



The Institute of Chartered Accountants of India

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE

Webinar on GST REFUNDS Advanced ISSUES and Latest Judgements

Date: 03-06-2025

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ADVANCED Issues for Discussion

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- Principle of unjust enrichment
- Time limitation issues
- Rule 96(10) - End of a saga
- Various unique issues in Refund & Court reliefs
- Issues in Inverted Duty Structure
- Various court decisions



Principle of UNJUST ENRICHMENT

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- “Every assessee seeking refund of an illegally recovered tax to prove that he had not passed on the burden of the tax to the customer or to any other person, for one who had passed on the burden would not be entitled to the refund of money himself.”
- A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompose – Indian Council for Enviro-Legal Action vs UOI (2011)
- In UOI vs Roplas Ltd AIR 1989 Bom 183 = 1988(38) ELT 27 (Bom HC), it was suggested that refund due should be transferred to a Consumer Welfare Fund instead of paying to the supplier in the event of incidence not being borne by the supplier.
- Accordingly, the concept of unjust enrichment was introduced in Central Excise and Customs law w.e.f. 20th Sep 1991. And the same continues in GST as well.



Landmark decision – 9 Judge bench verdict

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Hon'ble Supreme Court in Mafatlal Industries case – 19th Dec 1996

- Lays down by a majority of 8:1 as to what rights and remedies are available to a citizen against the State in the matter of refund of unlawfully recovered taxes and imposts.
- The two mainstreams of the judgment were:
 - **“RIGHT TO REFUND”** and
 - **“REMEDY FOR REFUND”**.
- (i) **“Unconstitutional levy”** – REFUND outside the provisions of the Act (governed by Section 17(1)(c) of the Limitation Act, 1963) – direct writ can be made
- (ii) **“Illegal levy”** –tax is collected by the authorities - misconstruction / wrong interpretation / incorrect facts – Refund under the provisions of the governing statute – Refund application
- (iii) **“Mistake of law”** - ended up paying a tax which he was not legally obliged to pay and which he is seeking refund of at a later point of time on discovery of mistake - falling "within the meaning of Section 72" of the Indian Contract Act, 1872



Principle of UNJUST ENRICHMENT

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Sec 54 (4) The application shall be accompanied by-

- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on **to any other person**:

Sec. 54 (5) - Crediting the refund to Consumer Welfare Fund by default.

Sec. 54 (8) Exception:

- refund of tax paid on exports / ITC in making such exports.
- refund of unutilised ITC – Sec 54(3)
- tax paid on a supply which is not provided – invoice not issued or refund voucher issued
- refund u/s 77 (payment of tax under wrong head)
- where the incidence of such tax and interest not passed on to any other person
- tax or interest borne by such other class of applicants as the Government may notify



Principle of UNJUST ENRICHMENT

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Doctrine of Unjust Enrichment – Entire supply chain

Tax burden is normally passed on, down the supply chain – “*to any other person*”

- CCE Vs Addison & Co Ltd. 2016 (339) ELT 177 SC - Assessee is entitled for filing a claim for refund on the basis of credit notes raised towards turnover discount. Provision regarding refund of duty under Central Excise is not limited to immediate buyer but can be claimed by ultimate buyer on proof of incidence of such duty not being passed on to any other person. There is no material brought on record to show that the buyer to whom the incidence of duty was passed on by the Assessee did not pass it on to any other person. There is a statutory presumption under Section 12-B of the Act that the duty has been passed on to the ultimate consumer. It is clear from the facts of the instant case that the duty which was originally paid by the Assessee was passed on. The refund claimed by the Assessee is for an amount which is part of the excise duty paid earlier and passed on. The Assessee who did not bear the burden of the duty, though entitled to claim deduction, is not entitled for a refund as he would be unjustly enriched..... The word 'buyer' in Clause (e) to proviso to Section 11-B (2) of the Act cannot be restricted to the first buyer from the manufacturer.
- Also refer: Chennai Petroleum Corporation Limited Vs CCE -2021 (375) ELT 129 Mad.



CREDIT NOTES – Unjust Enrichment

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B2B Credit note – Proposed amendment u/s 34(2)

Vide Finance Act 2025 – yet to be notified

~~**Provided** that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.~~

“Provided that no reduction in output tax liability of the supplier shall be permitted, if the—

- (i) input tax credit as is attributable to such a credit note, if availed, has not been reversed by the recipient, where such recipient is a registered person; or
- (ii) incidence of tax on such supply has been passed on to any other person, in other cases.”



Price variation – CA Certificate

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- **CESTAT-Chennai, M/s. Deepak Cables India Ltd Vs CCE-Puducherry dated 20 Feb'23** - when the Taxpayer issues a negative invoice for downward price revision, the excess payment initially made by PGCL would stand adjusted against the final amount payable by PGCL, and hence, the excess payment was borne by the Taxpayer. Refund of excess tax paid on downward price revision is available if it is not hit by unjust enrichment
- **M/s. EPE Process Filters & Accumulators Pvt. Ltd. Vs. CCE & ST, Hyderabad [2017 (352) ELT 398 (Tr.-Hyd.)]** - when the assessee has not collected the excess duty, it cannot be held that the refund is hit by unjust enrichment.
- **CCE, Coimbatore Vs. Flow-Tech Power [2006 (202) ELT 404 (Mad.)] and Commissioner of CCE & ST, Hyderabad-IV Vs. Victory Transformers and Switchgears Ltd. [2017 (358) ELT 354 (Tri.-Hyd.)]**- when there is a price variation clause resulting in excess payment of duty, the supplier is entitled to claim a refund based on the CA Certificate proving that the incidence of duty has not been passed.
- **CCE, Tirupathi Vs. Kruool Cylinders Pvt. Ltd. [2007 (219) ELT 473 (Tri.-Bang.)] and CCE, Mangalore s. Keltech Energies Ltd. [2008 (232) ELT 306 (Tri.-Chennai)]** wherein an identical case, CESTAT held that there is no unjust enrichment and hence, the supplier is entitled to claim a refund of excess tax paid.



Unjust Enrichment – CUM duty calculation

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Cum duty calculation –Unjust enrichment application

Ramky Infrastructure Limited Vs CCE –2017-TIOL-1782-CESTAT-Kolkatta

- Price is inclusive of all taxes as per contract
- Supplier believed that activity not taxable and not paid taxes.
- At department's instance paid tax on cum duty basis and later claimed refund.
- Refund rejected on the ground of unjust enrichment.



Pre-deposit

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- Refund of pre-deposit – Balance sheet figure – not to be expensed off (Time limit reference - F.No.275/37/2000 CX 8A Dt. 01.01.2002)
- Alternate argument: Duty paid on the impugned goods has been absorbed by the assessee and had been shown as expenditure in P & L account and had not been passed on. Refund was allowed - CCE Vs Flow Tech Power 2006 (202) ELT 404 Mad.
- Whether separate refund application is required? A practical perspective
- Interest on refund of pre-deposit – Sec 115 - from the date of payment of the amount till the date of refund of such amount.



Refund time limitation

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Uniroyal Marine Exports Ltd. Vs CCE –2021 Kerala High Court

- In such circumstances though we answer the question of law in favour of the Revenue, we find the Revenue to be incapable of recovery of the amounts refunded as tax due.
- The appeal is disposed of, answering the questions of law in favour of the Revenue; but restraining the respondent-Revenue from recovering the amounts refunded since as of now the levy of service tax on the payment in lieu of foreign agency commission will not be leviable as 'Business Auxiliary service' prior to 18.04.2006.

Note: Even though refund was time barred, recovery of amount without authority of law would violate Article 265 and hence Revenue was restrained from recovery

- **Principle of Mutuality - Kerala High Court – in the case of IMA – Related REFUND** - Doctrine of unjust enrichment may not apply, since there is “mutuality of interest” between clubs or associations and its members. Hence tax burden has not been passed on to any other person, since Club and its member is one and the same. **Note:** As per Mafatlal decision - *He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover them is take of law. One must fight his own battle*



Rule 96(10) – The End of a saga

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Minutes of the 54th GST Council Meeting

- The Law Committee observed that operation of rule 96(10) is leading to unnecessary complications without any intended benefit being served and therefore recommended that rule 96(10), rule 89(4A) & rule 89(4B) of the CGST Rules, 2017 may be omitted with prospective effect and that consequential amendments in clause (b) of sub-rule (4B) of rule 86, clause B, clause C and clause E of sub-rule (4) of rule 89 and Explanation (a) to sub-rule (5) of rule 89 of CGST Rules may be made.
- The Law Committee recommended that the proposed deletion of rule 89(4A) and 89(4B) of CGST Rules, 2017, in the cases where the benefit of concessional/ exemption notifications which were specified in rule 96 (10) or rule 89 (4A) or (4B) had been availed on inputs imported or procured domestically, the refund on account of exports can be claimed through the IGST refund route under rule 96 of the CGST Rules, 2017 or as refund of accumulated Input Tax Credit (ITC) under rule 89(4) of CGST Rules.

Omitted vide Notification No. 20/2024-CT dated 08.10.2024. Exporters can now claim IGST refunds without such restrictions, enhancing cash flows.

Validity of pending proceedings - (M/s.Glen Industries Private Limited & Anrv. Deputy Director DGGI & Ors. (2025) – Omission without SAVING CLAUSE – Court held omission applicable for pending cases.



Refund of Voluntary payment

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Messrs Aalidhra Texcraft Engineers & Anr. V. UOI 2024 – Gujarat High Court

- Refund of GST voluntarily and mistakenly paid due to mismatch between GSTR-2A and GSTR-3B
- Whether limitation period u/s 54(1) would apply to the refund of the voluntarily paid amount?
- Voluntarily paid “AMOUNT” doesn’t not constitute tax.
- The limitation period under Section 54(1) would not apply to the refund of the voluntarily paid amount, as it was not a tax, interest or penalty liability discharged by the petitioner
- Where an amount is paid by mistake or under a mistaken impression, the revenue authorities are duty-bound to refund the same, as its retention would be unconstitutional.



Cancellation of Contract-Refund

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Joint Commissioner of Commercial Taxes v. Nam Estates Pvt Ltd – 2025

- Supplier failed to deliver the goods, leading to cancellation of contract.
- Whether the respondent / buyer is entitled to refund of GST amount paid, even though the contract was cancelled, and the goods were never delivered?
- Levy of tax is on the transaction –If the transaction fails, the amount paid in advance needs to be refunded -Since the GST amount is lying with the revenue authorities without any GST liability on the part of the respondent or the vendor, the respondent is entitled to the refund
- Amount paid in advance needs to be refunded -The amount remitted to the exchequer by way of GST component in contemplation of discharge of contract by execution could not have been retained by the State when the contract failed.



Supplementary Refund claim

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ABN Industries v. Union of India & Ors. (2025)

- Supply to SEZ without payment of tax –First Refund application for unutilized ITC initially approved
- Petitioner filed another refund application to claim ITC of remaining amount which was inadvertently missed out
- Circular 125 restricts – Once refund application submitted, cannot be subsequently allowed to file another refund of same category for any previous period
- Assessee's entitlement to the quantum of refund claimed in 2nd refund application is not disputed
- When department admitted Assessee's entitlement to quantum of refund, Court has the power to direct department to grant such refund—failure to do so would amount to Court's approval of unjust enrichment by Revenue
- Adherence to prescribed procedures important –but cannot extend to a point where it deprives the substantive rights of the assessee under the Act
- Order of rejection of 2nd refund claim set aside



Deficiency Memo-Time limitation

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M/s Gillette Diversified Operations Pvt Ltd v. Joint Commissions GST & Excise (Appeals-I) and Ors. (2025)

- Refund filed online, followed by manual filing. Deficiency memo issued and claim has been resubmitted. Resubmission date taken as date of filing and rejected as time barred.

Court held that:

- Original filing date to be considered. Proviso to Rule 90 (3) to be given retrospective effect.
- Amended explanation 2(e) to Sec 54 relates to IDS refund vs present claim under export without payment of duty
- Held in favour of taxpayer.



Retrospective impact on Refunds

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M/s. Priyanka Refineries Pvt Ltd v. Deputy Commissioner ST and Ors (2025)

- Refund under inverted duty structure claimed on manufacture and sale of edible oils – Refund initially granted by the department. Subsequently, notice issued under Section 73 on the ground of erroneous refund in view of Notification No. 9/2022 - CT(R) which made certain goods ineligible for refund under inverted duty structure
- Whether restriction imposed by Notification No. 9/2022 would apply retrospectively to refund applications filed prior to date of issue of the said notification?
- Held - Restriction imposed by the Notification No. 9/2022 was prospective in nature and could not be applied to the petitioner's refund application filed prior to the notification
- Ascent Meditech Ltd v Union of India - Held that artificial class cannot be created based on date of filing refund application – would be discriminatory and violate Section 54 as well as Article 14 of Constitution
- Para 2(2) of Circular 181/13/2022 which provides that restriction contained in Notification 9/2022 will apply to all refund applications filed after 13.7.2022 struck down



Retrospective impact on Refunds

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Ascent Meditech Ltd v. Union of India (2024)

- Amendment of Rule 89(5) is clarificatory and would apply retrospectively – amendment made pursuant to directions of Hon’ble SC in VKC Footsteps India Pvt Ltd
- Circular 181/2022 provides clarification contrary to the purpose of amendment brought in the statute pursuant to recommendations of GST Council to remove the anomaly in formula prescribed under Rule 89(5)
- Refund cannot be denied as per Section 54 (3) merely because Assessee was granted refund prior to 05.07.2022 (date of issuance of Notification 14/2022)
- Circular 181/2022 contrary to provisions of CGST Act so far as it clarifies that amendment is not clarificatory in nature is quashed and set aside
- Notification 14/2022 applicable retrospectively – impugned order rejecting refund set aside



Recovery of sanctioned refund

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Gujarat High Court's - *Patanjali Foods Ltd. v. Union of India & Ors.* (2025):

- Patanjali Foods Ltd. received a sanctioned GST Input Tax Credit (ITC) refund of ₹1.7 crore under the inverted duty structure on January 12, 2024.
- Subsequently, on April 25, 2024, tax authorities issued a notice under Section 73 of the CGST Act, seeking to recover the refund, alleging it was erroneously granted.
- The Gujarat High Court ruled that once a refund is sanctioned, it cannot be reversed through recovery proceedings under Section 73; instead, the department must appeal under Sections 107 or 108.
- The court also declared Paragraph 2(2) of Circular No. 181/13/2022-GST as ultra vires to Section 54 of the GST Act and inapplicable retrospectively.
- This judgment reinforces legal certainty, ensuring that finalized refund orders cannot be arbitrarily revoked by tax authorities.



Cable and Wireless Global India Pvt Ltd v. Assistant Commissioner, CGST & Ors. (2024)

- Delhi High Court's - *Cable and Wireless Global India Pvt. Ltd. v. Assistant Commissioner, CGST & Ors.* (2024)
- Taxpayer sought refund of ₹47.33 lakh in unutilized ITC for services exported from its Delhi branch
- The refund was denied on the grounds that payments were received in the company's Bangalore bank account, not the Delhi branch that provided the services.
- The Delhi High Court held that the location of the supplier is determined by the registered place of business from which the supply is made, not by the bank account where payment is received.
- The Court emphasized that under Section 2(71) of the CGST Act, the supplier's location is tied to the registered place of business, rendering the payment's destination irrelevant.
- Consequently, the Court quashed the refund denial and directed the tax authorities to process the refund claim promptly.



Time limit – Mandatory?

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Jharkhand High Court - *M/s. BLA Infrastructure Pvt. Ltd. (2025):*

- BLA Infrastructure Pvt. Ltd., a registered GST dealer, filed an appeal against a tax demand by making a 10% pre-deposit as mandated under Section 107(6)(b) of the GST Act.
- After succeeding in the appeal, the company applied for a refund of the pre-deposit.
- The refund application was rejected by the tax authorities as time-barred u/s 54(1).
- The Jharkhand High Court held that the term "may" in Section 54(1) is directory, not mandatory, and that refund of a statutory pre-deposit is a vested right of the assessee.
- Consequently, the court quashed the rejection order and directed the tax department to process the refund with applicable interest within six weeks.

Also refer: Madras HC – Lenovo decision 2023



Sec 54(11) Scope

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Truth Fashion v Commissioner of DGST Delhi & Ors. (2025)

- Truth Fashion, a proprietorship firm, was granted a GST refund of ₹18.33 lakh by the appellate authority on May 10, 2024.
- Despite a Delhi High Court order on November 18, 2024, directing the tax department to process the refund within three weeks, the department failed to comply.
- The tax authorities cited Section 54(11) of the CGST Act, arguing that an intended appeal justified withholding the refund.
- Held that merely planning to file an appeal does not automatically stay a refund order; an actual appeal must be in progress and ordered immediate release of refund along with interest.

Sec 54(11) - Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.



IDS – Same Input and Output

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Madras HC - M/s Eveready Spinning Mills Pvt Ltd v. AC, CGST, Dindigul (2024)

Denial of refund on inverted duty by placing reliance on Circular No. 135/05/2020-GST which provides that in cases where input and output supplies are the same, though attracting different tax rates, are not covered under Section 54(3)(ii) for refund of accumulated ITC

Court decision:

- Circular has already been struck down as ultra vires of CGST Act by various High Courts.
- Despite the same, the circular has been applied to the facts of the case to deny the benefit of the refund under Section 54(3) of the CGST Act, 2017.
- GST enactments being applicable PAN India, Department cannot take a different stand
- Ratio of the *Hon'ble Supreme Court in Kusum Ingot & Alloys Ltd vs. Union of India* — Impugned order denying the benefit of the refund on account of the Inverted Duty Structure is unsustainable

Similar Ref: M/s Indian Oil Corporation Ltd - Bangalore (2025)

Crying baby gets the Milk!



**Know your
legitimate
RIGHTS!**

**Act with due
Statutory
Compliance!**



Thank You

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