Lawgics

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Section 54 & relevant rules shall be discussed in 4 parts:

Section 54(1), 54(2) & 54(3) read with Rule 89(1)	Section 54(4) read with Rule 89(2) to 89(5)	Rule 96, Rule 96A & Rule 96B	Section 54(5) to 54(14) read with Rule 90, Rule 91 & Rule 92
Lawgics Serial No. 055 Dated: 27-03-2023	Lawgics Serial No. 056 Dated: 28-03-2023	Lawgics Serial No. 057 Dated: 29-03-2023	Lawgics Serial No. 058 Dated: 30-03-2023

Section 54(1), 54(2) & 54(3) read with Rule 89(1)

Section 54: Refund of tax	
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 such form and manner as may be prescribed.
Rule 89: Application for refund of tax, interest, penalty, fees or any other amount	
Rule 89(1)	Any person, except the persons covered under notification issued under section 55, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or subject to the provisions of rule 10B, an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the – (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone: Provided further that in respect of supplies regarded as deemed exports, the application may be filed by, - (a) the recipient of deemed export supplies; or (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund:

	Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him. Explanation. —For the purposes of this sub-rule, — "specified officer" means a "specified officer" or an "authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.
Section 54(1) read with Rule 89(1) Interpretation	**Refund of Tax** Any registered person may claim refund in the following circumstances: (i) Excess payment or erroneous deposit in Cash Ledger (ii) Refunds on Account of Exports (iii) Inverted Duty Structure The claim, sanction, approval and grant of refund is entirely an online process. A registered person may claim refund of any Tax, Interest or any other amount paid, **within 2 years from the relevant date**. Please note that the concept of refund is based on the principle of unjust enrichment as discussed in section 49(6). Any registered person can claim refund by filing RFD-01 on the common portal within relevant date. Relevant Date – in case of Goods (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 dispatch 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. Relevant Date - in case of Service (a) 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 or in Indian rupees wherever permitted by the Reserve Bank of India, 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. (b) 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. (c) in the case of refund of unutilised ITC under section 54(3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises; (d) 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; (e) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and (f) in any other case, the date of payment of tax
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 two years from the last day of the quarter in which such supply was received.
Section 54(2) Interpretation	**Refunds to special agencies** (i) Specialized agency of UNO, or (ii) Any multilateral financial institution and organisation notified under the united nation act, or (iii) Consulate or embassy of foreign countries, or (iv) Any person as notified u/s 55 shall be eligible to claim refund of taxes paid by them on inward supplies. Such person shall file an application within 2 years from the last day of the quarter in which such supply was received, or such extended date notified for this purpose.
Section 54(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.
Section 54(3) Interpretation	**Refund of unutilized ITC** This section specifies that a registered person can claim refund of unutilized ITC in the following two situations: 1) Export supplies made without payment of tax, provided that such exported goods are not liable to export duty. 2) Inverted Duty Structure Also, no refund of unutilised input tax credit shall be allowed, 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. The Government has issued certain notifications by which Refunds under the head Inverted Duty structure are denied in few cases of Goods or Services as notified in such Notifications. Notifications relating to goods are as follows: ➢ Notification No. 05/2017-CTR Dated 28.06.2017 ➢ Notification No. 29/20170-CTR Dated 22.09.2017 ➢ Notification No. 44/2017-CTR Dated 14.11.2017 The Services as notified in Notification No. 15/2017-CTR Dated 28.06.2017: No refund of unutilised ITC shall be allowed under sec 54(3) of the GST Tax Act, in case of supply of service specified in Schedule II, Item No 5(b) i.e. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

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