

Export of Goods and Services and Valuation Thereof , Supplies to SEZ and Procedural Aspects of Refund

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Export of Goods and Services

- GST is payable on supply of goods or services or both
- Either as SGST and CGST or IGST.
- It is a destination-based Consumption tax,
- Nothing in the Act providing such,
- But Provisions are made in such a way
- that tax is being passed on to the State
- where the goods are services are consumed
- although collected in the State from which it is supplied.

Export of Goods and Services

- GST is collected on outward supply from the supplier and
- Which is subject to ITC in the hands of Recipient,
- In certain cases GST is being collected from Recipient as RCM,
- The State allowing ITC gets the revenue from the State who collected tax,
- Through central mechanism.

Export of Goods or Services

- This principal is followed in taxation of import or export of goods and services.
- Import of goods or services is subject to tax under RCM at the hands of recipient whereas the export of goods is exempt from payment of tax and subject to tax in the country of recipient.

Export of Goods or Services

- Section 16 of the IGST Act provides meaning of the term Zero rated supply means , -
 - Export of goods or services or both,
 - Supply of goods or services to SEZ Developer or SEZ Unit.
- Subject to provisions of section 17(5) of the CGST act the credit of ITC may be availed for making zero rated supply including exempt supply.

Export of Goods and Services

- Export of Goods or Services treated as inter State and are Zero Rated,
- Means option either to pay and claim refund or
- clear under LUT without payment of tax and
- claim refund of unutilised ITC.
- Tax can be paid by utilizing balance of ITC credit ledger or cash.
- As per rule 89 ITC only for inputs and input services are allowed to be refunded and not for capital goods.
- Option can be exercised by preparing bill accordingly.
- No need to apply for it, Can be exercised invoice wise.

Export of Goods or Services

- Export of Goods defined in section 2 (5) of the IGST Act,
- Means taking goods out of India to a place out of India.
- For this, it is not necessary to have receipt of money in convertible foreign exchange.

Export of Goods or Services

- The term India is defined in section 2(56) of the CGST Act means the territory of India as referred to in article I of the Constitution and includes;-
 - Its territorial waters, seabed and sub-soil underlying such waters,
 - Continental shelf, exclusive economic zones or any other maritime zones as referred to Maritime Zones Act, 1976 and
 - The air space above its territory and territorial water.

Export of Goods or Services

- It is not only enough to take goods out of India but to a place out of India.
- The ultimate destination of goods should be a place out of India.
- Therefore supply of goods to a ship or airlines for its outward journey is not considered as export of goods being not taken to a place outside India
- The exclusive economic zones or any maritime zones defined to be in India as such supply of goods or services to off-shore place beyond 12 Nautical Miles like ONGC is not considered as export of goods.

Export of Goods or Services

- Supply of goods at custom notified shops to out bound passenger is export of goods as such exempt from payment of tax.
- Supply of goods to inbound passenger from custom notified shop is outside India beyond the custom frontier neither supply of goods nor services and not liable to tax.
- At the same time the passenger is not liable to pay IGST as import of goods which is exempt under the provisions of customs Act.

(Sundeep Patil v. Union of India (2019) 110 taxmann.com 155 (Bom))

(Atin Krishna v. Union of India civil Appeal No,12929 of 2019 dated 03/05/2019 , (All)).

Export of Goods or Services

- Under the VAT regime the sale of goods to the exporter against form H was exempt from payment of tax
- This exemption is not continued under the GST law but rate of tax on supply of goods to a merchant exporter is reduced to .5% by notification subject to prescribed conditions.
- The exporter can not pay tax and claim refund but can clear goods without payment of tax under LUT and claim refund of .5% tax.
- Its better instead of exemption it is made subject to tax so the supplier can claim ITC on its corresponding inward supply and also eligible to claim refund as inverted supply.

Place of supply of export of Goods

- Section 11 of the IGST Act provides that place of supply of goods;-
 - imported into India shall be the location of importer and
 - exported from India shall be the location outside India
 - At the same time section 9 of the IGST Act provides that
 - Where the location of supplier is in the territorial water the location of supplier; or where the place of supply is in the territorial water the place of supply,
- shall be deemed to be in the nearest coastal Union Territory or State .

Export of Goods or Services

- The term Export of Service is defined in section 2(6) of the IGST Act 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 place of supply of service is outside India,
 - iv) The payment for such service is received in convertible foreign exchange or in Indian rupees wherever permitted by RBI and
 - v) The supplier of service and recipient of service are not merely establishment of a distinct person in accordance with explanation I in section 8 of the IGST Act.

Export of Goods or Services

- The term export of service is defined differently than export of goods.
- The place of recipient should be located outside India as well as place of supplier should be located in India which is not applicable in export of goods,
- It provides condition for place of supply to be outside India which is not applicable for export of goods,
- There is one more condition of receipt of money in convertible foreign exchange which is not applicable for export of goods and
- Not only that the condition of relation between supplier and recipient to be not merely establishment of a distinct person is applicable for export of service and not for export of goods.

Export of Goods or Services

- Section 13 of the IGST Act provides when place of supply of service is outside India or within India when made.
- The location of supplier or recipient of service is located outside India is one of the conditions for export of service.
- Subsection (2) provides general rule accordingly except the services specified in subsections (3) to (13), the place of supply of service shall be the location of recipient of services.

Export of Goods or Services

- The place of supply for specified performance-based services is to be determined with reference to its place of performance for certain performance-based services,
- Place of supply of Services directly in relation to immovable property shall be the location of immovable property,
- Place of supply of service by way of admission to or organisation of event etc. shall be the place where it is actually held,
- Place of supply of certain services shall be the place of location of supplier of services like banking or financial services, intermediary services, hiring of means of transport, including yachts excluding aircrafts and vessels up to a period of one month ,

Export of Goods or Services

- The place of supply of service of transportation of goods other than by way of mail or courier shall be the place of destination of goods whereas for transportation of passenger shall be the place where passenger embarks on the conveyance for a continuous journey,
- Place of supply of service to be provided on board or conveyance during the course of a passenger transport operation shall be the first scheduled point of departure,
- The place of supply of Online Information and Database Access or Retrieval Services shall be the location of recipient of services.

Export of Goods or Services

- The term intermediary is defined in section 2(13) of the IGST Act means a,-
- A broker, an agent, or any other person by whatever name called,
- Who arranges or facilitates the supply of goods or services or both or securities,
- Between two or more persons but
- Does not include a person who supplies such goods or services or both or securities on his own account.

Export of Goods or Services

- One of the controversy under the GST law and under the erstwhile service tax is in respect of intermediary services.
- The recent AAR and AAAR has ruled on facts certain supply of marketing and promotion services to the foreign recipient although received in convertible foreign exchange as intermediary and not considered as export of services.

Export of Goods or Services

- One has to be careful in this respect and verify the nature of transaction with reference to the provision of the GST law.
- The decisions of AAR and AAAR are with reference to the facts of case referred before them and can not apply universally in each and every case.

Valuation of Export of Goods or Services

- Valuation of export of goods and services is same as that apply to the other supply of goods or services.
- In respect of consideration receivable in convertible foreign exchange the rule 34 provides different rule of valuation for supply of goods and services.
- For supply of taxable goods the rate of exchange for determination of supply of taxable goods the applicable shall be the rate of exchange ,
- as notified by the board under section 14 of the custom act 1962 for the date of time of supply of such goods in terms of section 12 of the CGST Act.

Valuation of Export of Goods or Services

- For supply of services the rate of exchange shall be the applicable rate of exchange determined as per generally accepted accounting principles for the date of time of supply of such service in terms of section 13 of the CGST Act.
- Generally in accounts the entry is made at the spot rate applicable on the date of entry in accounts.
- The difference on actual realisation is accounted either as foreign exchange gain or loss.

Valuation of Export of Goods or Services

- For export of goods it is to be valued at custom notified rate whereas for services it is to be valued at spot rate of exchange on the date of time of supply.
- The board from time to time specifies the rate of exchange and that rate of exchange applicable on the date of time of supply of goods shall apply for determination of value of supply of goods.
- Further freight charge separately or any other charges shall also form part of supply of goods or services, as the case may be, as per section 15 of the Act.
- Any reimbursement of expenditure as an agent as per valuation rule shall not form part of value of export of services.

Inter State Supply

- GST is payable either as CGST and SGST or IGST depending upon the supply whether intra or inter State.
- GST is payable on export of goods or services also when claimed as refund,
- As per Constitution only Parliament has power to collect tax on export of goods or services.
- Section 7(5) provides that supply of goods or services,-
 - When the supplier is located in India and place of supply is outside India ;
 - to or by a SEZ Unit or Developer or
 - in the taxable territory, not being intra State supply,

Shall be treated in the course of inter State trade or commerce.

Therefore any tax is payable on export of goods or services or supply of goods or services to or by a SEZ shall be payable as IGST.

Supply of Goods or Services to SEZ

- Supply of goods or services to SEZ unit or Developer is treated as inter State not only that it is zero rated and treated at par with export of goods or services.
- Like export of goods or services, option is provided either to pay tax and claim refund or to clear under LUT without payment of tax and claim refund of unutilized input tax credit.
- However supplier and recipient SEZ both can not claim refund.
- There is no condition whether the goods or services are procured by the SEZ unit or developer for its authorized purpose or not in the section
- However by way of rule 89(1) by way of proviso while providing for refund, it is stated for authorised purposes.
- So refund will not be granted if it is not for authorized purposes and one need to obtain endorsement by the specified officer.

Deemed Export of Goods

- Section 147 of the CGST Act provides that Government by notification may provide certain supply of goods, manufactured in India, do not leave place in India, as deemed export of goods.
- Accordingly by Notification No.48 / 2017 dated 18/10/2017 certain supply of goods deemed as export of goods;-
 - Supply of goods to registered person against Export Promotion Capital Goods Authorisation (EPCG),
 - Supply of capital Goods by the registered person against EPCG,
 - Supply of Goods to EOU Unit, Electronic Hardware Technology Park Unit(EHTP), Software Technology Park Unit, Bio-Technology Park Unit,
 - Supply of Gold by Bank or PSU against AA.

Deemed Export of Goods

- It may be noted that Deemed export of Goods is not treated as zero rated supply.
- It can not be cleared without payment of tax.
- So GST is payable on it as IGST only and to claim refund
Either by supplier or recipient but not both.
- It is to be shown separately in 3B under 3.1(b) along with zero rated supply but in R1 to be shown under Table 6C as deemed export of goods.
- Supply of services to such persons is not deemed export
- Refund is subject to certain terms and conditions and evidences to be obtained as per Notification No. 49/2017 dated 18/10/2017.

Procedural Aspects of Refund

- Under GST Laws Refund is not automatic ,
- Law provides refund in certain cases only,
- One has to apply for it within the time limit prescribed for it,
- Even no automatic refund as per any order one needs to apply for it.
- The last circular No. 125/44/2019 dated 18th November, 2019 provides complete guide for refund related issue which is published in GST Review, November 2019.

Procedural Aspects of Refund

- The Government has set up online system for issue of refund,
- Refund in all cases to be applied on line except for refund of payment of tax on export of goods which is governed by Customs and for that return filed is deemed to be an application for refund.
- One need to be careful in filling returns 3B, R1 and shipping bills and needs to be of same amounts and having same particulars otherwise it may lead to denial of refund.

Procedural Aspects of Refund

- Apart from refund on export of goods and services including deemed export refund may arise in following cases;-
 - Refund of ITC due to Inverted duty structure,
 - Excess balance in cash ledger –TDS ,wrong payment etc.
 - Excess payment of Tax,
 - Refund of tax paid as Inter State vice versa when subsequently held as otherwise,
 - Refund on account of assessment order or any other order including High Court or SC
 - Refund on ground of any other- May include wrong disclosure in 3B not able to adjust due to negative figures and now may include eligible ITC which was not claimed due to mismatch of 2A.

Procedural Aspects of Refund

- From 26/09/2019 one single application form in RFD -01 is provided for making online application for refund in all cases,
- To submit various prescribed documents as per Annexure A of the said circular on line and no other documents to be provided except those prescribed,
- Upon submission of all documents ARN shall be generated which is deemed to be an application as per rule 90 and time limit shall be counted from that date for acknowledgement or deficiency memo, as the case may be.,
- Upon ARN either Acknowledgement in RFD 02 or deficiency memo in RFD 03 shall be issued,
- Refund would be granted by accepting ITC provisionally for Unmatched ITC subject to rule 36(4) provided undertaking is given to return back refund with interest when found not eligible in terms of section 16 or 42(2). (Para 7 of the Circular)

Procedural Aspects of Refund

- This undertaking should be submitted on line along with refund application,
- Refund application may be made for any tax periods or for successive tax periods,
- However, the quarterly return filers can file application quarterly basis or for successive quarters,
- Once acknowledgement is issued no deficiency memo can be issued for any reasons,
- Upon issue of deficiency memo fresh application is to be made and refund amount would be reccredited automatically and for that purpose no RFD 03 would require.
- Upon resubmission of application with required documents no fresh deficiency memo shall be issued.(Para 9(11) of the Circular).
- One needs to take care to see that resubmission of application must be within the specified period of time limit of 2 years as provided in Section 54(14) of the CGST Act. Needs to represent to treat date of original application for this.

Procedural Aspects of Refund


- Even in case of any irregularities noticed by the officer provisional refund of 90% shall be granted .
- Within 7 days full amount of refund shall be granted.
- Final section of refund shall be granted as per rule 92 of the Act.
- For rejection of any refund amount, the proper officer to issue show cause notice as per provisions of the act specifying rejection of refund amount as well as recovery of refund already granted separately.
- **Upon rejection of refund appeal can be filed and if succeed then need to file fresh application for refund of amount as per appeal order.**

Procedural Aspects of Refund

- For claim of unutilized ITC credit details of invoices to be given on line in Annexure B along with refund application with self attested copy of invoices for unmatched invoices.
- No need to produce either on line or physically invoices which are matched in 2A.(Para 36 of the circular).

Procedural Aspects of Refund

- The quantum of refund of ITC would be least of following;-
 - Maximum amount of refund as per rule 89(4) or (5),
 - Balance amount of credit of ITC ledger at the time of filing 3B or
 - Credit balance amount on the date of application of refund.
 - The balances to be shown as per respective credit ledger IGST ,CGST and SGST in that order. Not provided automatic but to follow it. But no adverse view if order is not followed.

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