

# TAX INFO

*Dated*

**Latest update on GST Law:** CBIC vide **Instruction No. 03/2022-GST dated 14th June, 2022** instructs GST officials to upload Speaking Order along with GST Refund sanction order in FORM GST RFD-06 and also specified that Post-Audit may be conducted within 3 months from issue of FORM GST RFD-06 order for GST Refund claims exceeding Rs. 1 Lakh.

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## **Summary of Instruction No. 03/2022-GST dated 14th June, 2022**

1. The pre-audit of refund orders is not required but the post-audit of the refund orders is required for the purpose of ensuring uniformity in procedure and enabling effective monitoring of sanction of refund claims in order to safeguard interest of revenue.
2. Section 107 of the CGST Act, 2017 provides that the Commissioner may review any decision or order, **including an order of refund**, with respect to its legality and he may direct any officer subordinate to him to file an appeal against the said decision or order **within 6 months of the date of communication of the said decision or order**.
3. The proper officer shall follow the principle of natural justice before taking the final decision with regard to refund claim. Principle of natural justice provides that a **detailed speaking order** needs to be issued providing a basis for sanction/rejection of refund. Therefore, while passing the refund sanction order, the proper officer should also upload a detailed speaking order along with refund sanction order in FORM GST RFD-06.
4. The post audit may be conducted only for refund claims amounting to Rs. 1 Lakh or more.
5. ACES-GST portal provides the facility for uploading a document in PDF format along with the FORM GST RFD-06 order. The same may be utilized by proper officer for uploading the speaking order along with refund sanction order in FORM GST RFD 06 so that the same is made available to the refund applicant as well as Post-audit/Reviewing Authority online.
6. All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in FORM GST RFD-06. The review and post audit officers shall have access to all documents/statements on ACES-GST portal pertaining to the said refund claims.
7. For the purpose of post-audit, a **Post-Audit Cell** under a Deputy/Assistant Commissioner along with one/ two Superintendents and Inspectors as required may be created in Commissionerate Headquarters.
8. The **post-audit should be concluded within 3 months** from the date of issue of FORM GST RFD-06 order. The findings of the post-audit shall be communicated to the review branch within the time period of 3 months.
9. The **review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal** under Section 107(2) of the CGST Act.
10. Till the time the functionality for conducting post-audit online is developed on ACES GST portal, post-audit of refund orders may be conducted in offline mode.
11. For the said purpose, the refund orders may be provided to the post-audit cell by the concerned Division through e-Office **within 7 days** of issuance of refund sanction order in FORM GST RFD-06. The report of the post audit may be furnished by the Post-Audit Cell to the Review Cell through e-Office within the time period of 3 months.

### **The speaking order should contain the following details:**

#### **A. Details for all category of refund claims:**

- The period for which refund claim has been filed, date of filing & the category in which refund has been claimed.
- Whether it has been checked that refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.
- Details of Deficiency Memo, if any, in FORM GST RFD-03 issued in respect of the said refund claim previously.
- Whether the refund claim has been filed within limitation of time.
- Details of the documents/ statements uploaded along with the refund claim.

- Whether all the due returns have been filed by the applicant or not, whether any dues are pending recovery from the applicant, and whether refund is required to be withheld/ any amount is required to be deducted as per provisions of section 54(10) of CGST Act on account of non-filing of returns or dues being pending for recovery from the applicant.
- Whether any SCN was issued to the applicant. Details of reply of the applicant and PH details. Discussion and findings in respect of applicant submission. Details of case laws relied upon in deciding the matter, if any.
- If unjust enrichment is applicable in the refund, whether the applicant has furnished due certificate in terms of section 54(4)(b) of CGST Act, certifying not passing the burden of tax, in respect of which refund is being claimed, on any other person.

**B. Additional details in case of the refund of accumulated ITC (on account of zero rated supplies/ inverted rated structure) and refund of IGST paid on account of zero-rated supplies:**

- Whether the refund amount claimed has been debited from the electronic credit ledger.
- In case of refund of IGST paid on account of zero-rated supplies, whether the amount of IGST has been paid through GSTR-3B return.
- Whether the calculation given by the applicant of export/ zero-rated turnover, adjusted aggregate turnover, turnover of inverted duty supplies, as applicable, is correct as per the relevant provisions.
- Whether calculation of Net ITC, is correct as per the relevant provisions.
- Whether it has been verified that ITC on capital goods has not been included in calculation of Net ITC for refund of ITC in zero rated supplies.
- Whether it has been verified that ITC in respect of input services as well as capital goods is not included in calculation of Net ITC in case of inverted tax structure refund.
- Whether refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in FORM GSTR-2A of the applicant in terms of **Circular No. 135/05/2020-GST dated March 31, 2020.**
- Details of computation of refund claim amount as per the prescribed formula in the Act/ Rules and verification whether the refund amount claimed is correct or not.
- In case of refund on account of export of goods, whether the details of shipping bill/ bill of exports have been verified from the ICEGATE portal.
- In case of refund on account of export of services, whether the claimant has furnished the BRC/FIRC/ other relevant documents evidencing receipt of export remittances.

**C. Additional details in case of refund of tax paid on supplies regarded as deemed export:**

- Whether necessary procedure was followed while making procurement/supplying of goods regarded as deemed exports.
- Whether the ITC claimed against the tax paid on such deemed export supplies have been debited from the electronic credit ledger by the recipient for filing application of refund.
- Whether it has been verified that no ITC has been claimed by the recipient when refund is claimed by supplier.

**D. Additional details in case of refund of excess balance in cash ledger:**

- Whether the amount claimed has been debited from the electronic cash ledger.
- Whether the amount to be refunded has been calculated in accordance with the provisions of section 49(6) of CGST Act.

**E. Additional details in case of refund filed under other categories except those mentioned above:**

- Whether the documents furnished/uploaded along with the refund claim have been verified for their correctness from the source like FORM GSTR-1, FORM GSTR-3B, ICEGATE portal.
- Details of the verification conducted and reasoning for grant/ rejection of refund.
- In case of refund ITC filed under “Any Other” category, whether the amount claimed has been debited from the electronic credit ledger, wherever required.

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