

## Incase of cancellation of contracts, the supplier cannot sit on refund of GST to the recipient, pending receipt of refund from the GST Department

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Government Customers or suppliers always try to have the upper hand in dealings with private players. Incase contracts are cancelled, there is always a question of how to adjust the GST paid earlier, especially if no outward tax liability is available. In this regard, SI No 3 of Circular No. 137/07/2020-GST dated 13.4.2020 specifies the following -

*1. An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before the supply of service and paid the GST thereon. Whether he can claim a refund of tax paid or is he required to adjust his tax liability in his returns?*

*In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which an invoice is issued before the supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.*

*2. An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued a receipt voucher and paid the GST on such advance received. Whether he can claim a refund of tax paid in advance or he is required to adjust his tax liability in his returns?*

*In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for a refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".*

Now the question is regarding the timing of the GST refund to the recipient. In this case where IRCTC received the value of supply with GST from the recipient (possibly in advance) and thereafter the contracts got cancelled, they held onto the GST portion taking the stand that they shall refund the GST component to the recipient subject to a complementary refund by the GST authorities to the IRCTC. This was even after the recipient had already filed an affidavit indicating that it has not availed the input credit of GST.

The High Court at Calcutta in the instant case of GRIHAM FOOD AND HOTEL PVT LTD Vs UNION OF INDIA [2023-VIL-452-CAL] held that As such, there cannot be any further impediment in the GST component being refunded to the petitioner. Entitlement of the IRCTC to get a complementary refund

from the GST authorities could not also be mandated in a blanket fashion by Court direction, simply because the IRCTC has failed to justify its delay in sitting tight over the application of the petitioner for a refund of GST component, which was made by the petitioner in due time. A complimentary refund to the IRCTC would be considered by the GST authorities in accordance with the law. However, there cannot be any doubt that the petitioner is entitled to a refund of the GST component from IRCTC and thus the IRCTC was directed to refund the GST component to the petitioner expeditiously.

**BRIEF ABOUT THE AUTHOR:**

Vivek Jalan is a Chartered Accountant & a qualified L. LM & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – Economic Affairs and Taxation Committee (ER). He is the Chairman of The Fiscal Affairs and Taxation Committee of The Bengal Chamber of Commerce and Industry. He is the Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Business Standard, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Direct and Indirect Taxes which reaches more than 70000 professionals.

He is also a visiting faculty in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce, The Merchant Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with Intra Soft Technologies Ltd. He has more than 18 years of experience in the field of Information Technology, Finance, Taxation and Logistics. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books include the following –

- COMMENTARY ON UNION BUDGET 2023 – February 2023
- HOW TO HANDLE GST LITIGATION– September 2022
- HANDBOOK ON GST– June 2022
- GST PLEADING & PRACTISE – August 2021 – **India's Bestseller**
- UNION BUDGET 2021 – February 2021
- SECTIONWISE COMPENDIUM ON GST – October 2020
- INTEGRATED APPROACH TO E-INVOICING E-WAYBILL & RETURN FILING – October 2020
- COMMENTARY ON UNION BUDGET 2020– Feb 2020
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- **SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018**
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- "SERVICE TAX AND VAT IN WORKS CONTRACT: A COMPREHENSIVE TECHNICAL GUIDE".

He is a regular speaker at various professional forums on the various key areas in Finance and has delivered more than 300 lectures on various topics under Information Technology, Finance, GST, Customs, Foreign Trade Policy of India, Income Tax, etc.