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(Set up by an Act of Parliament)

ICAI/IDTC/2021-22/Rep/5

7th October, 2021

Shri Sanjay Mangal
Commissioner, GST
Central Board of Indirect Taxes & Customs,
Government of India,
North Block,
New Delhi - 110001



Esteemed Sir,

Sub: Determination of time limit in the scenarios given in Circular No. 162/18/2021-GST 162/ dated 25th September, 2021

Greetings from GST & IDT Committee of ICAI. This is with reference to Circular No. 162/18/2021-GST 162/ dated 25th September, 2021 issued to clarify certain aspects in relation to refund of tax specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017.

The Institute of Chartered Accountants of India (ICAI), being a partner in nation building, has rendered unflinching support to the Government in ushering in the GST regime in India and continues to provide its unabated assistance in ironing out the post-implementation issues as well. Further, ICAI has also been playing crucial role in GST knowledge dissemination amongst all the stakeholders through its technical publications, GST Newsletter, live webcasts, e-learning, courses, conferences and programmes.

Sir, we wish to bring to your kind notice that in all the four scenarios given in the Circular to explain as to how the time period of two years for filing the refund claim under section 77(1) of the CGST Act or section 19(1) of the IGST Act should be determined, the day on which the correct tax has been paid has also been taken into account. For example, scenario 2 clarifies that the last date for filing refund application in terms of rule 89(1A) of the CGST Rules, 2017 will be 09.11.2023 when the tax has been paid on 10.11.2021.

We humbly submit that such manner of calculation of time-period is not in consonance with the legal position as also with the settled jurisprudence in this regard. As you will be aware that section 9 of the General Clauses Act, 1897, mandates excluding the first in a series of days or any other period of time, to use the word



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'from'. Needless to mention that the said section applies to all Central Acts made after the 3rd January, 1868 and thus, applies to Central GST Act, 2017 as well.

Courts have time and again held that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is *prima facie* excluded from computation. A full Bench of Hon'ble Supreme Court in the case of *M/s. Leon Antri Ltd., v. Rom Ind. Ltd.* (Cr. Apl. 1079/2006) has held that **while computing the period of limitation, the date of cause of action has to be excluded**. Reference may also be had to *M/s Saketh India Limited & Ors. Vs. M/s. India Securities Limited* 1999 AIR Supreme Court 1090, *Simranpal Singh Suri vs State & Anr.* 2021 Delhi High Court, *Haru Das Gupta v. State of W.B.* (1972) 1 SCC 639; 1972 SCC (Cri) 368, *West Bengal High Court, V.S. Metha and Ors. vs Unknown on 6 September, 1968* [AIR 1970 AP 234, 1970 CriLJ 797, Andhra High Court].

The effect of the dates listed in the scenarios given in the Circular, perhaps inadvertently too, is that the **time period of two years available to a taxpayer for making the refund application "gets reduced by one day"** which is neither the intention of the law nor in line with the settled legal and judicial position. For the sake of clarity, the relevant extract of the circular along with the suggested modification is given below:

Sl. No.	Scenario	Last date for filing the refund claim (As per the Circular)	Last date for filing the refund claim (As per the modification suggested)
2.	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)	Since "A" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 10.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or	Since "A" has paid the tax in the correct head	Since "A" has paid the tax in the correct head before



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<i>appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.05.2019</i>	<i>before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)</i>	<i>issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 24.09.23 (two years from date of notification)</i>
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A circular being meant to clarify the provisions, ought to present the legally correct position while clarifying the interpretation applicable to a given provision. Therefore, we request you to appropriately address this aspect in all the four scenarios given in Circular No. 162/18/2021-GST 162/ dated 25th September, 2021.

We hope that this representation will be considered favourably. We shall be glad to provide any further inputs as may be required. Your office can reach us at gst@icai.in.

With respectful regards,

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