THE CHAMBER OF TAX CONSULTANTS

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INDIRECT TAX STUDY CIRCLE MEETING ON 6TH AUGUST, 2019

"Issues in Refunds under GST Law"

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Issues in GST Refund - CTC

Case Study # 1

M/s. A Ltd is an exporter, exporting goods on payment of IGST and thereafter claiming refund of such IGST paidby filing GSTR-1. During July 2017, ALtd has exported goods on payment of IGST and has claimed automatic refund of IGST, however for same month ie July 2017, A Ltd has also claimed higher drawback. Refund of ALtd. was withheld on the ground that applicant has claimed higher drawback. To avoid this dispute, Applicant has subsequently returned differential drawback (difference between higher drawback and lower drawback) along with interest to the department.

Proper officer is of the view that Circular No.37/2018-Customs is binding on the revenue authorities.

Relevant extract of Circular No.37/2018-Customs reads as under:

Exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback.

Question for discussion?

- Whether view taken by proper officer is correct? Whether Proper officer is duty bound to follow circular issued by CBIC?

- Whether Applicant can simultaneously avail both higher drawback and refund of IGST paid in regard to the Zero Rated Supply in disregard of above circular?
- Consider in aforesaid case, A Ltd has actually claimed refund at lower rate but mistakenly declared in the shipping bills that it has availed higher drawback by selecting option A instead of B [option A signifies higher drawback and B signifies lower drawback]. According to department the IGST refund application could not be processed in this situation due to the fact that drawback code has been wrongly mentioned, further once EGM is closed for the said exports, it cannot be reopened by the computer system. Whether in this situation, A Ltd will not be able to claim any IGST Refund due to system issues?

Case Study # 2

B Ltd provides works contract services (subject to GST @ 12%) and procures various Input and Inputs services (e.g. Cement 28%, RMC 18%, Other Input and Input services which are subject to 18% GST) in the course or furtherance of its business. As ITC paid on the inputs and inputs services are higher than outward supply of works contract services, B Ltd is of the opinion that its case will be covered under Inverted duty structure refund.

Further to support its case, B Ltd also argues thatRule 89(5) of CGST Rules deals with inverted duty refund. Said rule has been amended by Notification no 21/2018-CT (R) dated 18th April 2018 and amendment were given retrospective effect from 1st July 2017 vide notification no. 26/2018-CTdated 13th June 2018.

Notification no 21/2018-CT (R) has made 2 major changes in relation to Rule 89(5) viz. formula for Inverted duty refund and Net ITC definition is amended as explained below

Formula for Refund before amendment

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷
Adjusted Total Turnover} - tax payable on such inverted rated supply ofgoods.

Formula for Refund after amendment

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Position before amendment	Position after amendment (retrospective)

"Net ITC" means input tax credit availed on inputs and input services during the relevant period	“Net ITC”|| shall mean input tax credit availed on inputs ~~and Input services~~ during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

B Ltd therefore believes that unutilised ITC on all inputs and inputs services which are used for providing outward supply of inverted duty goods or services or both is eligible for Refund retrospectively from 1st July 2017

Question for discussion?

- Whether belief of B Ltd is correct?
- Whether B ltd can also claim Refund of accumulated ITC of capital goods under rule 89(5)

Case study # 3

While filing GSTR-3B Accountant of C Ltd has wrongly shown zero rated supply in Table 3.1.a instead of 3.1.b and therefore not in a position to file Refund application online. C Ltd therefore has filed offline refund application (in physical form) with proper officer. Proper officer is of the view that Refund application has to be filed online and therefore said refund application is liable for rejection.

Question for discussion?

Presuming Refund Application is filed for

a) IGST paid Export of Service or

b) Without tax Export of Goods or Goods, or

c) Supply of Goods / Services to SEZ units (with or without payment of Tax)

Whether view taken by proper officer for rejecting refund is in consonance with GST law? Is there any other way out?

Case study # 4

Registered Tax Payer (RTP) has filed refund claims for the period July, 2017 to September, 2017. The Competent Authority has sanctioned 90 per cent of the amount claimed on provisional basis and the RTPhas also received same. Thereafter the revenue issued a show cause notice alleging that the refund claim had been erroneously sanctioned. The Competent Authority confirmed the demand raised in the show cause notice. Competent Authority has also reversed the refund originally sanctioned and ordered for recovery of the same. The RTP has filed appeal challenging the order of the Competent Authority along with a deposit of 10 per cent of the disputed amount by way of pre-deposit.

During the pendency of the appeal, the RTP filed refund claims for the unutilized credit for the subsequent period (October 17 onwards). The Competent Authority sanctioned a certain amount by way of refund after adjusting outstanding dues.

Question for discussion?

- Whether the act of Competent Authority to grant balance refund after adjusting outstanding dues on account of earlier demand is correct?
- Presume competent authority has disbursed full refund to exporter, however commissioner is not satisfied with legality or proprietary of the refund order, what option is now left open with department in this situation. Whether department can carry out direct recovery on the ground of "erroneous refund"?

Case study # 5

Applicant, YES India an Indian company and Yes Abu Dhabi Private Limited (Client) situated in Abu Dhabi have proposed to enter into a master service agreement (MSA) through which the applicant will provide administrative and support service in respect of the foreign business carried on by the client. Applicants as well as clients, both are subsidiary of YES Ltd (UK). Client Company is into Talent recruitment services.

Service to be provided by Applicant includes Accounting, Sales Invoicing, Purchase Invoicing, Cash receipt posting, Bank Payment entries, Other receipt entries, Credit Control work, Support Assignment work, Payroll assistance, Storing and scanning of data to the data storage disk and any other work as per requirement of client including general advice and assistance. Applicant will charge cost + 10% to the client as consideration for services. Payment for aforesaid services shall be received by applicant in convertible foreign exchange.

Department is of the view that aforesaid transaction is not eligible to classify as export of services due to following reasons:

- Applicant and client both are group companies and therefore they are establishments of the same person.
- Applicant is a person who arranges or facilitates supply of services between two or more personsand therefore the proposed service would be classified as 'intermediary service'.

Question for discussion?

You are called upon to opine whether transaction in question is zero rated supply eligible for GST Refund or normal supply subject to GST?

Further whether your answer to above question would change:

- If the Shareholding pattern of both the companies (applicant and client) proves that the Key management personal and Board of Directors are same and holds shares of each other and thus they control one another?
- If in payment advise from client foreign currency amount has been mentioned as "INR" but receiving bank has given confirmation that the bank has received the funds in "INR" to the debit of Vostro account and that such proceeds are received in fully convertible foreign exchange.
- If client withholds say 10% payment as TDS instead of remitting entire consideration to applicant?

Case study # 6

The applicant-company has entered into service agreement with overseas group entity for providing testing services in relation to the prototype goods(samples) which are physically made available by their overseas clients in India. The tests are directly carried out on the prototype goods provided by the overseas group entities and based on the same, the applicant prepares the testing report and sends across the said report to their overseas clients by way of email. The provision of service is complete only when the test report is delivered to the overseas group entities. The prototype goods are usually not sent back and the applicant receives the consideration in convertible foreign exchange for rendering testing services.

Relying on concept of destination based tax, applicant Company is of the view that since testing service is actually getting consumed outside India, such services provided to its overseas group entitiesis a zero-rated supply?

Question for discussion?

- Kindly opine whether service under consideration is eligible for refund as zero rated supply?
- Presuming in aforesaid question, Indian entity has received advance against testing services from overseas company & Indian entity has carried out testing for almost 9(Nine) months and came to conclusion that testing process is not making meaningful progress and this conclusion was conveyed to overseas company. Overseas company has allowed Indian

company to retain advance received towards full and final settlement of cost of testing services carried out till now. In this situation whether amount received from foreign entity can be claimed as export of services?

Case study # 7

The applicant is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines and undertakes the following types of transactions:

- The applicant installs beverage vending machines inside SEZ premises, prepares beverages using the vending machines and its ingredients, supplies to SEZ units which are consumed by the employees of SEZ units and charge the SEZ units based on number of cups of beverages supplied. (Cuppage billing)
- The applicant installs beverage vending machines inside SEZ premises, supplies beverage ingredients to the SEZ units and bills based on the quantity of ingredients supplied (Ingredients billing). There will not be any consideration for the usage of vending machine by the SEZ units.SEZ units prepare the beverages using the vending machines and serve them to its employees

As per applicant Zero-rated supply as defined in Section 16(1) of the IGST Act, 2017, means <u>any</u> of the following supplies of goods or services or both namely:—

a. export of goods or services or both; or
b. supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Applicant, therefore is of the view that <u>any</u> supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit is zero rated supply.

Question for discussion?

Whether view taken by Applicant is correct?

Case study # 8

100% Exporter is purchasing Yarn (Subject to 12% GST) and thereafter outsource processing activities to job workers and manufactures grey fabrics (Subject to 5% GST). Many of its input and inputs services are charged @ 12% and 18% GST. Exporter has exported goods on payment of 5% IGST and has received automatic refund from Customs authority.

Thereafter Exporter has filed Inverted duty Refund application for differential tax (Output tax Less Input tax). Proper officer has rejected Inverted duty refund

application relying on 2nd proviso to section 54(3) of CGST Act, which reads as under:

Provided also that no refund of input tax credit shall be allowed, if the supplier ofgoods or services or both avails of drawback in respect of central tax or claims refundof the integrated tax paid on such supplies.

Exporter is of the view that by denying refund to him, Government is actual taxing export.

Consultant is of the view that IGST refund received should be surrendered and thereafter Inverted duty refund should be applied.

Question for discussion?

Express your views in the given situation. Do you agree with view of Proper Officer, Consultant or Exporter?

Case study # 9

X is a merchant exporter. He procures various goods at Tariff rate and also some of goods at concessional GST rate of 0.1% [pursuant to notification No. 40/2017-Central Tax (Rate) & notification No. 41/2017-Integrated Tax (Rate) both dated 23rd October 2017]. He is exporting goods without payment of tax and propose to claim refund of ITC. Mr. X has following GST queries for refund:

Question for discussion?

- Whether Mr. X is eligible for claiming Refund of 0.1% GST?
- If yes, how many refund application he will have to file? Can he file single application as "refund of unutilized ITC on account of exports without payment of tax" and include refund of 0.1% GST also in this application?
- Is there any separate procedure to be followed for refund of concession rate of GST?

Case study # 10

PQR Ltd is providing VFX (Visual effects) services to its clients located overseas. It has imported costly computers and software after payment of custom duty and IGST. VFX Services are exported on payment of IGST to overseas clients (IGST is borne by PQR). While making IGST payment on exports, ITC availed on account of IGST paid at the time of import of computers and software were utilised in terms of section 49(5). Proper Officer while processing IGST paid refund application of

PQR ltd took a view that only IGST paid out of ITC availed on Input and Input Services is eligible for IGST Refund and IGST paid out of ITC availed on capital goods is not eligible for refund.

To form his opinion Proper officer has relied on Rule 96(9) of CGST Rules, which reads as under:

The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01and shall be dealt with in accordance with the provisions of rule 89

Further as per him Rule 89(4) defines Net ITC as under:

"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both

Question for discussion?

- Whether view taken by proper officer rejecting Refund relating to ITC on capital goods is correct?

- Whether view taken by proper officer linking rule 96 with 89 is correct?

If you don't agree with the either of views taken by proper officer kindly cite reasons of your refusal.

Case study # 11

ABC Ltd is having 2 units in Maharashtra. Unit A is located in Andheri (DTA) and Unit B is located in SEEPZ (SEZ). SEZ unit is a job worker. DTA unit has procured various raw materials and sent for processing to SEZ units. On completion of manufacturing process, DTA units authorise SEZ units to directly export goods to foreign destination.

Based on given facts, kindly opine on below mentioned issues:

- Who can Issue Export Invoice in this case, DTA unit or SEZ unit?
- Who can claim export benefit in given case, DTA Unit or SEZ unit?