EXPORT OF GOODS IN GST REGIME

Relevant Sections, Rules, Notifications and Circulars as on Date 09.07.2017

SECTIONS

Section No	Act	Description
2(5)	IGST Act, 2017	Export of Goods
2(23)	IGST Act, 2017	Zero-Rated Supply
16	IGST Act, 2017	Zero-Rated Supply
17(5)	CGST Act, 2017	Blocked Credits
2(63)	CGST Act, 2017	Input Tax Credit
2(62)	CGST Act, 2017	Input Tax
54	CGST Act, 2017	Refund of Tax

RULES

Rule No.	Act	Description
89	CGST Act, 2017	Refunds
96	CGST Act, 2017	Refunds
96A	CGST Act, 2017	Refunds

NOTIFICATIONS

Notification No	Act	Description
16/2017 dated 07 July 2017	Central Tax	Conditions and safeguards for the Registered person who intends to supply goods or services for export without payment of integrated tax, for furnishing a Letter of Undertaking in place of a Bond.

Circulars

Circular No.	Act	Description
02/02/2017 Dated 04 July 2017	Central	Issues related to furnishing LUT/Bond
04/04/2017 dated 07 July, 2017	Central	Issues related to furnishing LUT/Bond
26/2017 dated 01 July 2017	Customs	Export Procedure in GST Regime

EXPORTS OF GOODS IN GST

DEFINITION OF CERTAIN RELEVANT TERMS FOR EXPORTS OF GOODS

- **Exports of goods- Section 2(5) of IGST Act, 2017**

Export of goods with its grammatical variations and cognate expressions, means **taking goods out of India** **to a place outside India**

- **Zero Rated Supply-Section 2(*23*) of IGST Act, 2017**

Zero-rated supply" shall have the meaning assigned to it in **section 16**

Commentary/Observation:

This chapter deals with Zero rated supply which is relevant for input tax credit and refunds in case of:-

a) Exports of goods or services or both
b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit

Notwithstanding that such supplies are exempt supplies.

CHAPTER VII OF IGST ACT 2017- SECTION 16- ZERO RATED SUPPLY

SECTION 16(1)

Zero rated supply means **any** of the following supplies of Goods or Services or **Both**

Clause (a)

Exports of Goods or Services or Both

OR

Clause (b)
Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

SECTION 16(2) **CLAIM OF INPUT TAX CREDIT**

Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act**, credit of input tax** may be availed for making zero-rated supplies**, notwithstanding that such supply may be an exempt supply.**

INPUT TAX CREDIT

CGST, SGST, IGST or UTGST charged inward supply of goods or services or both made to him

IGST paid by him on imports of goods

Taxes paid under Reverse Charge:-

CGST u/s 9(3) & 9(4) of CGST Act

IGST u/s 5(3) & 5(4) of IGST Act

SGST u/s 9(3) & 9(4) of SGST Act/UTGST Act.

Allowed on all type of inward supply of goods or services or both **EXCEPT**

- Motor Vehicles & other conveyances **other than used for transportation of goods**. **MV as in section 2(28) of MVA 1988**
- Food and beverages, outdoor catering, beauty treatment, health services.
- Membership of a club, health and fitness centre.
- Rent-a-cab, life insurance and health insurance
- Works contract services when supplied for **construction** of an immovable property (other than plant and machinery)

  "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;
- Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

SECTION 17(5) OF CGST ACT 2017: BLOCKED CREDITS

Notwithstanding anything contained in sub-section (*1*) of section 16 and sub-section (*1*) of section 18, input tax credit shall not be available in respect of the following, namely:—
(*a*) Motor vehicles and other conveyances except when they are used––

(i) For making the following taxable supplies, namely:—
(A) Further supply of such vehicles or conveyances; or
(B) Transportation of passengers; or
(C) Imparting training on driving, flying, navigating such vehicles or conveyances;
(ii) For transportation of goods;

(*b*) The following supply of goods or services or both—

(*i*) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
(*ii*) Membership of a club, health and fitness centre;
(*iii*) Rent-a-cab, life insurance and health insurance except where––
(A) The Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
(B) Such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
(*iv*)Travel benefits extended to employees on vacation such as leave or home travel concession;

(*c*) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(*d*) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.––For the purposes of clauses (*c*) and (*d*), the expression
"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(*e*) Goods or services or both on which tax has been paid under section 10;
(*f*) Goods or services or both received by a non-resident taxable person except on goods imported by him;
(*g*) Goods or services or both used for personal consumption;
(*h*) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
(*i*) Any tax paid in accordance with the provisions of sections 74, 129 and 130.

Explanation.––For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
(*i*) land, building or any other civil structures;
(*ii*) Telecommunication towers; and
(*iii*) Pipelines laid outside the factory premises.

Input Tax-Section 2(62) of CGST Act, 2017

Input tax in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on **any supply of goods or services or both made to him and includes**—

(*a*) The integrated goods and services tax charged on import of goods;
(*b*) The tax payable under the provisions of sub-sections (*3*) and (*4*) of section 9;
(*c*) The tax payable under the provisions of sub-sections (*3*) and (*4*) of section 5 of the Integrated Goods and Services Tax Act;
(*d*) The tax payable under the provisions of sub-sections (*3*) and (*4*) of section 9 of the respective State Goods and Services Tax Act; or
(*e*) The tax payable under the provisions of sub-sections (*3*) and (*4*) of section 7 of the Union Territory Goods and Services Tax Act,
But does not include the tax paid under the composition levy

Input Tax Credit-Section 2(63) of CGST Act, 2017

Input tax credit means the credit of input tax

SECTION 16(3)

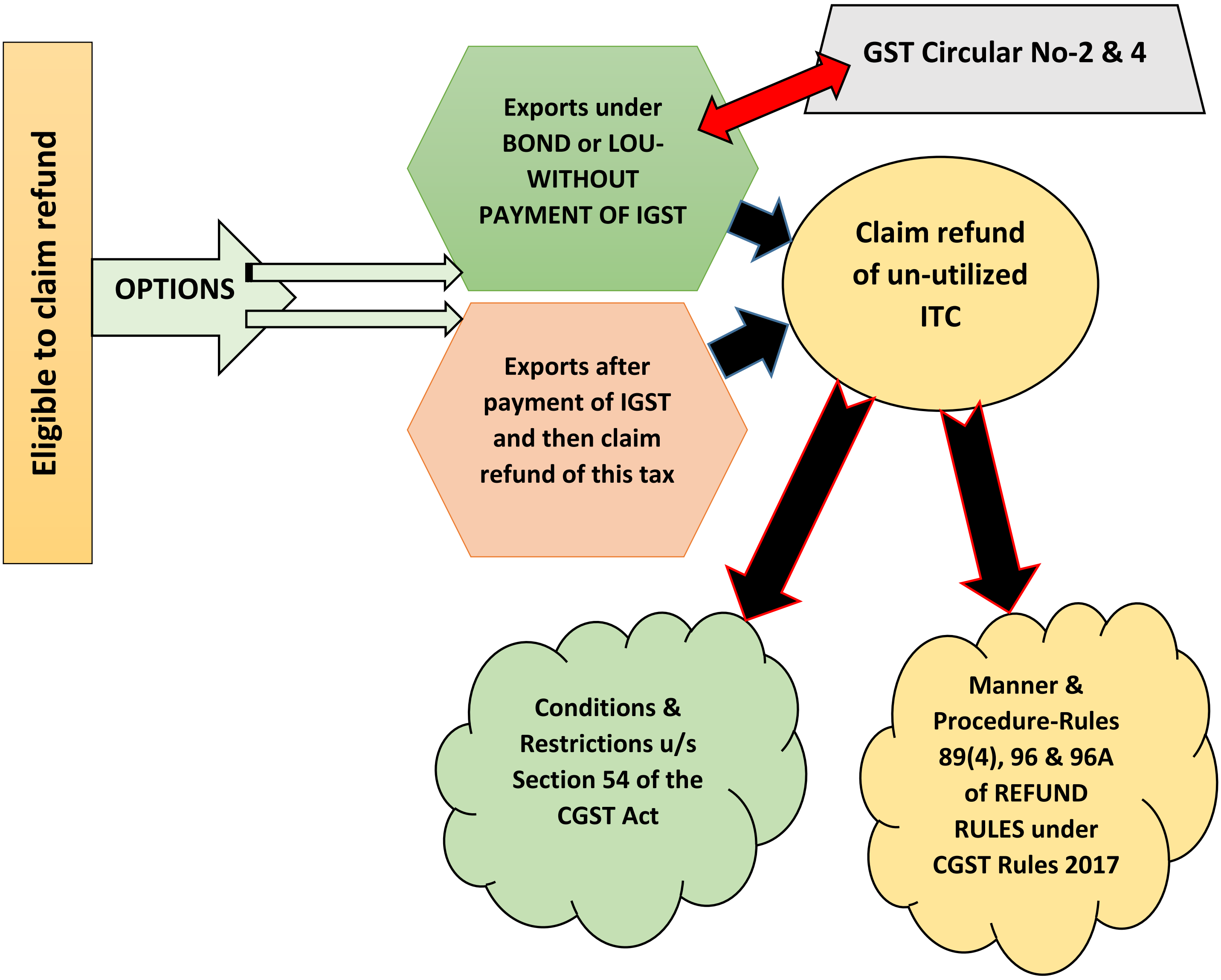
LAW TO CLAIM REFUND

A **registered person** making **zero rated supply** shall be **eligible to claim refund** under **either** of the following **options**, namely:—

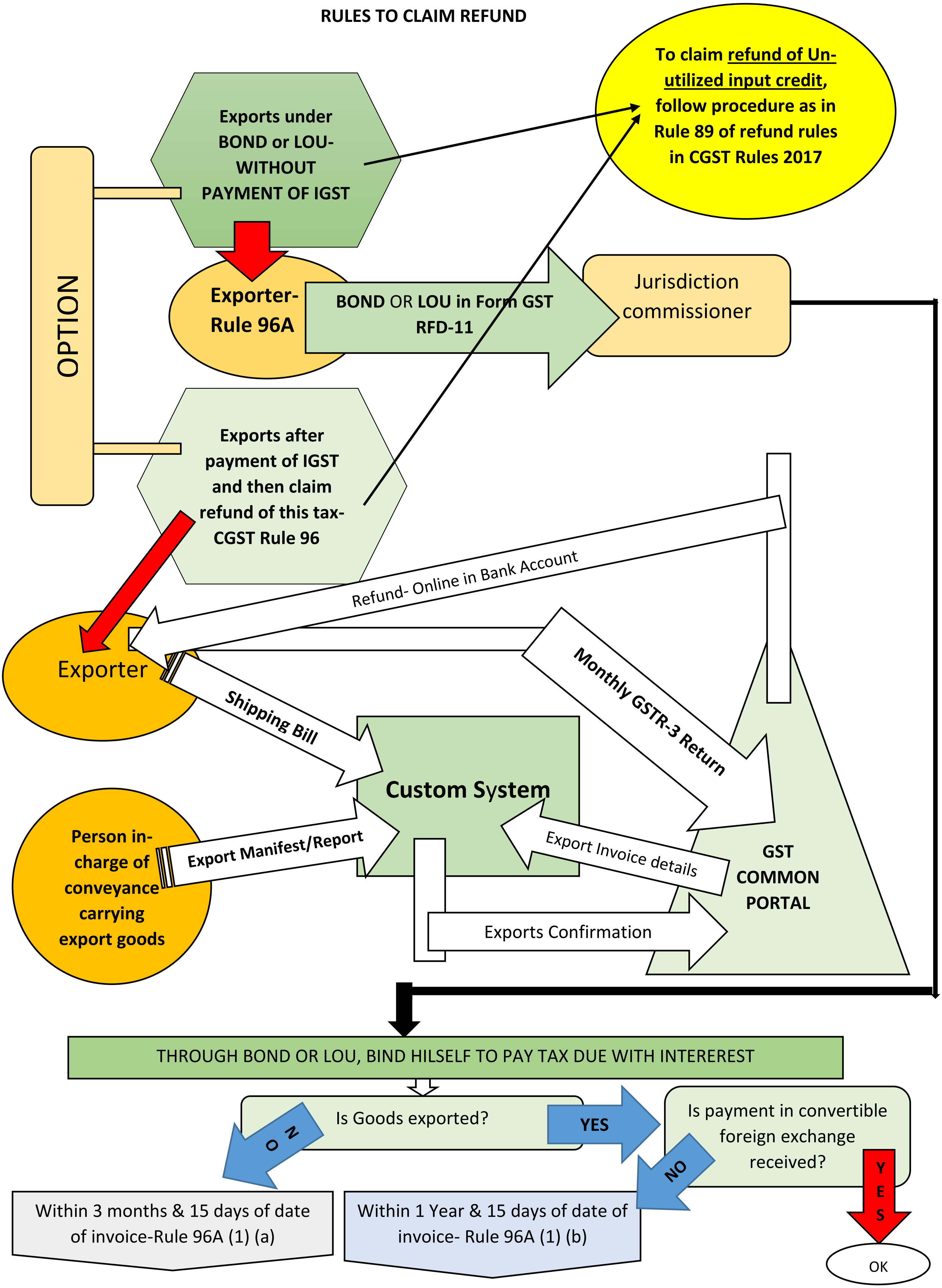
(*a*) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and **claim refund of unutilised input tax credit; or**

(*b*) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and **claim refund of such tax paid on goods or services or both supplied,**

In accordance with the provisions of **section 54** of the Central Goods and Services Tax Act or the rules made thereunder.



RULES TO CLAIM REFUND



Rule 96A (3)

If Not exported & not paid due tax as per rule 96A (1) (a)

Rule 96A (4):-

If pays the tax, exports withdrawn under sub-rule (3) will be restored

Tax & Interest shall be recovered from the registered person in accordance with the provisions of section 79.

Export allowed under Bond or LOU be withdrawn forthwith

RULE 96A (5)

The Board, by way of notification, may specify the conditions and safeguards under Which a Letter of Undertaking may be furnished in place of a bond

Notification No. 16/2017 – Central Tax dated 07 July 2017

The following registered person shall be eligible for submission of Letter of Undertaking in place of a bond

A status holder as specified in paragraph 3.20 of the Foreign Trade Policy 2015- 2020

Who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year.

and he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the existing laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

LETTER OF UNDERTAKING

- **In Duplicate**
- **For a Financial Year**
- **In Annexure to Form GST RFD-11 as referred in Rule 96A (1) of CGST Rules 2017**
- **Executed by:-**

  Working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor
- **On letter head of registered person**

Circular No. 2/2/2017-GST dated 04 July 2017 by GST Policy Wing

Bond/Letter of Undertaking required to be furnished under rule 96A of the said rules may be furnished manually to the jurisdictional Deputy/Assistant Commissioner in the format specified in FORM RFD-11 till the module for furnishing of FORM RFD-11 is available on the common portal.

Circular No. 4/4/2017-GST dated 07 July 2017 by GST Policy Wing

BOND

On non-judicial stamp paper of the value as applicable in the State in which bond is being furnished.

RUNNING BOND covering the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself & ensure that the outstanding tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the tax liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability.

FORM RFD -11 under rule 96A of the CGST Rules requires furnishing a bank guarantee with bond. Jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporter. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount.

LUT Valid for 12 months. If exporter fails to comply with LUT conditions, than need to furnish bond

Allowed under existing LUTs/Bonds till 31st July 2017. Exporters shall submit the LUTs/bond in the revised format latest by 31st July, 2017.

Bond/LUT shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of tax payers to respective authority is implemented. However, if in a State, the Commissioner of State Tax so directs, by general instruction, to exporter, the Bond/LUT in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented.

CHAPTER XI

REFUNDS

SECTION 54.

(*1*) Any person claiming refund of **any tax** and **interest, if any, paid on such tax** or **any other amount paid by him**, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a **registered person**, claiming **refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (*6*) of section 49**, may claim such refund **in the return furnished under section 39** in such manner as may be prescribed.

> **Section 49 (*6*)**
> The balance in **the electronic cash ledger** or **electronic credit ledger** after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there-under may be refunded in accordance with the provisions of section 54

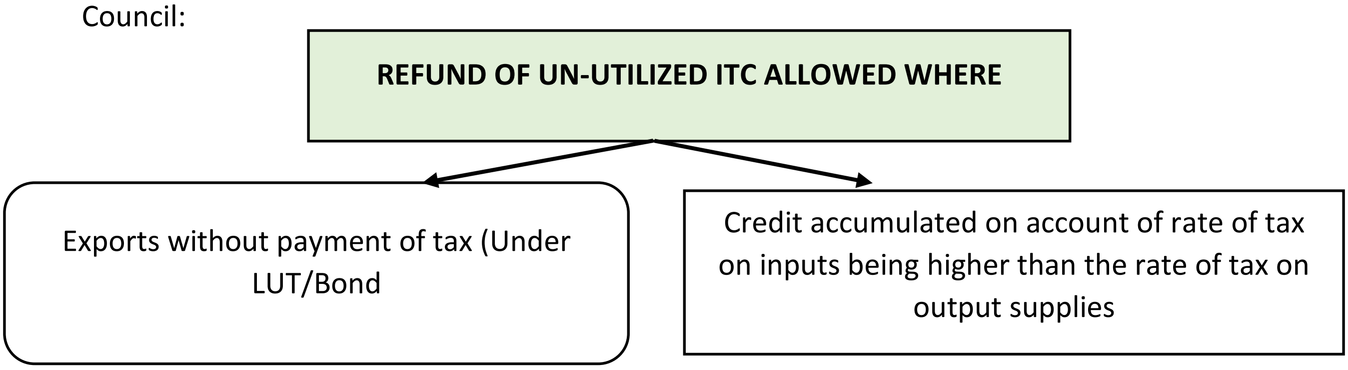
(*2*) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(*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**:

FIRST PROVISO
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:



SECOND PROVISO
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:

THIRS PROVISO
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.

NO REFUND OF UN-UTILIZED ITC ALLOWED WHERE

- **Exports with payment of Tax**
- **Goods exported out of India are subjected to export duty:**
- **Avails of drawback in respect of central tax**
- **Claim refund of the integrated tax paid on such supplies.**

(*4*) The application shall be accompanied by—

(*a*) Such documentary evidence as may be prescribed to establish that a refund is due to the applicant;

And

(*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:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(*5*) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(*6*) Notwithstanding anything contained in sub-section (*5*), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent, of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (*5*) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(*7*) The proper officer shall issue the order under sub-section (*5*) within sixty days from the date of receipt of application complete in all respects.

(*8*) Notwithstanding anything contained in sub-section (*5*), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(*a*) Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(*b*) Refund of unutilised input tax credit under sub-section (*3*);

(*c*) Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(*d*) Refund of tax in pursuance of section 77;

(*e*) The tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(*f*) The tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(*9*) Notwithstanding anything to the contrary contained in any judgment, decree order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (*8*).

(*10*) Where any refund is due under sub-section (*3*) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(*a*)Withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(*b*) Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

(*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.

(*12*) Where a refund is withheld under sub-section (*11*), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(*13*) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (*2*) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(*14*) Notwithstanding anything contained in this section, no refund under sub-section (*5*) or sub-section (*6*) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation
For the purposes of this section:-

(*1*) "Refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (*3*).

(*2*) Relevant date means—

(*a*) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(*i*) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(*ii*) If the goods are exported by land, the date on which such goods pass the frontier; or

(*iii*) If the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(*b*) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(*c*) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of:-

(*i*) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment;

Or

(*ii*) Issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(*d*) in case where the tax becomes refundable as a consequence of judgment decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(*e*) In the case of refund of unutilised input tax credit under sub-section (*3*), the end of the financial year in which such claim for refund arises;

(*f*) In the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(*g*) In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(*h*) In any other case, the date of payment of tax