

Import & Export under GST

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Introduction

Export of Goods and/or services:

- One of the fundamental principle to make exports competitive in the international market.
- Thus, the export policies have been made with the moto 'Export the goods and not the taxes'.
- Hence, export to destinations outside India as well as supplies to SEZ have been 'zero-rated', i.e., the goods or services exported are relieved of GST levied upon them either at the input stage or at the final product stage by way of refund of taxes paid.

Introduction

Import of Goods and/or services:

- The **Article 269A** of the constitution mandates that supply of goods and/or services in the course of import into the territory of India shall be deemed to be supply of goods and/or services **in the course of inter-state trade or commerce.**
- Accordingly, Import of goods or services is treated as inter-state supplies and is subject to IGST.

Export of Goods and Export of Services

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Sec.	Definition as per the provisions of IGST Act, 2017
2(5)	<ul style="list-style-type: none">• “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
2(6)	<ul style="list-style-type: none">• “export of services” means the supply of any service when, -<ol style="list-style-type: none">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 has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; andv. 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;

Import of Goods and Import of Services

Sec.	Definition as per the provisions of IGST Act, 2017
2(10)	<ul style="list-style-type: none">• “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India
2(11)	<ul style="list-style-type: none">• “import of services” means the supply of any service, where-<ul style="list-style-type: none">(i) the supplier of service is located outside India;(ii) the recipient of service is located in India; and(iii) the <u>place of supply of service</u> is in India; [Intermediary located outside India]

Nature of Imports – Inter-State Supply

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Section	Legal provisions as per IGST Act, 2017
7(2)	Supply of goods imported into the territory of India , till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce .
2(4) of IGST Act, 2017	“customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (52 of 1962.)
2(11) of Customs Act, 1962	" customs area " means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities

Nature of Imports – **Inter-State Supply**

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Section	Legal provisions as per IGST Act, 2017
7(4)	Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Nature of Exports – Inter-State Supply

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Section	Legal provisions as per IGST Act, 2017
7(5)	<p>Supply of goods or services or both,—</p> <ul style="list-style-type: none">a) when the supplier is located in India and the place of supply is outside India;b) to or by a Special Economic Zone developer or a SEZ unit; orc) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, [residual clause – Intermediary services u/s 13(8)] <p>shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.</p>

Taxability of Import of Goods – Article 269A

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Article 269A of COI	Levy and collection of goods and services tax in course of inter-State trade or commerce
(1)	Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
Explanation	For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

Taxability of Import of Goods – Statutory provisions

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Section	Legal provisions
5(1), IGST Act, 2017 Charging Section	..there shall be levied a tax called the IGST on all inter-State supplies of goods or services or both on the value determined u/s 15 of the CGST Act and at such rates, not exceeding 40%, as may be notified and collected in such manner as may be prescribed and shall be paid by the taxable person:
Proviso	Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) on the value as determined under the said Act at the point (POT) when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. (52 of 1962.)

Taxability of Import of Goods – Customs Tariff Act

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Section	Legal provisions
3(7), CTA, 1975	Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the IGST Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.

Taxability of Import of Services under RCM

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Notification No. 10/2017- Integrated Tax (Rate) dt. 28.06.2017

S.no.	Category of Supply of Services	Supplier of service	Recipient of Service
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

Non-taxable online recipient

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IGST Act	Definition
Sec. 2(16)	“non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services (OIDAR) in relation to any purpose other than commerce, industry or any other business or profession , located in taxable territory.

Non-taxable online recipient

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IGST Act	Tax payable by Supplier of OIDAR under FCM
Sec. 14	On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services
Illustration	<p>Indian individual buying paid subscription of a gaming or a fitness app from Apple Store or Bollywood music from iTunes for personal use.</p> <p>Apple US providing OIDAR services to non-taxable online recipient is mandatorily required to seek registration u/s 14 of the IGST Act, 2017 and discharge IGST on the subscription charges.</p>

Taxability of Exports – Zero Rated Supply

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Sec.	Legal provisions as per IGST Act, 2017
16(1)	<p>“zero rated supply” means any of the following supplies of goods or services or both, namely:–</p> <ul style="list-style-type: none">a) export of goods or services or both; orb) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.
16(2)	<p>Subject to the provisions of section 17(5) of the CGST Act (blocked credits), credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.</p>

Taxability of Exports – Zero Rated Supply

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Sec	Legal provisions as per IGST Act,2017
16(3) pre-amendment by FA, 2021	<p>A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:--</p> <ul style="list-style-type: none">a) he may supply goods or services or both under bond or LUT, subject to such conditions, safeguards and procedure as may be prescribed, without payment of IGST and claim refund of un-utilised ITC; ORb) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of IGST and claim refund of such tax paid on goods or services or both supplied, <p>in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.</p>

Taxability of Exports – Zero Rated Supply

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Sec	Legal provisions as per IGST Act,2017
16(3) post-amendment by FA, 2021 <u>Yet to be notified.....</u>	A registered person making zero rated supply shall be eligible to claim refund of un-utilised ITC on supply of goods or services or both, without payment of IGST , under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Taxability of Exports – Zero Rated Supply

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Sec 16(3)	Legal provisions as per IGST Act,2017 - what was earlier contemplated u/r 96B
Proviso inserted by FA, 2021 <u>Yet to be notified..</u>	Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds , be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances , in such manner as may be prescribed.

Zero Rated Supply vs Exempt Supply

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	Zero-rated Supply	Exempt Supply
Effective implication	Nil	Nil
Admissibility of ITC	Yes	No
Encashment of ITC	Yes	No
Reversal of common ITC u/s 17(2)	No	Yes [separate valuation u/s 17(2) r.w. (3)]

- Zero-rated supplies are treated at par with taxable supplies.
- **Even if exempt supply is exported, ITC is available and refund can be claimed. [Sec 16(2) of IGST]**

Critical issues related to Export of Services

1 In case of Intermediary Services, Place of Supply in terms of Sec. 13(8)(b) is the location of the supplier, which precludes Intermediary services from qualifying as export.

➤ **Vires of the provision [13(8)(b)] has been challenged before the High Courts.**

➤ **DISSENTING Judgement by Bombay HC**

Neither Section 13(8)(b) nor Section 8 (2) of the IGST Act are unconstitutional - Also neither Section 13 (8) (b) nor Section 8 (2) of the IGST Act are ultra vires the IGST Act. Section 13 (8) (b) is also not ultra vires Section 9 of the CGST Act, 2017 or the MGST Act, 2017 - Section 13(8)(b) as well as Section 8(2) of the IGST Act are constitutionally valid and operative for all purposes. **[2021 (6) TMI 563 - BOMBAY HIGH COURT] dt. 16.06.2021**

Critical issues related to Export of Services

1 2021 (6) TMI 383 - BOMBAY HIGH COURT dt. 09.06.2021

It is apparent that section 9 of the CGST Act cannot be invoked to levy tax on cross-border transactions i.e., export of services. Likewise, from the scheme of the IGST Act it is evident that the same provides for levy of IGST on inter-state supplies. Import and export of services have been treated as inter-state supplies in terms of section 7(1) and section 7(5) of the IGST Act. On the other hand sub-section (2) of section 8 of the IGST Act provides that where location of the supplier and place of supply of service is in the same state or union territory, the said supply shall be treated as intra-state supply. **However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts.**

Critical issues related to Export of Services

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2 Netting of foreign exchange receipts and expenditure while supplying services to, and receiving services from, the same foreign entity.

- Whether the gross value of supply to foreign entity shall be considered for the purposes of export, or the exports shall be accepted only to the extent of net amount received in convertible foreign exchange ?
- Whether non-payment in convertible foreign exchange to foreign entity would preclude the Indian entity from discharging tax under **RCM** on services received from the foreign entity?

Critical issues related to Export of Goods - Capping of turnover of export of goods under LUT to 150%

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RULE 89(4)(C) defines “Turnover Of Zero-rated Supply Of Goods” Substituted w.e.f. 23.03.2020

“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 letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

Critical issues related to Export of Goods - Capping of turnover of export of goods under LUT to 150%

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Analysis

- This Rule substitutes the definition of “**Turnover of zero-rated supply of goods**” used in the refund formula.
- No change in the definition for turnover of services exported and adjusted total turnover.
- Amendment seeks to cap the export value of goods to maximum of 1.5 times of like goods supplied in DTA by same or similarly placed supplier
- In effect, **numerator could get reduced keeping denominator unchanged**, resulting in reduction of refund amount.

Critical issues related to Export of Goods - Capping of turnover of export of goods under LUT to 150%

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Issues

- Whether the amendment is ultra vires to Sec. 54 of CGST Act and Sec. 16 of the IGST Act?
- Whether the amendment is not against the valuation provisions prescribed under Section 15 of the CGST Act?
- Whether the amendment is not discriminatory as it does not prescribe such artificial value when IGST refund is claimed on export of services or export of goods with payment of IGST ?

Critical issues related to Export of Goods - Capping of turnover of export of goods under LUT to 150%

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Issues

- Ineligible ITC shall be a cost to the supplier who does not have any other tax liability like 100% EOU
- Very subjective in nature and leads to litigation and provide impetus to corruption.
- Whether the amendment will apply to (a) refund filed but yet to be received, (b) exports already effected but refund to be filed or (c) only to exports and refund after effective date.

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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RULE 96B Recovery of refund of unutilised ITC or IGST paid on export of goods –

- Where any refund of **unutilised ITC** or **IGST paid** has been granted on account of export of goods but the **sale proceeds have not been realised**, in full or in part, in India within the period allowed under the **FEMA, 1999**, including extension of such period,
- the person shall **deposit the amount so refunded**, to the extent of **non realisation** of sale proceeds, along with **applicable interest** within **thirty days** of the expiry of the said period,
- failing which the amount refunded shall be **recovered** in accordance with the provisions of **section 73 or 74** of the Act, as the case may be, as is applicable for **recovery of erroneous refund**, along with interest under section 50:

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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RULE 96B Recovery of refund of unutilised ITC or IGST paid on export of goods –

Provided that if **Reserve Bank of India writes off the requirement** of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are **realised** by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces **evidence** about such realisation within a period of **three months** from the date of realisation of sale proceeds, the amount so recovered shall be **refunded by the proper officer**, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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Analysis

- It provides for deposit of refund received of unutilized ITC or of IGST paid on export of goods along with interest, where sale proceeds for export is not received within time specified in FEMA, including extensions thereto.
- Provides for recovery under section 73/74 for failing to deposit refund as above.
- Exception is when RBI waives off the requirement of realization.

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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Analysis

- If sale proceeds realized subsequently but within RBI permitted time and evidence produced within 3 months of realization, refund to be restored – **provision is silent on refund of interest.**
- Section 2(5) - “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India ▶ Section 2(6) - “export of services” means the supply of any service when- ▶ 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.

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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Issues

- When the definition of export of goods does not require receipt of consideration, can a Rule impose such a restriction? **Proviso inserted in Section 16(3) by FA, 2021, yet to be notified – to be applicable prospectively.**
- Whether Section 54 of CGST or Section 16 of IGST empowers the government to put such restrictions?
- Whether notice can be issued u/s 73/74 if export is made as provided in law?

Recovery of refund where export proceeds of goods are not realised – Rule 96B w.e.f. 23.03.2020

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Issues

- Whether it will apply to a) refunds already received, b) refund filed but yet to be received, c) exports already effected but refund to be filed or d) only to exports and refund after effective date ?

Refund of unutilised ITC pertaining to capital goods on account of exports under LUT

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Issues

- Rule 89(4) restricts the entitlement of refund on account of zero-rated supplies under made under LUT to so much of ITC as is pertaining to inputs and input services. **Capital Goods have been excluded.**
- **Gujarat HC in VKC FOOTSTEPS INDIA PVT. LTD. vs. UOI & 2 OTHER(S)** cited as [2020 (7) TMI 726 dated 24.07.2020], while dealing with the identical issue in case of inverted tax structure refunds, has held that **refund should be admissible of the entire unutilized ITC** without discriminating between inputs, input services, and capital goods.

Refund of unutilised ITC pertaining to capital goods on account of exports under LUT

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Issues

- To the contrary, Madras HC in **TVL. TRANSTONNELSTROY AFCONS JOINT VENTURE, AND OTHERS** cited as [2020 (9) TMI 931 - MADRAS HC dated 21.09.2020] on the same issue has held that the Rule 89(5) restricting the refund of ITC pertaining to inputs only is valid and is well within the boundaries of Section 54(3) of the Act.
- There is no restriction on refund of ITC pertaining to Capital Goods under **exports with payment of tax.**

Provisional refund provision u/s 54(6)

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- Section 54(6) read with Rule 92 provides for grant of **90% refund on provisional basis** in cases of refund arising on account of **zero-rated supply of goods or services** or both made by registered person.
- **To be granted within 7 days of issuance of acknowledgement** if proper officer prima facie feels that the refund is admissible.
- Subject to condition that applicant has **not been prosecuted for any offence** under the Act or under an existing law, during any of the immediately preceding **5 years, where tax evasion exceeds Rs. 2.50 crores**.

Provisional refund provision u/s 54(6)

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- Practically, the sanctioning authority does not sanction the refund on provisional basis on being prima facie satisfied that the refund application is legible.
- Provision is theoretical and practically not followed by the authorities. Refund is not sanctioned by the authorities till the application is fully scrutinized in order to safeguard their personal interest.
- Once, at the time of filing of refund application in RFD-01, the applicant undertakes to return the refund sanctioned if the same is subsequently found to be inadmissible under law, the Authorities should not deny from/avoid granting provisional refund on being prima-facie satisfied with the refund application.

Deemed Exports

Concept

The objective of Deemed Exports is to provide a level playing field to domestic manufacturers in certain specified cases as announced by the Government from time to time. Deemed exports refers to transactions in which goods manufactured in India are supplied for specified projects or purposes. Under Deemed Exports, the goods do not leave the Country and payment can be received either in Indian Rupees or in convertible foreign exchange by the supplier. **Deemed exports are truly Import substitution and to the extent of their supplies in India, the corresponding import gets arrested and consequently the outflow of foreign exchange is reduced. By exports, the country earns foreign exchange and through Deemed Exports the spending of foreign exchange is reduced. Both do contribute to the welfare of the Nation.** Therefore, the major benefits of duty concessions for physical exports are also generally extended for Deemed Exports under Foreign Trade Policy as well as GST.

Deemed Exports – FTP vs GST

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Foreign Trade Policy – Chapter 7 – **Covers 8 categories of supplies**

“Deemed Exports” for the purpose of FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 of FTP shall be regarded as “Deemed Exports” provided goods are manufactured in India.

“Deemed Exports” for the purpose of GST would include only the **supplies notified under Section 147 of the CGST/SGST Act**, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification. – **Covers 4 categories of Supplies**

Statutory Provisions

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Section	Legal provisions as per CGST Act, 2017
2(39)	“deemed exports” means such supplies of goods as may be notified under section 147
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 .

Notified Deemed Exports - N.No. 48/2017 - CGST - 18/10/17

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S. No.	Description of supply	Analysis
1	Supply of goods by a registered person against Advance Authorisation	<p>Under Chapter 4 of FTP, Advance Authorisation is issued to a Manufacturer Exporter to allow duty free import of inputs, which are physically incorporated in export product.</p> <p>In order to provide a level playing field to domestic manufacturers, holder of an AA is allowed to procure inputs from domestic manufacturer, in lieu of direct import, and same has been regarded the status of Deemed Exports under GST, to nullify tax implication.</p>

Advance Authorisation

- 1 Advance Authorisation (formerly known as Advance License) is input duties neutralisation scheme to reduce working capital requirement for exporters by way of duty exemptions.**
- 2 Primarily issued to manufacturer exporters for physical exports (including SEZ supplies)
- 3 Advance Authorisation is issued to allow **duty free import of inputs**, which are physically incorporated in the export product.
- 4 Exemption from payment of Basic Customs Duty, Additional Customs Duty, Anti-dumping Duty, Safeguard Duty, etc. where applicable on imports subject to conditions.
- 5 Exemption from payment of **IGST and Compensation Cess on imports** is available up to 31.03.2021.
- 6 Holder of an Advance Authorization can also procure inputs from indigenous supplier and tax implication is nullified by regarding such domestic supplies as Deemed Exports.**

Notified Deemed Exports - N.No. 48/2017 - CGST - 18/10/17

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S. No.	Description of supply	Analysis
2	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization	<p>Under Chapter 5 of FTP, Capital goods imported under EPCG Authorization for physical exports are exempt from import duties including IGST and Compensation Cess.</p> <p>The Authorization holder may also procure Capital Goods from indigenous sources in accordance with provisions of FTP and same is regarded the status of Deemed Exports under GST to nullify tax implication.</p>

Notified Deemed Exports - N.No. 48/2017 - CGST - 18/10/17

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S. No.	Description of supply	Analysis
3	Supply of goods by a registered person to Export Oriented Unit (including EHTP, STP, BTP) – Procedure prescribed vide Circular No. 14/14 /2017 - GST dt. 6/11/17	Units undertaking to export their entire production of goods or services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme. These units are entitled for duty free import of inputs. In order to provide level playing field to domestic suppliers, EOUs are allowed to procure inputs from domestic suppliers and same is regarded as Deemed Exports

Notified Deemed Exports - N.No. 48/2017 - CGST - 18/10/17

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S. No.	Description of supply
4	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.

Notified Deemed Exports - N.No. 48/2017 - CGST - 18/10/17

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Explanation

For the purposes of this notification, –

- 1. Advance Authorisation** means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports.
- 2. Export Promotion Capital Goods Authorisation** means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.
- 3. “Export Oriented Unit”** means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

Benefits of Deemed Export Status

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Supply of goods by a registered supplier to advance authorisation holder, or EPCG authorisation holder, or EOU has been regarded the status of deemed exports under GST.

These supplies would have otherwise attracted GST liability and the recipients would have borne the incidence of such tax and subsequently claimed refund thereof through ITC route after undertaking physical exports i.e. zero-rated supplies.

However, by regarding the status of deemed exports, either the recipients will not bear the incidence of tax and supplier will claim the refund of tax paid out of his own pocket. Or, the recipients will bear the incidence of tax and then instantly claim refund thereof, thereby minimizing the time involved in blockage of funds in the form of taxes.

Procedure for obtaining refund of tax paid on Deemed Exports

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Third proviso to rule 89(1) OF CGST RULES, 2017

In respect of supplies regarded as deemed exports, the application may 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 input tax credit on such supplies and **furnishes an undertaking to the effect that the supplier may claim the refund**

Time limit under explanation to section 54

2 years from the date on which the return relating to such deemed exports is furnished

Deemed Exports vs Exports

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Basis of Difference	Deemed Exports	Physical Exports (Zero-rated)
Scope	Notified supplies of goods wherein Goods do not leave India	Goods physically leave India
Treatment	Not covered under zero-rated supplies First, tax is required to be paid to Exchequer and subsequently refund is claimed. (No Option of LUT)	Covered under zero-rated supplies Without payment of tax under LUT – refund of ITC, or With payment of tax (IGST) and refund thereof
Who can claim refund?	Either supplier or recipient whosoever has borne the incidence of tax	Exporter

Deemed Exports vs Exports

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Basis of Difference	Deemed Exports	Physical Exports (Zero-rated)
Sanctioning Authority	Jurisdictional GST Officer	Without payment – ITC refund by jurisdictional GST officer With payment – IGST refund by Customs
Illustration	Ram supplying Products A, B, & C which are inputs for Shyam for manufacturing product X for Export	Shyam physically exporting product X to a buyer in USA

Merchant Exports - Notification No. 40/2017-C.T. (Rate), dt. 23-10-2017

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Reduced Rate of 0.1% prescribed for supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions

Notification exempts so much of the tax as in excess of 0.1% (0.05% CGST & SGST each)

The registered recipient (merchant exporter) has to export the goods **as it is within 90 days** from the date of issuance of tax invoice by the registered supplier @ 0.1%

Merchant Exports - Notification No. 40/2017-C.T. (Rate), dt. 23-10-2017

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Reduced Rate of 0.1% prescribed for supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions

The registered recipient must be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce.

The registered recipient shall move the said goods from place of registered supplier -

- i. directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
- ii. directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

Merchant Exports - Notification No. 40/2017-C.T. (Rate), dt. 23-10-2017

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Reduced Rate of 0.1% prescribed for supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions

the registered recipient shall indicate **GSTIN of the registered supplier** and the **tax invoice number** issued by the registered supplier in respect of the said goods in the **shipping bill or bill of export**, as the case may be;

the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the **jurisdictional tax officer of the registered supplier**;

CIRCULAR NO. 108/27/2019-GST, DATED 18-7-2019

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Important Clarification

It is clarified by the Board that the activity of sending/taking the goods out of India for **exhibition** or on **consignment** basis for **export promotion**, except when such activity satisfy the tests laid down in Schedule-I of the CGST Act, **do not constitute supply** as the said activity does not fall within the scope of Section 7 of the CGST Act as there is **no consideration** at that point in time. Since such activity is not a supply, the same cannot be considered as 'Zero-rated supply' as per the provisions contained in Section 16 of the IGST Act.

HIGH-SEA SALES OR SALES TAKING PLACE WITHOUT THE GOODS ENTERING IN OR LEAVING INDIA

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SCHEDULE III TO CGST ACT, 2017

Para 7: 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.

E.g., Sales from USA to Australia by a person in India

Para 8:

- a) Supply of warehoused goods to any person before clearance for home consumption;
- b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (**High-Sea**)

REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

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Sec. 15 of IGST - Refund of integrated tax paid on supply of goods to tourist leaving India.

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Proviso to Section 8 of IGST specifically excludes supply of goods made to the tourist from the purview of Intra-State supply.

CIRCULAR NO. 125/44/2019-GST, DATED 18-11-2019

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Whether refund of **compensation cess paid on inputs** is available where the exported product is not leviable to compensation cess (e.g., coal used for aluminium products)?

- In terms of Section 16 (2) of IGST Act, 2017 read with Section 11(2) of GST (Compensation to States) Act, ITC of cess can be availed.
- Such refund can be claimed u/s 54 of the CGST Act, 2017 read with Section 9(2) of the Cess Act.
- However, **ITC of cess cannot be utilized for payment of CGST + SGST or IGST** on outward supplies in view of proviso to Section 11 (2) cess act.
- ITC of tax paid on coal cannot be denied on the premises that same is used for generation of electricity which is further used for manufacture of goods (say aluminium).

CIRCULAR NO. 125/44/2019-GST, DATED 18-11-2019

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Furnishing of LUT is a procedural compliance

- The benefit of refund of ITC cannot be denied to the assessee in cases where the Zero-rated supplies are made before filing of LUT u/r 96A.
- The time limits prescribed under Rule 96A(1) (i.e., 3 months in case of goods and 1 year in case of services) are not to be strictly adhered to as far as other substantial conditions have been fulfilled, hence, jurisdictional commissioner may consider granting extension.

CIRCULAR NO. 125/44/2019-GST, DATED 18-11-2019

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Furnishing of LUT is a procedural compliance

- No LUT is required for claiming refund on account of export of non-GST and exempted goods [Section 16 (2)].
- Proof of receipt of forex cannot be insisted upon in case of export of goods. (**Legal position has changed after insertion of Rule 96B and amendment by FA, 2021**)
- While processing refund ,value of Zero Rated Supplies of goods shall be lower of:
 - ✓ Value declared in tax invoice
 - ✓ Value declared in shipping bill
 - ✓ 1.5 time the value of like domestic goods (w.e.f. 23.03.2020)

CIRCULAR NO. 125/44/2019-GST, DATED 18-11-2019

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SINGLE SANCTIONING AUTHORITY

- In view of Section 54 (8A), sanction order for refund (i.e. RFD 04/06) and corresponding payment order (i.e. RFD 05) under all tax heads shall be issued by a single authority either by Central Tax Officer or State Tax officer [Inserted w.e.f 01.09.2019]
- The said refund shall be disbursed through Public Financial Management System (“PFMS”) of Controller General of Accounts in prescribed manner
- In terms of Section 56, department is required to pay interest @ 6% on the refund amount starting from the date after the expiry of 60 days from ARN
- Amount shall be considered to be refunded only on the date amount is credited to the bank account of the applicant not on issuance of order

CIRCULAR NO. 135/05/2020 Dated 31-03-2020

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1. Refund to be restricted to so much of eligible ITC as is auto-populating in GSTR-2A

Previously, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. Now, in wake of insertion of sub-rule (4) in Rule 36, which restricts the availment of ITC upto 10% over and above the ITC reflecting in GSTR-2A, it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

CIRCULAR NO. 135/05/2020 Dated 31-03-2020

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2. No restriction on clubbing of tax periods across financial years

On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years. Thus, it has been decided to remove the restriction on clubbing of tax periods across Financial Years.

Issues arising u/s 54(3) of the CGST Act, 2017

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3. No refund of unutilised ITC is allowed on account of exports, if the supplier of goods or services or both avails of **drawback in respect of central tax** or claims refund of the integrated tax paid on such supplies.

In this regard Master Circular 125/44/2019 dated 18/11/2019 clarifies as under:

"The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax."

Thank you