

Export of goods and refund under GST

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1. Introduction

Government has always focused on making industry friendly policies when it comes to exports since the consideration is received in foreign currency. Under pre-GST regime, excisable goods were allowed to be exported without payment of duty in terms of rule 19 of the Central Excise Rules, 2002. Along similar lines, but without any binding precedent, section 16 is placed in Integrated Goods and Service Tax Act, 2017 (‘IGST Act’). This article summarizes authors learning from a deep dive into various aspects involved in neutralizing GST incidence on exports and lays out some concerns for reader’s attention.

2. Zero-rated supply

Supplies specified in section 16 of IGST Act are called ‘zero-rated supplies’ notwithstanding the generally applicable rate of GST. Zero-rated supply is not one where exemption is issued under section 6 of IGST Act. So, zero-rated supply is a moniker for supplies enlisted in section 16 of IGST Act:

Export of goods is defined under Section 2(5) of the IGST Act which states that *"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India*. Export of goods would be treated as inter-state supply in accordance with Section 7(5)(a) of the IGST Act. Under Section 16 of the IGST Act, following are treated as zero-rated supplies:

- I. Export of goods or services or both
- II. Supply of goods or services to Special Economic Zone developer or a Special Economic Zone unit

Zero-rated supply does not mean that the goods or services are nil rated or are subject to 0 per cent tax. In respect of such zero-rated supplies, section 16(3) provides options to neutralize the incidence of GST on exports, namely, either exporter is free to export goods on payment of IGST (rebate option) or to export under Letter of Undertaking (‘LUT’) without payment of IGST to claim refund of unutilized input tax credits (refund option).

2.1 Procedure for making zero-rated supply

Exporter who intends to export goods without payment of IGST, is required to furnish LUT. LUT has to be applied on common portal in Form RFD-11 and the same will be valid for the entire Financial Year.

LUT is to be furnished prior to undertaking export of goods. However, Central Board of Indirect Taxes ('CBIC') vide circular no. 125/44/2019 dated November 18, 2019 has clarified that the substantive benefit of zero-rated supply may not be denied where the exporter has delayed in furnishing LUT. Accordingly, LUT may be admitted on *ex post facto* basis, taking into account, facts and circumstance of each case.

Exporter is required to issue a tax invoice for export of goods and the particulars "*Supply meant for export under bond or Letter of Undertaking without payment of integrated tax*" is required to be mentioned on the tax invoice. Do note that overseas buyer does requires an Export Invoice denominated in agreed foreign currency and not tax invoice denominated in Indian Rupees.

In addition to the invoice, exporter is required to file Shipping bill in Form SB-I. Shipping bill is required to be issued in four copies.

It is pertinent to note that exporter is required to export the goods within 3 months from the date of tax invoice. In case the goods are not exported within such time, Rule 96A (1) of the Central Goods and Service Tax Rules, 2017 ('CGST Rules') provides that tax along with the interest at 18 per cent is required to be paid within 15 days from the end of this 3 months period or such further period as may be allowed by the Commissioner.

3. Refunds

Section 54 of the CGST Act read with Rule 96 of the CGST Rules provides the mechanism for claiming refund on account of export of goods. As discussed earlier, exporter has an option for export goods under LUT or he may export goods on payment of IGST. Accordingly, the refund provision for each scenario are as under:

A. Export of goods under LUT

Section 54(3)(i) of the CGST Act provides that a registered person may claim refund of unutilized input tax credit ('ITC') for zero-rated supply made without payment of tax. The refund application may be made for each tax period. The said section comes with some of the restriction which are enumerated below:

- I. *Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty*
- II. *Provided also that no refund of input tax credit shall be allowed, 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.*

Accordingly, if the goods which are exported as subject to export duty or any drawback is to be claimed on such exports, refund of utilized ITC may not be available.

Further, it is pertinent to note that, refund of utilized ITC has to be computed as per the method prescribed under Rules 89(4) of the CGST Rules. The same is reproduced below:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

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

(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 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;

(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 letter of undertaking, calculated in the following manner, namely:-

(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.

Illustration

Particulars	Amount (INR)
Export of goods under LUT (100 Qty)	50,000

B2B Supply (100 Qty)	10,000
B2C Supply	30,000
Exempt Supply	20,000
Total Turnover	1,10,000
Input (A)	3,000
Input Service (B)	2,000
Capital goods (C)	4,000
Total ITC	9,000

Note:

It is assumed that all the B2B supplies are similar goods with same quantity as that of exports.

Refund Calculation

Particulars	Amount (INR)
Turnover of export of goods- INR 50,000	15,000
or	
1.5 times value of like goods supplied in domestic market- 10,000 x 1.5 – INR 15,000 Whichever is lower (1)	
Adjusted Total Turnover (2)	90,000
Net Input tax credit (A+B) (3)	5,000
Refund Amount (1/2) x 3	833

Certain issues in amendments in the refund formula:

- It is pertinent to note that the restriction placed in Rule 89(4)(c) of the CGST Rules on the value of export of goods maximum to 1.5 times the value of like goods sold domestically is inserted vide Notification No 16/2020-Central Tax dated March 23, 2020. There were no such restriction placed earlier. To expect that export price greater than 50 per cent over domestic price is unwarranted restraint on export benefits that is deserved and earned by exporters.
- The calculation of 1.5 times the value of export of goods is applicable in the numerator only. In numerator the actual export value of goods is required to be added to the total adjusted turnover. Hence, this would further reduce the net refund amount to the exporter and is clearly a retrograde step.
- It is worthwhile to highlight that the said sub rule has been 'substituted' vide Notification No 16/2020-Central Tax dated March 23, 2020. In other

words, the old rule has been replaced with new rule. Accordingly, one needs to interpret whether the said substitution can extend this restriction to rebates yet to be filed for past exports and thereby be retrospective.

- It is deeply concerning if the said restriction applies to refund claim filed after March 2020 which are pertains to past period i.e. before March 2020
- Also, prices being dynamic, especially in present market conditions, to expect exporters to comply with this restriction when domestic supplies are nil or negligible or even sporadic.

B. Export of goods on payment of IGST

Any person availing option to export goods on payment of IGST is not required to file separate application for refund. Following procedure is to be complied with for export of goods on payment of IGST:

- A registered person is required to file shipping bill showing prescribed details.
- Details of goods exported as to be reported in Table 6A of Form GSTR-1.
- Summary details of goods exported are to be reported in Table 3.1(b) of Form GSTR-3B.
- The amount disclosed in GSTR-3B should not be less than the same shown in GSTR-1.

Upon matching the above details on the GSTIN and ICEGATE portal, the refund of IGST paid would automatically be get credited to the bank account of the exporter. Accordingly, a registered person is required to take utmost care at the time of uploading exports details at the time of filing GST returns.

3.2 Restriction on making exports on payment of IGST

Rule 96(10) of the CGST Rules, 2017 provides that a register person shall not be allowed to export goods on payment of IGST in following circumstances:

- A register person should not have received supplies mentioned in Notification No 48/2017-Central Tax dated October 18, 2017.
- A register person should not have received supplies mentioned in Notification No 40/2017-Central Tax dated October 23, 2017.
- A registered person should not have availed benefit of Notification No 78/2017-Customs dated October 13, 2017 or 79/2017 dated October 13, 2017.

In other words, the said sub rule states that register person should not have received any supplies which are regarded as deemed exports under GST (except EPCG), merchant export supplies, and should not be an advance

authorisation holder. The Government has provided relaxation to EPCG holder, wherein if they are importing goods under ECPG scheme without payment of duty, they can continue to export goods on payment of IGST.

3.3 Issues faced at the time of realising refund of IGST paid on export of goods

Certain registered person have erred at the time of filing Form GSTR-3B by reporting export of goods in Table 3.1(a) (outward taxable supplies) of GSTR-3B instead of Table 3.1(b) (zero-rated supplies) of Form GSTR-3B, though correctly reported in GSTR-1. As a result, the details of export invoices reported in Form GSTR-1 and GSTR-3B could not get match at GSTIN portal. Accordingly, the export invoices could not be transmitted from GSTIN to ICEGATE.

Hence, the genuine refund claims of many exporters got stuck due to wrong reporting of export details in Form GSTR-3B. In order to overcome the problem of refund blockage, CBIC have issued Circular No. 12/2018-Customs dated May 25, 2018 and Circular No 25/2019-Customs dated August 27, 2019 wherein the relief was granted to the exporters who have committed an error at the time of filing Form GSTR-3B.

In the said circular, it was clarified that those exporter who has committed error in filing returns for FY 17-18 and FY 18-19 their refund would not be withheld and custom policy wing would sent the details of exporter who have committed such error to GSTIN. The GSTIN would correct the error made in GSTR-3B from the back end and credit entry would be made in the export ledger of the registered person.

Upon such correction, records would get successfully transmitted from GST portal ICEGATE and refund would be processed. It is pertinent to note that the said solution provided by CBIC was for FY 17-18 and FY 18-19 only. Hence no resource is available as of now for such errors after FY 19-20 onwards. Accordingly, utmost care is to be taken at the time of reporting export details in GST returns.

3.4 Whether to export goods under LUT or on payment of IGST?

Every registered person is required to analyse looking at their nature and quantum of procurements as to whether to export goods on payment of IGST or under LUT. If a register person is having majority export supplies compare to domestic supplies, ideally ITC would be get accumulated in such case. Accordingly, in such cases, it would be prudent to make an export on payment of IGST and claim the refund of accumulated ITC in cash.

Similarly, if a registered person is required to discharge his tax liability in cash i.e. after utilizing his full ITC at the end of the tax period, it is advisable for him to export goods under LUT.

It is pertinent to note that the IGST payment is made at the time of filing GSTR-3B and the same may be made by utilizing ITC. Accordingly, unlike the restriction of claiming the refund of capital goods for unutilized ITC, no such restriction is applicable for refund of IGST paid on export of goods. Hence, ITC of capital goods also gets liquidated if the exporter chooses an option to make export of goods on payment of IGST.

4. Recent amendments in refund

4.1 Circular No 135/05/2020-GST dated March 31, 2020

Earlier, Circular No 125/44/2019 dated November 18, 2019 had restricted filing refund applications where tax period was across financial years. Meaning thereby, refund claim for multiple tax period falling in different financial year was not allowed. However, there is no such restriction place in Section 54 of the CGST Act and hence the circular was going beyond what was prescribed under the Act. Accordingly, the said restriction has been removed vide 135/05/2020-GST dated March 31, 2020.

4.2 Insertion of sub rule 96B in the CGST Rules, 2017

CBIC vide Notification No 16/2020-Central Tax dated March 23, 2020 has inserted Rule 96B in the CGST Rules which provides the sale proceed in respect of export of goods have to be realised within the time period allowed under Foreign Exchange Management Act, 1999 ('FEMA'). In case the sale proceed is not realised within the prescribed time limit, the refund amount sanctioned to the extent of non-realisation of export proceeds shall have to be refunded along with applicable interest.

It is pertinent to note that, the time limit for realisation of export proceeds in 9 months from the date of exports. With this recent amendment, exporter claiming refund of IGST paid on export of goods or claiming refund of unutilized ITC, in both the case, are now require to submit proof that the sale proceeds are realised within the prescribed time limit.

In case if the exporter does not realise the export proceeds within the prescribed time limit, the amount of refund to the extent of non-realisation of sale proceeds has to be deposited along with the applicable interest within thirty days of the expiry of the said period. If the refund amount is not deposited within thirty days, the amount of refund shall be recovered in accordance with Section 73 or 74 of the CGST Act.

We thank CA. Yash Parikh for drafting this article and CA. Jatin Christopher for reviewing the same. For any queries, you may connect with them at idtc@icai.in.

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