

# ₹ GST



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# Claim of ITC Refund by SEZ unit under GST



CA. Kashish Chawla

Special Economic Zones ('SEZs') are granted a special status in fiscal statutes owing to their special characteristics and regulatory mechanism.

GST law also accords a distinct status to the supplies made to the SEZ units. Section of the IGST Act, 2017 ('IGST Act') states that the supply of goods/services made to SEZ unit is treated as 'zero-rated supply'. For making such zero-rated supply, the supplier has either one of the following two options:

Option 1: Supply goods/services on payment of GST and claim refund of the GST so paid; or

Option 2: Supply goods/services without payment of GST under bond/LUT and claim refund of the unutilized ITC.

Export of goods/services is also a zero-rated supply under GST in respect of which the exporter can follow any one of the above options.

Rule 89 of the CGST Rules, 2017 prescribes the procedure and documents to be submitted by the supplier for claiming refund in respect of the supplies made to SEZ unit.

A reading of the above provisions will indicate that while supplying goods/services to a SEZ unit, the supplier claims refund of the output tax or unutilized ITC (based on the option adopted by him) and does not recover GST amount from the SEZ unit. Consequently, as the incidence of tax is not passed on to SEZ unit, the question of claiming ITC on such supplies by SEZ unit does not arise.

However, it may happen that the SEZ unit accumulates ITC on its inward supplies. While making supply to SEZ unit, sometimes, the supplier charges GST in the invoice and recovers GST amount from the SEZ unit. SEZ unit avails ITC in respect of such supply. Another instance of ITC accumulation at SEZ can be understood with the help of an example. Suppose a company has head office which is also registered as ISD and, one SEZ unit and DTA unit. The supplier raises an invoice on ISD in respect of certain services provided to the company. As the invoice is raised on ISD (and not on SEZ unit directly), such supply is not a zero-rated supply and hence, the supplier charges GST and recovers the same from the company. Tax so charged by the supplier is distributed by ISD to the SEZ unit and the DTA unit. SEZ unit avails the ITC in respect of such supply.

The issue arises when SEZ unit opts to export goods/services without payment of GST and seeks to claim the refund of unutilized ITC accumulated by it.

Generally, the department rejects the refund claim of SEZ unit on the grounds that SEZ unit is not eligible to claim such refund. The department contends that in terms of Section 16 of the IGST Act, while making supply to SEZ unit, it is the supplier who can claim the refund. GST Law does not contemplate claiming of ITC refund by the SEZ unit. Department also relies upon Rule 89 of the CGST Rules to allege that the refund procedures are also prescribed with respect to claiming of refund by the supplier only.

A similar issue arose before the Gujarat and Madras High Courts where the department had rejected the application filed by SEZ unit for claiming refund of the unutilized ITC in case of export of goods under bond/LUT. In all these cases, the Courts have consistently upheld the eligibility of SEZ unit to file the refund claim. The Courts noted that in a situation where SEZ unit avails the ITC distributed by ISD, it is not possible for the supplier to claim refund. Accordingly, SEZ unit was held eligible to claim the refund. The Courts also observed that GST Act or Rules do not prescribe any restriction on claiming of ITC refund by the SEZ unit. Rule 89 makes reference to the supplier of SEZ, which is only kind of entity that may file a refund application. However, it does not imply that reference to supplier will exclude other applicants which are otherwise eligible to claim such refund.

Author's take

In Author's opinion, the Courts have correctly held that the SEZ unit can claim the refund of unutilized ITC on export of goods without payment of GST. In terms of Section 16 of the IGST Act, exports are treated as zero-rated. For making such zero-rated supply, the exporter has two options, as discussed in the earlier part of the article. Section 16 of the IGST Act does not contain any restriction that if the exporter is SEZ unit and it exports the goods under bond/LUT without payment of GST, it cannot claim the refund of unutilized ITC. In the absence of any such restriction, it is well within the rights of SEZ unit to claim the refund of unutilized ITC in case it exports the goods under bond/LUT without payment of GST.

In order to avoid the unwarranted litigation,



Ca. Sanjil Dungarwal

# EXPORT OF GOODS & REFUND UNDER GST



## Introduction:

India is a country which is always in search of promoting exports. Under GST it consists several provisions which is governing taxation of export and procedure relating to refund in case assessee has paid tax while exporting such goods. It is important for assessee to understand that what are the provisions that are applicable to exporter and how assessee will be able to claim refund or can supply goods without payment of tax.

What is export of service under GST?

It has been defined under IGST that Export of services" means the supply of any service when, –(i) Supplier of service is located in India;(ii) Recipient of service is located outside India;(iii) 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 RBI (It is permitted for Nepal and Bhutan);(v) Supplier of service and the recipient of service are not merely establishments of a distinct person if place of supply is out of IndiaIt shall be noted that all the conditions are cumulative even if one condition amongst the above stated five is not satisfied than in that case supply of service will not be entitled to be treated as export of service.

To prove that assessee has received foreign exchange assessee shall keep Bank Remittance Certificate (BRC) or

Foreign Exchange Remittance Certificate (FIRC).

Also, there is one exception to general, in case assessee is supplying service to SEZ unit it will be treated as export of service and further in such case it will not require foreign exchange as consideration i.e., even if assessee is receiving Indian rupees it will be treated as export of service.

What is export of goods under GST?

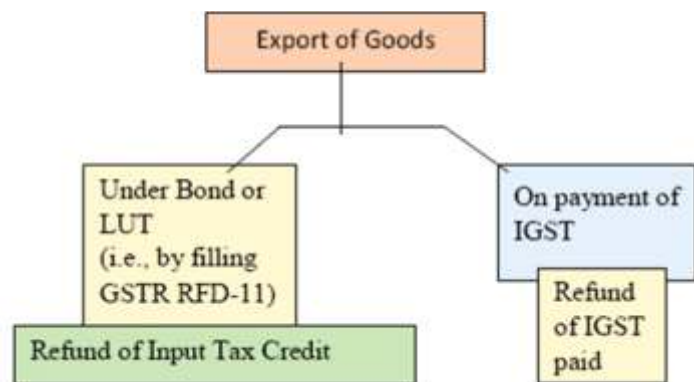
Export of goods means taking goods outside India to the place outside India. It does not contain any condition of receiving foreign exchange as consideration of such goods.

Whether export will be exempted under GST?

It shall be noted that export is covered under zero rated supply for taxation purpose and will not be exempted from tax. It means if assessee is fulfilling condition mentioned in question two and three than in that case assessee will be eligible to supply such goods either without payment or tax or if he has paid tax, he can claim refund of such tax.

Zero-rated supply has been defined under section of IGST Act, 2017; (a) Export of goods or services or both; or (b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone. Therefore, it is clear that SEZ is undertaking domestic clearance than in that case entity will be liable to pay GST.

## How exporter can supply goods?



**In case assessee is opting for first method than in that case assessee will have below mentioned illustrated situation:**

Illustration: Mr. R has exported interior decoration service for a flat situated in Australia. The recipient of service is situated in Australia. Mr. R is registered under GST; whether he will be liable to pay tax in case he wants to opt for payment of tax by executing bond?

It has been specified that for a service been entitled to be treated as export of service than in that case all the conditions mentioned in question two shall be satisfied. As supplier is located in India, recipient is located outside India and as per section of IGST Act, 2017 place of supply in case of immovable property will be place where such immovable property is located and, in our case, immovable property is located at Australia, therefore place of supply will be Australia.

If assessee is opting for exporting goods by executing Bond or LUT than in that case it shall satisfy conditions specified under Notification No. 37/2017 dated 4th October, 2017 which states that All the registered person can make export by executing Bond or LUT except in case were person exporting such goods has been prosecuted for any offence under the Central Goods and Services Tax, 2017 or Integrated Goods and Service Tax Act, 2017 or under any law for time being force and the amount of tax evaded exceeds Two hundred and Fifty Lakh Rupees.

In the given case Mr. R can supply goods or services for export without payment of integrated tax however, he will be required to furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest as determined under section of CGST Act, 2017 within the period of (a) If goods are not exported: Within 15 days after the expiry of three months from the date of issue of the invoice for export or (b) If goods are exported out of India: Within 15 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 (Only exception to above rule is, if export is made to Nepal and Bhutan than in that case no foreign currency will be required). In above case

assessee will be eligible to claim refund of taxes paid on inputs procured by him for the purpose of provision of service.

What if in given case Mr. R has supplied service to his own establishment? Whether in such case he will be eligible to execute Bond/LUT?

It shall be noted that one of the essential conditions of making service to be entitled of export of service is recipient and supplier are not mere distinct establishment of same person. Therefore, person will not be entitled to treat provision of service as export of service; further as per notification provided for exemption of service such service will be covered under the category of exempt service. Therefore, service supplied by Mr. R will be treated as exempt service.

If we want analysis another method and logic behind it, below mentioned illustrations is to be considered.

Illustration: Mr. J has exported renting service of a shop situated in Australia. The recipient of service is situated in Australia. Mr. J is registered under GST; whether he will be liable to pay tax, how this supply will be treated and what will be the tax implications?

In the give case there is supply of service by Mr. J who is registered person under GST. As supplier is situated in India and recipient is situated outside India; if Mr. J is receiving foreign exchange and place of supply is outside India than in that case supply of service will be deemed to be entitle to be treated as export of service.

For determination of place of supply of service, when either of parties are situated outside India section of IGST Act, 2017 will be referred. It has been stated that in case of any supply of service relating to immovable property place of supply of service will be, place where immovable property is situated. In given case as property is situated in Australia, place of supply of service will be Australia. While determining this assessee shall keep in mind that any residential property given by assessee for residential purpose will be exempted by virtue of notification 12/2017 of CGST Act, 2017.

Further it has been stated that any supply of service in nature of export will deemed to be treated as Inter-state supply and IGST will be levied on such supply.

Now from above points it is clear that supply of service by Mr. J is entitled to be treated as export of service and IGST will be levied on such supply. Now if Mr. J is deciding to pay tax on such supply instead of supply service by execution of Bond/LUT than in that case he will be eligible to claim refund of IGST paid by him.

Question that arises in mind of common man is when person is supplying by executing Bond/LUT than in that case he is eligible for refund of Input tax credit and her when he is paying tax, he is eligible only for refund of tax paid by such person?

This section has been drafted by keeping in mind that whenever assessee will discharge his liability than he

will utilize all the Input Tax Credit which for the which he is eligible. In same way whenever person is required pay IGST on exports than he will be utilizing all the eligible credit while discharging his IGST liability. Due to such logic whenever assessee is exporting goods by way of payment of IGST than he will eligible only for refund of IGST paid by him on such exports.

What if Mr. J has exported goods instead of supply of service? What are the important points that he shall consider while filling refund application?

In case Mr. J has supplied goods instead of supply of service than in that case Mr. J will not be required to bring foreign exchange and only condition that is to be satisfied by Mr. J will be goods shall be supplied out of India to the place outside India.

Further following points shall be consider for application of refund by Mr. J(1) Shipping bill filed by Mr. J on export of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. Along with this it shall be noted that, such application will be treated as valid application only in case when- Person in charge of the conveyance carrying the export goods will duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; - Assessee shall ensure that he has furnished a valid GSTR-3B return and has also furnished relevant details of export invoices in GSTR-1. Further, customs have electronically transmitted to the common portal, about confirmation on such exports.What if exporter has supplied goods through e-commerce platform?

In case if exporter is supplying goods through e-commerce operator than in that case E-commerce operators can export goods through Foreign Post Office (FPO), such export will be treated as zero-rated exports. Assessee will be required to file PBE-1.

Illustration: Mr. J has exported renting service of a shop situated in Australia. The recipient of service is situated in Australia. Mr. J is registered under GST; whether he will be liable to pay tax, how this supply will be treated and what will be the tax implications?

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# DECODING CLAUSE 44 OF FORM 3CD



Ca. Nihit Somani

Clause 44 made its debut as a new addition to Form 3CD of the Tax Audit Report (TAR) starting from the Assessment Year 2022-23. It is worth noting that although this clause was initially introduced through a notification dated July 20, 2018, its enforcement was consistently postponed each year through a series of circulars. The final circular addressing this matter was Circular No. 05/2021, dated March 25, 2021, which extended the deadline for its implementation until March 31, 2022. Consequently, any Tax Audit Report in Form 3CD submitted after March 31, 2022, must adhere to the requirements outlined in clause 44.

Since the introduction of this clause in the Tax Audit Report, tax professionals have expressed significant concerns and challenges related to gathering the necessary information from the assessee's accounting records. Additionally, there has been ongoing uncertainty surrounding the interpretation of the information presented in this clause, particularly from the perspective of tax authorities.

This article endeavors to offer valuable insights into Clause 44, taking into consideration the latest Revised Guidance Note issued by the Institute of Chartered Accountants of India (ICAI) [Please see: "Guidance Note on Tax Audit under Section of the Income-tax Act, 1961 (Revised 2023) – Ninth Edition 2023"]. Additionally, the author delves into a discussion about the risks associated with and potential mitigating strategies for providing information within this clause.

## Consolidated or Expenditure-wise information:

The primary question that arises is whether to provide the figures in a consolidated manner or furnish expenditure-wise details. In this context, Para 82.1 of the Guidance Note provides clarity by stating that the information required under this clause should be presented in a consolidated fashion, and there is no requirement to provide figures on an expenditure head-wise or nature-wise basis.

However, the Guidance Note suggests having a reconciliation statement in the following manner:

Description	Amount (Rs)
Total value of expenditure in P&L for the yearxxxx	Add: Total value capital expenditure not included in P&L for the

yearxxxxLess: Total value of non-cash charges considered as expenditurexxxxLess: Total value of expenditure excluded for being transactions in securities and transaction in moneyxxxxLess: Total value of expenditure excluded by virtue of Schedule III to the CGST Act 2017.xxxxBalance being value of expenditure for clause 44xxxx[Details of all deductions and additions must be maintained for each sub- entity (GSTIN wise) of the legal entity]

Capital expenditure to be included or not:

According to the guidance note, the term "expenditure" encompasses "capital expenditure" as well. Therefore, it is essential to provide information regarding the capital expenditure also in the said clause. However, if the assessee is of the view that the capital expenditure need not be included in the total expenditure and is not in a position to give the details as required in clause 44 in respect of capital expenditures, the tax auditor should report the same in his main report (Form 3CA/3CB).

Inter-branch transfers:

When it comes to transactions between distinct units of the same entity, it is crucial for the assessee to maintain accurate records. Specifically, these records should clearly indicate the value of outward supplies recorded by one unit as sales for determining GST liability and the value of inward supplies recorded by another unit as purchases for the purpose of claiming input tax credit. Although these values should be eliminated in the consolidated financial statements, it's essential to prepare a comprehensive reconciliation statement and keep it on record. This reconciliation statement serves as a valuable resource during tax assessments and ensures transparency and compliance with tax regulations.

## Decoding the figures in Clause 44:

It is essential to bear in mind that the consequences of disclosing the data in this clause remain uncertain. As we are aware, the department is actively gathering information from all available sources, including the utilization of Artificial Intelligence (AI). Consequently, we cannot dismiss the possibility of cases coming under scrutiny triggered by specific flags or criteria associated with the figures reported in various columns of the Table given under clause 44. For instance, if the ratio of

expenditures related to entities not registered under GST (as presented in column 7) compared to the total expenditure incurred (as reported in column 2) surpasses certain predefined thresholds, an inquiry may be initiated. This inquiry could take an internal or/and external form. When referring to internal scrutiny, it means that the department may conduct a comprehensive analysis of the available data for further investigation. In contrast, by mentioning external scrutiny, it means that the department may issue assessment notices to taxpayers, requesting additional information. It is prudent to be more concerned about internal scrutiny than external scrutiny, especially in light of the Aadhaar-PAN linking incident, given the department's extensive repository of big data.

Expenses related to entities having GSTIN but supplied exempt goods or entities falling under Composition Scheme:

Regarding the reporting of expenses related to supplies made by entities registered under GST but supplied exempted goods to the assessee or entities registered as composite suppliers, it becomes quite challenging to compile this information unless the taxpayer maintains their accounting records in a way that includes such details. This becomes particularly complex when dealing with a long list of suppliers. Therefore, a decision must be made on whether to provide figures in this column or not. If the choice is made to omit to furnish the information in this column, it is important to provide an explanation for this omission in the form of a comment in the main report.

#### **Expenses related to entities having GSTIN and supplied taxable goods:**

Regarding the reporting of expenses related to supplies made by regular suppliers (excluding composite suppliers), one has got the option to cross-verify the data provided by the assessee using information obtained from the following sources:(i) From GST Portal: We can retrieve Table 8A of GSTR 9 data in an Excel sheet format downloaded from the GST portal and calculate the total taxable value figures.(ii) From the Income Tax Site: We can verify the value of purchases from GST-registered suppliers as reported in the Annual Information Statement (AIS).While it is possible that the figures from these sources may not align perfectly, they can provide us with a sense of the reasonableness of the data provided by the assessee. In cases where a significant discrepancy exists, we may request an explanation from the assessee and then make a decision accordingly.

#### **Expenses related to entities having GSTIN and supplied taxable goods:**

If the figures reported under the column "Expenditures relating to entities not registered under GST" are

substantial, it is imperative for an auditor to investigate and understand the underlying reasons. The following factors may help mitigate the risk of any anomalies:(a) Assessee engaged in the business of dealing in agricultural commodities that are exempt from tax;(b) Major expenditures are covered under Non-GST or exempt category;(c) Where the expenses are subjected to TDS;(d) Where the payment for the expenses were made through the banking channel;(e) Smaller businesses might be involved in the supply chain, and they may fall below the GST registration threshold, contributing to the presence of non-registered entities in the expenses.By examining these factors and obtaining a clear understanding of the nature of the expenses and the entities involved, the auditor can make a more informed assessment and mitigate the risk of misinterpretation or misreporting.

As a corollary, when the figures reported in the mentioned column are substantial, and the following instances are present, the auditor should exercise heightened vigilance to ensure the authenticity of the transactions:(a) Taxable Products: If the products purchased are taxable under GST, it raises the significance of these transactions and warrants closer scrutiny.(b) Cash Payments: Payments made in cash can increase the risk of irregularities or inaccuracies in reporting, and therefore, require careful examination.(c) Absence of TDS: Transactions not subjected to Tax Deducted at Source (TDS) can potentially indicate a need for closer inspection, as TDS is a common regulatory requirement for certain types of payments.(d) Internal Documentation: Transactions primarily supported by internal vouchers, bills, or purchase notes, as opposed to external invoices or receipts, may necessitate a more thorough examination to verify their legitimacy.If the auditor encounters difficulties in forming a conclusive opinion based on the data provided by the assessee, it is essential to include appropriate comments in the main report. These comments should clearly convey an concerns or uncertainties regarding the reported transactions, ensuring transparency and clarity in the audit process.

#### **Expenses covered under Reverse Charge Mechanism (RCM):**

In case of expenditures that were subjected to tax on reverse charge basis, we may encounter with two issues-(a) Expenses incurred in respect of supplies made by a person registered under GST but issuing RCM invoices;(b) Expenses incurred in respect of supplies made by an unregistered person where the assessee pays tax under RCM on voluntary basis.In the first scenario, the expenditure under the said category ought to be reported under column 5 of clause 44 i.e., "Relating to other registered entities".

In the second scenario, the expenditure under the said category should be reported under column 7 i.e., "Expenditure relating to entities not registered under GST".





5th Sept. 2023 Celebration of Teachers Day



Ganesh Pooja at Branch



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