**Guest Corner.**

**A NOTE ON REFUND FOR EXPORTS**

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As per Section 16(3) of the IGST Act, 2017, a registered person making zero rated supply is eligible to claim refund under either of the following options, namely: –

* Supply of goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
* Supply of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

In the case of supply under Bond/LUT refund of the unutilised ITC has to be applied as per the provisions of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017. As per the above said rule, the person who has made zero rated supply under bond has to apply refund online through the GSTN portal and the refund can be applied for a specific month or for a specific period in a Financial year chronologically. For example, if a tax payer has supplied zero rated supply under Bond/LUT during April, June, August, December and February either he has to file the refund claim Separately for each month or from April to June or April to February.

The GSTN portal provide electronic interface to apply refund application for various categories of refund as mentioned below in form RFD-01.

1. Refund of Excess Balance in Electronic Cash Ledger
2. Refund of ITC on Export of Goods & Services without Payment of Tax
3. On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)
4. Refund on account of ITC accumulated due to Inverted Tax Structure
5. On account of Refund by Recipient of deemed export
6. Refund on account of Supplies to SEZ unit/ SEZ Developer (with payment of tax)
7. Export of services with payment of tax
8. Tax paid on an intra-State supply which is subsequently held to be inter- State supply and vice versa
9. On account of Refund by Supplier of deemed export
10. Any other (specify)
11. Excess payment of tax
12. On Account of Assessment/Provisional Assessment/Appeal/Any other order

As per GSTN portal specific application has to be filed for different type of Refund claims. Further, as per the GSTN portal, the refund claim has to be filed for a given month or given period chronologically. That is each and every month of the Financial year has to be covered in the refund claim. **If there is no claim then a NIL refund claim has to be submitted for that period**. So, if a tax payer has claim for January only, either he has to file a refund from April to January or April to Dec a NIL refund and Refund for January separately. **Here it is worth to mention that as per the software design of GSTN, the default is “NIL” refund claim. Suppose a taxpayer accidently clicks twice, the system will create a “NIL” claim and will not permit either to edit or to delete.** Many taxpayers have inadvertently filed “NIL” refund claim even though their intention is not file “NIL” refund claim for the particular period, forcing them to forgo the eligible refund claim. Several representations have been made to the GSTN to modify the above software design, but GSTN has not modified the design till date**. It is also worth to mention that, there is no such provisions either in the Act or Rules governing refund requiring to file a NIL refund claim.**

Having understood the problem faced by the Exporters, the Central Board of Indirect Tax, the Apex taxation body of CGST, has issued certain clarifications for the refund application filed as NIL refund application vide Circular No. 110/29/2019 – GST dated 03/10/2019 (Copy of the circular is enclosed for immediate reference). As per the circular

*It is now clarified that a registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:*

* 1. *The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and*
  2. *No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.*

*It may be noted that condition (b) shall apply only for refund claims falling under the following categories:*

1. *Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;*
2. *Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;*
3. *Refund of unutilized ITC on account of accumulation due to inverted tax structure;*

*In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied*

*4. Registered persons satisfying the above conditions may file the refund claim under “Any Other” category instead of the category under which the NIL refund claim has already been filed. However, the refund claim should pertain to the same period for which the NIL application was filed. The application under the “Any Other” category shall also be accompanied by all the supporting documents which would be required to be otherwise submitted with the refund claim.*

This circular, while wishes to address the problem faced due to the inadvertent filing of NIL refund claim, however the conditions put forth in the Circular, makes it difficult for the Tax payers who have filed the refund claims for the subsequent period.

A tax payer who wrongly filed NIL return for a period in order to get some relief and overcome the working capital requirements has to file the refund claims for the subsequent period. However, the conditions put forth in the Circular, denies the taxpayer his legitimate claim of refund. Though the Department is entitle to restrict the ineligible claim, it con not reject the refund claim without verifying the eligibility and other conditions. **Here one should note that the circular has been issued nearly 2 years after the implantations of GST.**

In view of the above, it is felt that the conditions put forth in the Circular need’s reconsideration. The Department has to allow the Taxpayer to file the refund claims for the tax payers who have filed the NIL Refund claims inadvertently verify the eligibility and quantum of refund claims and sanctions same without any pre-conditions.