# *Chapter A1*

# Terminology

## 1.1 Basic Concepts of the GST

In India, GST model comprises "Dual GST", wherein both Central GST and State GST components are levied on the same base. All goods and services, barring a few exceptions, have been brought into the GST base. Importantly, there is no distinction between goods and services with common legislations applicable to both.

Since India is a federal country where both the Centre and the States have separate powers to levy and collect taxes through appropriate legislations; and accordingly, both the levels of Government have distinct responsibilities to perform.

The power to levy tax is drawn from the Indian Constitution, which has been amended through the Constitution (101st Amendment) Act, 2016 assented by the President of India on 8 September 2016. Since, GST required different kinds of taxation powers than the ones already provided for prior to GST implementation, certain Constitutional Amendments were necessitated in this context.

Concurrent powers have been conferred upon the Parliament and the State Legislatures, through Article 246A of the Constitution of India, to make laws governing GST.

Every state has legislated its own GST law, such as, *Delhi GST Act*, *UP GST Act, MP GST Act, Gujarat GST Act,* and so on, in addition to the *CGST Act* by the Central Government. Parliament has also legislated UT GST Act for the purpose of levying GST, equivalent to State GST component, on intra-State transactions, in addition to CGST, within UT without legislatures (e.g., Chandigarh, Dadra and Nagar Haveli and Daman and Diu, etc.). IGST (Integrated GST) would be levied on inter-State supplies of goods and services through IGST Act by the Central Government.

Goods and Services Tax (GST) in India, is a form of a Value–Added Tax (VAT). The overarching purpose of GST was to impose a broad-based tax on Consumption. It is a destination-based consumption tax.

In general, the GST is imposed at every stage of the economic process and a deduction of taxes on purchases is allowed by all but the final consumer. The mechanism of input tax credits through the supply chain, except by the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain, and the means used for its delivery.

GST has facilitated seamless credit across the entire supply chain and across all states under a common tax base. There is a clear mechanism in place that allows for a credit of the tax levied on transactions between businesses. The system is based on tax collection in a staged process, with successive businesses entitled to deduct input tax on "capital goods", "inputs" or "input services" and account for a tax on "outward supplies". As a result of the staged payment system, GST thereby "flows through the businesses" to tax supplies made to final consumers.

Following the destination principle, in GST exports are not subject to tax with a refund of input taxes (that is "zero-rated") being made available, but imports are taxed (through the Integrated Goods and Services Tax -IGST) on the same basis and at the same rates as domestic supplies.

In the erstwhile regime of Sales Tax and Excise Duty, sale of goods was taxable either at the first point of sale or on the basis of statutory declaration forms without charging any tax. Thus, tax was charged only when goods were finally sold to the consumer. Hence, as such, need for refund of tax never arose except in appellate and enforcement matters.

However, under the GST, tax is charged at every stage of the supply chain, But where tax paid on purchases is higher than tax payable on sales, then due to accumulation of tax, need for refund of tax arises. These cases of refunds are mainly due to reasons of export of goods and services, supplies to the SEZ units and developers and inverted duty.

Since the whole concept of refund under the Indian GST law is based on supply of goods and/or services and is linked with payment of input tax credit in most of the cases, it is imperative for us to briefly appreciate the concepts of supply; input tax credit, etc. This will help us to understand substantial and procedural provisions of refund under Indian GST law in a more structured manner. These are discussed in the following Paras.

## 1.2 Supply

(1) In GST, the taxable event is the event of a "Supply". The GST is levied in the form of a Central Goods and Services Tax (CGST) and a State or Union Territory Goods and Services Tax (SGST or UTGST) on all intra-State

supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption [1][and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption], for which the earlier system of levies under Excise and VAT continues.

The value taken for the charge of the tax is determined under sec 15 of the CGST/SGST Act and the tax is calculated at such rates, not exceeding 20% under the CGST and SGST Act separately, as may be notified by the Government on the recommendations of the Council.

An Integrated Goods and Services Tax (IGST) is levied instead of a Central Goods and Services Tax and a State or Union Territory Goods and Services Tax whenever the supply happens to be an inter-state supply and is generally, double of the rates specified under the CGST or SGST Act.

(2) **Meaning of the terms "Goods" and "Services"**

As per sec 2(52) of the GST Act, the term "**goods**" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

As per sec 2(102) of the GST Act, the term "**services**" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

*Explanation*.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

(3) In terms of sec 7 of the GST Act that deals with the "Scope of Supply', "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Thus, the general tests for a transaction to be reckoned as a supply or not, are as under:

(i) It should be for a consideration; and

(ii) It should be in the course or furtherance of business.

---

[1] Inserted w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.114) dated 16.08.2024

However, in GST law, the Second Business Test mentioned does not apply to the situation of import of services for a consideration. Any Import of Services thus become liable to tax whether or not made in the course or furtherance of business.

Besides, there is a set of activities specified in Schedule I to the GST Act, made or agreed to be made without any consideration, that if engaged in have to be construed as being an instance of a 'supply'.

(4) Schedule II to the GST Act contains list of certain activities or transactions which are to be treated as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services.

(5) Further, activities or transactions specified in Schedule III to the GST Act; or such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council are to be treated neither as a supply of goods nor a supply of services.

## 1.3 Input Tax Credit (ITC)

(1) Sec 16 of the GST Act entitles every registered person to take credit of input tax charged on any supply (of goods or services or both) to him which are used or intended to be used in the course or furtherance of his business.

ITC is permitted to be taken on 'capital goods', 'inputs', and on 'input services'. The entitlement to credit is subject to certain prescribed conditions and restrictions. The ITC is made available to the registered person as a credit in his electronic credit ledger.

(2) To take credit, the registered person should have a tax invoice or debit note (or any other prescribed taxpaying documents) issued by a GST registered supplier and he should also have received the goods and/or services on which the ITC is sought to be taken. Sec 49 of the GST Act deals with how the input tax credit is credited to the electronic credit ledger of the registered taxpayer.

Further, details of invoice or debit note should be furnished by the counterparty supplier in his **Form GSTR-1** and such details have been communicated to the recipient of such invoice or debit note in **Form GSTR-2B**.

(3) Sec 16(2) (c) & (d) of the GST Act also entails that before the ITC is taken by the Recipient of either goods and/or services, tax charged in respect of such input supplies should have been actually paid to the Government, either in cash or through utilization of ITC admissible in respect of such a supply; and that the taxpayer receiving the input supplies furnish the return under sec 39 of the GST Act.

Restrictions have been put by Finance Act, 2022 by inserting clause (ba)[1] to sec 16 of the GST Act, which reads as *"the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted".*

Besides, it is also stipulated that the recipient of input supplies (either goods or services or both) should pay or reverse the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis.

Sub-clause (4) of sec 16 restricts availment of ITC in respect of any invoice or debit note for supply of goods or services or both after 30th Nov. following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier

(4) The amount of input tax credit is restricted to so much of the input tax as is attributable to the purposes of his business - in cases where the goods or services or both are used by the registered person partly for any business and partly for other purposes [Sec 17(1) of the GST Act].

In cases the goods and/or services are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies under the said Acts, the amount of credit is restricted to the input tax as can be attributed to the said taxable supplies including zero-rated supplies [Sec 17(2) read with rule 42 & 43 of the GST Rules].

(5) Sec 17(4) of the GST Act gives two options on the manner of taking ITC, either one of which may be exercised, to a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.

(6) Sec 17(5) restricts the ITC from being available in respect of certain input supplies (also termed as "blocked credits"); such as, on certain classes of motor vehicles, vessels, and aircraft, on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance, goods and services used for construction of immovable property, etc.

---

[1] Inserted by the Finance Act, 2022 (No. 6 of 2022) (s.100) dated 30.03.2022. Effective by Notification No. 18/2022-CT, dated 28.09.2022 w.e.f. 01.10.2022

(7) Sec 18 of the GST Act makes ITC available in respect of inputs and capital goods sent for a job-work, subject to observance of stipulated conditions.

(8) Sec 20 of the GST Act deals with the manner of distribution of credit by an "Input Service Distributor".

These ITC provisions along with the relevant Rules are going to be the most litigated part of Indian GST law and already hundreds of High Court judgments have been passed linked with this Section. These provisions equally apply to all kinds of circumstances giving rise to refund. There must be clearer definitions and objective criteria to reduce litigation.

The accounts of the registered tax payers along with timely and correct claims of refund on any ground including the reversal of input tax credit where required as per GST provisions are the cornerstones for claiming refund along with physical evidence in support of all the legitimate and eligible claims made for refund based on untilised ITC in the hands of registered tax payers.

## 1.4 Zero Rated Supplies

(1) By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach would in true sense make the goods and/or services zero rated.

(2) As per sec 2(23) of the IGST Act, zero-rated supply shall have the meaning assigned to it under sec 16 of the IGST Act.

As per sec 16 of the IGST Act, "zero rated supply" means any of the following taxable supply of goods and/or services, namely:

(a) export of goods and/or services; or

(b) supply of goods and/or services [1][for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

[1] Inserted w.e.f. 01.10.2023 (vide Notification No. 27/2023-CT, dated 31.07.2023) by Finance Act, 2021 (No. 13 of 2021) (s.123) dated 28.03.2021

(3) **Difference between Exempt Supply and Zero-Rated Supply**:

*[Vide Flyer on Zero-rated issued by CBIC]*

| S.No. | Exempt Supply | Zero-Rated Supply |
|---|---|---|
| 1 | "Exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under sec 11 of GST Act or under sec 6 of the IGST Act, and includes non-taxable supply | "zero-rated supply" shall have the meaning assigned to it under sec 16 of the IGST Act |
| 2 | No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed | No tax on the outward supplies; Input supplies also to be tax free by way of issuance of refund |
| 3 | Credit of input tax needs to be reversed, if taken;<br>No ITC on the exempted supplies | Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply;<br>ITC allowed on zero-rated supplies |
| 4 | Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building [1][and the value of such activities or transactions as may be prescribed in respect of Para 8(a) of Schedule III]. | Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC. |
| 5 | Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or wholly exempt from tax under the CGST or IGST Act, shall not be liable to registration | A person exclusively making zero rated supplies will have to register and refunds of unutilised ITC or integrated tax paid shall have to be claimed after registration |
| 6 | A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply | Normal tax invoice shall be issued |

[1] Inserted (vide Notification No. 28/2023-CT, dated 31.07.2023) by the Finance Act, 2023 (8 of 2023) (s.139)

## 1.5 Export of goods and services

### 1.5.1 Export of goods

(1) "Export of Goods" means taking goods out of India to a place outside India. [Sec 2(5) of the IGST Act]

(2) Definition of "India" is very important for the purpose of determining import and export, which has been defined under sec 2(56) of the GST Act. "India" means -

- The territory of India as referred to in Article 1 of the Constitution,
- Its territorial waters,
- Seabed and sub-soil underlying such waters,
- Continental shelf,
- Exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and
- The air space above its territory and territorial waters.

(3) **Meaning of the term "Place":**

The expression "place" will depend for its connotation on the context in which it is used. In clause of charter party requiring charterer to procure safe "place" for discharge of cargo, quoted word meant spot selected to drop anchor plus area over which tanker might swing to tide and charter's duty was not fulfilled merely be selecting area containing both safe and unsafe berths. The word "place" as used in a statute relating to searching for stolen goods in any store, shop, warehouse, or other building or place in a town, includes a steam-boat or vessel moored at the wharf. The word "place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context. For example, "place for water" includes a well. [*Collector of Customs vs. Sun Industries*[1]]

(4) Identical definition of "export" exists in the Customs Act vide sec 2(18) of that Act.

As per rule 2(c) of The Customs and Central Excise Duties drawback Rules, 1971, 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India or taking out from a place in

[1] 1988 (4) TMI 49 (SC)

Domestic Tariff Area (DTA) to a special economic zone and includes loading of provisions or store or equipment for use on board vessel or aircraft proceeding to a foreign port. In respect of certain matters where export could not be fructified due to certain compelling reasons, the Apex Court held as under: -

- *Collector of Customs vs. Sun Industries*[1] - On proceeding to the voyage after shipment of the goods, the ship developed engine trouble on the way and returned back and ran aground in Indian territorial waters. The Supreme Court held that it is an export.
- *U.O.I. vs. Rajindra Dyeing and Printing Mills Ltd.*[2] - The vessel set sail from Bombay, while still within the territorial waters of India, sank. The cargo loaded was destroyed. Following the judgment in the case of Sun Industries (supra), the Supreme Court held that it is an export.

However, under the IGST Act, since the term "India" has been specifically defined, the applicability of these Apex Court Judgments needs to be carefully studied.

(5) **Sale of stores, consumables etc. to outbound ships/aircrafts:**

- In the instant case under the Central Sales Tax Act, the appellants dealt in petroleum products and carried on business at Calcutta (now, Kolkata). They maintained supply-depots at Dum Dum Airport from where aviation spirit was sold and delivered to aircraft proceeding abroad for their consumption. It was held that aviation spirit loaded on board an aircraft for consumption, though taken out of India, was not exported since it had no destination, where it could be said to be exported and so long as it did not satisfy this test, it could not be said that the sale was in the course of export. It was held that this is an intra-State sale within the State of West Bengal and not an export sale.[3]
- Supply of meals and snacks to the foreign airlines, even if consumed outside the Indian Territory, is a local sale and not an export.[4]
- The assessee was a licensed manufacturer of Helium gas. It sold Helium gas to ONGC situated at Mumbai High. It was held that once the customs frontier stands extended to a territory (Mumbai High), there can be no export of goods to a territory which falls within the customs frontier. Moreover, it is not a sale from India to another country, to term it as export

---

1 1988 (4) TMI 49 (SC)

2 1999 (10) TMI 82 (SC)

3 *Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. CTO* (1960) 11 STC 764 (SC); *Madras Marine and Co. vs. State of Madras* (1986) 63 STC 169 (SC) and *Spares Corporation vs. State of A.P.* (2001) 122 STC 485 (A.P.)

4 *Mohan Hotels (P) Ltd. vs. CST* (2011) 11 VSTI B-347 (Del.)

for the purpose of Article 286(1)(b) of the Constitution of India. Further, movement of goods from the State of Maharashtra to Mumbai High does not constitute a movement from one State to another State. Mumbai High does not form part of any State in the Union of India. Therefore, it cannot be regarded as inter-State sale also.[1]

- In the case of *Shewratan Company Pvt. Ltd.*[2], the Applicant's supply of stores like paint, rope, spare parts, electronic equipment to foreign going vessels, as defined under sec 2(21) of the Customs Act, 1962, is not export or zero-rated supply, unless it is marked specifically for a location outside India. The Applicant is, therefore, liable to pay GST on such supplies.

  However, the Applicant's supplies to the foreign going vessels shall be treated neither as a supply of goods nor services in terms of paragraph 8(a) of Schedule III under sec 7(2)(a) of the GST Act if such stores are warehoused goods supplied to the recipient before clearance for home consumption.

(6) **Sale of goods by duty free shops to passengers:**

**(i)** ***Atin Krishna vs. U.O.I.[3]; also CIAL Duty Free and Retail Services Ltd. (CDRSL) vs. U.O.I.[4]; case followed- Sandeep Patil vs. U.O.I.[5]:***

**(a)** **Departing Passenger:** The supply of warehoused goods by the DFS at the departure terminal is to departing International passengers i.e. the passengers travelling from India to a foreign destination.

The entire activity of a DFS namely, warehousing, stocking and sale/supply happens as per the provisions under Chapter IX of the Customs Act and under Customs supervision and control. The sale of goods takes place only to International passengers and on obtaining from them payment in approved currency. *Every sale is covered by a sale voucher, which shall be deemed to be the Shipping Bill or Bill of Entry u/s 69 or 68 as the case may be*. As a condition of the license granted to DFS under Sec 58A of the Customs Act, DFS are permitted to deposit the goods at the warehouse without payment of duty on execution of a bond. As per Sec 71 of the Customs Act, the goods so deposited can either be cleared from the warehouse for home consumption (u/s 68) or for export (u/s 69) or for removal to another warehouse or otherwise provided in the Customs Act.

---

1 *CST vs. Pure Helium (India) Ltd.* (2012) 49 VST 14 (Bom.)

2 2019 (10) TMI 1138 dated 21.10.2019 (AAR-W.B.)

3 2019 (5) TMI 1397 dated 03.05.2019 (All. HC)

4 2020 (9) TMI 981 (Ker. HC)

5 2019 (10) TMI 360 (Bom. HC)

It is further observed that the facts of the four cases relied upon by the petitioner, the destination of the goods were very clear *viz* aircraft (in *Burmah Sheel*[1] and *Narang Hotel*[2]) and ship (in *Coching Coal*[3] and *Madras Marine*[4]). Thus, the destination was within the Indian territorial waters. In the present case of DFS, however, in a foreign destination of the foreign going passenger, the passenger also acts as a carrier and the goods are appropriated outside India.

Thus, the goods supplied are never cleared for home consumption and the warehoused goods are exported by the DFS; therefore, levy of Customs duty and of the IGST do not arise. ***The High Court, thus, held*** that sale or supply of goods falls under export of goods and export of goods is a zero-rated supply and person making zero-rated supply is entitled to claim refund of input tax credit under sec 16(1) and (3) of IGST Act. Therefore, Duty Free Shops are entitled to claim refund of ITC on GST paid on service of renting of immovable property by Airport Authority of India and procurement of domestic goods and services.

**In view of the decision of the GST Council in its Meeting held on 28-29 June 2022** and the consequential notifications, and deciding that supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers shall be treated as exports by DFS, this controversy has been put on rest to the extent of departing passengers.

**(b)** **Arriving Passenger:** When the ***warehoused goods*** are supplied by the duty free shop (DFS) to the International arriving passengers before its clearance for home consumption, the arriving passenger, along with the goods, thereafter crosses the customs frontier at the airport; and only then he clears the same for home consumption. The passenger is, therefore, liable to pay the applicable duties of customs, if any. The goods being a part of passenger's bonafide baggage are cleared for home consumption by the passenger under the Baggage Rules, 2016 and not by the DFS; hence no customs duty is payable by the DFS; and therefore, under proviso of sec 5(1) of the IGST Act read with sec 12 of the Customs Act 1962. Also, no IGST is payable on "passenger baggage" since full exemption from IGST has been provided vide Entry No. 147 (HSN 9803) of N. No. 2/2017-CT(R), dated 28 June

---

1 *Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. CTO,* 1960 (9) TMI 70 (SC)

2 *Narang Hotels and Resorts Pvt. Ltd. vs. State of Maharashtra* 2003 (10) TMI 620 (Bom. HC)

3 *State of Kerala vs. The Cochin Coal Company Ltd.* 1960 (10) TMI 57 (SC)

4 *Madras Marine & Co. vs. State of Madras* 1986 (7) TMI 125 (SC)

2017. However, basic customs duty shall be leviable, as applicable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2026 (notified on 02 Feb. 2026).

In the case of *Commissioner of CGST and CE vs. Flemingo Travel Retail Ltd.*[1], the Supreme Court held that the Duty Free Shops, whether in the arrival or departure terminals, being outside the customs frontiers of India, shall be deemed to be the area beyond the customs frontiers of India, and cannot be saddled with any indirect tax burden. However, later on, the Supreme Court ordered review of order by recalling vide *Commissioner of CGST and CE vs. Flemingo Travel Retail Ltd.*[2]

**(ii)** ***Legislative amendments:***

With retrospective effect from 01 July 2017[3], in view of the GST (Amendment) Act, 2018, supply of warehouse goods before clearance for home consumption have been notified as activities or transactions which shall not be treated as a supply of goods vide entry no. 8(a) of Schedule III. Further, sec 17(2) of the GST Act is amended according to which reversal of ITC pertaining to activity specified in Schedule-III is not required. Accordingly, the Petitioner was entitled to claim refund of ITC pertaining to arrival shops also.

However, Explanation to sec 17 has been amended by Finance Act, 2023 *w.e.f. 01.10.2023*[4], whereby value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the Sch III shall be treated as exempted supply for the purposes of reversal of common ITC. Exercising these powers, *w.e.f. 01.10.2023*, the Government has notified activities at "Duty Free Shops at arrival terminal in international airports to the incoming passengers", which will be included in the exempt supplies.

Once this ITC is eligible, refund of entire ITC pertaining to Departure DFS is eligible, based on formula of refund prescribed in Rule 89.

## 1.5.2 Export of services

(1) As per sec 2(6) of the IGST Act, the supply of any service shall be treated as "Export of Services" when -

---

1 2023 (4) TMI 613 dated 10.04.2023 (SC)

2 2023 (8) TMI 1039 dated 18.08.2023 (SC)

3 Inserted vide CGST (Amendment) Act, 2018 w.e.f. 01.02.2019. However, vide Finance Act, 2023 (enacted on 31 March 2023), amendment will be effective retrospectively, w.e.f. 01.07.2017 (vide Notification No. 28/2023-CT, dated 31.07.2023)

4 Inserted vide Notification No. 38/2023-CT, dated 04.08.2023

(a) the supplier of service is located in India;

(b) the recipient of service is located outside India;

(c) the place of supply of service is outside India;

(d) payment for such service has been received by the supplier in convertible foreign exchange [1][or in Indian rupees wherever permitted by the Reserve Bank of India]; and

(e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of sec 8.

(2) As per explanation 1 of sec 8 of the IGST Act, where a person has,—

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or UT and any other establishment outside that State or UT; or

(iii) an establishment in a State or UT and any other establishment [2][***] registered within that State or UT,

then such establishments shall be treated as establishments of distinct persons.

(3) As per clause (e) of sec 2(6), if the supplier of service and recipient of service are merely establishments of a distinct person, it would not be considered as export. *For example*, if some service is provided by the establishment of a person in India to its USA branch, it would not be considered as export. Further, since service is provided to overseas branch, being a distinct person, it would be an inter-State supply. *Does it mean that such supply would be subject to IGST, payable by the Indian Branch? Explicit clarification on tax treatment of all inter-establishment transactions must be issued by the GST Council.*

**N. No. 15/2018-IT(R), dated 26 July 2018 w.e.f. 27 July 2018: Entry no. 10F has been inserted to grant exemption in such cases, as under:**

Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in sec 8 of the IGST Act.

*Condition*: Provided the place of supply of the service is outside India in accordance with sec 13 of IGST Act.

---

1 Inserted vide IGST (Amendment) Act, 2018 w.e.f. 01.02.2019

2 Omitted vide IGST (Amendment) Act, 2018 w.e.f. 01.02.2019; before it was read as "being a business vertical"

In the case of *NES Global Specialist Engineering Services (P) Ltd.*[1], the Applicant provided accounting, sales and purchase invoicing, cash receipt posting, bank payment entries, receipt entries, credit control work, support Assignment work, payroll assistance, storing and scanning of data storage disk and any other work to its group entity located outside India. Looking at the shareholding pattern of both the companies, which proved that the key management personnel and Board of Directors were different and neither of them holds shares of each other and thus they did not control one another, it was held that the applicant was not a branch or an agency or a representational office of the client and both the companies are independent of each other.

## 1.5.3 Supplies in territorial waters

*(Sec 9 of the IGST Act)*

Notwithstanding anything contained in the IGST Act,–

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

It can be observed from the above definition that determination of "nearest point of appropriate baseline" may be disputed, which would affect tax jurisdiction and compliance obligations. *Therefore, clear geographical demarcation with published coordinates must be defined to avoid the aforesaid issues.*

## 1.5.4 Treatment of Export in GST

(1) As per sec 16 of the IGST Act, export of goods or services or both has been considered as "zero rated supply".

(2) Further, supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods and/or services in the course of inter-state trade or commerce.

[1] 2019 (3) TMI 594 (AAR-Mah.)

(3) As per sec 16(3) of the IGST Act[1], a registered person making zero rated supply shall be eligible to claim refund of unutilised ITC on supply of goods/ services, without payment of IGST, under bond or Letter of Undertaking, in accordance with the provisions of sec 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

However, 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 sec 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances unless exempted, in such manner as may be prescribed [Rule 96B of the GST Rules].

## 1.5.5 Two options are available to the Exporters

(a) Export under **bond or Letter of Undertaking (LUT)**, subject to prescribed conditions, without payment of IGST and claim refund of unutilized ITC;

(b) Export, subject to prescribed conditions, on payment of IGST and claim refund of IGST paid on goods and/or services.

*To illustrate*, a merchant exporter purchases garments for INR 1 lakh and paid input tax credit of INR 5,000/-, GST rate being 5%. He exports the same for INR 1.20 lakhs. He has two options in respect of refund:

(1) Export without payment of IGST and claim refund of ITC of INR 5,000/-;

(2) Charge IGST in the invoice of INR 6,000/- → In the GST Return, after claiming input tax credit of INR 5,000/-, pay INR 1,000/- to the government → Claim refund of INR 6,000/-.

---

[1] Sec 16(3) substituted w.e.f. 01.10.2023 (vide N. No. 27/2023-CT, dated 31.07.2023) by the Finance Act, 2021 (No. 13 of 2021) (s.123) dated 28.03.2021. Formerly, it read as:

"(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of sect 54 of the Central Goods and Services Tax Act or the rules made thereunder."

As per sec 16(4) of the IGST Act, 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 IGST and claim refund of the tax so paid [1]{in accordance with the provisions of sec 54 of the CGST Act or the rules made thereunder};

(ii) a class of goods or services [2]{or both, on zero rated supply of which, the supplier may pay IGST and claim the refund of tax so paid, in accordance with the provisions of sec 54 of the CGST Act or the rules made thereunder}.

Exercising these powers, the Government has notified certain goods vide N. No. 01/2023-IT, dated 31 July 2023 read with No. 05/2023-IT, dated 26 Oct. 2023, w.e.f. 01 Oct. 2023, which could not be exported or supplied to SEZ unit/developer for authorised operations on payment of IGST and on which the supplier of such goods could not claim refund of tax so paid; i.e., to be exported or supplied to SEZ unit/ developer against LUT.

As per the Explanation, the terms "authorised operations", "Developer", "Special Economic Zone" and "unit" shall have the same meaning as defined in clause (c), (g), (za) and (zc), respectively, of Sec 2 of the Special Economic Zone Act, 2005.

These goods mainly include pan masala (HSN-20169020), unmanufactured tobacco & tobacco refuse (HSN-2401), certain tobacco & tobacco products specified in HSN 2403 and essential oils (mentha) (HSN-3301).

*[For complete list of goods: Pl see **Appendix-2** at the end of this Chapter]*

As per sec 16(5) of the IGST Act[3], notwithstanding anything contained in sub-sections (3) and (4) of sec 16, no refund of unutilised ITC on account of zero rated supply of goods or of IGST paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty.

---

1 Inserted w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.153) dated 16.08.2024

2 Substituted w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.153) dated 16.08.2024. Earlier read as, "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"

3 Inserted w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.153) dated 16.08.2024

**Critical Analysis of both the options:**

- Exchange Rate Discrepancies: Different exchange rates apply at ex-factory date when invoice is issued vis-à-vis ex-customs date when shipping bill is made, creating valuation mismatches.
- The department issues refunds based on the lower value which puts exporters on the disadvantage.

*Therefore, the CBIC must issue standardization of exchange rate application or automatic reconciliation mechanisms.*

## 1.5.6 Bond or Letter of Undertaking (LUT)

(1) Under the provisions, an exporter is required to furnish a bond or LUT to the jurisdictional Commissioner before effecting zero-rated supplies.

(2) Notification No. 37/2017-CT, dated 04 Oct. 2017 requires a LUT to be furnished for a financial year.

(3) **Purpose of furnishing the Bond or Letter of undertaking**

The primary purpose of the bond or LUT is to bind the exporter to pay the tax due along with the applicable interest—

(a) **In case of export of goods**, if the goods are not exported out of India within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export; or

(b) **In case of export of services**, if payment of such services is not received by the exporter in convertible foreign exchange or in INR, wherever permitted by the RBI within 15 days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export.

(4) The LUT is filed electronically in **Form RFD-11** on the GST Portal. A detailed procedure for filing of LUT was specified vide Circular No. 8/8/2017 – GST, dated 04 Oct. 2017.

In some cases, such zero-rated supplies were made before filing the LUT, and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero-rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be

condoned and the facility for export under LUT may be allowed on ex post facto basis considering the facts and circumstances of each case.[1]

If the goods or services are actually exported, the Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case.[2]

(5) **Bond *vs.* Letter of undertaking (Relaxation of furnishing of Bond)**

As per N. No. 37/2017-CT, dated 04 Oct. 2017, all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond *except* those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds INR 250 lakh.

***Self-declaration for non-prosecution at the time filing LUT:***

*[Circular No. 125/44/2019-GST, dated 18 Nov. 2019 (Para 46)]*

It is learnt that some field formations are asking for a self-declaration with **every refund claim** to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of N. No. 37/2017-CT, dated 04 Oct. 2017, except to those who have been prosecuted for any offence under the CGST/IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds INR 250 lakh. Para 2(d) of the Circular No. 8/8/2017-GST, dated 04 Oct. 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond.

It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

(6) **Export of exempted or non-GST goods - No Requirement of bond/ LUT**

*[Circular No. 125/44/2019-GST, dated 18 Nov. 2019 (Para 49)]*

In case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered

---

1 Circular No. 125/44/2019-GST, dated 18.11.2019 (Para 44)

2 Circular No. 125/44/2019-GST, dated 18.11.2019 (Para 45)

persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

## 1.5.7 Illustration of Export of Goods

| **PQR (EXPORTER) in Delhi, to effect exports to Germany, purchases GOODS from ABC from Chennai** | |
|---|---|
| **Option A (without payment of IGST)** | **Option B (with payment of IGST)** |
| • PQR purchases goods from ABC, charging IGST (INR 100)<br>• PQR to avail input tax credit<br>• PQR to issue invoice for €15<br>• PQR to ensure no IGST is charged in the Euro invoice<br>• PQR to bring proof-of export and satisfy all other prescribed conditions<br>• PQR to claim refund of ITC of INR 100 being amount of ITC on inputs and input services related to the outward export supply *(refund of ITC on capital goods are not being allowed)*<br>• Such refund to be claimed by filing **Form GST RFD-01** online | • PQR purchases goods from ABC, charging IGST (INR 100)<br>• PQR to avail input tax credit<br>• PQR to issue, invoice for €15<br>• IGST to be charged on tax invoice issued in INR meant only for the purpose of GST, applying rate of exchange as per as notified by the Board under sec 14 of the Customs Act, 1962 on the date of time of supply of such goods in terms of sec 12 (Say INR 1,000)<br>• PQR to debit electronic credit ledger with IGST applicable of INR 180 (i.e. @18% on INR value of invoice) on the export (assume sufficient balance in credit ledger from inputs, input service & capital goods); other-wise pay through electronic cash ledger<br>• PQR to bring proof-of-export and satisfy all other prescribed conditions<br>• Refund of INR 180 to be allowed on automatic processing of shipping bill by Customs once GSTR-3B/GSTR-1 and EGM (Export General Manifest) is filed (Rule 96 of the GST Rules to be followed) |

## 1.5.8 Illustration of Export of Service

| PQR (EXPORTER) in Delhi effects export of services to USA | |
|---|---|
| **Option A (without payment of IGST)** | **Option B (with payment of IGST)** |
| • PQR to issue invoice for $100<br>• PQR to ensure that no IGST is charged in the Dollar invoice<br>• PQR to claim refund of input tax credit in respect of inputs and input services being amount of ITC related to the outward export supply<br>• PQR to bring proof-of export and satisfy all other prescribed conditions **including realisation of consideration in convertible foreign currency or in Indian rupees wherever permitted by the RBI**<br>• Such refund to be claimed by filing **Form GST RFD-01 online** | • PQR to issue invoice for $100<br>• IGST (@18%, Say INR 1,260/-) to be charged on tax invoice issued in INR meant only for the purpose of GST, applying rate of exchange determined as per the generally accepted accounting principles on the date of time of supply of such services in terms of sec 13 of GST Act (Invoice value- INR 7,000)<br>• PQR to debit electronic credit ledger with IGST applicable on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods); otherwise pay through e-cash ledger<br>• PQR to bring proof-of export and satisfy all other prescribed conditions **including realisation of consideration in convertible foreign currency or in Indian rupees wherever permitted by the RBI**<br>• Such refund to be claimed by filing **Form GST RFD-01 online** |

## 1.5.9 Rate of exchange

[1]As per Rule 34 of the GST Rules, rate of exchange for determination of –

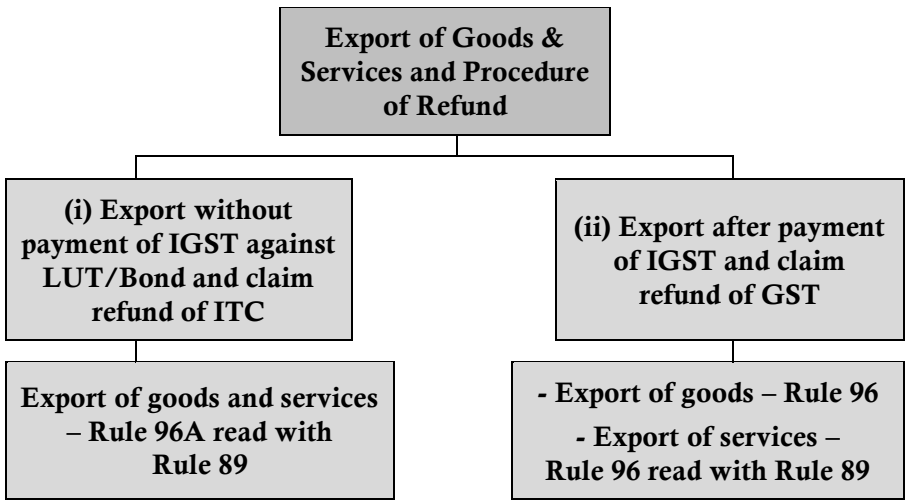
- **Value of taxable goods** shall be the applicable rate of exchange as notified by the Board under sec 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of sec 12 of the GST Act.

[1] Substituted vide N. No. 17/2017-CT, dated 27.07.2017 w.e.f. 27.07.2017. Earlier read as "The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date of time of supply in respect of such supply in terms of sec 12 or, as the case may be, sec 13 of the Act."

- **Value of taxable services** shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of sec 13 of the Act.

It means that the exporter opting to export the goods on the payment of IGST, shall apply the rate of exchange as notified by the CBIC under sec 14 of the Customs Act on the invoice for calculation of IGST at the time of removal of goods from the factory/ warehouse. Rate of exchange so applied by the exporter may be different vis-à-vis the exchange rate applied by the Customs Department at the time of issuance of shipping bill due to time gap between the ex-factory date and ex-customs date. As per the Dept.'s clarification, the refund is issued on the lower of these values.

### 1.5.10 Procedure of Export and its refund: A Summary




## 1.6 Supply to SEZ Units and Developers

### 1.6.1 Special Economic Zone

As per sec 2(19) of the IGST Act, "Special Economic Zone'' shall have the same meaning as assigned to it in clause (za) of sec 2 of the Special Economic Zones Act, 2005.

Whereas as per sec 2(za) of the Special Economic Zones Act, 2005, "Special Economic Zone" means each Special Economic Zone notified under the proviso to sec 3(4) and sec 4(1) (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.