GST IMPACT ON EXPORTERS

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India is the part of WTO agreement, wherein it was agreed by all the countries that taxes will not be exported. In other words, tax will not be part of value of cost & services which is getting exported. One of the objective as mentioned in Para 1.06 of Foreign Trade Policy 2015-19 on the heading of Trade Facilitation& Ease Of Doing business" that,

Quote:
"Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The various provisions of FTP and measures taken by the Government in the direction of trade facilitation are consolidated under this chapter for the benefit of stakeholders of import and export trade.".
Un-quote

However, when we go through the provisions and frequent amendments made in GST Laws & Rules, policy makers have lost the sight of understanding the issues of exporters.

A. EXPORTERS WITHOUT AVAILING ANY SCHEME BENEFITS UNDER ADVANCE AUTHORISATION OR EOU OR SEZ:

1) **Initial bottleneck due to system:**

   Number of exports refund were stuck up on account of interface of ICE Gate Site meant for export and import and GSTN, where payment of IGST on exports reflected in tax invoice was matched with shipping bill of ICE Gate. Since, there was no clarity amongst the exporters, EGM date and commercial invoice number for exports and tax invoice under GST were not matching. There was no provision of mentioning the EGM date in earlier returns and shipping bill reflects only commercial invoice number for exports and not the tax invoice number. Therefore, refunds were stuck up for long period of time and thereafter hue and cry of the exporters, department provided the solution to upload separate annexure and number of refund claims were released. But during the period exporters have suffered lot of liquidity crunch and orders were cancelled.

2) **Latest Amendments in Section 16(4) of IGST Act 2017 announced in Budget 2021-22**.
   New Clause has been inserted as sub-section 4 of Section 16 of IGST Act 2017, which is reproduced below:

   Quote:
   (4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify

   (i) a class of persons, who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

   (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.
   Un-Quote:

All the exporters may not be permitted to claim refund of IGST paid on exports and only certain class of goods or services or certain class of exporters will be allowed to claim such refund.
Further, proviso to Section 16(3) has been made which is reproduced below:

Quote
Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Un-Quote
It means, exporter who has not received the remittances in prescribed period as laid down under FEMA, such exporters will have to pay back the refund alongwith interest, which is absolutely unjustified. Exporters will pay the taxes by utilizing input tax credit accumulated on account of receipts of inputs and services which is used in export products. But still, it will have the additional cost impact and is against the principal accepted in WTO.

Further, definition of "exports of goods" very clearly specifies that "Export of goods - with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

When there is no specific provision like definition of export of services relating to receipt of foreign exchange against such goods, this provision is not in the good spirit. It is the dream of Hon Prime Minister to make Indian Economy stronger to the extent of USD 5 TN but, exporters will have to bear additional cost on free samples exported and they will have to reverse the ITC in terms of Section 17(5)(h) of CGST Act 2017. As such based on definition of exports when free samples are exported out of India, it is covered under the meaning of zero rated supply, but still exporters will suffer.

The IGST refund module has been designed in line with the above rule and has an in built mechanism to automatically grant refund after validating the Shipping Bill data with available in ICES against the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and any mis-match of the laid down parameters returns giving following error/response codes

Code	Indicates
SB000	Successfully validated
SB001	Invalid SB details
SB002	EGM not filed
SB003	GSTIN mismatch
SB004	Record already received and validated
SB005	Invalid Invoice Number
SB006	Gateway EGM not available

If the said matching is successful, ICES shall process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of export shall be electronically credited to the exporter's bank account as mentioned with the Customs authorities and not in any other account as mentioned on GST portal.

As mentioned above, process of granting of refund is very easy and automated, but one has to be very careful while understanding the error occurred and its meaning and what action to be taken for correcting the same.

B. EXPORTERS AVAILING ADVANCE AUTHORISATION SCHEME AND EOU SCHEME

1) **Pre-Import Condition for claiming IGST Exemption:**

Notification No. 79/2017 Cus dtd. 13th Oct 2017 specified that IGST is exempted against the advance authorization scheme if goods are imported prior to exports. Such type of provision has been worstly interpreted by Directorate of Revenue Intelligence of Customs and they have considered pre-import condition means all the goods mentioned in the advance authorization should be imported first and then only export should take place and any importer have imported the goods after the exports of even small quantity, still it was considered by them as violation of pre-import condition and IGST exemption claim sought to be denied to such exporters and number of Show Case Notices have been issued and matters are under adjudication process.

Huge demands are raised. This issue was brought before the law-making authorities and since the demand of the trade and industry was genuine this condition was removed vide Notification No. 01/2019 – Customs dtd. 10th Jan 2019. but this notification should have been effective retrospectively rather than prospectively.

2) **Refund of IGST paid on exports under Rule 96(10) of CGST Rules 2017**

Though GST Act and Rules were made effective from 1st July 2017, the first time the rules were made for refund of IGST paid on exports under Rule 96(10) or refund of input tax credit under Rule 89(4) accumulated on account of exports. Exporters were not having any issues of legal interpretation and refunds were blocked on account of technical glitches but not on account of legal glitches.

GST Council has framed the rules and notified the same for claiming the refund of IGST paid on exports under Rule 96(10) or refund of input tax credit under Rule 89(4) accumulated on account of exports vide Notification No. Notification No. 45/2017 – Central Tax dtd. 13.10.2017 and the same was amended retrospectively vide Notification No. Notification No 3 dtd. 23-01-2018. If both the notifications are read together, there will be clarity on understanding the confusion in the minds of law-making body. Meanwhile, without understanding the meaning of above notifications exporters have received the refund irrespective of any legal interpretation and understanding of these notifications. However, department might have understood their mistake and again issued the Notification No.53 dtd. 09-10-2018 and Notification No 54 dtd. 09-10-2018 clearly making their intend that

1) The person claiming the benefit under Notification No. 79/2017 Cus dtd. 13.10.2017, which has granted exemption of IGST to the advance authorization holders will not be entitled to claim refund of IGST paid on exports under Rule 96(10) CGST Rules 2017.

2) The person claiming the benefit under Notification No. 78/2017 Cus dtd. 13.10.2017, which has granted exemption of IGST to the EOU will not be entitled to claim refund of IGST paid on exports under Rule 96(10) CGST Rules 2017.

3) The Person receiving the goods from domestic supplier charging concessional IGST on such supplies, which is meant for export through Merchant Exporter will not be entitled to claim the benefit of IGST paid on Exports under Rule 96(10) of CGST Rules 2017

Hon Gujarat High Court have held in the case of M/s Cosmo Films Limited, wherein it has been held that

Quote

Recently, vide Notification No. 16/2020CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017)

"Explanation. For the purpose of this subrule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated

Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now.

Un-Quote

Thereafter, exporters i.e. Advance Authorization Holders and EOU where been issued the SCN to pay back the refund claimed by them under Rule 96(10) of CGST Rules 2017 w.e.f. 23.10.2017 alongwith interest thereon and there is no clarity whether department will issue PMT-03 and allow exporters to re-credit of such IGST paid at the time of exports and now demanded by department.

C. EXPORTERS OPERATING UNDER SEZ :

1) Mandatory Separate Registration Provision for SEZ Developer / Unit :

Supply to SEZ Developer and Unit is considered as zero-rated supply under Section 16 of IGST Act 2017 and Chapter VI of CGST Act 2017 provides the various provisions of registrations. There was mandatory provisions either specified in the Act and Rules for taking separate registration for SEZ. However, subsequently it was made mandatory to take subsequent registration for SEZ and therefore, during such period, supplies on which IGST was considered as zero rated supply without payment of duty or on payment of duty for the claim of refund are having the issues either of issuing the demands, when supply was made against LUT or refund when supply was made on payment of IGST.

2) Inter State Supply Vs Intra-State Supply :

Since, GST provisions were new to the trade and industry, suppliers to the SEZ Developer as well as Unit have not understood the implications of the provisions of Section 7(3)(5) of IGST Act 2017 that,

(5) Supply of goods or services or both,––

(a) when the supplier is located in India and the place of supply is outside India;
(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

And therefore, number of suppliers have not considered such supplies as Inter-state supplies and charged CGST and SGST as against IGST and department have started demanding IGST on such supplies.

Unfortunately, those who have supplied prior to two years, may not be entitled to get the refund on account of limitation.

Further, those suppliers to SEZ Developer / Unit being much below of threshold limit have not taken the registration and claimed the threshold limit exemption. However, such exemption of threshold limit is not applicable for inter-state supplies and hence even the small service providers, who is not liable to take the registration being under threshold limit, but supplied to SEZ Developer / Unit will have to pay tax on each supplies made by him, department have started issuing the Show Cause Notices.

3) Wrong tax-payer type exists in GST portal

Many SEZ taxpayers selected as regular at the time of new registration / migrated as regular at the time of implementation of GST. Government has never issued any booklet / FAQ specifically on SEZ and therefore SEZ developers / units and suppliers thereof have faced the tremendous issues. During March' 2018, GSTN portal had issued an advisory for change in taxpayer type where it was suggested to send a mail to reset.sezflag@gst.gov.in along with scanned copy of LOA for obtaining as SEZ / SEZ developer units. Even though it worked for few months initially, it has been observed that there is no response / action for the e-mails sent for change of status. The possible solution could be raising a grievance in GST portal in addition to sending a mail and continuous follow up of the same.

4) Disclosure of DTA sale of goods in GSTR-1 and GSTR-3B

SEZ units can clear goods to DTA unit upon payment of applicable custom duties. GSTR-1 or GSTR-3B do not have any column to disclose such details. Due to this, many differences arise between GST returns and financial statements which resulted in many notices to SEZ units.

Reference can be made to instruction no. 9 of Form GSTR-1 which states that supply by SEZ unit to DTA has to be treated as an import in case goods are received under the cover of the bill of entry. As such there is no need to disclose the details of goods cleared to DTA units in GSTR-1 or GSTR-3B. However, it is suggested to maintain a reconciliation for the same and disclose the same while filing annual returns of the SEZ unit.

5) Reverse charge liability under Section 5(3) or 5(4) of IGST Act 2017

Across there is a confusion in the minds of SEZ Developers / SEZ Units whether reverse charge liability under section 5 (3) of IGST Act needs to be discharged upon receipt of services specified under notification no 10/2017 – IGST (eg. GTA services, legal services, services from Government, sponsorship services, etc)? Also, until 13.10.2017, in compliance with section 5 (4) of IGST, in case of procurement of goods / services from unregistered persons upon exceeding specified limit, the registered recipient had to discharge GST liability under reverse charge. Further, the same confusion lies in the minds of CGST Officers and they started issuing notices for demanding GST under reverse charge mechanism to the SEZ Developer / Unit without understanding the legal provisions that supply to SEZ Developer and Unit is considered as zero-rated supply. Therefore, wherever reverse charge mechanism is not prescribed, SEZ Developer and Units are not required to pay any GST on reverse charge mechanism, since such supply is considered as zero-rated supply under Section 16(1) of IGST Act 2017 and it can be referred clarification issued by Tax Research Unit of CBIC vide File No. 334/335/2017- TRU dated 18.12.2017

6) Refund of accumulated ITC on inputs and input services

Number of suppliers to the SEZ Developers & Units are not willing to execute the LUT on account of procedural matter and fear in the mind. Therefore, they preferred to charge IGST on supplies made to SEZ Developer & units. As such any clearances of the goods is considered as import when cleared in DTA considering SEZ as a port and applicable duties under Section 12 of Customs Act 1962 and payment of additional duties in terms of Section 3 of Customs Tariff Act 1975 is required to pay and in terms of Section 3(7) of Customs Tariff Act 1975, IGST is required to pay on such clearances to DTA and such payment to be made in cash and accumulated IGST cannot be adjusted. Therefore, there is a huge accumulation of IGST in the Electronic Credit Ledger of SEZ Developers and Units.

Even though, there is no restrictions to deny refund of accumulated input tax credit on account of exports in terms of Section 54 of CGST Act 2017 read with Rule 89(4) of CGST Rules 2017, departmental officers do not grant such refund on account of confusion or the reasons best known to them.

7) GST impact on goods or services received for non-authorised operations

Prior to the amendment of budget, supplies of goods or services to SEZ developer is considered as zero-rated supply in terms of Section 16(1) of IGST Act 2017. However, based on certain Advance Ruling Judgements supplies to SEZ Developer / unit which may not be used for Authorised operations or may be used for operation & maintenance of non-processing area IGST is demanded. Concept of Authorised operations was brought in Rule 89 of CGST Rules 2017 and the same was clarified by CBIC in June 2018 that zero-rated benefit will not be applicable for authorised operations. This is absolutely illegal provision and circular thereon, since Rules cannot override the provisions of Sections.

Perhaps, this mistake have been understood by the department and in the recent budget announced by Hon Finance Minister Smt Nirmala Sitharaman, Section 16 is amended and zero-rated supply will be supplies to the SEZ units / Developers for authorised operations. This will create lot of issue. How the suppliers are expected to know, whether supplies are for authorised operations or otherwise. It is advisable to obtain list of authorised operations and list of goods and services to be used for such authorised operations from SEZ Developers / Units and since it will not be believed by the department, it preferably needs to be endorsed by unit Approval Committee of such SEZ, This will create the chaos. To avoid such chaos, suppliers will not be ready to supply the goods treating as zero rated supply and will charge IGST and SEZ Developers and SEZ Units will have to obtain refund under Rule 89(4) of CGST Rules 2017.

8) GST impact on purchase returns made by SEZ units

It is common practice that supplies may be required to be returned for various issues including quality issues, damages, etc. Such supplies might have been received without payment of duty being zero-rated or payment of IGST under the claim of refund.

Rule 47 of SEZ Rules, 2006 is applicable only for sale of manufactured Goods by SEZ Unit. Rule 48 of SEZ Rules, specifies that where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods. Provided that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is **'Nil'** and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area based on invoice only and filing of Bill of Entry in such cases shall not be required. However, if the SEZ unit insists to file Bill of entry, then the DTA should inform the said rule then the rate of BCD would be Zero. DTA shall make sure that the bill of entry is obtained so that there is no disallowance of ITC by the GST authorities for IGST portion if paid.

9) Bill to SEZ units Ship to DTA units

When the goods are supplied to DTA unit on the instruction of SEZ unit (billed to SEZ unit), the transaction eligible to be treated as Zero-rated supply and the vendor is eligible to claim refund in either of two routes specified under Section 16 (3) of IGST Act. However, SEZ officers are not issuing endorsement form on the reason that goods are not admitted into SEZ unit. Due to lack of endorsement certificates, vendors refund applications being rejected.

As the goods are not getting admitted to the SEZ and it is suggested that IGST can be charged on sale of goods instead of considering the same as zero rated transaction. The Government should clarify that while processing refund in such cases that there is no need for endorsement certificate / specify a procedure to the officers to issue endorsement certificate in such cases after thorough verification.

10) Drawback benefit on supplies to SEZ units

SEZ Unit eligible to claim Drawback benefit (All Industrial Rate) on the goods procured from DTA unit. In case the SEZ unit does not intend to claim such benefit, a disclaimer to this effect shall be given to the Domestic Tariff Area supplier for claiming such benefits from their jurisdictional Goods and Services Tax or Central Excise Commissioner. However, payment has to be made for such supplies in foreign currency from their FC account. Therefore, majority of suppliers of SEZ Units cannot take the benefit and taxes are exported being such taxes are built up in the value of cost of goods or services, which are supplies to the SEZ.

11) Eligibility Zero-rated supplies benefit to Sub-contractors

Though SEZ Rules specifies to get duty free material by SEZ contractors / sub-contractors provided, such bill of entry is jointly signed or such bill of exports are jointly signed by the SEZ unit / developer alongwith contractor / sub-contractors, but, there is no such provision in the SEZ Act to consider supplies by sub-contractor to the main contractor of SEZ Developer / Unit is also to be considered as zero rated supply. Therefore, supplies to be received by the sub-contractor will have the input tax and such sub-contractor will have to avail input tax credit and utilise the same when raising the tax invoice on main contractor. Further, supplies by main contractor to the SEZ Developer / Unit will be considered as zero rated and main contractor will have to apply either refund of accumulated ITC under Rule 89(4) or charge the IGST to SEZ Developer / Unit and such SEZ Developer / Unit will have to obtain refund under Rule 89(4).

D. RODTEP SCHEME AS DECLARED – DISAPPOINTMENT OF EXPORTERS

RoDTEP (Remission of Duties or Taxes on Export Products) is a Scheme for the Exporters to make Indian products cost-competitive and create a level playing field for them in the Global Market. RoDTEP Scheme will replace the current MEIS scheme, which is not in compliance with WTO norms and rules. The new RoDTEP Scheme is fully WTO compliant scheme. It will reimburse all the taxes/duties/levies being charged at the Central/State/Local level **which are not currently refunded under any of the existing schemes but are incurred at the manufacturing and distribution process.**

MEIS was objected by USA before WTO. Therefore there was a need to introduce the scheme which will fall under the framework of WTO agreement and principle “Taxes are not to be exported”. In view of the same Ministry of Commerce has introduced RoDTEP scheme with objective to refund of taxes which are not be refunded under any of the existing schemes but are incurred at the manufacturing and distribution process.

Some of the examples of some taxes are:

1. Central & state taxes on the fuel (Petrol, Diesel, CNG, PNG, and coal cess, etc.) used for transportation of export products.
2. The duty levied by the state on electricity used for manufacturing.
3. Mandi tax levied by APMCs.
4. Toll tax & stamp duty on the import-export documentation. Etc.
5. Ineligible ITC on GST
6. Tax involved on free samples and destruction

Number of companies have filled up very lengthy and clumsy form R1, R2 and R3 duly certified by Chartered Accountant and Cost Accountant and submitted through respective Export Promotion Council. Industry was expecting compensatory gift for new year 2021 since they were already suffering from stoppage and blockage MEIS.

Ministry of commerce have issued a press note declaration RoDTEP scheme was absolutely shocking and disappointing for following reasons:

a. No rates have been declared
b. The scheme creates more confusion about entitlement and eligibility
c. MEIS has not yet withdrawn through Notification under Foreign Trade Policy.

Unfortunately, when Exporter do not know what is the scheme certain correction in the system has already made by Customs under Department of Revenue without issuing any circular for public, however, document Viz; ***Implementation of RoDTEP Scheme in Customs Automated System – Declarations in Shipping Bill and further processing***, is posted on website of ICEGATE.

Such actions by Ministry of Commerce as well as Department of Revenue are absolutely beyond the law, but sufferer are the Exporters only.

Exporters needs to file the declaration as a part of shipping bill or Bill of Export under RoDTEP Scheme.

Though, neither provisions are notified nor rates are notified either in foreign trade policy or any of the government notifications under the applicable law, understanding of this scheme as announced is given below:

a. The scheme is not available for exports under Advance Authorization scheme, EOU Scheme and perhaps may not be available for DFIA, SEZ, since procedure specifies "etc.. schemes". However, subsequently Ministry of Commerce have issued the circular allowing SEZ also to claim the RoDTEP, but there is no reason as to why EOU & Advance Authorization Holders, DFIA Holders have been deprived of substantial benefit, which otherwise is required to be given in terms of WTO Agreement.
b. Whether the scheme is available for Duty drawback and RoDTEP is not clear as the wording are made as drawback and / or RoDTEP.
c. It is undoubted fact that following taxes are getting exported through value of goods which includes the portion of such taxes.
   - Central & state taxes on the fuel (Petrol, Diesel, CNG, PNG, and coal cess, etc.) used for transportation of export products.
   - The duty levied by the state on electricity used for manufacturing.
   - Mandi tax levied by APMCs.
   - Toll tax & stamp duty on the import-export documentation. Etc.
   - Ineligible ITC on GST
   - Tax involved on free samples and destruction
d. RoDTEP scheme should have been in addition of exiting scheme
e. Under RoDTEP scheme duty scrip of eligible amount will be credited to exporters ledger with Customs which can be used for payment of Customs duty on imports or can be transferred to any other importer. Further it has not been made clear whether portion of IGST debited in such scrip credit ledger w.r.t. payment of IGST ITC under CGST Act, 2017, will be eligible or otherwise since there is no amendment in the GST Act or Rules.

Normal exporter under Duty drawback scheme has no option but to give such declaration without knowing the rates and benefits and without amendment in law. Other exporter will adversely suffer since they will not be eligible for benefit for RoDTEP even though they were eligible for MEIS. Government should issue necessary notification and circular under Foreign Trade Policy and Customs Act and CGST Act. And also should appreciate that no taxes should be part of cost of export product. Hence such amount needs to be refunded in addition to existing scheme including duty drawback, Advance Authorization, EOU, SEZ, DFIA.

E. Conclusion of Article :

If India has to be USD 5 TN Economy and become superpower then policy makers need to understand the grievances of the exporters. They don't need any subsidiary nor any assistance but demand a system of ease of doing business and ensure taxes do not become the part of value of goods or services exported. Being a part of WTO agreement, India has committed that the taxes will be reimbursed to the exporters. Very simple mechanism without any restriction as mentioned above should be developed for granting such reimbursement of taxes.