

## **Analysis of GST law implications on Exports Sector (including refunds)**

### **Legislations on Exports Sector:**

Exports Sector is legislated by various laws viz. 'Foreign Trade Policy 2015-2020' (FTP), 'Foreign Exchange and Management Act, 1999' (FEMA Act). Duty and tax implications are dealt by 'Customs Act, 1962' and 'Integrated Goods and Services Tax Act, 2017' ('IGST Act'). This booklet focuses on GST law implications on Exports (including refunds) provisions contained in IGST Act and rules made there. These provisions are framed on the lines that Exports should not be taxed. Wherever necessary, relevant provisions from other laws are also given.

### **Constitutional Background:**

Article 269A of the Constitution states that Goods and services tax ('GST') on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India.

Further, Article 286 imposes restriction on the taxing powers of the state in case of Export of goods.

Therefore, in exercise of the powers contained in Article 269A read with Article 286, IGST Act, 2017 was enacted which contains relevant export provisions.

### **Determination of nature of supply:**

Section 7(5)(a) provides that Supply of goods or services 'when the supplier is located in India and the place of supply ('POS') is outside India' shall be considered to be supply in the course of inter-State trade or commerce.

Therefore, Exports of goods and services are always considered to be inter-state supply.

### **Registration requirement:**

Section 24 of CGST Act states that persons making any inter-State taxable supply shall be compulsorily required to be registered under this Act. However, it is provided by Notification no. 10/2017- Integrated Tax ('IT'), if turnover of a person engaged in **inter-state services** is up to Rs.20/10 lacs in a Financial Year ('FY'), registration is not required. However, to availing benefit of this exemption is not advisable to Exporter since an unregistered Exporter cannot claim refunds (Section 16 of IGST Act).

### **Furnishing of Returns:**

Export figures needs to be reported in 3.1.(b) in GSTR-3B. Tax figures should be zero in case of exports under LUT/bond.

Further, In GSTR-1, Export figures needs to be reported in table 6A. Following check can be noted while furnishing GSTR-1:

- Before furnishing any details in GSTR-1, details already available in respect of each shipping bill with Customs EDI system through ICEGATE login should be verified.
- GSTIN of recipient should be left blank.
- Details should match with shipping bill details for ease of refund processing. Invoice no. should match with invoice no. as mentioned in shipping bill including special characters.

- In case of a CIF contract, if the value mentioned in shipping bill is FOB value, then shipping bill requires to be amended.
- Amendments in details incorrectly furnished can be made using table 9A of subsequent tax period GSTR-1.

## **Export of Goods:**

### **Meaning:**

Section 2(5) of IGST Act, 2017 states, 'Export of goods' with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Definition given under IGST Act is in line with definitions given under Customs Act, FTP.

However, Customs Act contains various other provisions (not present in IGST Act) which qualifies a transaction as Exports. Some of the relevant are discussed below:

- Section 69(1) of Customs Act states that any warehoused may be exported to a place outside India without payment of Import Duty.  
It is opined that the same continues under the IGST Act as well.
- Section 88 of Customs Act states that any warehoused goods may be taken on board a foreign going vessel without the payment of import duty.  
It is opined that the same continues under the IGST Act as well.

Below are the relevant factors to qualify a supply as 'Export of goods':

- a. Goods should be physically present in India.
- b. There should be movement of Goods from India:
  - India has been defined in Section 2(56) of CGST Act to include territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone, the air space above its territory and territorial waters, etc.
  - Definition is very wide to cover an area upto 200 nautical miles from the baseline. It is also relevant to note that area upto 12 nautical miles forms part of the Coastal State or Union Territory where the nearest point of the appropriate baseline is located (reference can be taken from Section 9). Further the remaining area of 188 nautical miles (beyond 12 nautical miles of territorial waters) is considered to be 'other territory' (i.e. a Union Territory as per Section 2(81) of CGST read with Section 2(8) of UTGST Act).
- c. Goods should be 'taken to a place outside India':
  - In the case of CC v. Sun Industries 1988 (35) ELT (241), it was held that expression 'taking of goods to a place outside India' would also mean a place in high seas, if that place is beyond territorial waters of India. In the instant case, since vessel sunk within the territorial waters of India and it was held to be not Exports. Similar decision was rendered in the case of Supreme Court decision in the case of UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC).
  - It is to be noted that under IGST Act, India extends till 200 nautical miles. Therefore, exports can be said to have taken place only after crossing 200 nautical miles.
  - In a recent Delhi AAR ruling in the *application of M/s. Rod Retail Private Limited*, it was decided that to qualify a transaction as exports, it is necessary that the same should cross 'India' and not just customs frontier/area. However, it is

opinioned that the same qualifies as exports from the reference of various landmark judicial precedents including Supreme Court judgment in the case of Hotel Ashoka.

**POS is deemed to outside India:**

Unlike 'Export of Services', there is no requirement to check whether 'POS' falls outside India. By virtue of Section 11(b) 'POS' is deemed to be outside India in case of 'Export of Goods'.

**Location of Supplier and Recipient not relevant:**

Unlike 'Export of Services', there is no requirement that 'location of supplier' and 'location of recipient' is in India and outside India respectively.

**Receipt of Foreign Exchange not relevant:**

Unlike 'Export of Services', there is no requirement that payment should be received in convertible foreign exchange.

Para 2.52 of FTP can be referred which states that:

- a. Export proceeds should be realized in **freely** convertible currency.
- b. Export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan.

Para 2.52 can be referred for complete provision.

Further, para 2.53 states that Indian rupees can be received in case of exports to Iran.

Further, para 2.54 states about the consequences of non-realisation of export proceeds within the time specified by RBI. The time is specified in regulation 9 of **Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 which states that** full export value of goods/software/services exported by all exporters including SEZs, EOUs, Status holder exporters, Units in EHTPs, STPs & BTPs shall be realised and repatriated to India within nine months from the date of export.

The consequences for non-realisation includes returning of all benefits/incentives availed under FTP.

Para 2.54 can be referred for complete provision.

**Requirement of Import Export Code (IEC):**

Para 2.05 mandates requirement to obtain IEC for Exports of goods of unless otherwise specifically exempted.

**Export of Services:**

Section 2(5) of IGST Act, 2017 states, "export of services" means the supply of any service when:

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the POS of service is outside India;

- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange (or in Indian rupees wherever permitted by the Reserve Bank of India) **Foot note**; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.
- All these five conditions need to be cumulatively satisfied.

### **Analyzing the components of the definition:**

#### **Supplier of service is located in India:**

Section 2(15) of IGST Act, 2017 states that 'location of the supplier of services' means:

- (a) where a supply is made from **a place of business** for which the **registration** has been obtained, the location of such place of business;
- (b) where a supply is made from a place **other than the place of business** for which registration has been obtained (**a fixed establishment elsewhere**), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the **establishment most directly concerned** with the provision of the supply; and
- (d) in absence of such places, the location of the **usual place of residence** of the supplier;

Clause (a) of this definition uses the term 'place of business'. Section 2(85) of CGST Act states that "place of business" includes:

- (a) a place from where the business is ordinarily carried on, and **includes** a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called.

This place of business can be **principle place of business or additional place of business**.

Clause (b) of this definition uses the term 'fixed establishment'. Section 2(50) of CGST Act states that "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs. Following can be noted:

- Period of Permanence to constitute an establishment fixed is not prescribed anywhere in GST law.
- CBEC education guide dated 20.06.2012 states as follows:
- Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources), to carry out an activity for a consideration, or to receive and use a service supplied.

Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task.

- **Illustrations:**

- An overseas business sets up office with staff in India to provide services to overseas customers as back office is a fixed establishment satisfying the condition that location of supplier is in India.
- A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. In this case, location of supplier is not in India. If the company setup an office in India to carry on its business by managing the property, this will create a fixed establishment satisfying the condition that location of supplier is in India (though POS would also be in India).

Clause (c) of this definition uses the term ‘most directly concerned’:

CBEC education guide dated 20.06.2012 stated that this will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:

- The contract(s) between the service provider and receiver;
- Where there are no written contracts, any written account (documents, correspondence/e-mail, etc.) between parties which sets out in detail their understanding of the oral contract;
- In particular, for suppliers, from which establishment the services are actually provided;
- In particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- Details of how the business fits into any larger corporate structure;
- The establishment whose staff is actually involved in the execution of the job;
- Performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment).

Clause (d) of this definition uses the term ‘usual place of residence’. In case of a corporate, the usual place of residence should be place of incorporation.

**Recipient of service is located outside India:**

Section 2(93) states that “**recipient**” of supply of goods or services or both, means—

- a. where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- b. where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- c. where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Section 2(70) states that “**location of the recipient of services**” means,—

- a. where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- b. where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- c. where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- d. in absence of such places, the location of the usual place of residence of the recipient;

**Illustration:** When an Auditor contracts with a Company head office (H.O.) for provisioning of Statutory Audit Services, location of recipient would be location of Head office for the entire audit services from Auditor’s invoicing perspective. It does matter that some portion of the services are also provided to branches as well (separately registered in GST). Reason being before dwelling into the definition of ‘location of recipient of services’, it needs to be checked as to who is the recipient. Recipient in this particular case is Head office (i.e. the one liable to pay consideration).

**POS of service is outside India:**

POS of service is ‘outside India’ or not needs to be determined as per Section 13. As per sub-section (1), POS is the location of the recipient of service except for the certain specified services as discussed below. In case location of recipient of service is not available in the ordinary course of business, then location of supplier of service is the POS.

Sub-Sections	Nature of service	POS	Remarks/Illustration
(3)(a)	Services in respect of goods required to be made physically available.	Location where services are actually performed.	<ul style="list-style-type: none"> <li>Essential characteristic is that the <b>goods temporarily comes into the physical possession or control of the service provider</b>, and without this happening, the service cannot be rendered.</li> <li>Where goods were not required for rendering service <b>but still made available</b>, this provision shall not apply.</li> <li>Not applicable where goods are imported for repair and return and without being put to any use.</li> </ul>
Proviso to 3(a)	Services that are supplied from	Location of the goods.	Information Technology Services.

	remote location through electronic means.		
(3)(b)	Services which requires physical presence of the recipient or person acting on his behalf with supplier for supply of services.	Location where services are actually performed	<ul style="list-style-type: none"> <li>Personal security service, health and fitness services, photography service (to individuals), internet cafe service, classroom teaching or a beauty treatment on-board an aircraft.</li> <li>Beautification contract with a modelling agency for models.</li> </ul>
(4)	Services 'directly in relation to' immovable property, Accommodation services.	Location where immovable property is located. If located outside India, then location of recipient.	<ul style="list-style-type: none"> <li>Chartered accountant's advice on capital gain tax on immovable property is not directly related.</li> <li>Renting of property would fall in this clause.</li> </ul>
(5)	Services of 'admission to' or 'organization' of event and 'ancillary services'.	Location where event is actually held.	<ul style="list-style-type: none"> <li>Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization.</li> <li>A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is a service ancillary to admission.</li> </ul>
Where the services mentioned are supplied at more than one location (including taxable territory), then POS would be taxable territory.			
(8)(a)	Services of a banking company or FI or NBFC to account holders.	Location of supplier.	<ul style="list-style-type: none"> <li>Foreign bank is not covered.</li> <li>Account should be bearing interest and includes a non-resident external/ordinary account.</li> </ul>
(8)(b)	Intermediary Services.	Location of supplier.	<ul style="list-style-type: none"> <li>An Indian commission agent providing services to a foreign principal would have POS in</li> </ul>

			<p>India (even though forex may be received).</p> <ul style="list-style-type: none"> <li>• A bank/FI in India working as agent for a money transfer service operator (MTSO) located outside India for transferring money is an intermediary and have POS in India.</li> <li>• Where the freight forwarder acts as an intermediary, the place of provision will be his location. However, when he provides a service to an exporter of goods, the exporter can claim refund of tax paid.</li> </ul>
(8)(c)	Hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.	Location of supplier.	Hiring of aircraft, vessels are excluded irrespective of the period.
(9)	Transportation of goods other than by mail or courier.	Location of destination of the goods.	<ul style="list-style-type: none"> <li>• GST exempt on transportation charges in case of transshipment of goods.</li> <li>• GST exempt on transport services in case of <b>transit cargo to Nepal and Bhutan</b>. Notification no. 30/2017– CT (Rate) dated 29.09.2017</li> <li>• Discussed below**</li> </ul>
(10)	Passenger transportation services.	Location where passenger embarks for continuous journey.	Air transportation of passengers, embarking from, or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal is exempt. Notification No. 12/2017– CT (Rate).
(11)	Services supplied on-board a	Location of first scheduled point of	<ul style="list-style-type: none"> <li>• Services are to be supplied</li> </ul>



	conveyance.	departure.	during the journey and substantially consumed on-board. • Not applicable where it is already included in fare.
(12)	Online Information and Database Access or retrieval of service.	Location of recipient services.	Person receiving such services deemed to be located in taxable territory if any of the 2 conditions are satisfied: a. Address of recipient in taxable territory. b. Card of recipient that is used to pay for the services is issued in taxable territory. c. Billing address is in taxable territory. d. Internet protocol address in taxable territory. e. Bank of recipient in taxable territory. f. Country code of SIM card is of taxable territory <b>or</b> g. Fixed line used by recipient is in taxable territory.

**\*\* When the Freight forwarder acts on his own account:** A freight forwarder provides domestic transportation within taxable territory (say, from the exporter's factory located in Delhi to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the POS is the destination of goods i.e. outside India. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc.) are 'composite supply' with the principal service.

**Ocean Freight:**

- A foreign shipping line engaged by India exporter shall have not POS out of India. It is not a case of 'export of services' (even if forex is received).
- As per notification no. 02/2018 – IT (Rate) as amended by notification no. 15/2018-IT/Rate, services by way of transportation of goods by aircraft or vessel from customs station of clearance in India to a place outside India is exempt till 30<sup>th</sup> September, 2019

**Payment is received in Convertible Foreign Exchange:**

- In the case of landmark case of Sun-Area Real Estate Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-I (2015-TIOL-956-CESTAT-MUM), appellant received payment in INR through Deutsche Bank. It was held that FIRC can be

issued only in respect of foreign exchange as per Clause 3A.6(i) of Exchange Control Manual. Moreover, it was certified in the FIRC itself that remittance has not been received in non-convertible rupees or under any special trade or payments agreements. It was observed that in terms of para 4 of notification no. FEMA 9/2000-RB, when a person receives payment in INR from the account of a bank situated in any country outside India maintained with an authorised dealer, the payment in INR shall be deemed to have repatriated the realized foreign exchange to India.

While referring to the below judgment of Supreme Court, it was observed that INR maintained in an account with a foreign bank signifies that INR maintained was obtained in lieu of Foreign Exchange.

- In the case of **J.B. Boda and Company Private Ltd. Vs. Central Board of Direct Taxes (AIR 1997 SC 1543)** the payment towards insurance brokerage retained by the Indian agent from the total payment of premium to be paid to the foreign insurance company in foreign exchange, was held to be retained in foreign exchange.
- Notification no. FEMA 14(R)/2016-RB can be referred which specifies '**Manner of Receipt and Payment of Foreign Exchange**'.
- It was clarified in circular no. 5/5/2017-GST that Attention is invited to Para A (v) Part-I of RBI Master Circular no. 14/2015-16 dated July 1, 2015 (updated as on November 5, 2015), which states 'Export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan'.
- Further, sub-clause has been specifically amended to include receipt of INR wherever permitted by RBI.

#### **Supplier and recipient are not 'merely establishments' of a 'distinct person':**

- Explanation 1 to Section 8 provides that where a person has an establishment in India and any other establishment outside India, then such establishments shall be treated as establishments of distinct persons.
- Supplier and recipient should not be **merely establishment** of distinct person which means it is to be proved that recipient is **not just an establishment to help supplier qualify services as exports but must demonstrate substance in its activities** (even though it can be distinct establishment). However, even when a person passes the test of distinct establishment, whether the case falls within the purview of Intermediary also needs to be checked.
- **Landmark Judgments and way forward:**
  - In the case of **Tandus Flooring India (P) Ltd.**, AAR decided that subsidiary company and holding company are not merely establishments of a distinct persons for the marketing and sales support services provided in India by Tandus India to Tandus group companies.
  - In the landmark case of **M/s Paul Merchants Ltd.**, Hon'ble CESTAT held that the person who is obliged to make payment for the service and whose need is satisfied by the provision of the service is the recipient of service (i.e. person using the services). On this ground, the Tribunal held that where the person located abroad is under an obligation to pay for the service and thus pays for it,

the service is used outside India. The Tribunal has further held that when the person on whose instructions the services in question have been provided is located abroad, the destination of the service has to be treated abroad and thus qualifies to be export of services. The destination has to be decided on the basis of the place of consumption and not the place of performance.

- In the case of **Microsoft Corporation (I) (P.) Ltd.**, Hon'ble CESTAT held that sales promotion services performed in India for promoting the business of a service recipient located outside India qualifies as export of service.
- However, from 01.10.2014, the above cases were specifically brought within the purview of Intermediary and was liable to Service Tax. Definition of 'Intermediary' is kept similar under Section 2(13) of IGST Act and thus liable to GST.
- **Foreign Entity having liaison office/branch office in India:**
  - Service of liaison office/branch office can be covered under the definition of intermediary as per section 2(13) and accordingly as per section 13(8), location of intermediary shall be the POS and which is in India.
  - Services supplied by liaison office/branch office in India to H.O. or another branch, etc. shall be considered to be intra-state taxable supply and CGST/SGST is payable. It would also not qualify as export of services since these are 'distinct persons' and 'POS' is also in India. Amount received from HO/branch outside India can be taken to be value for the purpose of charging GST.
  - However, In re Habufa Meubelen B.V., Rajasthan AAR decided that If the liaison office in India does not render any consultancy or other services directly/indirectly, with or without any consideration and the liaison office does not have significant commitment powers ,except those which are required for normal functioning of the office, on behalf of Head Office, then the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V. (HO) to the Liaison Office, established in India, is not liable to GST and the applicant i.e. M/s Habufa Meubelen B.V. Jaipur, is not required to get itself registered under GST.

## **Relevant Export Documents:**

### **Shipping Bill/Bill of Export:**

- A shipping bill is presented by an exporter of goods in form SB I and SB II (Shipping bill and Bill of Export (Forms) Regulations 2017).
- No goods shall be water borne for exports unless accompanied by Shipping Bill. Moreover, person in charge of a conveyance shall not permit loading of export goods unless shipping bill passed by the proper officer is handed over by exporter.

### **Commercial Invoice/Export Invoice:**

- It is an invoice which is required to be raised as per INCO terms and Rule 46 of GST Rules stating quantity, price, goods, weights, units, destination, etc.
- It is relevant to also note of para 2.52(a) of FTP provisions which states that 'Invoice alongside Export contract can be denominated either in freely convertible currency or Indian rupees'. *"There is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act 1999. Further, in terms of Para 2.52*

*of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.*

- Proviso to rule 46 of CGST rules requires that in the case of the export of goods or services, the invoice shall carry an endorsement viz. 'SUPPLY MEANT FOR EXPORT ON PAYMENT OF INTEGRATED TAX or 'SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING ('LUT') WITHOUT PAYMENT OF INTEGRATED TAX', as the case may be.

#### **Exports are Zero Rate supply:**

- As per Section 16(1), Exports are considered to be zero rated supplies.
- Zero rating is based on the concept that Exports should not be taxed. It is ensured in Section 16(3) which provides that a registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:
  - a. Supply goods or services or both under bond or LUT, without payment of IGST and claim refund of unutilised input tax credit ('ITC'); or
  - b. Supply goods or services or both, on payment of IGST and claim refund of such tax paid on goods or services or both supplied,in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.

#### **No requirement to reverse ITC:**

As per Section 17(2), there is no requirement to reverse ITC on goods or services used for effecting Zero Rated Supplies.

#### **Section 17(5) to apply:**

Restriction stated in Section 17(5) to apply even in respect of Exports since Section 16(2) is subject to Section 17(5). Therefore, Export of free Samples, gifts, etc. needs to be dealt accordingly.

#### **Refund provisions: Contained in chapter XI of CGST Act comprising Section 54 to 58.**

##### **Refund of unutilised ITC:**

First Proviso to section 54(3) of CGST Act states that a registered person effecting zero rated supplies without payment of tax may claim refund of any unutilised ITC at the end of any tax period.

- **Export Duty and Export Refund:**

The second proviso to section 54(3) of the CGST Act states that no refund of ITC shall be allowed in cases where the goods exported out of India are subjected to export duty.

- **Duty Drawback and Export Refund:**

- The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of ITC shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax ('CT').

- It is clarified by Circular no. 37/11/2018 – GST that a supplier availing of drawback of basic customs duty only shall be eligible for refund of unutilized ITC of CGST/ SGST/UTGST/IGST/Compensation cess. It is further clarified that refund of eligible credit on account of SGST shall be available even if the supplier has availed of drawback in respect of CGST.
- **Refund of unutilized ITC of Compensation Cess:**
  - Section 11(2) of GST (Compensation to States), 2016 ('Cess Act') states that the provisions of the IGST Act, and the rules made thereunder, shall, *mutatis mutandis*, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of IGST on such inter-State supplies under the said Act or the rules made thereunder.  
Provided that the ITC in respect of cess leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.
  - Section 11(2) in effect implies that if the supply qualifies to be zero rated under IGST Act, it will also considered to be zero rated under Cess Act also.
  - Therefore, it was clarified in circular no. 45/19/2018- GST by way of example that a registered person making zero rated supply of aluminum products (not chargeable to compensation cess) under bond or LUT may claim compensation cess paid on coal.
  - Such registered persons may also make zero-rated supply of aluminum products on payment of IGST but they cannot utilize the credit of the compensation cess paid on coal for payment of IGST in view of the proviso to section 11(2) of the Cess Act. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of IGST.
- **Refund of unutilised ITC by exporter of exempted or non-GST goods:**
  - It was clarified by Circular no. 45/19/2018- GST that as per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per section 2 (47) of the CGST Act, exempt supply includes non-taxable supply.
  - Therefore, refund of unutilised ITC by exporter of exempted and non-GST goods can be claimed.

#### **LUT Mandatory:**

- A bond or a LUT needs to be **furnished prior to export** in GST RFD-11 binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of:
  - a. fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or
  - b. fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

- Where the registered person fails to pay the tax due along with interest within the period, the facility of export without payment of IGST will be deemed to have been withdrawn and if the amount mentioned in the said sub-rule is paid, the facility of export without payment of IGST shall be restored.
- During the intervening period of withdrawal and restoration, exports can be made either on payment of IGST or under bond with bank guarantee (Refer Circular no. 8/8/2017- GST).
- Where the goods are not exported within the time specified, and the registered person fails to pay the amount as mentioned, the export as allowed under bond or LUT shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79. The export as allowed under bond or LUT withdrawn shall be restored immediately when the registered person pays the amount due.
- However, it is clarified by circular no. 37/11/2018-GST that as long as goods have actually been exported even after a period of three months, payment of IGST first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

#### **Furnishing of LUT:**

Following has been clarified by Circular no. 40/14/2018- GST:

- The registered person (exporters) shall fill and submit GST RFD-11 on the common portal.
- An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.
- If it is discovered that an exporter was ineligible to furnish an LUT, then the exporter's LUT will be liable for rejection and rejection shall be deemed to be ab initio.
- No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.
- LUT shall be valid for a financial year.

#### **Eligibility for LUT:**

Refer Notification no. 37/2017- CT which states that all registered persons shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence under the GST Acts, 2017 or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees (Rs. 2.5 Crores).

#### **Exports without LUT:**

It was clarified in circular no, 37/11/2018- GST dated 15.03.2018 that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such

cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

### **Furnishing of Bond:**

- A running Bond (on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished) covering amount of self-assessed estimated tax liability on the exports along with bank guarantee of 15% of the bond amount needs to be furnished where a person is prosecuted for any offence under the CGST Act, 2017 or IGST Act, 2017 or any of the existing laws in force in a case where the amount of tax evaded exceeding two hundred and fifty lakh rupees (Rs. 2.5 Crores) (Refer circular no. 8/8/2017- GST). The format of the same has been given in GST RFD-11.
- In case of multiple units in a state, bond needs to be furnished to Central or State government JC/AC officer having jurisdiction over the principal place of business.

### **LUT or Bond for exempted or non-GST goods:**

It was clarified by Circular no. 45/19/2018- GST that in respect of refund claims on account of export of non-GST and exempted goods without payment of IGST, LUT/bond is not required. Compliance with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any is sufficient.

### **Refund rules:**

The rules dealing with refunds are contained in Chapter X of GST rules.

### **Refund of unutilised ITC**

#### **Filing of Application:**

- As per rule 89(1), a person claiming refund of any unutilised ITC may file an application electronically in GST RFD-01.
- Application can be made for monthly basis. However, person who have opted to furnish return/statement on quarterly basis notification no. 57/2017- CT shall file refund application on quarterly basis.
- It is clarified by circular no. 37/11/2018- GST that exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. However, calendar month(s)/quarter(s) cannot spread across different financial years.
- Application can be made after filing the details in GSTR-1 for the said tax period. It is also to be ensured that a valid return in GSTR-3B has been filed for the last tax period before refund application is being filed.
- Navigation: Log-in>Services>Refunds>Application for refund>Refund of ITC on Export of Goods & Services without payment of Integrated Tax.

### **Manual processing of refund application:**

It was clarified by Circular no. 17/17/2017- GST that:

- GST RFD-01A was notified by notification no. 55/2017- CT dated 15<sup>th</sup> November, 2017 as replica of GST RFD-01 which needs to be filed at common portal. Print out



of the said form needs to be submitted before the jurisdictional proper officer for manual processing of refund till the time online module is operational.

- Refund claim needs to be filed with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order issued in this regard by the Chief Commissioner of Central Tax and the Commissioner of State Tax. In case such an order has not been issued, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority along with an undertaking stating that the claim for sanction of refund has been made to only one of the authorities.

#### **Online submission of other details:**

As per rule 89(2), the application shall be accompanied by

- a. Statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices.
- b. Statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services.

Format of such statement is given as annexure 1 to GST-RFD-01 as Statement 3. The above details are to be submitted in Statement-3 through JSON file created using the offline excel utility.

#### **Document required:**

<b>List of Documents for processing of refund claims as given in circular no. 37/11/2018- GST are:</b>
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- |   |
|---|
| <ul style="list-style-type: none"><li>• Copy of RFD-01A filed on common portal and ARN.</li><li>• Copy of Statement 3A of RFD-01A generated on common portal.</li><li>• Copy of Statement 3 of RFD-01A.</li><li>• Invoices w.r.t. input and input services/Details of the invoices in Format enclosed as Annexure-A to Circular no. 59/33/2018- GST**.</li><li>• BRC/FIRC only in case of export of services.</li><li>• Undertaking, Declaration and Verification Statement in RFD-01A.</li></ul> |
|---|

\*\*It is clarified by Circular no. 59/33/2018- GST that submission of an invoice (either original or duplicate) should not be insisted, the details of which are present in GSTR-2A of the relevant period submitted by the claimant.

Details of the invoices on the basis of which ITC had been availed for which refund is being claimed in format enclosed as Annexure-A to Circular no. 59/33/2018- GST manually along with the application and ARN. The claimant shall also declare the eligibility or otherwise of the ITC availed against the invoices in the said Annexure for enabling the proper officer to determine the same.

#### **BRC/FIRC for export of goods:**

Proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted (Circular no. 37/11/2018- GST).

#### **Electronic Credit ledger to be debited:**



- As per rule 89(3), the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.
- The common portal shall generate a proof of debit (ARN- Acknowledgement Receipt Number) which would be mentioned in the **GST RFD-01A** submitted manually, along with the print out of **GST RFD-01A** to the jurisdictional proper officer, and with all necessary documentary evidences as applicable (as per details in statement 3 or 5 of Annexure to **GST RFD-01**), within the time stipulated for filing of such refund under the CGST Act.

#### **Discrepancy between values of GST invoice and shipping bill/bill of export:**

During the processing of the refund claim, the value declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund (Circular No. 37/11/2018-GST).

#### **Transmission of Data to Customs EDI Systems:**

- The details of the export invoices contained in GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system. Amendment information contained in Table 9 of GSTR-1 of the subsequent tax periods should be taken into cognizance as clarified in circular no. 37/11/2018-GST.
- Provided that where the date for furnishing the details of outward supplies in GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of GSTR-1 after the return in GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs.  
Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in GSTR-1 for the said tax period.

#### **Calculation of Refund amount:**

- As per rule 89(4), Refund of ITC shall be granted as per the following formula:  
**Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover**

Explanations:

(A) 'Refund amount' means the maximum refund that is admissible.

(B) 'Net ITC' means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

Following needs to be noted:

- As per Section 16(2), Net ITC would also include ITC on inputs and input services used in making zero rate supplies which are exempted.
- It is clarified by circular no. 37/11/2018 that the transitional credit pertains to existing laws viz., Central Excise Act, Finance Act, 1994, the same cannot be

said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

- Goods and Services for which ITC is blocked as per Section 17(5), cannot form part of Net ITC since Section 16(2) is subject to 17(5).

(C) 'Turnover of zero-rated supply of goods' means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

(D) 'Turnover of zero-rated supply of services' means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:

**Aggregate** of the payments received during the relevant period for zero-rated supply of services **and**

Zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period.

**Reduced** by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

(E) "Adjusted Total Turnover" means the sum total of the value of:

- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services.

Excluding:

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) Relevant period means the period for which the claim has been filed. It is clarified by circular no. 37/11/2018- GST:

- In many scenarios, exports may not have been made in that period in which the inputs or input services were received and ITC has been availed. Similarly, there may be cases where exports may have been made in a period but no ITC has been availed in the said period. Taking into account such scenarios, relevant period is defined in the context of the refund claim and does not link it to a tax period.
- In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

- **Common portal calculates refundable amount as the least of the following amounts:**

- a. The maximum refund amount as per the formula in rule 89(4) (formula is applied on the consolidated amount of ITC, i.e. CGST + SGST/UTGST + IGST + Cess (wherever applicable));

- b. The balance in the electronic credit ledger at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and
- c. The balance in the electronic credit ledger at the time of filing the refund application.

This calculation is done in Statement 3A of GST RFD-01A.

- After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:
  - a. IGST, to the extent of balance available;
  - b. CGST and SGST/UTGST, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, CGST), the differential amount is to be debited from the other electronic credit ledger (i.e., SGST/UTGST, in this case).

The procedure, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are required to follow the order as explained above for refund applications filed after the date of issuance of this Circular no. 59/33/2018-GST. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

- **Refund on Capital Goods:**

Net ITC takes into its account only ITC availed on inputs (and input services). Section 2(59) states that inputs means goods other than capital goods. Therefore, refund of capital goods is not allowed. Though as per Section 54(3) and Explanation 1 to Section 54, no such restriction is placed.

### **Deficiency and Acknowledgment:**

Rule 90 provides as under:

- The proper officer shall within 15 days of filing of complete application, make available an acknowledgement indicating the date of filing of the claim for refund in GST RFD-02 through the common portal.
- If the application is not found to be complete, the proper officer shall communicate the deficiencies in GST RFD-03 through the common portal, requiring applicant to file a fresh refund application after rectification of such deficiencies.
- Circular no. 17/17/2017-GST states that:
  - If the application is not filed afresh within thirty days of the communication of the deficiency memo, the proper officer shall pass an order in GST PMT-03. The amount claimed as refund shall be re-credited through GST RFD-01B (until FORM GST PMT-03 is available on the common portal) as per sub-rule (3) of rule 89 to the electronic credit ledger on the communication of deficiencies.
  - Deficiency Memo should be complete in all respects and only one Deficiency Memo shall be given.

- Resubmission of the application, after rectifying the deficiencies pointed out in the deficiency memo, shall be made with original ARN, debit entry number generated originally and hard copy of the refund application filed online earlier.
- All communications to be done manually till online module is operational.
- [Circular No. 37/11/2018 – GST, dated 15.03.2018](#) states that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified or any other substantive deficiency is noticed subsequently.
- Deficiencies communicated under the SGST rules are in addition to the deficiencies communicated under CGST rules.
- The time period of sixty days as specified in sub-section (7) of section 54 for passing of order shall be counted from such date of filing of complete application (application for which acknowledgment has been given).

#### **Grant of provisional refund:**

- The proper officer after scrutiny of the claim and evidences and on being prima facie satisfied may grant provisional refund as specified in Section 54(6) of the ninety percent of total amount so claimed (excluding the amount of ITC provisionally accepted) within a period not exceeding seven days from the date of the acknowledgement by order in GST RFD-04 and if the applicant has not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees during any period of five years immediately preceding the tax period to which the claim for refund relates.
- Circular no. 17/17/2017- GST clarified that the amount of provisional refund shall be calculated without making any reduction for credit being provisionally accepted (since GSTR-2 which provided for provisional acceptance has not been functional).
- Before sanction of the refund a declaration shall be obtained that the applicant has not contravened the above rule.
- A payment advice in GST RFD-05 for the amount sanctioned shall be issued.
- Provisional refund shall be granted separately for each head CGST/SGST/UTGST/IGST/Cess.
- Refund would be made directly in the bank account mentioned in the registration.
- All communications to be done manually till online module is operational. Refer Circular no. 17/17/2017- GST.

#### **Order sanctioning/withholding refund:**

- Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, order under shall be made each head i.e. CGST/SGST/UTGST/IGST/Cess in GST RFD-06 sanctioning the amount of refund, mentioning therein the amount, if any, refunded to him on a provisional basis, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.
- Some of the checks to be applied while examination of application as given in Circular no. 17/17/2017 are:

- a. The officer shall validate details in refund statement with details in GSTR 1 (or Table 6A of GSTR-1) available on the common portal.
  - b. The Shipping bill details through ICEGATE SITE ([www.icegate.gov.in](http://www.icegate.gov.in)) wherein details of EGM and shipping bill by keying in port name, Shipping bill number and date can be checked.
  - c. Details of IGST paid also needs to be verified from GSTR- 3B and it needs to be verified that the refund amount claimed shall be less than the tax paid on account of zero rated supplies as per GSTR- 3B.
- Refund order shall be issued for each head i.e. CGST/SGST/UTGST/ IGST/Cess.
  - Circular no. 24/24/2017-GST states that payment of the sanctioned refund amount in relation to CGST/IGST/Cess shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to SGST/UTGST would be made by the State tax/Union territory tax authority. It therefore becomes necessary that the refund order issued either by the Central tax authority or the State tax/UT tax authority is communicated to the concerned counter-part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be.
  - In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of GST RFD-07.
  - Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the Section 54(10) or 54(11), he shall pass an order in Part B of GST RFD-07 informing reasons.
  - Where the proper officer is satisfied, for reasons to be recorded in writing that refund is not admissible or is not payable to the applicant, he shall issue a notice in GST RFD-08, requiring to furnish a reply in GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim. No application for refund shall be rejected without giving the applicant an opportunity of being heard.
  - Where the proper officer is satisfied that the amount refundable is not payable to the applicant under sub-section (8) of section 54, he shall make an order in **GST RFD-06** and issue an advice in **GST RFD-05**, for the amount of refund to be credited to the Consumer Welfare Fund.
  - Where any amount claimed as refund is rejected, the amount shall be re-credited to the electronic credit ledger by an order made in **GST PMT-03**. The actual credit of this amount will be done by the proper officer in **GST RFD-01B**.
  - All communications to be done manually till online module is operational. Refer Circular no. 17/17/2017- GST.

## **Refund of integrated tax paid on goods or services exported out of India**

### **Application:**

The shipping bill shall be deemed to be an application for refund of IGST paid on the goods exported and such application shall be deemed to have been filed only when:

- a. The person in charge of the conveyance files an export manifest or an export report; and (It is clarified that filing of correct EGM/Export report within prescribed time is must for refund claim processing. Para 3 of Instruction no. 15/2017- Customs can be referred for further details.)
- b. A valid return in GSTR-3B has been furnished by applicant.

**Transmission of data to Customs systems and processing of refund:**

- The details of the relevant export invoices in respect of export of goods contained in GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Amendment information contained in Table 9 of GSTR-1 of the subsequent tax periods should be taken into cognizance as clarified in circular no. 37/11/2018-GST.

Provided that where the date for furnishing the details of outward supplies in GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of GSTR-1 after the return in GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs.

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in GSTR-1 for the said tax period.

- Upon the receipt of the information regarding the furnishing of a valid return in GSTR-3B, the system designated by the Customs or the proper officer of Customs shall process the claim of refund in respect of export of goods and an amount equal to the IGST paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

**Mismatch in bank account details:**

It is clarified by Instruction no. 15/2017- Customs that refund shall be credited to the bank account registered with customs even if there is mismatch with bank account registered with GST.

**Transmission post matching of GSTR-1 and GSTR-3B:**

- GSTN system has a inbuilt validation to ensure that the IGST paid on export of goods in any particular month as mentioned in 3.1.(b) of GSTR-3B is not less than the IGST amount of export invoices as mentioned in Table 6A of GSTR-1. Where the amount mentioned in 3.1.(b) is less or not mentioned in 3.1.(b), data will not be transmitted to Customs EDI system. In order to correct details furnished in GSTR-3B, procedure as prescribed in circular no. 26/26/2017 dated 29.12.2017 can be followed.

Amendments in details incorrectly furnished in GSTR-1 can be made using table 9A of subsequent tax period GSTR-1.

- Post correction following this circular for GSTR-3B or using table 9A for GSTR-1, data gets transmitted to Customs EDI systems/ICEGATE. The same can be verified



by Login at GSTN portal> Services>Refunds>Track status of invoices shared/to be shared with ICEGATE.

- Exports ledger can also be verified in this regard by following the same path.

Further, Circular no. 12/2018- Customs dated has clarified following:

- Exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on interstate domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR1. As a result of these mismatches in the amount of IGST paid on export goods between GSTR-1 and GSTR-3B, the transmission of records from GSTN to Customs EDI system has not happened and consequently IGST refunds could not be processed. The problem is compounded by the fact that the facility to adjust GSTR-3B in subsequent months is not available in all cases.
- To overcome the problem of refund blockage, an interim solution for processing of refund claims for the period July, 2017 to March, 2018, subject to undertakings/ submission of CA certificates by the exporters has been envisaged as below.

**Cases where there is no short payment:** Para 3(A) of Circular no. 12/2018- Customs can be referred in this regard.

**Cases where there is short payment:**

Para 3(B) of Circular no. 12/2018- Customs can be referred in this regard.

#### **Departmental audits of Refunds:**

- As per circular no. 17/17/2017 – GST, Pre-audit of the manually processed refund applications is not required to be carried out, irrespective of the amount involved, till separate detailed guidelines are issued.
- Post refund audit of the orders may however continue on the basis of extant guidelines. Circular no. 12/2018- Customs provides that the exporters claiming refund basis procedure prescribed by this circular would be subjected to a post refund audit under the GST law.

#### **Refund not available in following cases:**

The persons claiming refund of IGST on exports of goods or services should not have:

- i. Received supplies on which the benefit of following notifications has been claimed by his supplier:
  - a. Notification No. 48/2017-CT. This notification deals with deemed exports. Refund in this case needs to be applied under rule 89(4A) (discussed later under 'Deemed Exports' heading).
  - b. Notification No. 40/2017-CT (Rate) (41/2017- IT (Rate)). This notification deals with supply of taxable goods for export at concessional rate. Refund in this case needs to be applied under rule 89(4B) (discussed later under 'Merchant Exports' heading).

Following has been clarified by circular no. 45/19/2018- GST:

- This restriction is due to the reason that the exporter does not utilise the ITC availed on other domestic supplies received for making the payment of IGST on export of goods.

- It is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under above notifications. The said restriction is not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.
- ii. Person claiming refund should not have himself availed the benefit of the:
  - a. Notification No. 78/2017-Customs as amended by notification no. 33/2018-Customs. This notification deals with IGST exemption to EOU on import procurements. Refund in this case needs to be applied under rule 89(4B) (discussed later under 'Refund to persons availing benefit of IGST exemption on imports' heading).
  - b. Notification No. 79/2017-Customs as amended by notification no. 35/2018-Customs. This notification deals with IGST exemption against EPCG/Advance Authorisation schemes. Refund in this case needs to be applied under rule 89(4B) (discussed later under 'Refund to persons receiving inputs covered by IGST exemption on imports' heading).

Following has been clarified by circular no. 45/19/2018- GST:

A manufacturer might have imported capital goods by availing the benefit of above notifications. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. This restriction does not apply to such inward supplies of an exporter.

#### **Refund to persons receiving inputs covered by IGST exemption notification on imports:**

- As per rule 89(4B), persons receiving inputs covered by benefit of IGST exemption on imports vide notification no. 78/2017-Customs as amended by notification no. 33/2018- Customs (IGST exemption to EOU on import procurements) and 79/2017- Customs as amended by notification no. 35/2018- Customs (IGST exemption against EPCG/Advance Authorisation schemes) can claim refund of ITC availed in respect of such inputs received for export of goods and ITC availed in respect of other inputs and input services to the extent used in making exports.
- These persons can't claim refund under 'Exports with IGST' route.
- The application and procedure are as per refund of unutilised ITC in case of exports.

#### **Refund of IGST paid on export of services:**

##### **Application:**

- The application for refund of IGST paid on the services exported out of India shall be filed in GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89 (i.e. refund of unutilised ITC in case of export of goods or services).
- The restrictions discussed in heading 'Refund not available in following cases' also applies while claiming refund of export of services with payment of tax.
- Further it is clarified by circular no. 45/19/2018-GST that:
  - Certain registered persons committed errors in declaring the export of services on payment of IGST by showing such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **GSTR-3B** whilst they



have shown the correct details in Table 6A or 6B of **GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **GST RFD-01A** for refund of IGST paid on the export of services because of an in-built validation check in the system which restricts the refund amount claimed (IGST/cess) to the amount of IGST/cess mentioned under column 3.1(b) of **GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

- In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in **GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **GSTR-3B** filed for the corresponding tax period.

#### **Verification of Refund withheld reasons at ICEGATE portal:**

Exporter can verify details as available with Customs EDI system by log-in into ICEGATE portal. In respect of each shipping bill nos. response codes (reasons) for refund withheld are available. Response code signifies mismatch between shipping bill details and invoice details transmitted from GSTN portal. Appropriate action can be initiated to ensure processing of refund withheld.

#### **Deemed Exports:**

As per Section 2(39), Deemed exports means such supplies of goods as may be notified under section 147.

As per Section 147, The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Following needs to be noted:

- Deemed Exports are not zero-rated supplies.
- Services cannot qualify as deemed exports.
- Goods should be manufactured in India.
- As per notification no. 48/2017 – CT dated 18.10.2017 following shall be considered as deemed exports:
  - a. Supply of goods by a registered person against Advance Authorisation.
  - b. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
  - c. Supply of goods by a registered person to Export Oriented Unit (EOU) (EOU also includes Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit).
  - d. Supply of gold by a bank or Public Sector Undertaking specified in the notification no. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

**Procurement regarding procurement of goods by EOU under deemed export's notification has been prescribed circular no. 14/14/2017- GST dated 6<sup>th</sup> November, 2017. The same can be referred at:**

<https://www.aces.gov.in/Documents/circularno14gst.pdf>

### **Refund in case of Deemed Exports:**

As per explanation 1 to Section 54, "refund" includes tax on the supply of goods regarded as deemed exports.

- As per third proviso to rule 89, RFD-01A application can be filed by:
  - a. The recipient of deemed export supplies; or
  - b. The supplier of deemed export supplies in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.
- Refund to be claimed by Recipient: This applies when supplier has charged GST to recipient for which recipient would be claiming ITC i.e. benefit of notification no. 48/2017- CT has not been availed. Statement 5B containing details of invoices of inward supplies and declaration as annexed to RFD-01A needs to be submitted. Further, other procedure i.e. either to Export goods with payment of tax or under LUT remains same.
- **Refund to be claimed by Supplier:**
  - Rule 89(2)(g) states that application shall be accompanied with a statement containing the number and date of invoices.
  - Further, notification no. 49/2017- CT specifies other documents to be produced by supplier.
  - Statement 5B containing details of invoices of outward supplies and declaration as annexed to RFD-01A needs to be submitted.

### **Other refund claims for recipient of Deemed Exports:**

Rule 89(4A) provides that a person (exporter) who have received supplies from a supplier **who has availed the benefit of notification no. 48/2017 – CT** (i.e. refund is claimed by supplier), person can claim refund of ITC availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both.

### **Merchant Exports:**

#### **Manufacturer Exporter:**

"Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods.- Para 9.32 of FTP.

#### **Merchant Exporter:**

"Merchant Exporter" means a person engaged in trading activity and exporting or in tending to export goods.- Para 9.33 of FTP.

In order to deal working capital blockage in case of **exports by a manufacturer through merchant exporter** wherein manufacturer was required to charge tax at **full rate** to merchant exporter and thereafter merchant exporter was required to claim refund, notification no. 41/2017 – IT (Rate) dated 23.10.2017 was issued which

provided that tax rate to be charged to merchant exporter shall be only 0.1% of IGST. **However, this in effect leads to blockage of funds of registered supplier since he would be required to claim refund on account of inverted duty structure.**

Procedure as given in notification can be accessed through

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-41-igst-rate-english.pdf;jsessionid=7C5835A9958DCBB1A1E8C0B67ED950D2>

**Some of the relevant points of the notification are mentioned below:**

- i. Supplier and recipient should be Registered.
- ii. Registered supplier means a Manufacturer Supplier and Registered Recipient means a Merchant Exporter (Registered with an export promotion council or a commodity board recognised by the department of commerce).
- iii. One of the option provided to the recipient is to move the goods from place of supplier directly to a registered warehouse. It has been clarified by circular no. 42/2017-Customs dated 07/11/2017 that registered principal place of business or registered additional place of business shall be deemed to be a 'registered warehouse' for the purpose of this notification.
- iv. Para 2 of circular no. 42/2017-Customs dated 07/11/2017 clarifies various precautions to duly comply with the benefit of this notification including 'exclusion of commercial sensitive information while providing copies of shipping bills'. This can be accessed through <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars2017/circ422017cs.pdf;jsessionid=CA04B06B4002CEC9D1D54C172F2F1EBE>
- v. The supplier shall not be eligible for the above-mentioned exemption if the recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice (i.e. tax and interest shall become payable).
- vi. The concept is equally applicable on compensation cess (Refer Circular no. 1/1/2017 – CC).
- vii. It has been clarified by circular no. 45/19/2018- GST that benefit of notification no. 41/2017- IT (Rate) is optional. The option may or may not be availed. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.1% paid by him.

**Refund to Merchant Exporter and Manufacturer Exporter:**

- As per rule 89(4B), Merchant exporter (claiming benefit of notification no. 41/2017 – IT (Rate)) can claim refund of ITC availed in respect of ITC amount of 0.1% paid to manufacturer exporter and other inputs or input services used in making zero-rated supply of goods or services or both.
- The application and procedure are as per refund of unutilised ITC in case of exports.
- It is clarified by circular no. circular no. 45/19/2018- GST that:
  - a. Merchant Exporter can export the goods only under LUT/bond and cannot export on payment of IGST since rule 96(10) states that exporter with payment of GST should not received supplies on which benefit of notification no. 41/2017- IT (rate) has been availed by manufacturer exporter.
  - b. Manufacturer exporter who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure.

**Merchant Trading Transactions:**

Where a person in India places an order for purchase, and sale the same before entering of goods into India in the same condition (i.e. without any transformation) then the same is said to be merchant trading transaction. These are also called international bill to ship to transaction or out and out sale transaction. There are two legs of the transaction viz purchase leg and sale leg.

Schedule III which deals with 'Activities or Transactions which shall be not be treated as supply' has been amended by CGST Act, 2018 to state that 'Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India'. This para is to be effective from the date to be notified which is still pending to be issued.

Therefore, it is relevant to analyse through provisions effective as on date.

In respect of purchase leg:

- The provisions of the act are applicable on the supply happening in the 'taxable territory' (Section 2(109) CGST Act read with section 7 and 9).
- When a person located outside India is entering into a supply contract with a person located in India, supply contract cannot be taxed.
- The understanding is also captured in Section 7(5)(c) which states that only Supply in the 'taxable territory' not elsewhere covered as inter-state supply.
- Moreover, the goods does not get imported into India and thus not chargeable to GST as imports as well (Section 2(10)).
- Therefore, there is no liability in respect of purchase leg.

In respect of Sale leg:

- The sale leg does not qualify as exports since goods are not taken out of India to a place outside India.
- Section 7(5)(a) states that where the supplier is located in India and place of supply is outside India, supply shall be considered to be inter-state supply.
- Supplier is located in India in case of sale leg. Place of supply needs to be determined as per Section 10 which would fall outside India and thus section 7(5)(a) is squarely applicable in the present case.
- The same seems to be chargeable to tax as inter-state supply, not qualifying as exports.
- It does not matter whether the goods are present physically since supply can be said to be happening in/from India.

In a recent advance ruling, Kerala AAR referred to the provisions of IGST Act, Section 3(7) of the Customs Tariff Act, section 12 of the Customs Act and circular no. 33/2017-Customs (dealing with levability of IGST on high sea sales of imported goods) and decided that the goods are liable for IGST when they are imported into India and IGST is payable only at the point of importation of goods into. On facts when the applicant was procuring goods from China and selling to USA, the AAR decided that GST is not

payable on the purchase or sale of goods since the goods are not imported into India at any point.

**Time limits for claiming refunds:**

Time limits are mentioned in explanation 2 to Section 54 as follows:

<b>Refund Type</b>	<b>Time limit</b>
Refund of unutilised input tax credit	The end of the financial year in which such claim for refund arises
Deemed exports	The date on which the return relating to such deemed exports is furnished
<b>Goods:</b> Where a refund of tax paid is available in respect of goods themselves or the inputs or input services used in such goods	
Export by sea or air	Date on which the ship or the aircraft leaves India
Exported by land	Date on which goods pass the frontier
Exported by post	Date of despatch by the Post Office
Deemed exports	Date on which the return relating to such deemed exports is furnished
<b>Services</b>	
Where a refund of tax paid is available in respect of services themselves or the inputs or input services used in such services	Receipt of payment in convertible forex or INR (where permitted by RBI), if services completed prior to receipt <b>or</b> Issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice