



# Lawgics

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## Section 77 of CGST Act, 2017

### 77. Tax wrongfully collected and paid to Central Government or State Government.

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

## Our Interpretation

Section  
77

GST is a destination-based tax. The provisions of place of supply play an important role while determining the taxable jurisdiction i.e., the State which gets the right to collect tax. However, there can be some instances where a taxpayer may wrongly consider a transaction as intra-state supply instead of inter-state supply or vice-versa and pay tax under the wrong head.

In cases, where tax paid under the wrong head is utilized against the tax liability (i.e. return has been filed), the assessee would be required to pay tax under the correct head and he can claim refund of tax paid under wrong head.

This provision deals with a situation where a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-state supply, but which is subsequently held to be inter-state supply. Upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will have to be refunded in the manner prescribed under Rule 89 of the CGST Rules, 2017. No interest will be levied on the payment of IGST as there is no loss to Government Revenue.

If a taxable person wrongly pays IGST by treating a supply as inter-state supply, which is subsequently held to be intra-state supply, interest is not required to be paid on the CGST/SGST or CGST/UTGST payable.

The relief from payment of interest on CGST/SGST is allowed under section 77(2) whereas relief from payment of interest on IGST is allowed under section 19(2) of IGST Act, 2017.

Various doubts were raised on the interpretation of the term 'subsequently held', that whether refund claim would be available where the payment made under the wrong hand is subsequently found by the tax officers or would also include the scenarios where it is subsequently found by taxpayer himself. The CBIC has clarified vide **Circular No. 162/18/2021-GST, dated 25.09.2021**, that the refund would be available in both the given cases.

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