

## REFUND

### **Refund of tax.**

39. (1) Subject to the provisions of this Act and the rules made thereunder, the Commissioner or the designated officer shall, in such manner and within such period, as may be prescribed, refund to a person, the amount of tax, penalty or interest, if any, paid by such person in excess of the amount due from him and also the excess of input tax credit over output tax payable under this Act. The refund may either be by refund voucher or at the option of the person, by refund adjustment order as may be specified:

Provided that, the Commissioner or the designated officer shall first apply such excess amount towards the recovery of any amount due in respect of which a notice under section 29 has been issued or any amount, which is due, but not paid, as the case may be, and shall refund the balance, if any.

(2) Where any refund is due to any taxable person or registered person according to the return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due and payable as per the returns furnished under section 26 for any subsequent period:

Provided that the amount of tax or penalty or interest or all of these, due from, and payable by, the taxable person or the registered person, as the case may be, on the date of such adjustment, shall first be deducted from such refund while making adjustment:

Provided further that where an application for claim of refund is submitted by a person on the basis of his monthly return, the designated officer shall provisionally allow seventy five per cent of the amount of such claim, against submission of indemnity bond in the prescribed form for the amount, equal to the amount of refund claimed in the application, and after the receipt of the forthcoming quarterly returns, the designated officer shall cross check the transactions, and after satisfying about the genuineness of the claim , he shall determine the final amount of refund.

### **Interest on delayed refund.**

40. Where an amount required to be refunded by the Commissioner or the designated officer, to any person, is not so refunded to him within a period of **sixty days** from the date of the application, a simple interest at the rate of half per cent per month on the said amount shall be paid to such person from the date, immediately following the expiry of the period of sixty days to the date of the refund.

**Explanation.-** (1) If the delay in granting the refund within the aforesaid period of **sixty** days is attributable to the taxable person or the registered person, as

the case may be, whether wholly or in part, the period of the delay attributable to him, shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded in terms of Explanation (1), for the purposes of calculation of interest, such question shall be determined by the Commissioner, whose decision shall be final.

(3) Interest under this section, shall be calculated by considering part of the month as one month.

**Power to withhold refund in certain cases.**

41. (1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the officer competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such officer may, with the previous approval of the Commissioner, withhold the refund till such time, as may be determined.

(2) Where a refund is withheld under sub-section (1), the Commissioner shall pay interest in accordance with the provisions of section 40 on the amount of refund ultimately determined to be due to the person as a result of appeal or further proceeding or any other proceeding for the period, from the date, immediately following the expiry of the period of ninety days from the date of the order referred to in sub-section (1), to the date of refund.