

# **GST REFUND- DEFICIENCY MEMO NIGHTMARE**

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A long-awaited, good move towards e-governance, the fully electronic refund module for all categories of GST Refund and the process through a single source, either from Central GST authority or State GST authority, is implemented from 24/09/2019 and the modalities for the processing of electronic refund module were explained by the CBIC vide Circular No: 125/2019 dated 18/11/2019. Trade and Industry welcomed the implementation, expected seamless, speedy disposal of refund claims and elimination of submission of voluminous documents. No doubt that the CBIC has taken good moves during Covid-19 to help taxpayers in granting the refund under fast track mode and in fact has CBIC has released the good amount of refund claim in short span of time. However, of late, the issuance of memo appears to derail the simplified and unified refund processes. The surge in the issuance of Deficiency memo by the Departmental Officers are alarming, the reason attributed is contrary to the expectation Trade and Industry and It defeats the and very purpose of ease of doing business.

This article wishes to highlight the issue with respect to the deficiency memo issued by the refund authority at preliminary verification claim and highlight the plight of the Trade industry on account of such Deficiency memo.

To understand the issue, one need to understand the process/background and other allied actions on account of issuance of deficiency memo. The process flow of refund is as under:

- A registered person claiming a refund claim needs to file a refund application in Form RFD-01 within two years from relevant date in accordance with section 54 read with rule 89 of the CGST Rules.
- As per Annexure A of CBIC Circular 125/2019 dated 18/11/2019 and Circular No:135/2020 dated 31/03/2020, the Applicant has to upload certain statements/declarations/undertakings/certificates and other supporting documents along with the refund application depending upon the refund category.
- For refund claim pertaining to other than refund claim of electronic cash ledger, proper officer within 15 days of filing the said application needs to scrutinize the application for its completeness.
- If the said application is found to be complete in the term of rules 89(2), (3), (4) of the CGST Rules, 2017, acknowledgment needs to be given in Form RFD-02 indicating the date of filing the application.
- However, if any deficiencies are noted by the proper officer, same shall be communicated to the applicant by issuance of deficiency memo in Form RFD-03 along with an advice informing the applicant to file a fresh refund application after rectification of such deficiencies.

Of Course, the issue of deficiency memo is at the discretionary nature of the proper officer. However, it creates a more annoyance for the applicant to resubmit the fresh application. In the one tax, one nation concept, the discretionary power should barest minim.

The grievances of the Trade and Industry with reference to the issuance of Deficiency memo are:

1. The reasons attributed for the issuance of Deficiency memo.
2. At time limit considered for fresh application becomes time barred.

### **The reasons attributed for the issuance of Deficiency memo:**

Some of the reasons for issue of deficiency memo are:

- a) The uploaded documents are not legible
- b) GSTR-2A is not as per the GSTN portal
- c) The refund claim is time bared
- d) The refund claim is not in the Correct format (Refund Claims filed under Another category)
- e) HSN code not mentioned in Statement of Invoices.

It has been seen that Field Officers are very particular about the format of refund claim as given in circular and rejecting the refund claim even if there is minor variation and if HSN is missed in the annexure of statement of inward supplies or due to similar avoidable errors. Here one should understand the enormous task involved in filing the online refund application and again filing the application afresh.

### **The filing of online refund involves:**

As said earlier, the applicant, wish to claim refund claim needs to file a refund application in Form RFD-01 within two years from relevant date in accordance with section 54 read with rule 89 of the CGST Rules and has to upload documents as per Annexure A of CBIC Circular 125/2019 dated 18/11/2019 and as amended by Circular No:135/2020 dated 31/03/2020.

As per the Circular's supra the Applicant has to upload certain statements/declarations/undertakings/certificates and other supporting documents depending upon the refund category.

In general, such documents to be uploaded are:

- 1) Declaration/Statement/Undertaking/Certificates to be filled online;
- 2) Uploading of mandatory supporting documents as per Annexure a to Circular No: 125/2019

For the statements prescribed under Rule 89 of CGST Rules, 2017, GSTN provides offline tool and the Applicant. has to fill the data, convert it as json file and upload. After successful validation only further filing is possible.

**Please Note:**

- *The Offline tool does not permit cut, copy and paste. So, one has to enter each and every data manually by typing it.*
- *The data filled in Offline tool is validated before converting it to json and indicates the errors.*
- *One cannot delete or edit a line in between if there are typo error. He /she has to fill the data again without any typo or other errors. Getting a successful json is a tedious process.*

Next step is, the json file has to be uploaded and the system will again validate the data with already filed data. The data uploaded and data present in the system should match up to digit, if not validation fails. One has to again fill the data in off-line tool and repeat the process once more.

After successful online filing of Statements as per Rule 89, supporting documents has to be uploaded. As per Circular No: 125/2019 dated 18/11/2019 and 135/2020 dated 30/03/2020 the important documents for most of the refund for unutilised ITC are

- (1) Statement of Invoices in Annexure B and
- (2) GSTR-2A for the relevant period.

### **Statement of Invoices in Annexure B:**

As per Circular No: 125/2019 dated 18/11/2019, Statement of Invoices in Annexure B, appears to be reconciliation statement invoices for Net ITC availed as per GSTR3B and invoices uploaded as per GSTR-2A by the supplier. So, the Applicant has to match the invoices available with him and uploaded in the portal by supplier, exclude the ineligible invoices as per Section 17(5), in certain case of refund exclude Capital goods, input services. Further as per circular supra, for the documents not reflected in GSTR-2A, the details have to be entered in the statement and self-certified copies of the invoices has to be uploaded.

#### **Please note:**

*Matching of invoices as per the provisions of Section 42 of CAGT Act, 2017 is kept suspended after July 2017 due to complexity involved.*

Now as per Circular No: 135/2020 dated 30/03/2020, in the statement HSN code has to be given and statement is only for the invoices uploaded as per GSTR-2A and documents not reflected in GSTR-2A will not be considered for refund. However, no modification has been incorporated with reference to uploading of self-certified copies of the invoices which were not reflected in the GSTR-2A. Certain filed Officers insist that self-certified copies also to be uploaded.

#### **Please note:**

*The number of columns for statement of Invoices Annexure B is 14 and minimum characters is 220 (15 characters per Column) and this information has provided in a single containing all the column.*

It is further important to note that as per the circular no. 135 /2020 dated 31/03/2020, in statement of Invoices-Annexure B, HSN code has to indicated.

The Circular is silent which HSN code has to be given when an Invoice contains multiple HSN. This apart certain categories tax payers viz Turnover less than 1.5 crores- HSN code is not required to be mentioned in the invoices. But the Circular expects HSN is required!

### **Uploading Statement and Self-certified copies in PDF with a size of 5 MB:**

As per GNTN, the Statement and Self-certified copies should be in PDF format and size should be below 5 MB. In this connection the advisory issued by the GSTN is worth (add salt to the injury)

*How to scan the document at a lower resolution:*

- 1. When the window "Scanning from the Scan Picture/Document/Film" opens, click "Scan Document Settings."*
- 2. Adjust the number of the Resolution (dpi). We recommend a resolution of 100 dpi. Scanning in Line Art scan mode or Grayscale scan mode will also result in a lower resolution document.*
- 3. Select "online publishing" option when saving as PDF since this will reduce the file size.*

*"Can mobile based scanning apps be used for scanning the invoices/ debit/ credit notes. Mobile bases scanning apps like 'Cam Scanner' can be used for scanning the invoices/ debit/ credit notes. The taxpayers can easily scan multiple invoices/ debit/ credit notes through the mobile application and get the output in a consolidated PDF which can be uploaded with the refund application."*

From the above one should understand, how difficult it is to scan multiple documents with a good resolution in a single 5MB Size. So, the filed officer is happy to issue "Deficiency memo", where ever the document uploaded with

low resolution, in order to avoid time bound work and pressure of handling the pendency.

### **GSTR-2A for the relevant period.**

The next mandatory document to be uploaded is, GSTR-2A for the relevant period. GSTN provides as facilitation measure, GSTR-2A in json format and in Excel format. Now, in which format GSTR-2A has to be converted in to PDF for uploading? The Circular is totally silent about this aspect and it is discretion of the filed level officers!

Pl see the image file of PDF created based on the GSTR-2A downloaded.

### **Json to PDF Format:**

```
{
  "gstn": "XXXXXXXX",
  "fp": "012019",
  "b2b": [
    {
      "ctin": "33AAACT6649K1Z2",
      "cfs": "Y",
      "cname": null,
      "inv": [
        {
          "val": 7648.4,
          "itms": [
            {
              "num": 1801,
              "itm_def": {
                "csamt": 0,
                "samt": 583.35,
                "rt": 18,
                "txval": 6481.7,
                "camt": 583.35
              }
            }
          ]
        }
      ],
      "inv_typ": "R",
      "pos": "33",
      "idf": "02-01-2019",
      "rchrg": "N",
      "inum": "33027192",
      "chksum": "8088fdf24b75843ddfbec9b4f36cef892f82820821e9541dce3b1d055aa18497"
    },
    {
      "ctin": "XXXXXXXX",
      "cfs": "Y",
      "cname": null,
      "inv": [
        {
          "val": 2502,
          "itms": [
            {
              "num": 1,
              "itm_def": {
                "csamt": 0,
                "samt": 190.8,
                "rt": 18,
                "txval": 2120,
                "camt": 190.8
              }
            }
          ]
        }
      ],
      "inv_typ": "R",
      "pos": "33",
      "idf": "05-01-2019",
      "rchrg": "N",
      "inum": "2491",
      "chksum": "94a1f217536aa7a931c9eb1e47deacab5a4f4b5816c477cb5af0e21df48d3ce0"
    },
    {
      "val": 2872,
      "itms": [
        {
          "num": 1,
          "itm_def": {
            "csamt": 0,
            "samt": 219.02,
            "rt": 18,
            "txval": 2433.6,
            "camt": 219.02
          }
        }
      ],
      "inv_typ": "R",
      "pos": "33",
      "idf": "24-01-"
    }
  ]
}
```

Excel to PDF:

Please note there are 10 work sheets in Excel format for GST-2A as below:



Whether entire book has to be converted in to PDF or Only B2B pages needs to converted in to PDF? Again, the Circular silent and it is the discretion of the filed Officers.! Circular are issued under Section 168 of CGST Act, 2017 for the purpose of uniformity in the implementation of this Act.

Now, any one will comprehend, how difficult it is to convert GSTR-2A, with readable and within in 5 MB size.

Further, as per GSTN only 10 documents of size less than 5MB can be uploaded. For a full Financial Year 12 PDF files has to be uploaded and GSTN does not provide single json or Excel file for multiple tax period. GSTN has not so issued any advisory how to handle this situation. However, the Applicants and the Tax consultants with their computer knowledge and using the free resource available in the web, are filing the refund claim

In this background, one will understand the pain and plight of online submission of statement and uploading of supporting documents to file a single refund claim. But the refund claims are sent back under the pretext of "Deficiency Memo". Now the tax payer has to repeat the above painful work in online for resubmission.

**Please note:**

*After the issuance of Deficiency memo, none of the documents uploaded earlier is available in the GSTN portal to verify the correctness of the reasons of the deficiency memo.*

*There is no provision in the GSTN portal delete the incorrect document and add new document for rectifying the deficiency memo. All the earlier process has to be done afresh.*

The Field Officer should look into the effect of such discrepancies on the refund claim rather than going into the mere procedure as per the circular and issuing

deficiency memo. But one cannot blame the Field Officer, after all he is bound by the Circulars and he has to safe guard himself from the future audit objections and review by the Department. Play safe. Poor Taxpayer!

**Time bar aspect after the issuance of Deficiency memo:**

In GST regime, with the issuance of deficiency memo, applicant is asked to file a fresh refund claim and two years of time limit from relevant date would be considered for fresh application though the original application was filed within the time limit mentioned in the section 54 of the act. This situation becomes very dangerous when the refund application was filed within the short period of the due date. In such scenario, rectification of deficiency memo would result in filing the fresh application after due date and refund claim could be treated as time-barred application by the department. This results in long drawn litigation which would be very time consuming and also block the working capital of the applicant. It is also fact that considering the benefit as procedural lapse cannot take away the substantive benefit as held by the Hon'ble Tribunals and Courts.

In the Circular No: 125/2019 dated 18/11/2019 it was mentioned that since a submission of refund application on account of deficiency memo is fresh application therefore the same shall also be made within two years from the relevant date. Though the rules request for filing of fresh refund application in case of deficiency memo but nowhere mentions either old application is invalid/ rejected, or calculation of relevant date shall be made from the resubmission of fresh application. It only circular bought that thought process into light. It appears that the Circular goes beyond the scope of Sections of Act. It is settled principle that if the circular is contrary to the legal provisions thereby it is *non-est* in law as held by the Hon'ble SC in the case of Commissioner v. Ratan Melting and Wire Industries - 2008 (10) TMI 5 – Hon'ble Supreme Court.

The issuance of deficiency memo is nothing new in the indirect taxation Viz Central Excise and Service tax, in fact the process was available in earlier regime as well. In earlier regime the time limit from relevant date would be considered for original application filed and not for the fresh application. There are catena of judgments wherein it has been held that time limit to be computed from the date on which refund/rebate claim was originally filed. High Court and CESTAT Tribunal, have held in following cases that original refund/rebate claim filed within prescribed time limit laid down in section 11 B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- CCE Bolpur Vs. Bhandiguri Tea Estate 2001 (134) ELT 116 (T. Kol.)
- Good Year India Ltd. Vs. CCE Delhi 2002 (150) ELT 331 (T. Del)
- CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in, a case of M/s IOC Ltd. reported as 2007(220) ELT 609 (GOI) as under: -

"Rebate Limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

Further rejection of refund claim by deficiency memo makes the rule 92(3) unwarranted which says any rejection of refund claims shall be made through form RFD-08. Department must give clarification that if due to error in the refund application does not impact the refund claim majorly, the due date for

the refund shall be considered for the original application filed. Else it would be treated as weapon to the department for making the application time barred, if the same has been filed in the last week of the due date.

It was seen that before master circular dated 18 /11/ 2019, officers have issued show cause notices in case the applicant does not response to the deficiency memo. However, with the issuance of master circular the said window was closed saying if the deficiency memo is issued, SCN is not required to be issued. Though in some cases it was also seen that, show cause notice was issued if the reply to the deficiency memo was not issued.

However, in case where do not wish to give SCN it makes the purpose of rule 94(3) ineffective. As, it is fundamentally settled principle that any refund claim must be rejected by way of SCN although in many cases, order used to be issued. Without a show cause notice a refund cannot be rejected as laid down in many judgements.

It has also been seen that many a times, department does not give the deficiency memo within 15 days of application filed which result in making the refund claim time barred as the fresh application could result in beyond time limit of 2 years from relevant date.

### **Way forward/ Suggestions:**

Now the Central /State Indirect Taxation Department has voluminous data as detailed under:

#### Data furnished by the Tax payer-through GSTN

1. Details of outward supply (GSTR-1)
2. Details of Tax payment and ITC Aailed (GSTR-3B)
3. Details of supply from Ecommerce operators
4. Details of ISD supply

#### To the Customs Department through ICEGATE

1. Details of goods Exported - Shipping Details

2. Details of Goods imported-Bill of entry
3. Details of e-BRC through DGFT

Datamining reports provided by the GSTN:

1. Details of Inward supply GSTR-2A

This apart as per the provision of Section 150 of CGST Act, 2017, various stake very many organizations are under obligation to furnish information return to the Government. So, the department practically has all the information required for sanctioning the refund claim, the need for additional data is very minimal and this information can be obtained using offline utility. The provisional refund could be sanctioned based on simple application and final refund could be sanctioned based on time frame after due verification. This will eliminate the issuance of Deficiency memo for want of rectifiable errors.

Since the Hon'ble Courts and Tribunal have held that time limit is as per the Original claim and not based on the rectified claim submitted after deficiency memo, Circular needs to be amended clarifying that two years shall be calculated for originally filed application and not for the revised one as the same would create havoc.

In the Covid-19 situation some oxygen for suffocating Trade and Industry as well as overall economy, is the early sanction of refund.

Hope, CBIC will understand the plight of the taxpayers, issue suitable instruction with refence to issuance of deficiency memos and restore the confidence of the trade and industry.