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Refund under GST in case of temporary registration- a practical challenge

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VIDE Circular No. [125/44/2019-GST](#) dated 18.11.2019, the government mandated electronic refund applications in Form GST RFD 01. These clarifications were comprehensive in nature so as to include refund arising on account of any reason. However, there are still some issues that need to be sorted out. One of them has been highlighted in this article.

Refund vis-à-vis temporary registration

CBIC had mentioned 12 categories (one being residuary category) under which refund application has to be filed electronically. One such situation is 'refund on account of assessment/appeal/any other order'. To file an online refund application, a person must have a GST registration in the State where he/she seeks the refund. However, there are cases when the department granted temporary registration to a person in a State where he/she does not carry out any business.

Let us first examine the Rule 16 which relates to *suo moto* registration.

"16. *Suo moto* registration - (1) *Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG 12"*

...

(3) *Every person to whom a temporary registration has been granted under sub-rule (1) shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 8 or rule 12:*

Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority"

Purpose of *suo moto* registration is to enable a person to deposit tax/interest/penalty as levied by the officer in such State. For instance, the department may intercept a vehicle carrying goods in State X. The tax invoice accompanying goods is of State Y. The officer may be of the view that tax on the goods is payable in State X where it was intercepted and thus, grants *suo moto* registration in State X. Now, the tax demanded by the officer has to be deposited in State X through that temporary registration.

Rule 16 stated above specifies the time limit within which a person has to apply for permanent registration. This Rule prescribes the above treatment only in case a person is liable to register under the GST law. However, if the liability to register is set aside in appeal, there is no mechanism in law to cancel the temporary registration granted by the department. In other words, if the person in the above illustration files an appeal before the appellate authority and gets a favorable order, there is no need to file for registration afresh in State X. This is where the trouble arises for taxpayers as the person will be claiming refund of the amount deposited earlier in State X.

To seek the refund of tax deposited under such temporary registration, the taxpayer has to file refund application electronically in terms of CBIC master circular on 'refund'. But the temporary registration does not allow a person to proceed with the refund application until details of authorised signatory are not uploaded. For this, the applicant does not get an option to convert the temporary registration to permanent. Rule 16 does not provide for conversion of temporary registration to permanent registration in such circumstances. In fact, a taxpayer is required to file a fresh application for registration with details of all the core fields once the liability to register is confirmed.

Whereas, in absence of any registration in the State, taxpayer will not be able to claim refund of the tax/interest/penalty. Thus, in the scenario where liability to register is set aside, there appears to be no facility on the online portal to file a refund application in respect of tax deposited via temporary registration. Moreover, the department does not accept manual refund application pursuant to the above stated circular.

In the absence of any mechanism to claim a refund in the above scenario, department authorities might not be inclined to grant refund even though the claim is valid. Therefore, necessary instructions as to refund in the above scenario are required from the department.

[The views expressed are strictly personal.]

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