

## **GST Guidance Note 10**

### **Imports and Exports**

#### **What this Guidance Note contains?**

- 10.01 Broad scheme of taxation of imports in GST*
- 10.02 Treatment of supplies to and by SEZ units/SEZ developers*
- 10.03 Treatment of exports under GST*
- 10.04 Fate of export promotion schemes like Advance License, EPCG in GST.*
- 10.05 Treatment of warehoused goods*
- 10.06 Examples of supplies outside India which do not constitute export of goods or services.*
- 10.07 Place of supply of goods and/or services in cases of import or export of goods and/or services.*
- 10.08 Treatment of supplies in continental shelf and exclusive economic zone of India.*
- 10.09 Meaning of continental shelf and exclusive economic zone of India*
- 10.10 Refunds of taxes on exports and deemed exports be claimed.*
- 10.11 Applicable penal provisions to imports- IGST law or the Customs Act 1962*
- 10.12 Will SEZ Act have an overriding effect over the GST Acts?*
- 10.13 Tax treatment of export of goods and services to Nepal and Bhutan*
- 10.14 Merchant export*
- 10.15 Deemed export*
- 10.16 High-seas sales*

#### **10.01 Broad scheme of taxation of imports in GST**

As per provisions of the IGST Act import of goods into India shall be deemed to be a supply in the course of inter-State trade or commerce. It has also been provided that 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 at the point when duties of Customs are levied on the said goods under the Customs Act, 1962, on a value as determined under the Customs Tariff Act, 1975.

The Taxation Laws (Amendment) Act, 2017 provides that IGST on imports will be levied at value of imported article as determined under the Customs Act plus duty of customs and any other sum chargeable in addition to customs duty (excluding GST and GST Cess). This in effect makes levy of IGST at par with present levy of CVD which is on basic value plus customs duty.

As per the definition of ‘supply’ under CGST Act, import of services for a consideration whether or not in the course or furtherance of business is deemed to be supply and as per the IGST Act, supply of services in the course of import into the territory of India, shall be deemed as supply of services in the course of inter-State trade or commerce. Accordingly, Integrated Tax would be levied on import of services. The Integrated Tax on import of services would be payable by the recipient under reverse charge.

Further, there would be no change in applicability of countervailing duty levied under section 9BB of the Customs Tariff Act, 1975 (and different from the additional duty of Customs levied under section 3, *ibid.*, also known as CVD), anti-dumping or safeguard duties, where ever imposed by the Government.

## **10.02 Treatment of supplies to and by SEZ units/SEZ developers**

As per the IGST Act, supplies of goods and services to or by Special Economic Zone (SEZ) units or SEZ developers will be treated as inter-State supplies. As per the SEZ Act, supply of goods from SEZs are treated as import of goods into India. Accordingly Basic Customs Duty (BCD) & Integrated GST will be levied on such supplies from SEZ units and SEZ developers into DTA.

Supplies of goods and/or services to SEZ units or SEZ developers are to be treated as “zero rated supplies” and the SEZ developer or SEZ unit receiving such zero rated supplies will be given similar treatment as exports (please refer next question for details).

The Government vide Notification No. 18/2017- Integrated Tax (Rate) dated 05.07.2017 has exempted services imported by a SEZ unit or SEZ developer for authorized operations from whole of IGST.

Proviso to rule 8(1) of the CGST Rules makes it mandatory for SEZ unit (s) or SEZ developer to obtain separate registration as a business vertical distinct from its other units located outside the SEZ.

## **10.03 Treatment of exports under GST**

As per the provisions of IGST Act, export of goods and/or services are to be treated as “zero rated supplies” and a registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options:

- i. Export under bond or letter of undertaking without payment of Integrated Tax and claim refund of unutilized input tax credit.
- ii. Export on payment of Integrated Tax and claim refund of the tax so paid on goods and services exported.

The aforesaid refunds will be subject to prescribed rules, safeguards and procedures

#### **10.04 Fate of export promotion schemes like Advance License, EPCG in GST.**

After 1<sup>st</sup> July 2017, the benefits under Advance authorization scheme, Export Promotion Capital Goods (EPCG) scheme, duty credit scrips such as Merchandise Exports from India Scheme (MEIS) & Service Exports from India Scheme (SEIS) shall be restricted only to Basic Customs Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty in respect of goods leviable to IGST. For items specified in Fourth Schedule to the Central Excise Act, 1944 (specified petroleum products, tobacco etc.) exemption from Additional Duty leviable under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 shall be available.

Supply of goods by a registered person against Advance Authorisation and supply of capital goods by a registered person against EPCG authorisation has been notified as deemed exports vide Notification No. 48/2017- Central Tax dated 18.10.2017. (Refer the notification for exhaustive list of supply of goods notified as deemed exports)

#### **10.05 Treatment of warehoused goods**

For deposit of imported goods into a warehouse and for subsequent clearance of goods from the warehouse for home consumption, provisions made under Customs Act, 1962 shall be applicable. The Taxation Laws (Amendment) Act, 2017 provides for inclusion of 'a warehouse' in the definition of Customs area' to ensure that an importer would not be required to pay the IGST at the time of removal of goods from a Customs station to a bonded warehouse.

On clearance of goods from a warehouse for home consumption Integrated Tax would be leviable in place of CVD and SAD which was levied in pre-GST regime.

#### **10.06 Examples of supplies outside India which do not constitute export of goods or services.**

- a. Supply of service to a person located outside India where place of supply of service is in India. For example - a property rented out in Mumbai to a person residing in Dubai; agent located in India providing service to a New York based exporter for selling goods to China.

- b. Supply of services where consideration is received in Indian currency or a currency other than convertible currency. For example supply of consultancy service by an Indian consulting firm to an overseas entity, payment for which is made in Indian rupees by Indian branch of overseas entity.
- c. Provision of service by an Indian entity to a branch or office of the same entity located overseas.

### **10.07 Place of supply of goods and/or services in cases of import or export of goods and/or services.**

For detailed discussions please see section on Place of Supply

### **10.08 Treatment of supplies in exclusive economic zone of India.**

Areas which do not constitute any specific State but are a part of Union of India (e.g. EEZ) will also be treated as Union territories for the purpose of GST law. These have been given the nomenclature of ‘other territories’ and treated as Union territories under GST law. Thus in line with treatment of transactions to/from UTs without legislature, supplies to/from EEZ would be treated as inter-State supplies chargeable to Integrated Tax. Supplies within /EEZ will be chargeable to UT Tax. For example, services of drilling provided on a rig located in EEZ by a service provider would be chargeable to Integrated Tax even if the service provider is located in the State adjacent to such EEZ.

The manner of administration of levy of Integrated Tax/UT Tax on supplies from or within ‘other territories’ like continental shelf and EEZ is not fully clear at the moment. Another aspect of the jurisdiction is that International law as well as the Maritime Zones Act, 1976 recognizes limited jurisdiction over the EEZ. Accordingly, there is a school of thought that special provisions may be provided by the Government regarding levability of GST on supplies to and from EEZ,

### **10.09 Meaning of continental shelf and exclusive economic zone of India**

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.

The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline. Continental Shelf was an older concept in International Law to define maritime jurisdiction of coastal State which has now largely been replaced worldwide by

concept of EEZ which prescribes a uniform limit of 200 nautical miles irrespective of the natural prolongation of the continental shelf

### **10.10 Refunds of taxes on exports and deemed exports be claimed.**

In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgment of application in Form GST RFD – 01.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

In the case of refund of IGST paid on exports, the shipping bill filed with the Customs is treated as an application for refund and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR-3 by the applicant. The Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of exporter.

### **10.11 Applicable penal provisions to imports- IGST law or the Customs Act 1962**

As per the provisions of IGST Act, Integrated Tax on goods imported into India shall be levied and collected in accordance with provisions of Customs Tariff Act 1975. Accordingly for any offences relating to levy of Integrated Tax on imports penal provisions of Customs Act, 1962 would be leviable. However import of services has been deemed as a supply under Central GST Act and import of services is treated as supply of services in the course of inter-State supply. Accordingly for offences relating to import of services provision of IGST Law will be applicable.

### **10.12 Will SEZ Act have an overriding effect over the GST Acts?**

As per Section 51 of SEZ Act, the SEZ Act has an overriding effect on any other law for the time being in force. This overriding effect is limited only to the laws notified by the Central Government. There is no clarity whether GST laws will be notified under the SEZ Act. Another school of thought is that in view of the provisions of the amended Article 246 of the Constitution, SEZ Act cannot have overriding effect on GST laws. It is expected that to preserve the SEZ scheme, the SEZ Act may be given an overriding effect over GST Acts. However, unless express provision is made either in SEZ Act or GST Act to provide overriding effect to SEZ Act, the SEZ Act will not override GST Acts.

### **10.13 Tax treatment of export of goods and services to Nepal and Bhutan**

In terms of para 2.52 of the Indian Foreign Trade Policy (2015-2020) exports proceeds from Nepal and Bhutan can be realized in Indian rupees. Despite receipt of export proceeds in India, rupee exports of goods to Nepal and Bhutan will be treated at par with export to any other country as definition of ‘export of goods’ under IGST Act attaches no condition other than ‘taking goods out of India to a place outside India’.

However in case of export of services, in case export proceeds are received in Indian rupees, it will not qualify as ‘export’ as the definition of ‘export of services’ mandates receipt of payment in ‘convertible foreign exchange. To overcome this situation, the Government vide Notification No.42/2017 – Integrated Tax (Rate) dated 27.10.2017 has exempted from levy of tax, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

In a nutshell, service to Nepal or Bhutan will be treated as Export of services irrespective of realisation of payment in Indian Rupee and attract no IGST.

By a subsequent Notification No.55/2017 – Central Tax dated 15.11.2017, an explanation was inserted in rule 43, after sub-rule (2) providing that supply of services to Nepal & Bhutan for payment in INR will not be considered as exempt supply for the purpose of arriving at the quantum of reversal of ITC attributable to exempted supplies.

### **10.14 Merchant export**

The concept of merchant or manufacturer exporter has become irrelevant under the GST regime. The procedure in respect of the supplies made for export is same for both merchant exporter and a manufacturer exporter.

### **10.15 Deemed export**

Deemed export has been defined under section 2(39) of the CGST Act as supplies of goods as may be notified under section 147 of the said Act. Under section 147, the Government may, on the recommendation of the GST Council, notify certain supplies of goods manufactured in India 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.

The Government vide Notification No. 48/2017- Central Tax dated 18.10.2017 has notified list of supply of goods to be treated as deemed exports.

## 10.16 High-seas sales

### 10.16.1 What is High-seas sale?

If a buyer wants to sell his consignment to a third party before arrival of goods but after sailing vessel from load port, such sale is known as high sea sale. In simple words, the ownership of goods is transferred, when goods are in transit.

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale.

### 10.16.2 Which taxes will be levied at the time of high-seas sale?

As per Sec 7(2) of the IGST Act, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be an inter-State supply. Thus such a transaction of sale/transfer will be subject to IGST under the IGST Act. Besides the Custom duty, the sale of goods on high seas basis will also be subjected to IGST.

### 10.16.3 When will IGST be levied on imported goods?

As per Circular No.33/2017- Customs dated 1st August, 2017, the GST council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high-seas-sales-contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

### 10.16.4 Applicability of IGST on goods transferred/sold while being deposited in a warehouse

As per Section (8A) of the Customs Tariff Act, 1975, where goods deposited in a customs warehouse are sold to any person before clearance for home consumption or export, the value of such goods for the purpose of payment of IGST will be;

- the value for which Bill of Entry (BOE) for warehousing was submitted or
- the transaction value of such goods,

whichever is higher.

Thus if the warehoused goods are sold at a value lower than the value for which BOE for warehousing was filed, IGST will be payable on the value for the BOE for warehousing was filed.

The similar scheme will apply for payment of compensation cess, wherever applicable. [Section (10A) of the Customs Tariff Act, 1975]

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