



Export under GST

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Basic Premise

- Exports have been the area of focus in all policy initiatives of the Government
- Government don't want tax to be exported and make domestic products non-competitive due to taxes
- Therefore exports continue to enjoy this special treatment
- On the other hand, GST demands that the input-output chain not be broken and any exemption to outward supply breaks this chain.
- As GST law requires reversal of Input tax credit for raw material used in exempted or non-taxable supplies.
- Therefore, in order to avoid the reversal of Input tax credit Government has adopted the method of Zero-rated supply

Export of Goods

- As per IGST Act Section 2(5) :
 - Export of goods with its grammatical variations and cognate expressions, means
 - taking goods out of India to a place outside India.
 - Export means trading or supplying of goods and services outside the domestic territory of a country.
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- Inter State V/s Intra State
 - IGST V/s CGST & SGST

Export of Services

- As per IGST Act Section 2(6) "Export of services" means the supply of any service when,
–
- (i) the **supplier of service** is located in India;
- (ii) the **recipient of service** is located outside India;
- (iii) the **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, and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person. if place of supply is out of India.

Zero Rated Supply

- “**zero rated supply**” means any of the following supplies of goods or services or both, namely:—
 - (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
- Export V/s Deemed Export

Export V/s Deemed Export

- Export of goods, in common parlance, means taking goods outside India.
- However, the Central Government may notify certain categories of supplies of goods, which would be treated as deemed exports.
- This means that such supplies shall be treated as exports even if such goods are not taken outside India.
- Deemed Export - Applicable only for the supply of goods (not applicable to services).
- Such supplies cannot be made under Bond / LUT.
- The tax must be paid at the time of supply. Refund of tax paid on such supplies can be claimed.
- Payment can be received in Indian Rupees or in convertible foreign exchange.

Zero Rated Supply - Explanation

- Zero-rated supply does not mean that the goods and services have a tariff rate of '0%'
- but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier.
- the disqualification that input tax credit will not be available in respect of supplies that have a '0%' rate of tax does not apply to zero-rated supplies covered by this section.
- These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws.
- this provision will benefit the supplier wherein exemption of goods or services or both will result in export competitiveness.
- This provision also specifically expresses that taxes are not exported.
- Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in **unjust enrichment**.

LUT - Some Basic Questions on LUT

- LUT Applicable to both supply of Goods or Services ?
- When LUT needs to be furnished – at the beginning of each F.Y. or at the time of each export ?
- To Whom to be furnished – GST Officers or custom officers
- Time limit for export Compliance and consequence of non-compliance

Options for Exporter Under GST

- Under GST regime, the exporter has either of the two options:
- Export under bond without payment of tax
- Export along with tax payment and claim refund later

1) Export under bond without payment of tax - LUT

- LUT and bonds are instruments that evidence an undertaking by the taxpayer for exports
- In the Bond/LUT, the exporter undertakes that he shall export the goods / services and observe all the provisions of the Act / Rules in respect of export of goods / services
- **Eligibility for LUT**
 - The facility of export under LUT has been now extended to all registered persons
 - who intend to supply goods or services for export without payment of integrated tax
- **Validity of LUT**
 - The LUT shall be valid for the whole financial year in which it is tendered.

➤ **Form for bond/LUT:**

FORM GST RFD-11 is available on the common portal, the registered person (exporters) may furnish the LUT online before the beginning of Financial Year to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business.

Documents for LUT:

Self-declaration by the exporter to the effect that he has not been prosecuted should suffice

Verification, if any, may be done on post-facto basis

Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise.

➤ **Time for acceptance of LUT/Bond:**

- LUT/bond should be accepted within a period of three working days of its receipt along with the self-declaration by the exporter.
- If the LUT / bond is not accepted within a period of three working days from the date of submission, it shall **deemed** to be accepted.

➤ LUT Format

➤ **Bank guarantee:**

- Bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs.
- A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

➤ **Running Bond or Regular Bond**

➤ **Running bond:**

- The exporters shall furnish a running bond equivalent to the amount of self-assessed estimated tax liability on the export.
- The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount.
- In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability.
- The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter.
- The record of such entries shall be furnished to the Central tax officer as and when required.

Non Compliance to LUT

- in case the goods are not exported within the time specified in the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule,
- the facility of export under LUT will be deemed to have been withdrawn.
- If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored.
- As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

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Sealing of Export Consignment :

- Under GST sealing of containers of export goods by CBIC officials has been dispensed with
- Rather self-sealing procedure shall be followed
- Conditions to be complied for Self Sealing :
 - 1) inform the details of the premises of a factory or warehouse or any other place.
 - 2) Exporter should be registered under the GST
 - 3) The exporter shall seal the container with the tamper proof electronic –

2) Export with payment of IGST

- When an exporter sends goods and services out of the country on payment of IGST at the applicable rate,
- they can claim a refund of the tax under Rule 96 of the CGST Rules, 2017.
- The refund process is different for goods and services.
- An exporter of goods or services or both can claim the refund of Integrated GST in his Form GSTR1 in the relevant month.
- Table 6A of Form GSTR1 AND declaration made under Form GSTR 3B and Table 6A of GSTR-1 are used for refund processing

➤ Export with payment of IGST....Contd...

- The shipping bill filed by an exporter of goods shall be deemed to be an application for refund
- The details of the export invoices in FORM GSTR-1 shall be transmitted electronically to Customs (ICEGATE) and
- a confirmation by ICEGATE system to electronically transmit to the common portal,.

Mandatory Information in Shipping Bill

- Shipping Bill cannot be filed without
- GSTIN/UIN/PAN
- Taxable value and Tax amount should be mentioned against each item in the Shipping bill for processing the refund amount
- Shipping bill to contain details of GST Invoices else refund of IGST paid on export will be stucked.

Uploading Documents in ICEGATE Portal

- **The steps to upload documents on the ICEGATE portal is as follows:**
- Step-1: Prepare documents in specified formats (PDF) for upload to the portal
- Step-2: Login to the ICEGATE portal (DSC is required to upload documents)
- Step-3: Go to the e-SANCHIT tab for uploading the documents.
- Step-4: Click on the upload documents button. At a time, a batch of maximum 5 documents can be uploaded.
- Step-5: Select documents to be uploaded from the drop-down list. All the documents should be digitally signed before uploading.

- Step-6: Validate the DSC on the documents by clicking on the 'Validate Document' button for each document.
- Step-7: Click on submit documents. Click the OK button on a disclaimer that will appear to accept the responsibility for the genuineness of the documents uploaded.
- Step-8: On successful submission, a unique IRN number will be generated which can be used for future reference.

Refund of Un-utilised ITC (in case of exports)

- The excess of unutilised ITC (Input Tax Credit) can be claimed by way of filing Form GST RFD-01
- The Form RFD-01 has to be filed on a monthly basis by exporters.
- Form RFD-02 is made available as an acknowledgement of the application filed
- If, the assessing officer will intimate the exporter any incorrect details through Form RFD-03
- The Form RFD-01 has to be filed within a span of two years from the relevant date.
- The refund of Un-utilised ITC is admissible in both ?

Merchant Exporter

- WHO are they ?
- A merchant exporter is a person who is involved in trading activity and exporting or intending to export.
- They do not have a manufacturing unit.
- They buy goods from a manufacturer-exporter and then ship them to foreign customers.
- Supply by Manufacturer to Merchant Exporter - Taxable or Zero Rated Supply
- Process :
 - 1) Purchase Order by the Merchant Exporter to Manufacturer
 - 2) goods shall be moved from the place of the manufacturer directly to the Port

■ Merchant Exporter - Contd..

- 3) goods should be exported out of India within 90 days
- 4) A merchant exporter can export the goods under LUT/Bond only. He cannot export under the IGST payment route.
- 5) When merchant exporter exports the goods, it is a Zero-Rated Supply;
- 6) tax @ 0.1% IGST [or CGST 0.05% + SGST 0.05%] paid by manufacturer
- 7) Merchant exporter will be eligible to take credit of the tax @ 0.1% IGST [or CGST 0.05% + SGST 0.05%]
- 8) After export of goods, a copy of the shipping bill or bill of export shall be submitted to jurisdictional tax officer

Merchant Exporter – Contd..

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- 9) If the merchant exporter fails to export the said goods within a period of ninety days from the date of issue of the tax invoice –
- 10) The option may or may not be availed by the supplier and/or the recipient and the goods may be procured at the normal applicable tax rate.
- 11) The supplier who supplies goods at the concessional rate is also eligible for a refund on account of the inverted tax structure
- 12) Applicable for Goods & Services both ?

FORM GST RFD - 11*[See rule 96A]***Furnishing of Letter of Undertaking for export of goods or services****Applicant Details :**

Goods and Services Tax Identification Number

Legal Name

Trade Name

Address

LUT details :

LUT Applied for financial year

2023-24

Document Upload

Previous Letter of Undertaking (LUT)

Document

Letter of Undertaking for export of goods or services without payment of integrated tax
[See rule 96A]

Goods and Services Tax Identification Number - [REDACTED]

To
The President of India (hereinafter called the "President"), acting through the proper officer

I/We [REDACTED] of [REDACTED] having Goods & Services Tax Identification Number No. [REDACTED] hereinafter called "the undertaker(s) including my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents, hereby jointly and severally undertake on this 26th day of March, 2023 to the President

- ☒ (a) to export the goods or services supplied without payment of integrated tax within time specified in sub-rule (1) of rule 96A;
- ☒ (b) to observe all the provisions of the Goods and Services Tax Act and rules made thereunder, in respect of export of goods or services;
- ☒ (c) pay the integrated tax, thereon in the event of failure to export the goods or services, along with an amount equal to eighteen percent interest per annum on the amount of tax not paid, from the date of invoice till the date of payment.

I/We declare that this undertaking is given under the orders of the proper officer for the performance of enacts in which the public are interested.

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the undertaker(s)

1. Name of Witness	Occupation
[REDACTED] X	[REDACTED] L
Address of Witness	
[REDACTED]	

2. Name of Witness	Occupation
[REDACTED]	[REDACTED]
Address of Witness	
[REDACTED]	

Place of Filing LUT
[REDACTED]

Date of Filing LUT
26/03/2023

Verification details :

Documentation in Export

- Import Export Code (IEC)
- Tax Invoice with declaration
- as 'SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX'
- Or
- SUPPLY MEANT FOR EXPORT WITH PAYMENT OF INTEGRATED TAX'
- Shipping Bill
- MDCC / Export Order

Place of Supply of Goods - Import or Export

- The place of Supply of Goods
 - (a) Imported into India shall be location of the importer
 - (b) exported from India shall be the location outside India.

Export of Services

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- Supply of Export of service is very ticklish term under GST.
- Sometimes a transaction seems to be supply of export of service but according to the provisions of the GST such transaction shall not be treated as export of service.*
- Export of service is defined under section 2(6) of the IGST Act which is reproduced as under: –
- **“export of services”** means the supply of any service when, —
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the 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 the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person
- If place of supply of service is not outside India, then that transaction shall not be treated as export of service.
- To verify the place of supply whether it is outside India or within India we shall have to read the provisions stated under section 13 of the IGST Act.

- Three main ingredients to determine whether a supply of service is export of service or not are as :
- A) the supplier of service is located in India – i.e. location of supplier
- B) the recipient of service is located outside India – i.e. location of recipient
- C) the place of supply of service is outside India – i.e. Place of Supply is not in India

“location of the supplier of services” means,—

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

“location of the recipient of services” means,—

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

Place of supply of services where location of supplier **or** location of recipient is outside India

- ▶ Section 13 of the IGST Act governs the determination of Place of Supply where
location of supplier
or
location of recipient
is outside India
- ▶ Section 13(2) states that The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.

Examples

- 1) The Consultancy firm located in Lucknow provides services of “market feasibility” to the company at Brazil by way of detailed report of feasibility of business in India.
- Place of Supply will be i.e. according to the
- This will be subject to other conditions fulfilled in section 2 (6) of the IGST Act.

- 2) A business located in Indore receives services of legal firm from a firm located in US for fighting a law suit in US.
- Place of Supply will be i.e. according to the
- This will be according to section 2 (11) of the IGST Act.

Goods that are required to be physically made available :

- 13 (3) (a)
- services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services
- POS - will be location of goods or where the services are actually performed.
- What if the services are performed on goods made available remotely - (like online repair of a machinery) ---How POS will be determined - General Rule
- e.g. :-

Services requiring physical presence of service provider

- 13 (3) (b)
- services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient,
- which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.
- POS will be the location where the service is performed
- E.g. of such services are Beauty Treatment, Medical surgeries etc.
- A resident of US came to India for undergoing plastic surgery at a Doctor's clinic located in Amrawati (MH).
- POS will be determined not as per general rule of location of recipient but as per specific Rule 13(3)

Services in relation to Immovable property – Section 13(4)

- Broadly Covers following categories of services
- (a) Services directly in relation to an immovable property like estate agents,
- (b) Supply of accommodation by a hotel, guest house,
- (c) Grant of rights to use immovable property,
- (d) Services of architects or interior decorators.

Supply of service in relation to admission to events" (Sec 13(5)

- It covers services by way of admission to or organization of,
- a cultural, artistic, sporting, scientific, educational or entertainment event
- to celebration, conference, fair, exhibition or similar events and
- of services ancillary to such admission
- shall be the place where such event is actually held.

Sec. 13(6) & Sec. 13(7) – Supply at more than one location or supply in more than 1 State

- Place of supply shall be the location in the taxable territory. – 13(6)
- Place of supply of such services shall be in each of the respective States in proportion to the value for services or on such other basis as may be prescribed. – 13 (7)

Section 13(8) - supply of services by Banking Companies, NBFC, Intermediaries etc

- In the above cases "The Place of Supply " is Location of service Providers.

Services of transportation of goods, other than by way of mail or courier – 13(9)

- Place of Supply shall be the place of destination of such goods.

Supply of passenger transportation services"- Sec 13(10)

- he place where the passenger embarks on the conveyance for a continuous journey

Supply of services on board a conveyance – 13(11)

- Location from where the conveyance started its journey".

Services provided for online information and database access or retrieval services” – 13(12)

- the place of supply of service shall be the location of recipient of service.

Power of Central Government – 13(13)

- to prevent double taxation or
- no-taxation of the supply of a service or
- for the uniform application of rules
- the Government shall have the power to notify any description of service or circumstance in which the
- place of supply shall be the place of effective use and enjoyment of a service.