

**GOVERNMENT OF TAMIL NADU  
COMMERCIAL TAXES DEPARTMENT  
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES  
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: DR. D.JAGANNATHAN I.A.S.,**

**COMMISSIONER OF STATE TAX**

**Circular No 19 /2023  
(PP6 /GST-145/2022 )**

**Dated 16.11.2023**

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| <b>Sub:</b> | Prescribing manner of filing an application for refund by unregistered persons -reg.   |
| <b>Ref:</b> | Circular No. 188/20/2022-GST, File No CBIC - 20001/2/2022, Government of India , Ministry of Finance , Department of Revenue, Central Board of Indirect Taxes and Customs-New Delhi dated 27.12.2022 |

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In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No 188/20/2022-GST, dated 27.12.2022 on the recommendations of the GST Council. Hence, following *pari-materia* circular is issued:-

Instances have been brought to the notice of the GST Council, where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter referred to as 'TNGST Act') may already have got expired by that time. In such cases, the

supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the TNGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received by the GST Council, requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.

2. It would be pertinent to mention that sub-section (1) of section 54 of the TNGST Act already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of section 54 of the TNGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

2.1 In order to enable such unregistered person to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered



persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'. Further, sub-rule (2) of rule 89 of Tamil Nadu Goods and Service Tax Rules, 2017 (hereinafter referred to as 'TNGST Rules') has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. G.O Ms 208, CT& R Department dated 30.12.2022 and G.O. (Ms) No.59, CT & R(B1) Department, dated 30.05.2023 TN Notfn No.SRO 4-27 (a)/2022, dated 30.12.2022 and SRO A-20(b-2)/2023, dated 30.05.2023 [Issue No.198] to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

3. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Commissioner, in exercise of powers conferred by section 168 of the TNGST Act, hereby clarifies the following:

#### **4. Filing of refund application**

4.1 The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of TNGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same State/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the TNGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

4.2 The application for refund shall be filed in **FORM GST RFD-01** on the common portal under the category '**Refund for unregistered person:**. The applicant shall upload **statement 8** (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the TNGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the TNGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

4.3 Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

4.4 Where the time period for issuance of credit note under section 34 of the TNGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the TNGST Act has already expired.



## **5. Relevant date for filing of refund:**

As per sub-section (1) of section 54 of the TNGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the TNGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the TNGST Act, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

## **6. Minimum refund amount**

Sub-section (14) of section 54 of the TNGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

7. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

7.1 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

**Sd/D.Jagannathan**  
**Commissioner of State Tax**

To

All the Joint Commissioners (ST)(Territorial) and (LTU)  
All the Head of Assessment Circles in the State

Copy to

1. All the Additional Commissioners, including Service Tax cell in the Office of the CCT, Chennai-5
2. Director, Commercial Taxes Staff Training Institute, Chennai -35
3. All the Joint Commissioners (Intelligence)
4. Appellate Joint Commissioner (GST) Chennai.
5. All the Deputy Commissioners (Territorial and Intelligence)
6. All the Appellate Deputy Commissioner (GST) in the State.
7. The Joint Commissioner (CS), Chennai 35, to upload the same in the internet website.
8. Stock file / Spare.

*dmr*  
*16/11/23*  
Deputy Commissioner (P&P)

*S*  
*16/11/23*