



DEEMED EXPERT AND IMPACT ON EPC POWER BUSINESS

CMA Utpal Kumar Saha

AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd.

At the outset of this article we need to understand the basic concept of deemed export under Goods and Services Tax (GST) as well as Foreign Trade Policy (FTP) point of view.

Deemed Export under Goods and Services Tax (GST):

Deemed export under section 147 of GST Act-

The Government may, on the recommendation of the Council, notify certain supplies of goods as deemed export, where supplies do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactures in India.

The basic ingredients are as follows:

- i) Government will notify category of supplies of goods to be as deemed export, based on the recommendations of GST Council;
- ii) Applicable only to supplies of goods which is within India;
- iii) Payment with respect to such supply will be either in Indian rupees or in convertible foreign exchange;
- iv) Goods are to be manufactured in India only;

Now, we look at the definition of the term manufacture under GST law. Section 2(72) of GST law, manufacture means processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use the term “manufacturer” shall be constructed accordingly. Supplies of imported goods, which are manufactured outside of India, will not be covered under deemed export.

Till date Government has notified the following supplies of goods as deemed export vide notification no. 48/2017 – CT dated 18-10-2017

- i) Supplies of goods by a registered person against Advance Authorisation;
- ii) Supplies of goods by a registered person against Export Promotion Capital Goods (EPCG) Authorisation;
- iii) Supplies of goods by a registered person to Export Oriented Unit;
- iv) Supply of gold by a Bank or Public Sector Undertaking specified in the Notification No. 50/2017-Cus, dated 30th June 2017 against Advance Authorisation

Currently these four categories supply are only deemed export under GST Law.

Now we are focusing these deemed export with Foreign Trade Policy (FTP) 2015-20 point of view also.

Deemed Export under FTP is governed by Chapter 7 of Policy Book. All the category of supply under paragraph 7.02 of FTP will be treated as deemed export. Para 7.02 is reproduced for reference.

7.02 Categories of Supply

Supply of goods under following categories (a) to (d) by a manufacturer and under categories (e) to (h) by main / sub-contractors shall be regarded as “Deemed Exports”:

A. Supply by manufacturer:

(a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement /DFIA;

(b) Supply of goods to EOU / STP / EHTP /BTP;

(c) Supply of capital goods against EPCG Authorisation;

(d) Deleted

B. Supply by main / sub-contractor(s):

- (e) (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.
- (ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.
- (iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies /Funds.
- (iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A.
- (f) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.
- (ii) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.
- (iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.
- (g) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the Customs notification no. 84/97-Customs dated 11.11.1997, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.
- (h) Supply of goods to nuclear power projects provided:
- (i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification no. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein.
- (ii) The project should have a capacity of 440 MW or more.
- (iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.
- (iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Under foreign trade policy, category A supply made by a manufacturer and category B supply by a contractor/ sub-contractor will be treated as deemed export.

However, under GST law only specific four categories of supply will be treated as deemed export. Interestingly, a particular supply is deemed export under Foreign Trade Policy, it may not be a deemed export under GST. There is a disparity between the two policies.

Deemed Export as per GST	Deemed Export as per FTP 2015-20	Points of Similarity
The Government may, on the recommendation of the Council, notify certain supplies of goods as deemed export, where supplies do	Transactions in which goods supplied do not leave country, and payment is received either in India rupees or in free foreign exchange. Supply of as	i) Goods do not leave India ii) Payment will be either in rupees or in convertible foreign exchange

not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactures in India	mentioned in paragraph 7.02 below shall be regarded ad Deemed Export provided goods are manufactured in India.	iii) Goods are manufactured in India
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Impact of change of definition of deemed export under GST and big setback to EPC Power industry-

Earlier, under Central Excise Regime, supply of goods to a mega power project by a contractor or sub-contractor is exempted from Excise duty. As a result supplies of goods are only suffered CST or VAT and Entry Tax in some of the States. As a result there is a saving nearly 10% to 14% of the goods supplied to Mega Power Project. With the introduction of GST, supply of goods to mega power project is not a deemed export. Now, all supply of goods to Mega Power Projects is levied under GST at the rate almost 18%.

A comparative chart is prepared to demonstrate the effective tax rates in pre GST and post GST -

SI No	Nature of Transaction	Tax Categories	Rates	Effective Rates
1	Local Sale (Movement of goods within the State) - VAT Sale	Central Excise	0%	5% to 14.5%
		VAT	5% to 14.5%	
2	CST Sale u/s 3(a) of CST Act, 1956	Central Excise	0%	3% to 10%
		CST	2%	
		Entry Tax (a few States)	1% to 8%	
3	CST Sale u/s 3(b) of CST Act, 1956 (commonly known as Sale in Transit)	Central Excise	0%	1% to 8%
		CST	0%	
		Entry Tax (a few States)	1% to 8%	
4	Intra State/Inter State	GST	18% to 28%	18% to 28%

Earlier, Excise Duty was exempted, CST @2%/ 0%, VAT @5%/14.5% and Entry Tax in some of the States ranging from 1% to 8%. Effectively contractors were paying 1% to 14.5% tax on supply of goods to Mega Power Project. Such benefit has been withdrawn and GST in most of the goods is under 18% tax bracket and as a result project authority has to face some incremental cost to the ongoing projects. This would also badly impact the cash flow of the contractors. In some cases project authority has denied to set off the incremental cost to the contractors as the contractual period is completed and hence any increase of taxation would in the hands of the contractors. As a result EPC contractors mostly in power sector facing substantial cash flow issues. Government may rethink section 147 and bring back supplies under category B of para 7.02 of FTP under Deemed Export category in order to minimize the project cost and provide a better level playing field to the EPC Contractors.

Claim of Refund under Deemed export -

Deemed export is subject to levy of GST. Refund of GST may be claimed either by supplier of goods or by recipient of goods, as the case may be. Third proviso to rule 89 specify the claim of refund either by the recipient or by the supplier of deemed export.

Notification 49/2017 - CT, dated 18-10-2017 also lays down the list of evidences

- i) An acknowledgement by the jurisdictional tax officer of the Advance Authorisation Holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said authorization Holder or Export Promotion Capital Goods holder, or a copy of tax invoice under which such supplies have been received by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund of such supplies and the supplier may claim the refund.