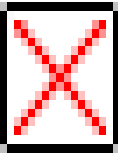


Curious case of refund of tax paid to the wrong 'government'

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THIS article is penned in the backdrop of the [one](#) that appeared in this column on August, 17.

For this purpose, the section 77 of the CGST [Act, 2017](#) is reproduced below -

Tax wrongfully collected and paid to Central Government or State Government.

77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.

Similarly, Section 19 of the IGST Act is also reproduced below -

Tax wrongfully collected and paid to Central Government or State Government.

19.

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

Refund u/s 77 of the CGST Act or for that matter u/s 19 of the IGST Act would arise only after **"it is subsequently held"** that the tax initially paid on the supposed transaction is not an intra-state supply but an inter-state supply OR vice versa.

Section 77(1) stipulates that the registered supplier be granted refund of the amount of taxes so paid in such manner and subject to **such conditions as may be prescribed.**

Obviously, refund of the tax paid earlier, albeit incorrectly, would arise only after the registered person has paid **AFRESH** the correct tax viz. Integrated Tax or, as the case may be, the CGST/SGST. The fact that, without such payment, there is no scope for any refund, needs no greater elucidation.

The largesse bestowed by the Government through these sections is that the registered person would **not** be required to pay any INTEREST on the amount so PAYABLE.

This leaves us with two pertinent questions.

How will this recovery of unpaid CGST/SGST or IGST be effected?

It is obvious that this recovery (say, of CGST) is to be effected in terms of s.73 or for that matter in terms of s.74 of the CGST Act, 2017 and what goes hand in glove is the penal provision - interest obviously has been given a miss by section 77 itself.

So, the words **"it is subsequently held"**

owes its roots to section(s) 73/74 of the CGST Act, 2017 which entails issuance of 'notice' and passing of an 'order'.

Timelines mandated in the sections 73, 74 obviously come into play and there is no escape from the same.

What necessarily follows is that, once it is held that the supply is not what the registered person actually thought it to be, the **"recovery"** follows along with penalty (quite presumably) and which may finally, if required, lead to recovery of tax u/s 79 of the Act, 2017.

It also needs mention that the title to section 77 reads **"Tax wrongfully collected and paid to Central Government or State Government"**.

Special emphasis needs to be given to the words **"wrongfully"** - it is not **"wrongly"**.

Dictionary meaning of **"wrongfully"** (adverb) is - in an unfair, unjust or illegal manner.

Whereas **"wrongly"** (adverb) means - in a way that is incorrect or mistaken.

"Wrongfully" appears to be far more accusatory than the word **"wrongly"**.

And so also, make a note of these words, **"collected and paid"** - not **"paid and collected"**.

Be that as it may, presuming that the aforesaid play of s.73/74 is not at all envisaged in cases covered by s.77 of the Act, the fact of the matter is that **"refund"** would be due only when the payment under the correct head of IGST or CGST/SGST is MADE.

What is the time limit for claiming refund?

In the backdrop of the conclusion in the earlier paragraph, the refund timer would start ticking only after the IGST or CGST/SGST is paid **after** being held to be payable by the authorities **concerned**.

This **"date"**, therefore, would be the **"relevant date"**

as can be arrived at upon reading the Explanation 2(h) of Section 54 of the Act, 2017.

Furthermore, non-applicability of 'unjust enrichment' provisions is made crystal clear in view of the provisions of s.54(8)(d) of the Act, 2017.

What also needs mention is the construction of s.20 of the IGST Act and rule 2 of the IGST Rules.

While section 20 [clause (xiii)] clearly stipulates that the provisions of CGST Act, 2017 relating to refunds shall **mutatis mutandis**, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act, rule 2 of IGST Rules only mentions that CGST Rules, 2017 shall so far as may be, apply in relation to Integrated tax as they apply in relation to central tax.

Interestingly, rule 89(2) of the CGST Rules begins thus - **"The application under sub-rule (1) shall be accompanied by any of the following evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-"**

Clause (j) to rule 89(2) reads - 'a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply'. Application Form GST RFD-01, Sr.no. 7(j) too makes a mention of the same.

Needless to mention, because of usage of the term *"mutatis mutandis"*

in section 20 of the IGST Act, one may read this clause (j) as 'a statement showing the details of transactions considered as inter-State supply but which is subsequently held to be intra-State supply' insofar as refund of IGST is concerned.

Incidentally, section 54(8)(d) covers **"refund of tax in pursuance of section 77"**. However, because of the employment of words ***mutatis mutandis*** in s.20 of the IGST, Act, refund of tax in pursuance of s.19 of the IGST Act, 2017 would also get covered therein.

Having said that, one also needs to take a look at section 54, sub-section (8A). It reads - The Government may disburse the refund of the State tax in such manner as may be prescribed.

All said and done, should one presume that the **"manner of claiming/disbursing refund"**

is the one that is already prescribed in terms of rule 89 or is any fresh methodology awaited. This is because sub-section (8A) has been inserted by the Finance Act, 2019 w.e.f 01.09.2019 ONLY whereas the parent rule is in existence since July 2017.

To conclude, refund u/s 77 of CGST Act, 2017 [or u/s 19 of IGST [Act, 2017](#)

] is not a mere 'give and take' measure but one which operates within defined **"timelines"**, as explained above.

Making a mountain out of a molehill, you bet!

Not unless the mighty CBIC steps in and clears the muddle.

[The views expressed are strictly personal.]

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