

Hurdles in Regard to Refund under Inverted Duty Structure

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With the introduction of GST with multiple tax slab rates, the problem of non-utilization of input tax credit was fairly anticipated. If the unutilized ITC is not refunded, then the unutilized ITC will be added in the cost of supply to be made thereby forfeiting the very purpose of the introduction of this new taxation law. Usually final output amounts to higher value than the inputs. However, due to multiple GST rates, there may be a situation where the Input tax credit exceeds the GST liability payable & such excess ITC remains unutilized, this kind of a situation arises when GST rate on inputs are higher than the GST rate on outputs despite the value additions made. And, this is known as inverted duty structure. And, to overcome the issue of accumulated credit, refund under the Inverted Duty Structure was introduced to steer the issues related with this unutilized ITC and to remove the cascading effect.

However, the concept of inverted duty structure is not as simple as it appears and results in more difficulties than easing it out for taxpayer. The Government has brought various changes and amendments to this concept in order to blow off the criticism from the large section of tax payers, however it is still an unresolved battle. Many industries such as textiles, solar modules, fertilizers, steel utensils, railway wagons, and textiles and so on are facing difficulties because of inverted duty structure mechanism and the complexities involved in the refund process.

Even though the government has come up with the circular which states that the refund process has been made online but still the entire process is slow and paradoxical which enhance cost of compliance. Even after the successful filing of refund application post struggling with the technical glitches on the GSTN portal, there are various ground issues which delay the refund process. To illustrate few issues, the refund applications don't get reflected on the jurisdiction officer portal on real time which may be due to transfers or any other technical issues, in case the officer issues the deficiency memo, the fresh application needs to be filed again leaving the tax payer to go through the entire process of online filing again. Further, the situation might arise that the timing restriction of two years for filing of application of refund would have lapsed by the time deficiency memo is communicated. Due to the lack of clarity in law, the refund might get rejected and the only option available to the tax payer is to litigate it which again is an additional burden on the tax payer. This way inverted duty structure give rise to various refund-related issues. Due to such procedural complexities involved in the refund filing process, the taxpayers are either left with the option of either building the said cost of unutilized input tax credit in their selling price or diversifying their business so as to utilize the said unutilized input tax credit. However, the latter is achievable by few only and thus the rationale behind introduction of GST of

bringing ease and reduced burden of taxes both on businesses and consumers gets defeated.

Further, certain amendments and clarifications through circulars instead of bringing relief to the taxpayers made the said concept more complicated and turned into the havoc for the tax payers. Amendment with respect to exclusion of input services with retrospective effect from July 1, 2017, from the eligible input tax credit for refund in case of inverted duty structure and the clarification via circular that the refund under inverted duty structure shall not be available in case the input and output are same thereby restricting the refund to traders was never the intention of the law. The said clarification through circular has no legal backing and created the turmoil in the industry. Many a times, Government issues notifications lowering the GST rates of taxes. And, as a relief to the pandemic and to boost the demand, it is expected further that the Government will reduce GST rates on various goods and services in the next GST council meeting. This would result in the unsold stock left with the traders purchased at the higher rate, however post the change in rate of tax that will have to be sold at lower rate. Thus, it will result in pool of credit. However, with this circular coming in, no refund shall be allowed in such cases. Various representations have been made to CBIC on reconsideration of this matter and various writ petitions have been filed in High Court. In the past, in order to resolve the issue, the GST council increased the GST rates on several inputs. However, this cannot be considered as rational and cogent. With the pandemic hitting the Indian industries magnificently, the need of an hour is some major reforms to ease the refund process instead of increased burden of taxes, which is not in line with the fundamentals of GST.

To further submit, "Make in India", an initiative by the Government of India to encourage companies to manufacture in India and incentivize dedicated investments into manufacturing cannot be achieved unless such anomalies are immediately looked into. Inverted duty structure revive imports and infirm the domestic industry.

Aim of GST was to give benefit to the nation in the long term but this cannot be achieved unless the anomalies and complicacies in refund process are removed and the ease of doing business is not only being said but is brought in place in real sense. Any proposal that affects GST revenues should first pass through the GST fitment committee and post their analyses should be submitted to Council for decision.

As on date the relevant law has not been updated yet and the best possible outcome is still awaited. The GST rates concerning the inverted duty structure are required to be calibrated so as to improvise the largely affected working capital position of input supplies and buyers. Special reforms have to be introduced in the refund mechanism so as to fasten the process of the refunds related to inverted duty structure and thereby to revamp the manufacturing sector and other key sectors in India who are largely impacted by this inverted duty structure.