

GST THIS WEEK

11th – 17th January, 2017



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- ⇒ Graphical presentation showing treatment of amount recovered or refunded in pursuance of assessment or adjudication proceedings [Sec 184 of Revised Model GST Law (MGL)]
- ⇒ Graphical presentation showing treatment of amount recovered or refunded pursuant to revision of returns [Sec 185 of Revised Model GST Law (MGL)]
- ⇒ Practical issues on Sec : 184 & 185 of Revised Model GST Law (MGL)
- ⇒ Corresponding sections under earlier Model GST Law (MGL)

Treatment of amount recovered / refunded in pursuant to assessment or adjudication

PROVISIONS AS PER SEC : 184

(CGST Act)

(SGST Act)

Refund of Tax, Interest, Fine, Penalty

In case if any amount of tax, interest, fine or penalty **becomes refundable** to the taxable person; under any assessment proceedings instituted before, on or after the appointed day **under the earlier law**; then such amount shall be refunded to him **in cash** under the earlier law, subject to the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

In case if any amount of tax, interest, fine or penalty **becomes refundable** to the taxable person; under any assessment proceedings instituted before, on or after the appointed day under the earlier law; then such amount shall be refunded to him **in accordance with the provisions of earlier law**.

Recovery of Tax, Interest, Fine, Penalty

- In case if any amount of tax, interest, fine or penalty **is recoverable** from the taxable person; under any assessment or adjudication proceedings instituted before, on or after the appointed day under the earlier law; then such amount shall be **recovered as an arrear of tax under this Act**.
- The amount so recovered shall **not be admissible as input tax credit**.

Treatment of amount recovered / refunded pursuant to revision of returns

PROVISIONS AS PER SEC : 185

(CGST Act)	(SGST Act)
In case of refund pursuant to the revision of returns	
<p>If any return furnished under the earlier law is revised <u>after the appointed day but within the time limit specified for revision</u> and after such revision; any amount is found to be <u>refundable or CENVAT credit is found to be admissible</u> then such amount shall be refunded to him <u>in cash</u> under the earlier law, subject to the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.</p>	<p>If any return furnished under the earlier law is revised <u>after the appointed day but within the time limit specified for revision</u> and after such revision; any amount is found to be <u>refundable or Input tax credit is found to be admissible</u> then such amount shall be refunded to him <u>in accordance with the provisions of the earlier law</u>.</p>
In case of recovery pursuant to the revision of returns	
<ul style="list-style-type: none"> • If any return furnished under the earlier law is revised <u>after the appointed day</u> and after such revision; any amount is found to be <u>recoverable or CENVAT credit / Input Tax credit is found to be inadmissible</u> then such amount shall be <u>recovered as an arrear of tax under this Act</u>. • The amount so recovered shall <u>not be admissible as input tax credit</u>. 	

How will settlement done under various legislations?

As per Sec 184 of Revised MGL, the comprehension is that in case of a Refund Adjustment Order (RAO) under VAT Act of the State, it can be adjusted under the GST return. Again a technical point of law would arise as to whether a refund under one legislation could be set off against an outstanding against other legislation. We hope that the Rules would clarify this point in detail.

How shall the allocation of revenue be done?

The recoverable amount so received from assessee relating to earlier regime would be collected as arrears of tax under GST. The allocation of this amount between Centre and State is not specified and might cause difficulty in administration of such taxes after implementation of GST.

What will be the treatment of Cess recoverable or refundable under the earlier law following assessment or adjudication proceedings?

Any tax, interest, interest, fine or penalty recoverable or refundable after the appointed day in pursuant to the assessment or adjudication proceeding under the earlier law shall be allowed to recovered or refunded as per Sec 184 & 185 of Revised MGL. However, the provision doesn't clarify whether Cess such as Swachh Bharat Cess, Krishi Kalyan Cess, etc. will be covered or not.

We can say that such Cess are included herein word 'tax'. However, an order of removal of difficulties is expected to be passed to resolve the said issue.

If after completion of assessment / adjudication proceedings, amount of CENVAT credit is not allowed as per the provisions of the Sec 184 of the Revised Model GST Law then, what will be the implication under the GST law?

As a result of such proceedings, if the amount of CENVAT credit is inadmissible to the assessee then, the same amount shall be recoverable as an arrear of Tax under GST. Further, the same shall not be admissible as Input Tax Credit (ITC) under GST.

If after the appointed day, taxpayer found some admissible credit which were not availed under the earlier regime; then whether he has any option to avail the same even under GST regime?

In the said situation, if the period of revision of return pertain to the said credit doesn't expire then he can very well revise his return after the appointed day by increasing the credit amount as per the provision of Sec 185 of Revised MGL. Accordingly, he can avail the un-availed credit pertaining to the earlier period even after the appointed day by revising return within time period specified under the earlier law. The same condition of revising the return in timely manner only applies in case of refund and not recovery under GST regime.

Corresponding Sections under Draft GST law dated 14.06.2016

Provisions under earlier draft law		Provisions under present draft law	
Section	Heading	Section	Heading
157	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings	184	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings
158	Treatment of the amount recovered or refunded pursuant to revision of returns	185	Treatment of the amount recovered or refunded pursuant to revision of returns

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