

GST/ FTP Benefits for Exporters

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In these times of Global trade wars with President Trump taking aggressive stand and not making a differentiation between developing countries and USA, exporters of goods and services have to be competitive.

The Ministry of Commerce and the Ministry of Finance are not working in a well co-ordinated manner leading to some intended benefits not reaching the exporter. Delays in benefits as well as the denial of just refund or inordinate delay plays havoc with the working capital of the exporter. This also leads to a higher cost of exports.

Some of the common areas where one finds issues leading to either no claim or erroneous claim or tips to enable incentives to be cashed have been examined in this article as under:

- 1) Duty Drawback & GST Refund are mutually exclusive. Even then, in respect of one shipping bill, both benefits can be claimed simultaneously after 01.10.2017.
- 2) There is an understanding the inputs credit is not available where output is not taxable or at nil rate.

Inputs & Input services used in the production of an intermediate product are eligible for credit & refund if it is subsequently captively used in exporting the finished product. This benefit is available even if the intermediate product is exempted from GST (Ex. Electricity) or even if the intermediate product manufactured in a separate factory. In the earlier central excise regime hon'ble Supreme Court confirmed this. Escorts Ltd Vs CCE 2004 (171) ELT 145 (S.C) & Hindustan Sanitaryware & Industries VS CCE 2002 (145) E.L.T 3 (S.C)

Quantum of usage of intermediate product for the finished product is not relevant as long as the factum of usage is established. Eligibility of credit& refund is determined on the basis of turnover of export only.

The above logic is equally applicable in respect of intermediate product used in clearances of goods to SEZ.

- 3) GST compensation cess is also eligible for refund if it is used in export/SEZ supplies. The same is clarified in Para 5 of Circular No. 45/19/2018-GST, dated 30-5-2018. (Example: Rs. 400 per MT paid on coal purchases).
- 4) Restrictions of export with payment of IGST in terms of 96(10) is clearly ultra-virus to Section 54 of the GST Act. Courts are expected to strike down this Rule.
- 5) EOU's are entitled to file a Bill of Entry with payment of IGST on their imports & without payment of BCD. Both are exclusive one is creditable & other is non creditable. Customs Department should not insist on the importer either to opt for exemption of both or payment of both taxes. EOU's are allowed to export with payment of IGST only when it pays IGST at the time of import.
- 6) If EOU pays the BCD at time of import it would become a cost to importer. So presently all EOU's filing the Bill of Entry without payment of BCD & IGST. Since EOU opted for IGST exemption on import they are forced to file monthly ITC refund application with the officer, they have to undergo all hassles instead of export with payment of GST. The understanding of the customs department is wrong to our understanding. Representation by export bodies may find relief.
- 7) Goods may be Non-GST goods still it would be treated as Zero rated supply once the goods are exported.
- 8) Goods may be exempt from GST (Ex:- Fish, prawn, agriculture produce) still it would be treated as Zero rated supply once the goods are exported & ITC would be refunded.
- 9) The exporter should be allowed to claim the refund of GST paid on Capital goods also. There are industries completely Capital intensive industries into exports, their working capital is blocked to the extent of ITC on Capital Goods. To this extent, law should be amended.

- 10) Condition of receipt of convertible foreign exchange is not required for exporter of goods for the purpose of GST.
- 11) Receipt of consideration in INR is allowed wherever it is permitted by RBI.
- 12) 'Place of Supply' for intermediary has to be changed & law has to be amended. It maybe represented to avoid countless disputes already there (from October 2011 onwards) and many more in the offing.
- 13) In case of intermediary service being exported, it maybe examined whether the SEIS scheme can be claimed.
- 14) There are cases where IGST refund is not sanctioned within time (seven days) without fault of exporter & when there is no error code (SB; 000). In that case, exporter can file the application for interest on delay in disbursing the amount. If this is done by most exporters- no genuine case would see any delay.
- 15) 90% of ITC shall be granted as refund within 7 days on a provisional basis. Otherwise, the exporter should be eligible for interest for such delay. This issue is pending before the Court in the case of Saraf Natural Stone v. Union of India - 2018 (19) G.S.T.L. J74 (Guj.)
- 16) Even if the exporter not opted for MEIS benefit in the shipping bill, the same has to be granted by DGFT in terms of various High Court orders. Pasha International Vs CC 2019 (365) E.L.T. 669 (Mad.)
- 17) Old arrears whatever liability of excise duty, service tax either under forward charge or reverse charge can be paid through CGST credit as per Circular No. 42/16/2018-GST, dated 13-4-2018. The benefits available in case of recovery of tax should be equally applicable even if the assessee paid the amounts on his own.
- 18) Once the particular amount for supply of goods or service is billed to SEZ Unit, whether it is consumed in SEZ or consumed outside of SEZ premises it is treated as Zero rated supply only & eligible for the export benefit.
- 19) Seller of goods in DTA to SEZ Unit is eligible for Duty Drawback benefits. The procedure prescribed in SEZ Act, 2005 has to be

followed. Tax invoice issued in terms of GST Law will be treated as bill of export for refund claim.

- 20) Expenditure incurred for maintenance of foreign branch office would not be considered as an import of service in hands of Head Office located in India.
- 21) Now SEZ Units & EOU's are eligible for benefits MEIS Scrips.
- 22) Out & Out sales, international trading sales, merchant trading sales, sale of goods when they are in Customs Bonded Warehouse & high sea sales are not liable for GST & Credit reversal is also not required as it is not exempted turnover.
- 23) Proportionate Credit reversal for MEIS & SEIS Scrips exempted sales required only for common credit i.e office overheads, not for entire goods & services used in production floor or factory.
- 24) Presently the GST officers are rejecting the ITC refund claims to SEZ Units saying there is no specific provision in GST law for allowing ITC refund to SEZ Units. As per department, only supplier to SEZ is entitled to claim the refund. However, it is implied in the law that the SEZ Unit is also entitled to claim the refund of ITC as they are also the exporter of goods. SEZ Unit cannot be put in disadvantageous position as against a DTA Unit.
- 25) There are Capital Goods (equipments which are embodied in the technical building) which are ineligible for credit can be procured through EPCG Scheme so that IGST is exempted & exporter can save some cost.
- 26) In case of domestic invalidation of EPCG scheme, ensure always supplier is only going for refund of GST on such invalidation because there are some cases the buyer is not eligible for credit of GST on such goods therefore ineligible for refund even under deemed export notification also. If the supplier is opting for refund the question of eligibility of credit in the hands of the supplier would not come as it is output tax refund.

- 27) Compliance of conditions in the case of sale of goods to Merchant Exporter is *sine qua non* for exemption otherwise supplier would saddle with huge demand.
- 28) Even if exporter purchases one transaction with the benefit of Merchant Exporter Notification, he is completely debarred for the option of export with payment of IGST.
- 29) Credit review has to be done in order to optimize the credits & minimize the tax cost especially for export community.
- 30) EOU can have the option to procure the goods without payment of GST - under deemed export of goods.
- 31) Advance authorization Vs Duty drawback benefits needs to be examined and chosen wisely. There are number of cases Duty Drawback under All Industry Rate is always beneficial than Advance authorization.
- 32) EOU - benefit of customs duty exemption vs drawback benefit to be examined - if drawback benefit is more, examine the option of coming out of EOU to be examined.

These are some of the issues and suggestions or knowledge inputs which may assist in applying for, getting the refund/ benefit with interest.

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