GST Refunds: Pre- and Post-COVID-19 Comparison

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GST law still hasn't settled into the system completely, as various facets of law demanded clarity to ensure uniformity in its implementation. One such aspect being refund of GST under various scenarios envisioned by lawmakers.

The authors, **Karan Kakkar (Associate Partner, Grant Thornton India LLP)** with inputs from **Devika Dixit (Associate Director),** pen down about the refund process in Pre and Post COVID-19 eras and how the Government initiatives have slightly eased taxpayer's burden. Pointing out the entire refund process in the pre-COVID situation to be time consuming, the authors mention how the refund process was automated to ease the problems of the taxpayers, as also, the government undertook necessary amendments in the law to ensure no unintended encashment of ITC balances of taxpayers.

Article

'One nation, one tax' is the descriptive christened by the Indian Government for the Goods and Service Tax (GST), which came into effect from 1 July 2017 and is aimed at 'minimum government and maximum governance'. However, even after almost three years of inception, India Inc is still struggling to be at rest with this youthful federal law.

Since the implementation of GST, various facets of the law demanded clarity to ensure uniformity in its implementation. One such aspect has been the ambiguity related to refund of GST under various scenarios envisioned by lawmakers. Lawmakers have been continuously taking fruitful measures to ensure smooth GST refund process for the taxpayers along with providing certain reliefs in the post-COVID-19 era.

Pre-COVID-19

- For starters, considering that the entire refund process was time consuming and taxpayers may face working capital shortfalls, benefit was provided by way of provisional refund wherein 90% of refund application amount applied is released to the taxpayer on a conditional basis.
- Initially, refund mechanism was implemented manually on account of unavailability of electronic refund module. With effect from 26 September 2019, a fully electronic online refund process was implemented to provide rapid and easy refund facility.
- A master circular was rolled out to automate the refund process. Prior to this, taxpayers applying for refund of accumulated Input Tax Credit (ITC) were facing major issues on account of authorities demanding copies of all input invoices on which ITC had been availed during the refund period. The government addressed this issue by clarifying that submission was required only for invoices not appearing in GSTR-2A. However, this clarification was widely argued by tax authorities on account of introduction of Rule 36(4) of CGST Rules 2017, which restricted availment of ITC only to an excess of 20% (later reduced to 10%) over the amount of ITC reflecting in GSTR-2A of the taxpayer. Consequently, the government further provided clarification related to said clause *vide* Circular No. 135/05/2020 dated 31 March 2020, wherein GST refund claim was aligned with said Rule 36(4). Refund claim pertaining to invoices not appearing in GSTR-2A of the applicant was completely denied by said circular and provision providing relief by way of availment of excess 10%/20% margin provided for in Rule 36(4) was ignored. This restriction on the refund to the extent of invoices reflected in GSTR-2A runs contrary to the position laid down by Rule 36(4). Needless to say, this amendment is highly contentious and a clarification required as it is prone to being challenged at higher forums.
- Another practical hardship faced by tax payers was related to restriction on clubbing of tax periods, spread across different financial years, as was clarified under various circulars. This led to an administrative roadblock for the exporters claiming refund of ITC in cases where exports were undertaken in one month but its relevant ITC was availed in subsequent month. This restriction was removed in light of Hon'ble Delhi High Court's ruling in case of M/s Pitambra Books Pvt Ltd. This was a welcome move allowing relief to taxpayers.
- The government has also undertaken necessary amendments in the law to ensure no unintended encashment of input tax credit balances of taxpayers. For example, refund in case of supplies made other than zero-rated supplies such as excess payment of tax. Let us assume that a taxpayer had inadvertently deposited excess IGST of INR 10 lakh (partially through utilisation of ITC (INR 9 lakh) and partially through cash (INR 1 lakh) on exempt outward supply. The taxpayer had legal remedy of filing for refund claim of tax paid (INR 10 lakh). However, in such cases, entire refund was being credited to the bank account of the applicant leading to unintended encashment of ITC balance. In order to remove

- the said lacuna, the government brought amendment in CGST Rules 2017 by which it allowed issuance of such refund in the same mode by which said excess tax was paid i.e. both in cash as well as credit which were originally used to discharge GST liability.
- Earlier, disbursement of refund of CGST, IGST and cess was undertaken by central tax officer and SGST was undertaken by state tax officer; it made the process cumbersome and time consuming. The process has now been changed and complete refund would be disbursed by single tax officer in centre or state jurisdiction to whom such refund application has been assigned. This has led to removal of undue hardship, tracking and coordinating with different officers, faced by taxpayers.

Post-COVID-19

While the above actions helped taxpayers with the issues they were grappling with, spread of the COVID-19 pandemic led to new challenges for tax payers. During this period of uncertainty, the government has announced following relief measures to lessen the adverse economic impact of the pandemic:

- Immediate disbursement of pending GST refunds aimed at providing relief to all taxpayers (around one lakh business entities), including MSMEs and address their working capital concerns. On the Customs front, the government has disposed of 6.76. lakh claims of Customs, IGST and drawback worth INR 8,656 crore as part of the special refund and drawback disposal drive to benefit MSMEs/exporters during the COVID-19 crisis.
- Taxpayers faced various challenges on account of cancellation of service contracts and return of goods after discharging GST on said transactions upon issuance of tax invoice or receipt of advance. In such cases, the government has provided the taxpayers with the option to file refund of such excess tax paid if there is no output tax liability in the future (owing to low business activity during these times) against which such excess tax paid can be adjusted.
- Refund timelines have also been extended by the government, wherein any due date of filing refund application falling during 20 March 2020 to 29 June 2020 has been extended until 30 June 2020. This extension has also been provided for renewal of Letter of Undertaking for the purpose of effecting tax free exports in FY 2020-21.
- The government has further ramped up its IT system to ensure faster and smooth compliances/operations.

While the initiatives taken by the government have slightly eased taxpayer's burden, the government may consider following measures to lessen the impact of the COVID-19 crisis on businesses:

- Extend timeline further for filing refund claims wherein any deficiency memo has been issued and timelines for filing fresh application on account of same is within the lockdown period.
- As all taxpayers are working from home with limited access to documents/IT infrastructure, the government should consider pruning of documentary requirements for filing of refunds (both for input and output tax). The said relief may also be given by restricting the submission of invoices to only those which are relevant to the refund period.
- Applicability of Rule 36(4) should be suspended/deferred for the entire financial year so as to do away with the requirement of matching of inward invoices with GSTR-2A at the time of filing refunds, considering the difficulty faced in filing GSTR-1 return by various suppliers due to low business activity/ restrictions during these tough times.
- Refund for export of services can be claimed only on basis of foreign inward remittance certificate (FIRC) copies certified by banks. With delay in realisation of export proceeds, delay in claiming GST refund on export of services is expected. To address this issue, the government may consider granting provisional refund on export of services based on declaration from the customer and the local supplier without waiting for copies of FIRC.
- Current refund process, in case of supplies to SEZ unit/developer, requires an endorsement copy to be submitted. This endorsement needs to be obtained by the said SEZ unit/developer wherein the regional SEZ authority certifies that underlying supplies have been received for authorized operations. Owing to current operational restrictions, the government should consider relaxing this requirement to ease administrative burden on SEZ units/developers and their suppliers.

Overall, the government has been very supportive and empathetic towards taxpayers with swift addressing of issues by taking various relief measures and providing immediate support with tax reforms along with fast disbursement of refund applications for MSMEs and other small businesses. By doing this, the government has not only cleared the backlog of refund applications but has also injected liquidity into current sluggish Indian economy.