



Gurugram Branch of NIRC of ICAI

LIVE WEBINAR

Virtual CPE Meeting

Refund Under GST



CA. Kashish Gupta

Tuesday, 10th August 2021
04:00 PM - 06:00 PM

Register at <https://bit.ly/3xqzqDQ>

CA. Nitin Kataria

Chairman
9899354222

CA. Mohit Singhal

Vice-Chairman
9555379714

CA. Nishant Kumar

Secretary
9560753535

CA. Lalit Aggarwal

Treasurer
9999565491

CA. Dheeraj Sharma

Immediate Past Chairman
9818396559

CA. Arun Aggarwal

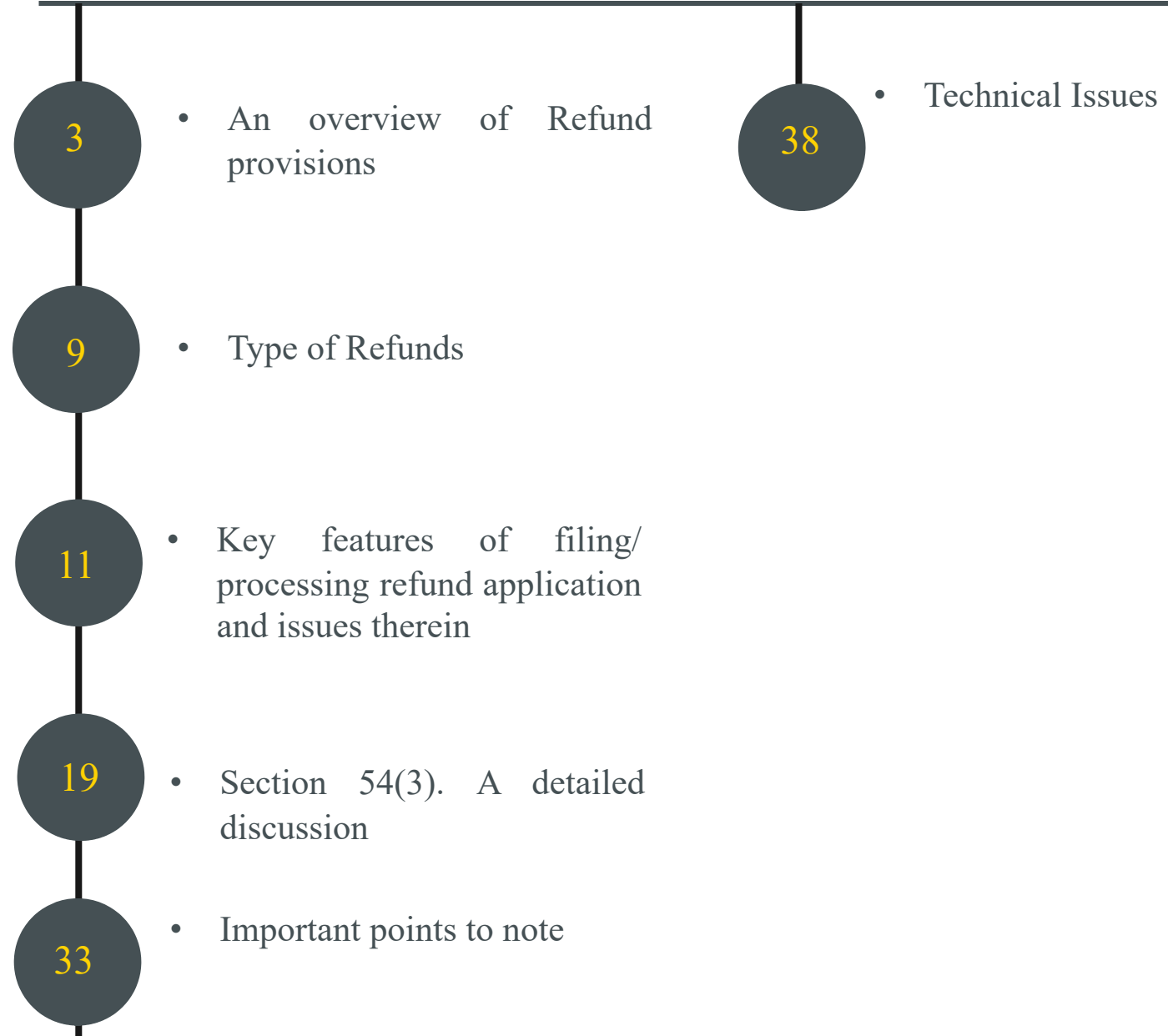
Past Chairman
9891338830

CA. Sanjeev Aggarwal

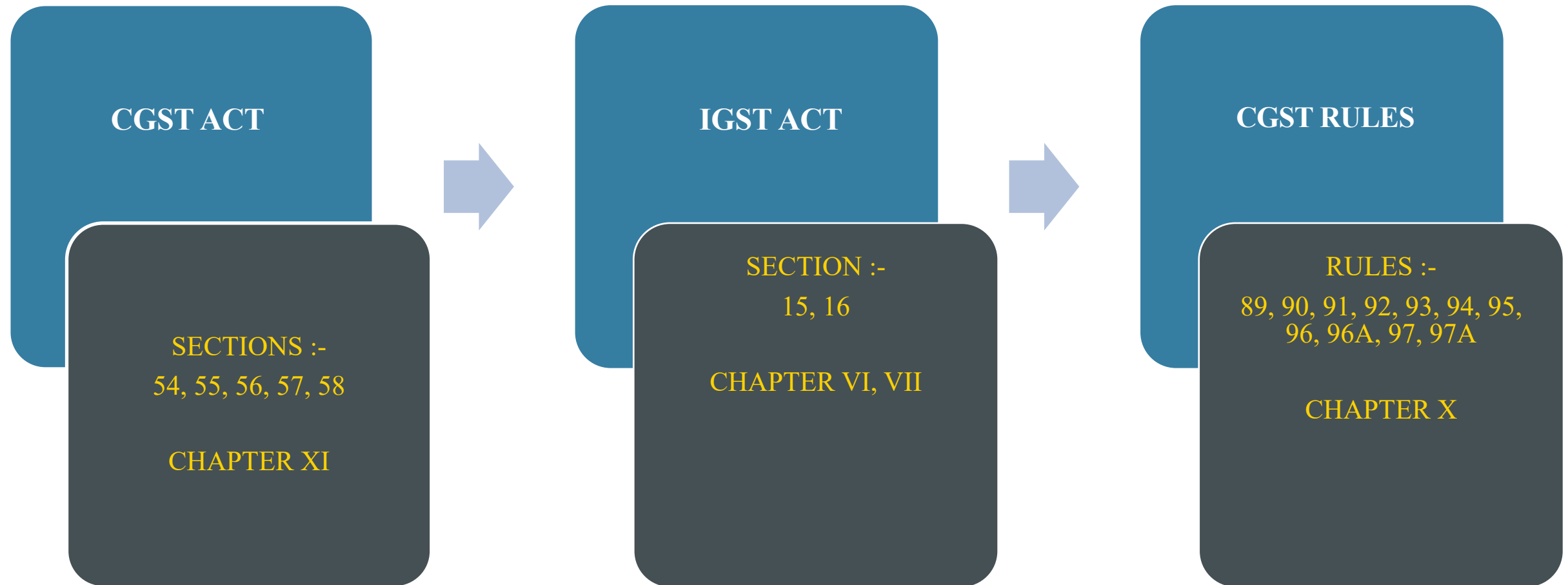
Executive Member
9818264355

Highlights and Insights

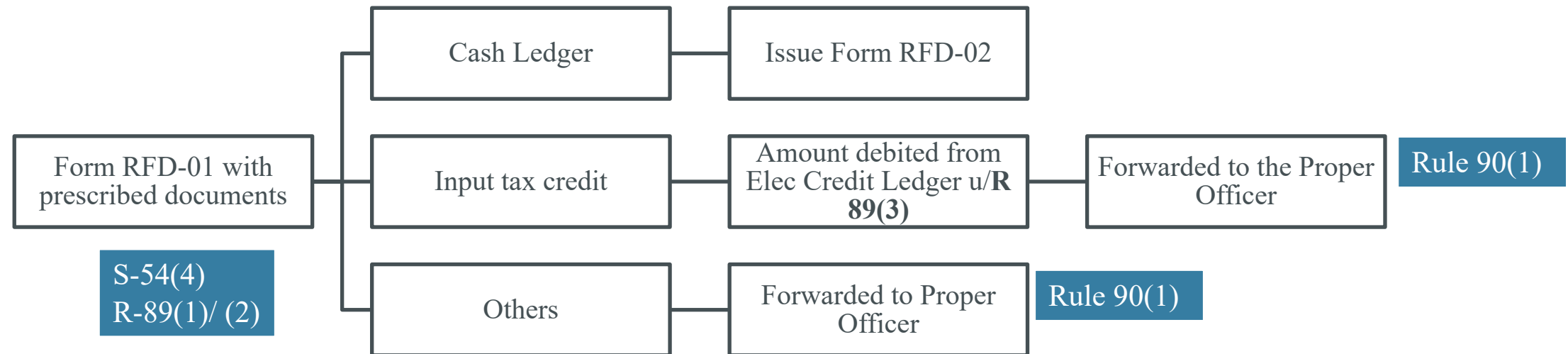
Topics of this Presentation



An Overview of Refund Provisions

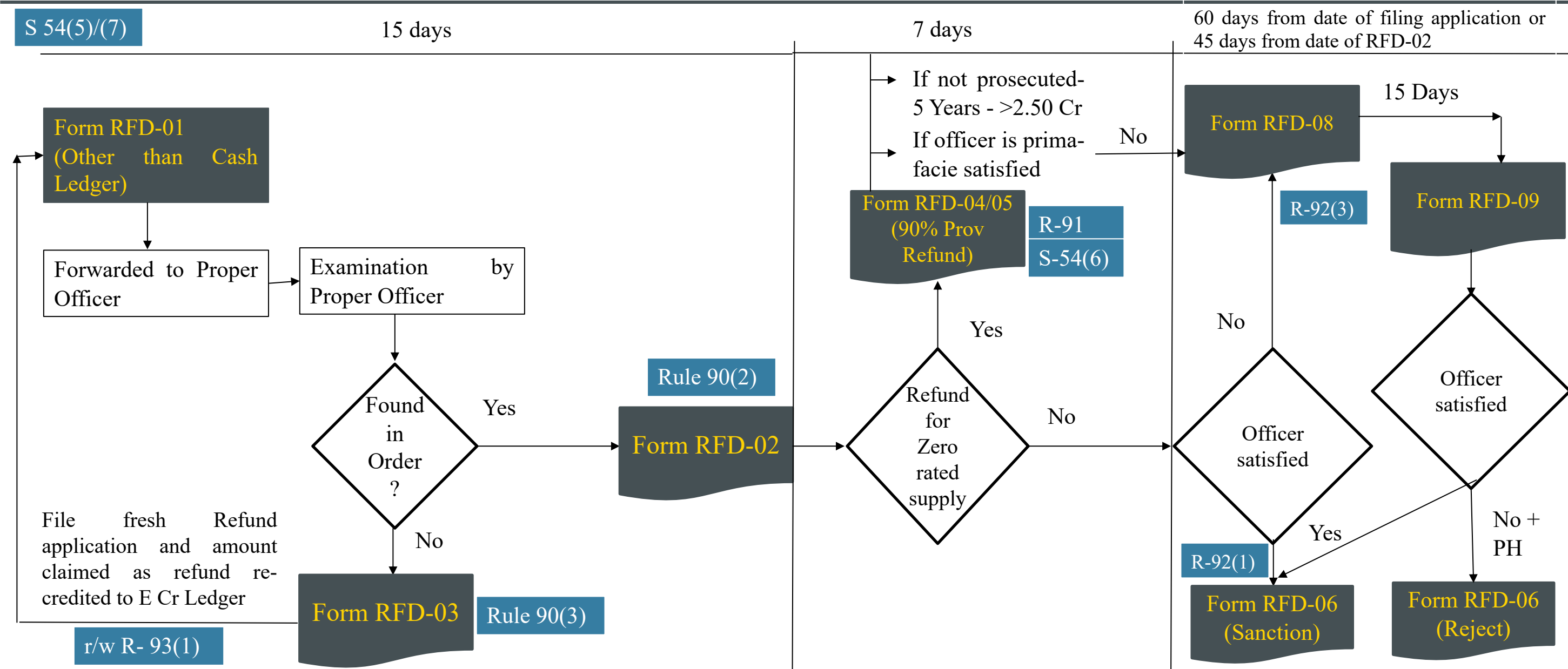


An Overview of Refund Provisions

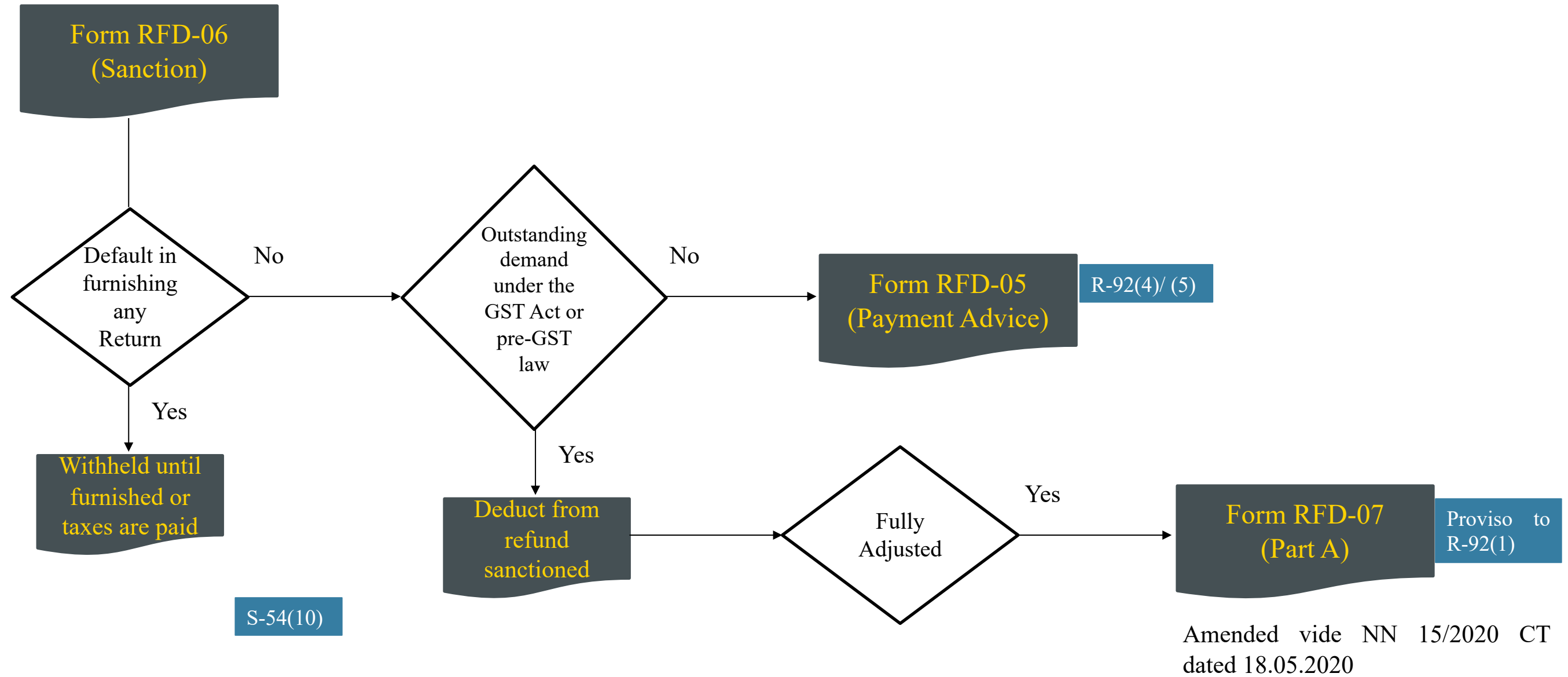


Day 0

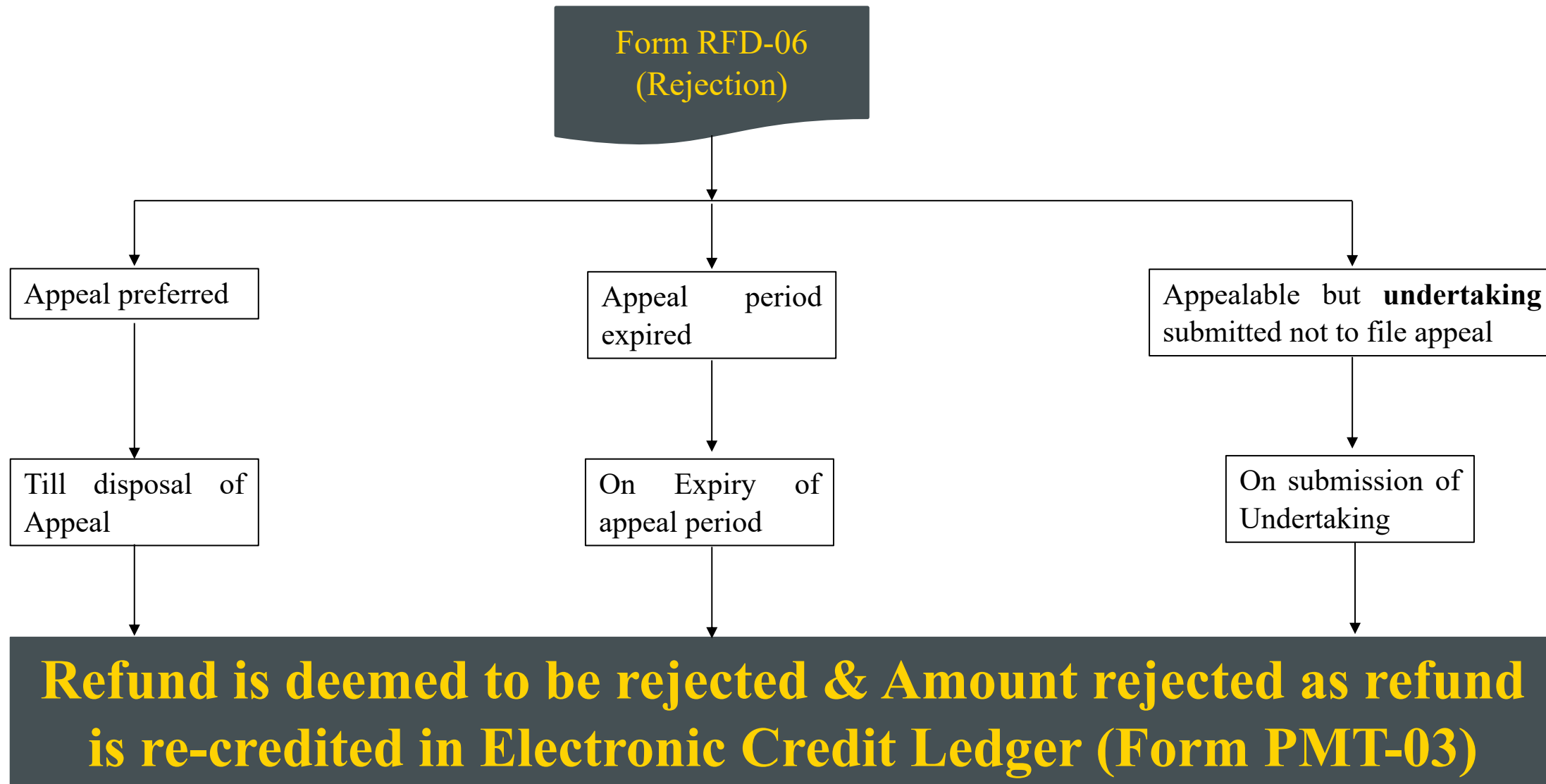
An Overview of Refund Provisions



An Overview of Refund Provisions

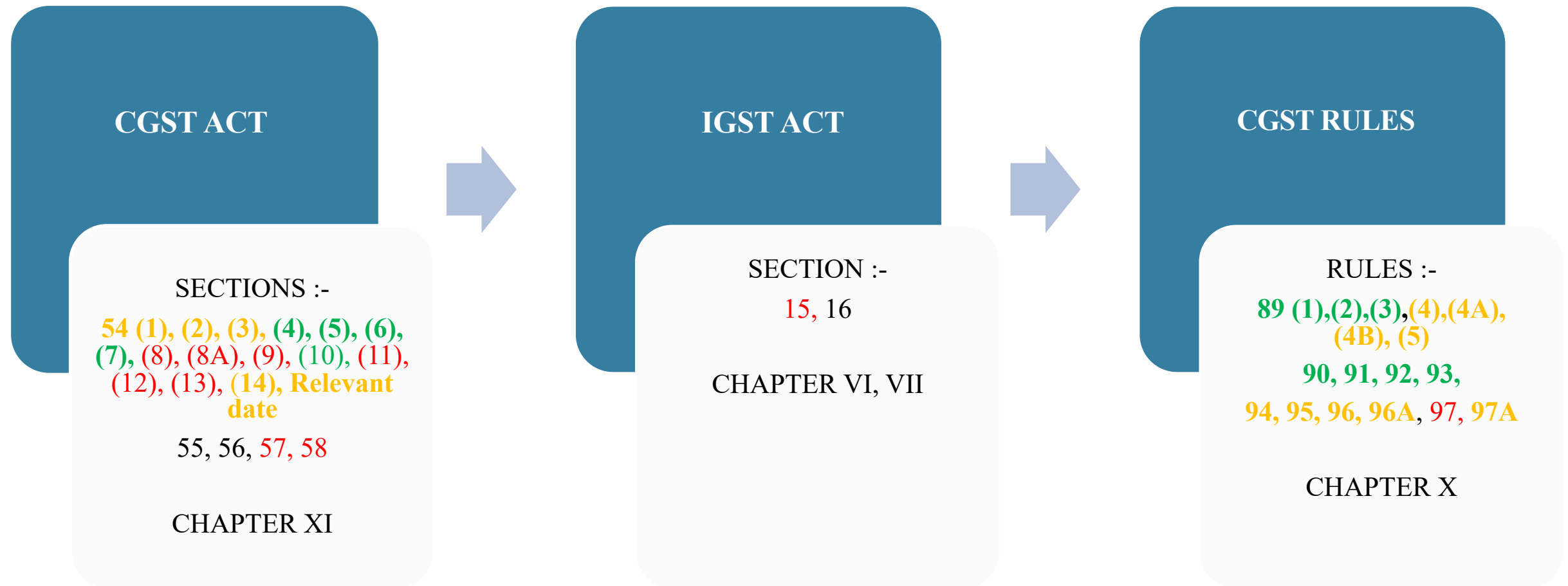


An Overview of Refund Provisions



R-93(2)

An Overview of Refund Provisions



Types of Refund

The screenshot displays the GST portal interface. At the top, the header includes the Government of India emblem, the text "Goods and Services Tax", and the user "JAKSON LIMITED" with a notification bell icon showing 0 alerts. The main navigation bar contains links for Dashboard, Services, GST Law, Downloads, Search Taxpayer, and Help and Taxpayer Facilities. The "Services" dropdown menu is open, showing options: Registration, Ledgers, Returns, Payments, User Services, Refunds (highlighted), and e-Way Bill System. The "Refunds" sub-menu lists: Application for Refund, My Saved/Filed Applications, Track status of invoice data to be shared with ICEGATE, Refund pre-application form, Track Application Status, and Intimation on account of Refund not received. A message box states: "You can navigate to your chosen page through navigation panel given below". Navigation buttons include: RETURN DASHBOARD >, CREATE CHALLAN >, VIEW NOTICE(S) AND ORDER(S) >, ANNUAL RETURN >, and Else Go to >> CONTINUE TO DASHBOARD >. A "View Profile >" link is also present. A "Quick Links" section lists: Check Cash Balance, Liability ledger, and Credit ledger. The footer contains copyright information for 2018-19, the site last updated date (07-09-2020), and the developer (GSTN).

Goods and Services Tax

JAKSON LIMITED

Dashboard Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities

Registration Ledgers Returns Payments User Services **Refunds** e-Way Bill System

Application for Refund
My Saved/Filed Applications
Track status of invoice data to be shared with ICEGATE
Refund pre-application form
Track Application Status
Intimation on account of Refund not received

You can navigate to your chosen page through navigation panel given below

View Profile >

RETURN DASHBOARD > CREATE CHALLAN > VIEW NOTICE(S) AND ORDER(S) >

ANNUAL RETURN >

Else Go to >> CONTINUE TO DASHBOARD >

Quick Links

Check Cash Balance
Liability ledger
Credit ledger

© 2018-19 Goods and Services Tax Network Site Last Updated on 07-09-2020 Designed & Developed by GSTN

Types of Refund

1	Refund of Excess Balance in Electronic Cash Ledger	54(1)	7	Export of services with payment of tax	16 of IGST
2	Refund of ITC on Export of Goods & Services without payment of tax		8	Tax paid on an intra-state supply which is subsequently held to be Inter-State Supply & vice-versa	77
3	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)	54(3)	9	On account of Refund by Supplier of Deemed Export	
4	Refund on account of ITC accumulated due to Inverted Tax Structure		10	Any Other (Specify)	
5	On account of Refund by Recipient of Deemed Export		11	Excess Payment of Tax	
6	Refund on account of Supplies to SEZ unit/ SEZ developer (with payment of tax)	16 of IGST	12	On account of Assessment/ Provisional Assessment/ Appeal/ Any other order	

View after clicking
“REFUNDS” on the
common portal
(www.gst.gov.in)

Key features of filing filing/ processing Refund claim and issues therein

- ❖ Processing made fully electronic w.e.f. 26.09.2019
- ❖ If marked to wrong jurisdiction, officer shall re-assign it to correct jurisdiction with 3 working days [*Also refer Circular Number 104/23/2019- GST dated 28.06.2019*].
- ❖ GSTR-1 and GSTR-3B due upto the date of filing refund application shall be furnished, where applicable.
- ❖ The “tax period” means a period for which return is filed. However, it may happen that there are exports on one tax period and procurements in other tax period, therefore, to facilitate the refunds, clubbing of refund applications has been allowed. However, clubbing across different financial years has also been allowed by Hon’ble Delhi HC in case of *Pitambara Books Pvt Ltd WP(c) 627/2020*
- ❖ Refund applications are to be filed in **chronological order** in following cases:
 - ❖ ITC refund on account of zero-rated supplies, and
 - ❖ ITC refund due to inverted duty structure.
- ❖ If fresh refund application is filed pursuant to issuance of deficiency memo, then the scope of issuing deficiency memo is restricted to the extent of deficiencies pointed out or any other **substantial** deficiency.
- ❖ Fresh refund application shall also be filed within 2 years from relevant date – amendment made to exclude the time spent in between the date of filing application and date of issuing the deficiency memo.
- ❖ Once acknowledgment in Form RFD-02 is issued, no deficiency memo can be subsequently issued by the officer.

Key features of filing/ processing Refund claim and issues therein

- ❖ Once acknowledgment in Form RFD-02 is issued, no deficiency memo can be subsequently issued by the officer.
- ❖ If department fails to point out deficiency within 15 days, then
 - ❖ If department is allowed to issue deficiency memo, the implications would be as under:
 - Department will be in a position to breach the statutory time limit of 60 days.
 - Since the applicant has to file fresh refund application, it may lead to a situation where time limit of 2 year from relevant date may end and claimant right to claim refund becomes barred by time.
 - Delay in obtaining refund from department
 - Impairment of claimant's Right to claim interest.
 - ❖ **Jian International – Delhi HC – WP(C) 4205/2020** – Hon'ble court held that department loses the right to point out deficiencies if the deficiency memo is not issued within 15 days.
- ❖ Refund of unutilized input tax credit on account of Zero-rated supplies – 90% provisional refund sanctioned

Refund claimed for	Provisionally sanctioned	Adjudicated as refundable	Action to be taken
100	90	70	<ul style="list-style-type: none">• Form RFD-08 to be issued• Rejection of Rs. 30/-• Recovery of Rs. 20/- along with interest.

Key features of filing filing/ processing Refund claim and issues therein

❖ Can proper officer reject refund claim on ground of **INELIGIBLE CREDIT**?

- ❖ As per para 20 of Circular Number 125/2019 dated 18.11.2019, proper officer can reject the refund on ground of ineligibility of credit and can issue a **show cause notice** requiring the claimant to show cause as to why:
 - a) the refund amount corresponding to the ineligible ITC should not be **rejected** as per the relevant provisions of the law; and
 - b) the amount of ineligible ITC should not be **recovered** as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, **along with interest and penalty**, if any.
- ❖ ITC Limited Vs CCE, 2019 (368) 216 (SC-3J)
 - The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all.
- ❖ The issue of admissibility of credit, in the absence of any show cause notice alleging wrong availment of ITC having been issued under section 73/74 of the Act, cannot be raised by the proper officer for the purposes of refund.

Key features of filing/ processing Refund claim and issues therein

❖ Refund is restricted to the extent of balance appearing in Form GSTR-2A – for cases falling under section 54(3).

❖ A copy of Form GSTR-2A is required to be uploaded on portal for

- Relevant period,
- Prior period, and
- Subsequent period

Wherein invoices, in respect of which credit was claimed in relevant period, are appearing.

❖ Applicant to do the following work:

- Prepare list of invoices in respect of which credit is claimed in GSTR-3B
- Do matching thereof with GSTR-2A
- Categorize into input/input services/capital goods
- Mention whether eligible/ineligible

❖ Upload self-certified copies in respect of those invoices which are not appearing in Form GSTR-2A. However, as per Circular Number 135, it has been provided that refund in respect of these invoices shall not be allowed.

Refund of ITC availed in GSTR-3B is to be claimed. These invoice may auto-populate in 2A of any tax period. We should not restrict our claim to the invoices appearing in 2A of relevant tax period only.

❖ Issues

- What shall be done when such invoices will start appearing in Form GSTR-2A as supplier has time till September of the following financial year?
- In such cases, portal does not allow claimant to furnish a new refund application under same category for the same tax period. It has also been experienced practically that department officers do not process the claims filed under “Any Other” category.
- As per para 7 of the Circular 125, it is specifically mentioned that **GST Council** has decided to sanction the refund of provisionally accepted input tax credit. Accordingly, undertaking to pay back amount of refund sanctioned to the extent of mis-matching is asked for from the claimant.

Key features of filing filing/ processing Refund claim and issues therein

❖ Manner of debiting the electronic credit ledger

- ❖ IGST, to the extent of balance available
- ❖ CGST and SGST/UTGST, equally to the extent of balance available. In the event of shortfall, excess reversal from other tax head can be made.
- ❖ In 2017-18, the GSTN portal automatically debited the electronic credit ledger. At that time, the functionality was not developed properly. As a result, the claims of many assessee's were processed **automatically** with a lower amount. For example,
 - Refund application pertains to period Nov-17
 - Clarification came on 04.09.2018
 - Another refund application was not allowed on GSTN portal for same tax period, under the same category.
 - **What should be the possible contentions?**

❖ Possible contentions

- Claimant already applied for full amount but was restricted to a lower amount by the GSTN portal.
- Therefore, the refund has already been claimed in full by the claimant.
- The debit from electronic credit ledger has been made with short amount due to inherent errors in formula on GSTN portal.
- Therefore, a simple letter should be written to the jurisdiction department officer to process the balance amount of refund.

Key features of filing filing/ processing Refund claim and issues therein

❖ Manner of debiting the electronic credit ledger

Particulars	Turnover of zero-rated supply of goods and services	Adjustable total turnover	Net Input Tax Credit	Refund Amount
	1	2	3	3A(1*2/3)
Integrated Tax	12,50,86,314.40	50,52,81,821.40	2,15,86,523	53,43,906
Central Tax			81,29,393	20,12,492
State/UT Tax			81,29,393	20,12,492
Cess				
Total	12,50,86,314.40	50,52,81,821.40	3,78,45,309	93,68,890

Particulars	Value as per statement 3A	Balance in Electronic Credit Ledger	Tax Credit Availed during the Period	Eligible Amount (Lowest of all)
Integrated Tax	53,43,906	0	2,15,86,523	0
Central Tax	20,12,492	4,12,26,697	1,49,79,854	20,12,492
State/UT Tax	20,12,492	3,61,64,840	84,03,085	20,12,492
Cess				
Total	93,68,890	7,73,91,537	4,49,69,462	40,24,984

Key features of filing filing/ processing Refund claim and issues therein

❖ Slight improvement made on online portal – claimants allowed to file refund under “Any Other” category where **NIL** refund claims were inadvertently filed - Circular Number 110/29/2019-GST dated 03.10.2019

- ❖ For cases falling under section 54(3) i.e. Unutilized ITC refund for zero-rated supplies, inverted duty structure
 - Nil Refund claim has been filed inadvertently, and
 - No refund claim has been filed for subsequent tax period.

❖ For other cases

Note: Since chronological claims are to be lodged in respect of applications filed under section 54(3) only, condition “No refund claim has been filed for subsequent tax period” is not applicable here.

❖ Issues

- What shall be done where refund has been claimed but with lower amount?
- For example, refund for Rs. 1,00,000/- was to be claimed but the same has been claimed for Rs. 75,000/-.
- In such cases, portal does not allow claimant to furnish a new refund application under same category for the same tax period. It has also been experienced practically that department officers do not process the claims filed under “Any Other” category.

Key features of filing filing/ processing Refund claim and issues therein

❖ Why one Refund application for one tax period under one category? Is it in line with statutory requirements?

- ❖ Neither the Act nor rules nor Form as well as instructions provided to submit the Form prescribed by the legislature for claim of refund provides that refund shall be claimed under any particular category and that refund shall be claimed only once under a particular category for a tax period.
- ❖ In order to safeguard double claim of same refund, assessee has been asked to provide a self-verification in para 10 of refund Form wherein assessee confirms that “*no refund on this account has been received by me/us earlier*”.
- ❖ The restriction to claim refund only once under a particular category in one tax period is self-created by the portal which is seriously affecting the vested rights of the assessee.
- ❖ Therefore, in our view, more than one refund applications shall be permitted under one category for one tax period on the GSTN portal. It will facilitate filing of refund applications, as discussed in previous slides.
- ❖ Link to refer the article on subject issue:
https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=9249&Search_text=kashish%20gupta

Section 54(3). A detailed analysis

❖ Understanding the scheme of law

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Relevant rules are 89(4),(4A),(4B),(5) and Rule 96A.

Section 54(3). A detailed analysis

❖ Understanding the scheme of law

- ❖ The person making “zero-rated supply”; “inverted rated supply”, shall be eligible to claim refund of ‘unutilized input tax credit’ under this section. Therefore, refund of unutilized input tax credit is a vested right of the person doing the inverted rated supply; and as soon as the goods or services or both are so supplied, the said right gets vested in the assessee by virtue of section 54(3).
- ❖ This sub-section also provides that refund of input tax credit can be claimed at end of any tax period..
- ❖ It is pertinent to mention that sub-section (3) of section 54 of GST Act nowhere provides that any formula for the purposes of granting refund is to be prescribed by way of sub-ordinate legislation. However, looking at the practical circumstances, government finds this matter in respect of which provisions are required to be made by rules and hence rules have been so drafted under section 164(2) of the GST Act.
- ❖ It is also pertinent to note that this power to make rule is without prejudice to the generality of rule making power provided under section 164(1) which provides to make rules for carrying out provisions of the Act. This necessarily follows that any rule which is beyond the provision of Act or restricts the provision of Act shall be held as made beyond the rule making power and hence lacks the legislative competence.
- ❖ Therefore, sub-rule (4) and (5) of rule 89 only estimates the amount of unutilized input tax credit for the purposes of granting refund. It has no other purpose.

Section 54(3). A detailed analysis

Type 1: Applications of “Inverted Duty Structure” [Section 54(3) r/w Rule 89(5)]

- ❖ The refund of unutilized input tax credit has been restricted only to inputs and that too by way of making retrospective amendment in the rules.
- ❖ Section 54(3) of GST Act provides the substantive right to the assessee making inverted rated supply to claim refund and hence, the refund of “unutilized input tax credit” is the vested right. However, the said formula results in taking away the vested right of the assessee by restricting it to ITC availed on inputs only.
- ❖ **VKC. Footsteps India Pvt. Ltd. Vs. Union of India - R/Special Civil Application No. 2792 of 2019 dated July 24, 2020.**

Contentions:

- a. GST is a consumption tax where the tax burden is borne by the final consumer and business does not bear the burden of tax since business is allowed to take credit of the tax paid on anterior supplies received by it. In case rate of inward supplies is higher than the rate of outward supplies, [the true nature of consumption tax would be defeated as unutilised input tax credit would keep on accumulating](#). In such circumstances, the best way to mitigate the tax cost is to allow refund thereof. On this premise, section 54(3) is enacted in the GST Act.
- b. Section 54(3) refers to the refund of ‘any unutilised input tax credit’. The [exclusion of ‘input service credit’ whittles down the effect of the word “Any”](#) in the aforesaid phrase. Though the term “any” has not been defined under the CGST Act, however, as per Black’s Law Dictionary (4th Ed., 1968) “Any” means “one out of many; an indefinite number; one indiscriminately of whatever kind and quantity.
- c. The Government framed the [rule 89\(5\) for the limited purpose of estimating the input tax credit](#) relatable to inverted rated supplies. In the grab of fixing a formula, the [refund has been restricted to the extent of ‘inputs’ only which is not permissible](#). Therefore, this rule is not for the purpose of carrying out the provisions of the Act.

Section 54(3). A detailed analysis

Type 1: Applications of “Inverted Duty Structure” [Section 54(3) r/w Rule 89(5)]

S.No.	Status of claims	Present status	Way forward
1	Refund claimed and pending for adjudication	Order awaited	Additional submissions should be made at the time of the personal hearing.
2	Refund claimed and rejected	Three months to file an appeal are not expired	Either of the following shall be done: a) File appeal Or a) File writ petition under Article 226 of the Constitution of India
3		Pending before First Appellate Authority	Additional submissions should be made at the time of the personal hearing.
4		Rejected by First Appellate Authority	Either of the following shall be done: a) Wait for the constitution of GST Appellate Tribunal and file appeal Or a) File writ petition under Article 226 of the Constitution of India
5		Three months to file the appeal are expired	File writ petition under Article 226 of the Constitution of India

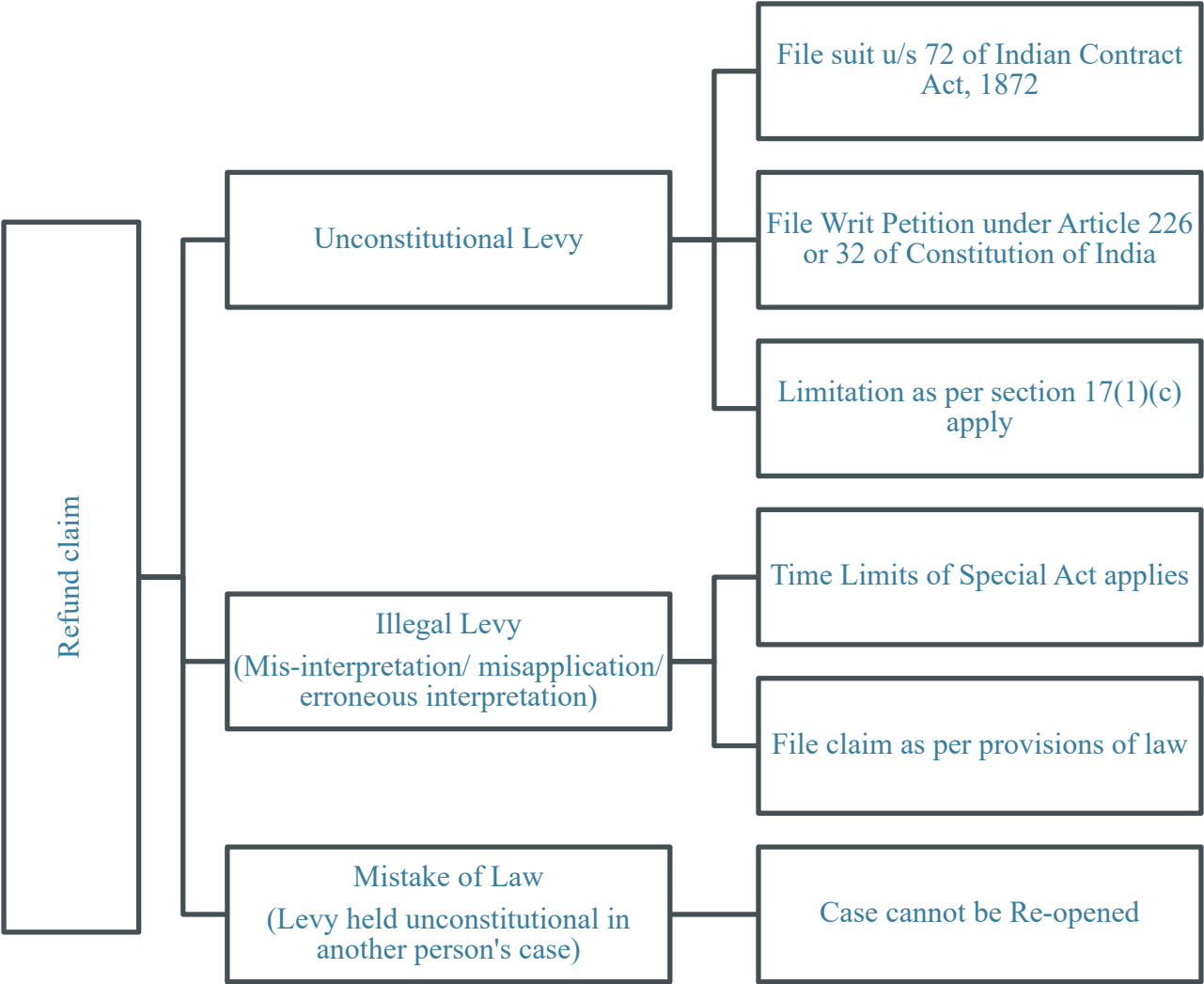
Section 54(3). A detailed analysis

Type 1: Applications of “Inverted Duty Structure” [Section 54(3) r/w Rule 89(5)]

S.No.	Status of claims	Present status	Way forward
6	Refund not claimed	Within period of 2 years from relevant date	File refund application
7		Time barred	No remedy.
8	Refund claimed for ‘inputs’ only	Within period of 2 years from relevant date	File refund claim either under the category of ‘Any Others’ or submit manual application under same category. Correspondingly debit the balance lying in electronic credit ledger by way of filing Form DRC-03
9		Time barred	No remedy.

Section 54(3). A detailed analysis

Type 1: Applications of “Inverted Duty Structure” – Above advise based on *Mafatlal case* given by *Supreme Court*

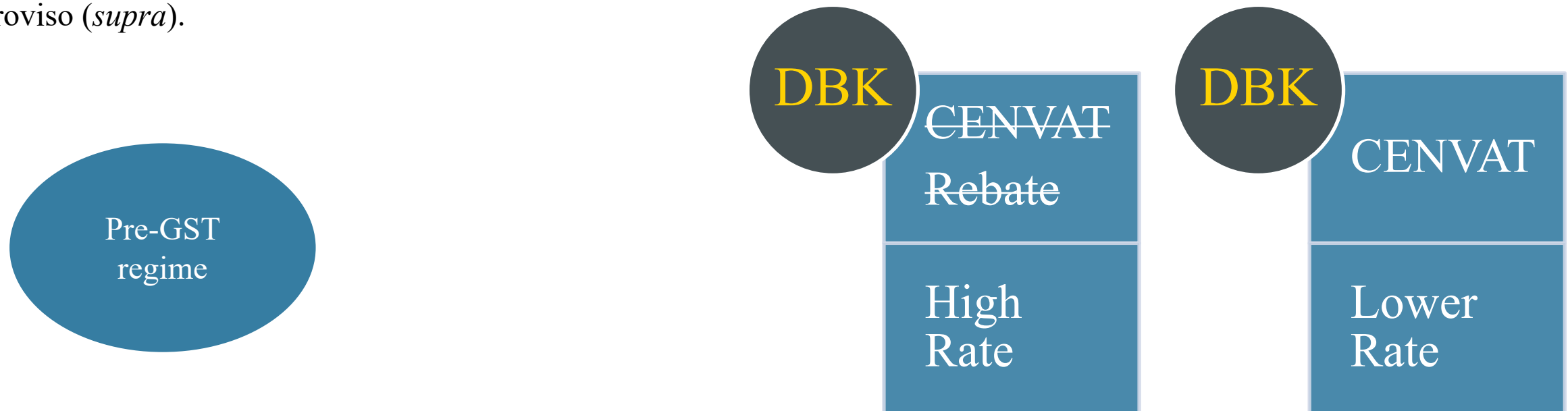


Section 54(3). A detailed analysis

Type 2: Applications of “Inverted Duty Structure” – Export of goods with payment of Integrated Tax

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

- ❖ In case exporter falls under inverted duty structure i.e. tax paid on his exports is lower than the tax paid on procurements, the question arises whether the refund would be barred by third proviso to section 54(3) of the GST Act? Since GST is a consumption based tax which has been levied in India with an objective to remove cascading effects, such kind of restrictions would act as a bottleneck to achieve the real objective of the Act. Therefore, it is very important to discuss the real scope and objective of inserting the third proviso (*supra*).



Section 54(3). A detailed analysis

Type 2: Applications of “Inverted Duty Structure” – Export of goods with payment of Integrated Tax

❖ The rates were made applicable for the period 01.07.2017 to 30.09.2017 subject to certain conditions.



In light of the above analysis, it can be said that higher rate of drawback compensates the exporter towards ‘central GST’, ‘integrated GST’ and ‘Integrated GST paid on exports’ from the period 01.07.2017 to 30.09.2017

The restriction is only for ‘Export Product’. The ITC shall not be availed if the DBK is to be claimed at higher rate and goods manufactured out of it are exported during 01.07.2017 to 30.09.2017. Therefore, ITC shall be availed in respect of goods lying in closing stock as on 30.09.2017.

Section 54(3). A detailed analysis

Type 2: Applications of “Inverted Duty Structure” – Export of goods with payment of Integrated Tax

- ❖ With effect from 01.10.2017, erstwhile drawback rules were repealed and new drawback rules 2017 were notified.
 - Provisions of GST and drawback has been made independent from each other.
 - There is no such linkage that if ITC is claimed, then drawback rate shall be given at lower rate and if ITC is not claimed, then drawback shall be given at higher rate.
 - In case of exports, law pertaining to GST is given under section 16 of IGST Act, 2017 which allows exporter either to claim refund of ITC if export is made without payment of taxes or to claim refund of IGST paid on exports.
 - **Drawback rate is only available now to compensate the ‘Customs duty’ paid on import of goods.**

From 01.10.2017, there cannot be a situation where the exporter has an option either to claim drawback in respect of central taxes/GST or claim refund in respect of integrated tax paid on goods exported. Therefore, the third proviso ceases to have operation from 01.10.2017

Section 54(3). A detailed analysis

Type 2: Applications of “Inverted Duty Structure” – Export of goods with payment of Integrated Tax

Including
export
turnover
with IGST

Turnover of inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods or services	Adjusted total turnover	Net input tax credit	Maximum refund amount to be claimed
(1)	(2)	(3)	(4)	(5) = [(1*4/3)-2]
24,63,30,140.45	1,23,29,688.09	37,25,98,764.3	3,04,91,444	78,28,623

Excluding
export
turnover
with IGST

Turnover of inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods or services	Adjusted total turnover	Net input tax credit	Maximum refund amount to be claimed
(1)	(2)	(3)	(4)	(5) = [(1*4/3)-2]
22,40,09,873	1,12,13,674	37,25,98,764.3	3,04,91,444	71,18,068

7,10,555
Diff

Section 54(3). A detailed analysis

Type 3: Applications of “Inverted Duty Structure” – Fabrics

- ❖ Refund on Fabrics was not allowed under “inverted duty structure” for the period upto 31.07.2018.
- ❖ Unutilized input tax credit, after payment of taxes for the period July 2018, shall lapse. [NN 20/2018-CT (Rate) dated 26.07.2018]. Such a condition has been held as improper by Hon’ble HC in case of ***Shabnam Petrofils Pvt Ltd v UoI R/SCA No. 16213/2018***.
- ❖ “Lapse” is only for the purposes of claiming refund but not for utilizing it for output tax liability. [***Re: Uttranchal Filament (India) – AAR – Uttarakhand 2020 (2) TMI 854***]
- ❖ Such restriction was only on claims made under “inverted duty structure”. In case such goods are exported, claims for refunds can be made under “zero-rated supplies made without payment of integrated tax”. [***Circular No. 18/18/2017-GST dated 16.11.2017***]

Section 54(3). A detailed analysis

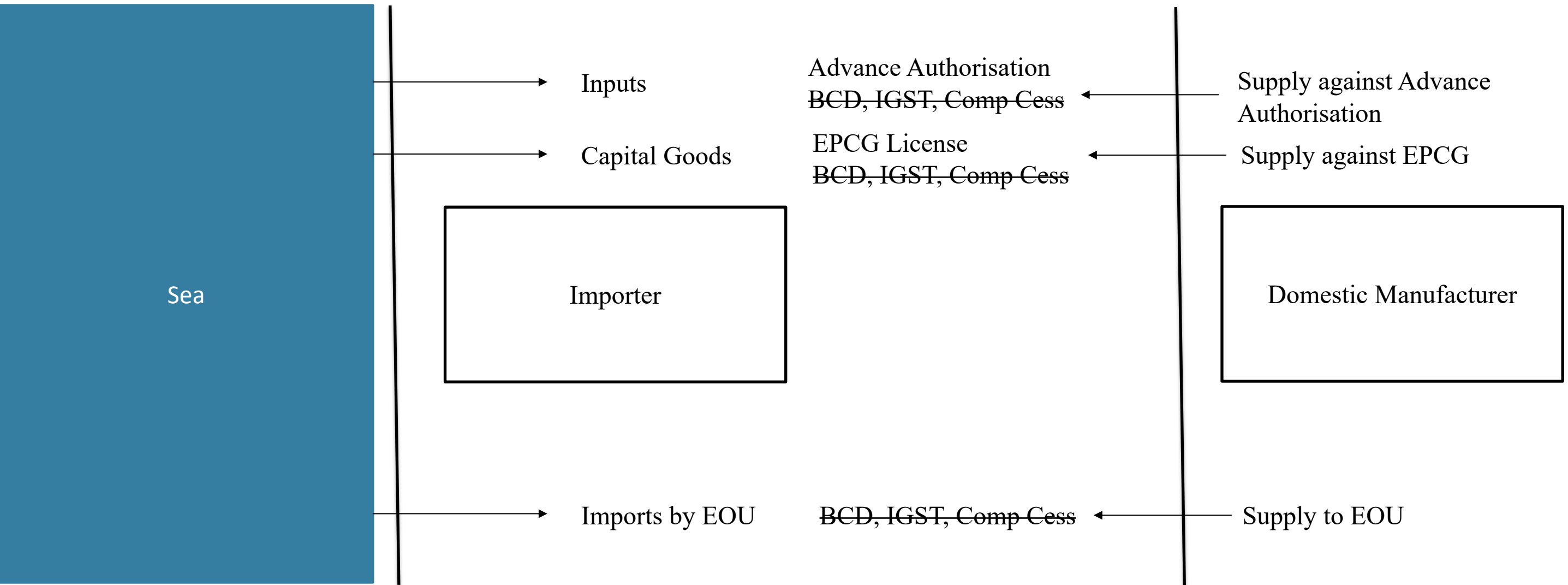
Type 4: Unutilized input tax credit for making zero-rated supply of goods or services or both

- ❖ Recently, rule 96B has been inserted which provides for recovery of refund paid to the exporter if export proceeds are not realized within permitted time as per FEMA or extended time permitted by RBI..
- ❖ The Undertaking inserted in Form RFD-01 vide NN 16/2020-CT dated 23.03.2020 reads as under.
I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.
- ❖ There was no such proviso in Section 16 of IGST Act, 2017. Sub-section (3) of section 16 of IGST Act, 2017 has been amended by FA 2021 (yet to be notified) – only for exports made without payment of integrated tax.

Section 54(3). A detailed analysis

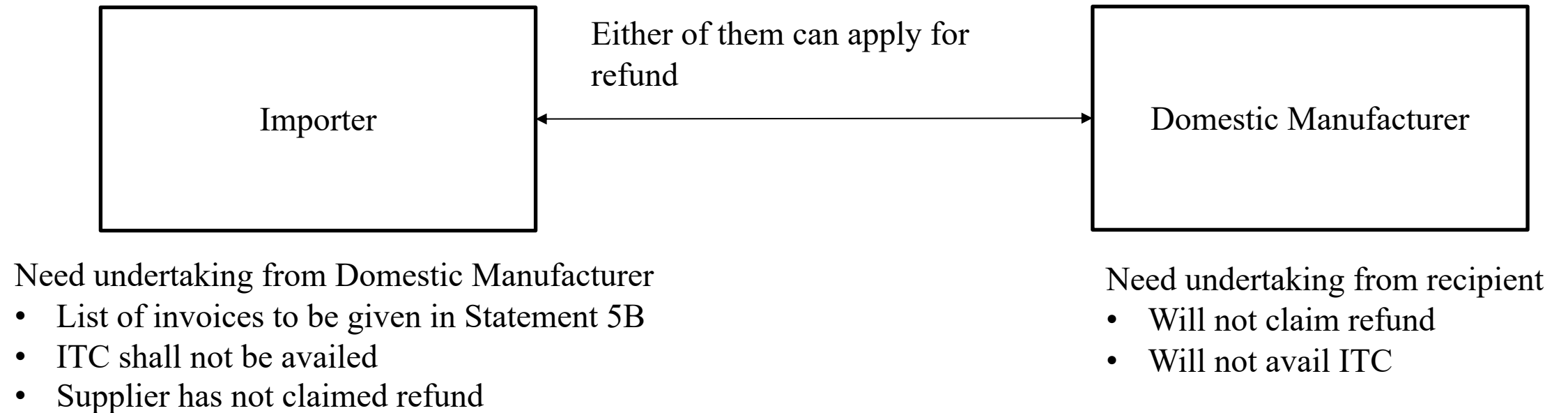
Type 5: Manner of making applications under ‘Deemed Export’ category

Zaveri & Co Pvt Ltd v Union of India, HC-Gujarat (2018) SCA No. 15091 of 2018, dated 28-9-2018



Section 54(3). A detailed analysis

Type 5: Manner of making applications under 'Deemed Export' category



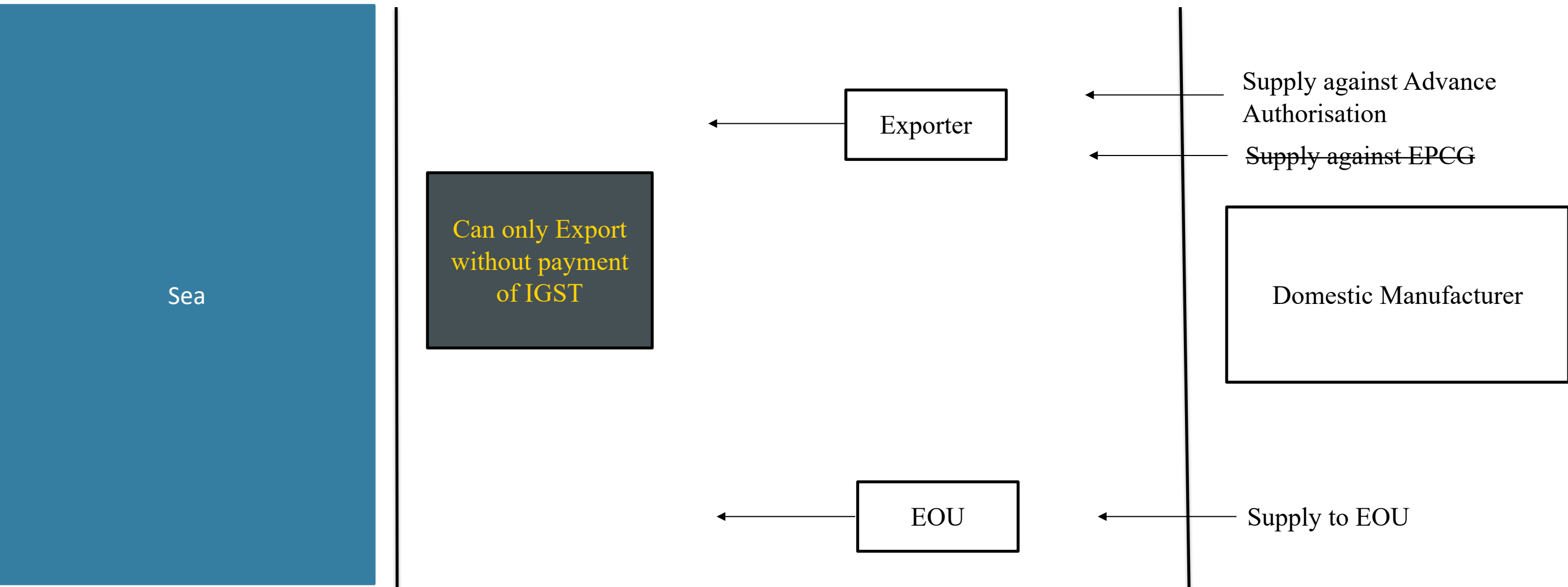
Refund of other inputs or input services is also allowed under rule 89(4A) – File this claim under “Any Other” category

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, [notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section \(i\), vide number G.S.R 1305 \(E\) dated the 18th October, 2017](#), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

Why Separate Category has been created - MINISTRY OF COMMERCE reimburses MoF for the refunds sanctioned

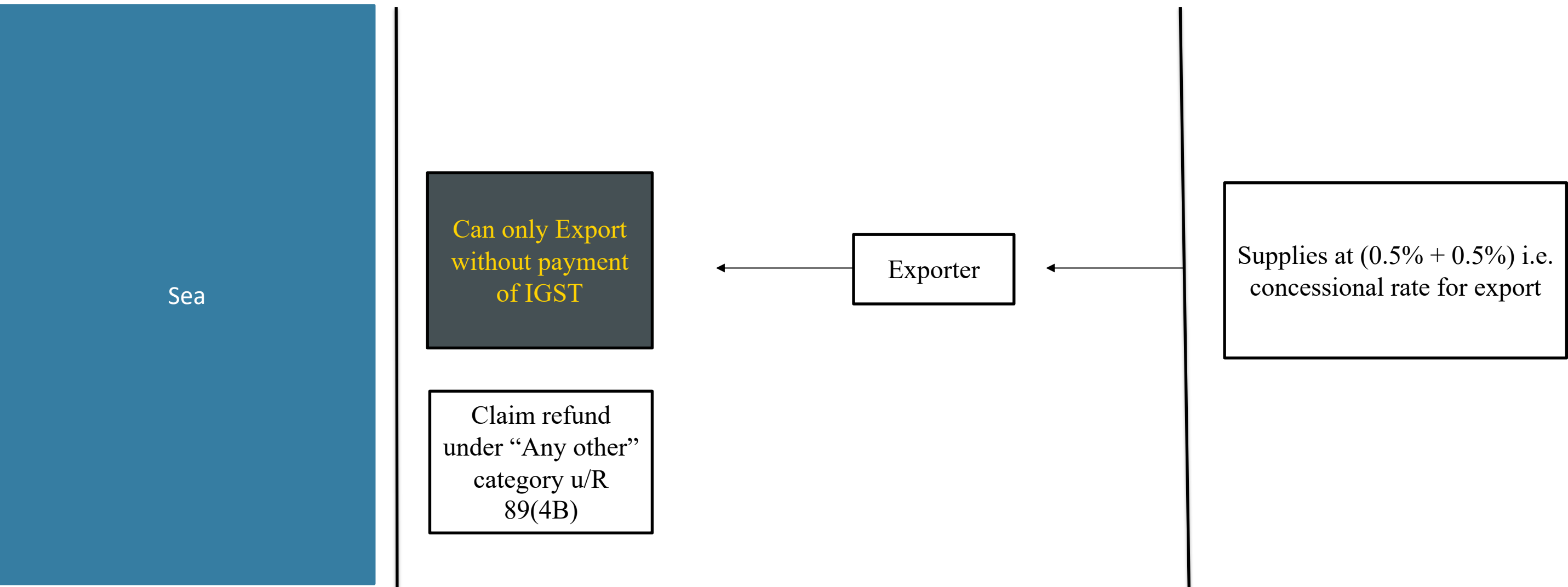
Important points to note

Procurements without GST, exports with IGST shall not be made: **DEEMED EXPORT**



Important points to note

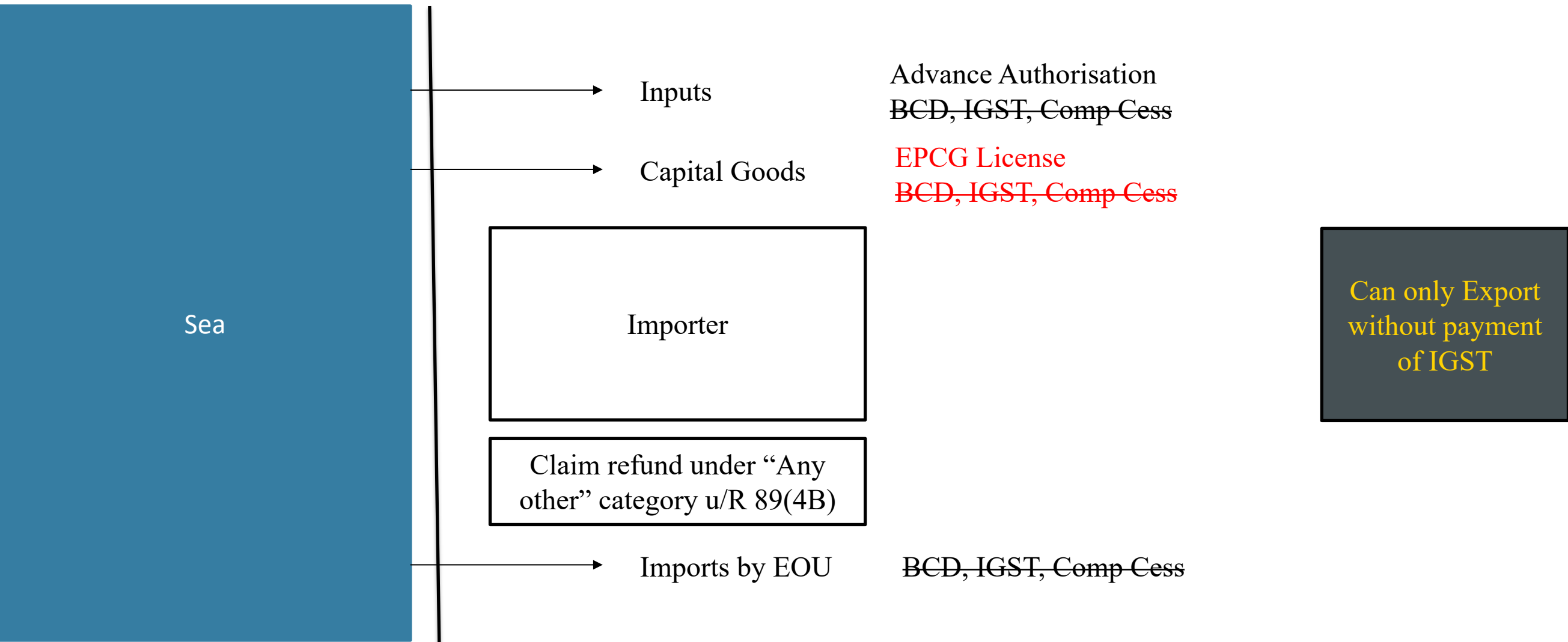
Procurements without GST, exports with IGST shall not be made: Procurements at concessional rate



Important points to note

Procurements without GST, exports with IGST shall not be made: Imports without payment of IGST

Only IGST paid and BCD not paid – Export with payment of IGST allowed

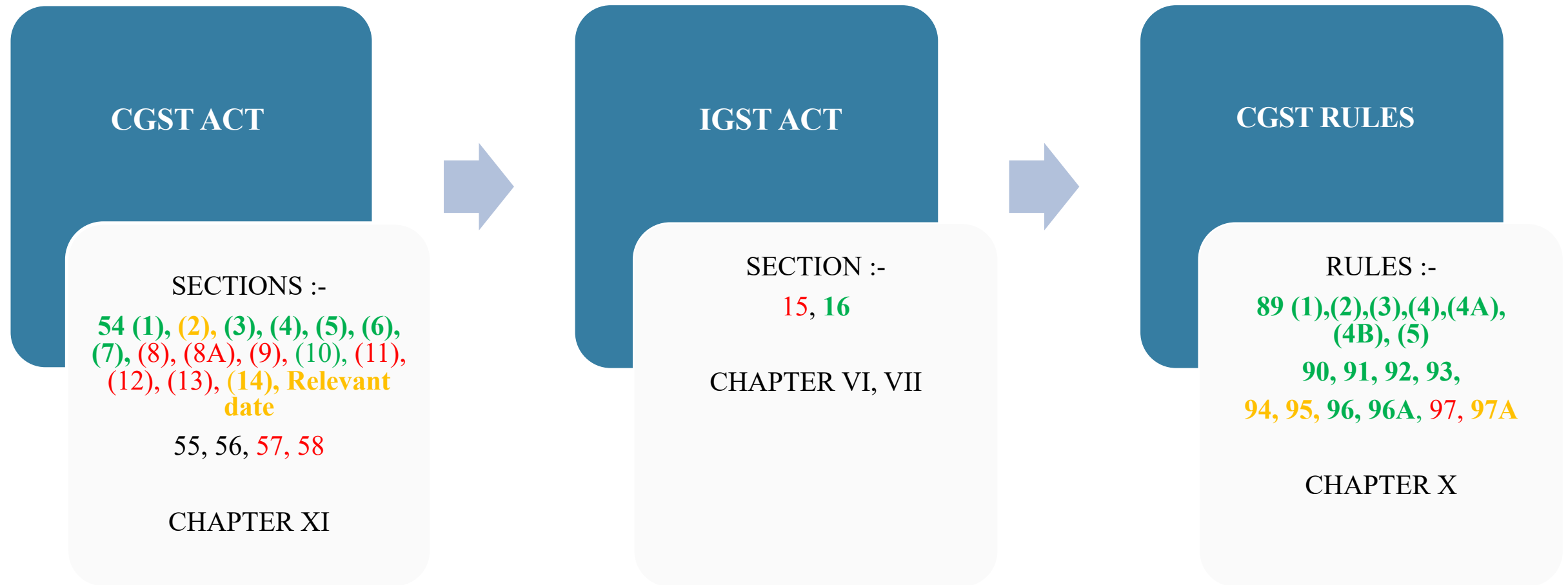


Important points to note

Whether Procurements for single rupee will debar exporter to export with payment of integrated tax?

- ❖ It must be noted that procurement of inward supplies for a single rupee under said notification **shall not debar** the exporter from exporting all outward supplies with payment of integrated tax. It should be **only to the extent of output generated from procurements** made at concessional rate. To substantiate this, attention is invited to agenda of 30th GST Council Meeting dated 28.09.2018 wherein while discussing this amendment, following was mentioned:
 - ❖ “9.16 Commissioner (GST Policy Wing), CBIC stated that Rule 96 (10) of the CGST Rules seeks to prevent an exporter, who receives goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This was **to ensure that the exporter did not utilise the input tax credit availed on other domestic supplies received** for making the payment of integrated tax on export of goods.....”
- ❖ This can further be substantiated from the language used in Circular 125 (*supra*) which reads as under:
 - ❖ “59. It may also be noted that the exporter of **such goods** can export the goods only under LUT / bond and cannot export on payment of Integrated tax.”
- ❖ Further, the supplier of such goods can also claim refund considering his outward supplies as being made under inverted duty structure. This has been clarified vide Circular Number 125 (*supra*) which reads as under:
 - ❖ “59. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

An Overview of Refund Provisions



Important Points

1. Whether refund of “inverted duty structure” be extended to
 - Capital Goods?
 - What should be strategy for refunds of “input services”?
2. Whether refund of ITC for making zero-rated supplies be extended to Capital Goods?
3. Whether refund under inverted duty structure can be claimed of exports are made with payment of integrated tax?
4. For claiming refunds under inverted duty structure, can we read “rate” as “effective rate”? For example, input and output is taxable at 5%. But Central Government has allowed 50% subsidy to the assessee which is excluded from valuation for levying tax.
5. What is the meaning of term “lapsing of unutilized balance in credit ledger” appearing in NN 20/2018-CT (Rate).
 - Beyond statutory powers, or
 - Lapsing for the purposes of claiming refund only but not for utilizing it for output tax liability.
6. Is it legal to disallow the refund to the extent of invoices not appearing in Form GSTR-2A?
7. Whether proper officer can raise the issue of “ineligible ITC” in the absence of any SCN to that effect? If no, is it justifiable for him to issue SCN even in cases where the amount of ineligible ITC is more than 1crore (CGST)/ Rs. 2Crore (IGST)?
8. Whether section 16(1) of IGST Act has direct relation with section 16(3)? Is it mandatory to adhere to provisions of section 16(3) of the Act?
9. Whether SEZ is required to pay under RCM for supplies made by domestic supplier?
10. Whether supply of goods by SEZ shall be considered as ‘supply by SEZ’ or ‘import by recipient’?
11. What is your view on framing of rule 96/96A in CGST/SGST Rules, 2017. We think that these should have been framed under IGST Rules. If these are not proper, what implications it may have on,-
 - Exports without prior LuT
 - Not exporting within 3 months from date of issue of invoice
 - Exporting with IGST despite procurements under “Deemed Exports”, “0.10%” and “imports without payment of IGST”.

Technical Questions

12. In 2017-18, the refunds were automatically curtailed by the GSTN portal. The position was clarified by Board on 04.09.2018. Now, can we take the contention that
- Refund was applied in full by the claimant.
 - The amount was debited from electronic credit ledger in short due to portal restrictions.
 - Now, it may be debited either by way of filing Form DRC-03 or by reversing it through GSTR-3B and a simple letter may be written to the department to claim it.
13. In some cases, it has been seen that department has rejected the refunds because claimants debited the refundable amount from electronic credit ledger in the manner other than clarified by Board. Is it legal?
14. As per section 34(2), by what time credit notes can be issued for a financial year? Presuming that these can be issued by September of the following FY, can we file refund claim for issuing CNs after September 2020?

Technical Questions

1. Disband Refund Approval Committee – *GSI Products, AC Impex, P.C Univarsal Pvt Ltd Versus Union of India & Ord and GST Council & ORS., HC-Delhi (2019) W.P.(C) 9161/2018 & CM 35316/2018 (stay), W.P.(C), W.P.(C) 194/2019 & CM 946/2019 13881/2018 & CM 54179/2018 (stay) dated 29.05.2019*
2. Refund claim for the past periods – non operationalization of Form GSTR 2/2A: *Bharti Airtel Limited Versus Union Of India & Ors., HC -Delhi (2019) W.P.(C) 6345/2018 dated 16.10.2019*
3. Refund on account of technical glitches - *Dell International Services India Private Limited Versus Union Of India & Ors. - HC-Delhi, W.P. (C) 8787/2020 & CM APPL. 28287/2020 dated 09.11.2020 ; Vision Distribution Pvt. Ltd. Versus Commissioner, State Goods & Services Tax & Ors., HC - Delhi (2019) W.P.(C) 8317/2019 dated 12.12.2019 ; Raju K. Thomas Versus The State Tax Officer (Wc) , The Executive Engineer, Dy. Commissioner, State Gst Department, The Commissioner Of State Gst, HC-Kerala (2020), WP(C). No. 32678 OF 2019(H) dated 09.01.2020*
4. Drawback claimed at higher rate – Differential drawback to be adjusted from refund amount: *Real Prince Spintex Pvt. Ltd. Versus Union Of India, HC-Gujarat (2020) R/SPECIAL CIVIL APPLICATION NO. 14974 of 2019 dated 04.03.2020 ; TMA International Pvt. Ltd & Ors. Versus Union Of India & Anr., HC - Delhi (2019) W.P.(C) 2694/2019 dated 26.11.2019 ; M/s Amit Cotton Industries through Partner, Veljibhaivirji Bhai Ranipa Versus Principle Commissioner of Customs, HC-Gujarat (2019) R/SCA No. 20126 of 2018 dated 27.06.2019*



CA Kashish Gupta
B.Com(H), FCA, LL.b

Managing Partner, Paksh Legal

C-1/605, Milan Vihar, I.P.
Extension, Patparganj, Delhi -
110092

M: +91 85108 06440

E: Kashish@pakshlegal.in

Web: www.pakshlegal.in

Linked In:
<https://www.linkedin.com/in/ca-kashish-gupta-401bba78/>

Youtube:
https://www.youtube.com/channel/UCH7NVyZIKO-YAg4LnmE_20A

- Kashish has 9+ years of experience in providing tax and legal services; and has been the head of Litigation Division of one of the top 10 CA firm specializing in indirect tax litigation and advisory services along with expert domain of audit services. In 2021, he established his own law consultancy firm, M/s Paksh Legal.
- He possesses extensive knowledge and strong command on the subject. Kashish has successfully handled and represented varied matters on indirect taxes (including GST, VAT, Service tax, Customs, Excise). Kashish has worked for multiple industry segments including Indian and foreign multinationals, PSUs and Fortune 500 companies.
- Kashish has privilege of becoming one of the India's youngest taxation author in 2017 when his book - "Commentary on Revised Model GST Law" was published by Bharat Law House Private Limited. He has authored three editions of aforesaid book till date. In 2019, he authored two specialized books on GST, one on "GST Annual Return and Audit" and second as "GST Tracker" containing section wise, rule wise list of all notifications, circulars, orders, Removal of Difficulty Order and synopsis of judgments released till date of release of book.
- He has argued matters before 'Customs Excise and Service Tax Appellate Tribunal', Advance Ruling Authorities of various states in India and several State VAT Tribunals. Prior to introduction of GST, has handled issues pertaining to almost all the State VAT laws.
- He has delivered lectures/ talks on various subjects inter alia including GST, Service tax, VAT, central excise, Customs, etc. in various Chambers of Commerce & Industry, various forums of the Institute of Chartered Accountants of India, CAG etc.
- He has Contributed towards publications of the ICAI, Taxmanagement India, Taxmann,⁴¹ Institute of Actuaries of India, pamphlets of various chambers of Commerce and Industry etc.



www.pakshlegal.in

(Media & Updates – Webinar/Seminars)

Confidential

© 2021 Paksh Legal