

# Customs Law & GST - *Interface*

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# CUSTOMS DUTIES & GST

- **Custom Duties Subsumed in GST**
  - Additional Duty of Customs levied under Section 3 (1) – CVD
  - Additional Duty of Customs levied under Section 3 (5) – SAD
- **Custom duties not subsumed in GST**
  - Basic Customs Duty - BCD
  - Anti-dumping Duties
  - Safeguard Duties
  - Cesses

Customs Tariff Act 1975 amended Section 3 vide Notification No. 25/2017 Cus dtd.  
28.06.2017 w.e.f. 01.07.2017

6. For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of—
  - i. the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
  - ii. any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include—
    - (a) the duty referred to in sub-section (5), (7) and (9);
    - (b) the safeguard duty referred to in sections 8B and 8C;
    - (c) the countervailing duty referred to in section 9; and
    - (d) the anti-dumping duty referred to in section 9A.
7. Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40%, as is leviable under Section 5 of the Integrated Goods & Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).

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**Classification of goods**

The classification of goods is on the basis of Harmonised System of Nomenclature (HSN).

Custom has got 8 digit code, whereas GST have 4 digit code and wording of exemption is not harmonized with HSN.

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Issues of Classification of Goods and Services and rates thereof considering wording of Schedule not matching wording of HSN

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The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification

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# Important Definitions

## Definition of India : Sec 2(56) of CGST Bill defines “India”:

"India" means the territory of India as referred to in article I 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;

## Inter State - Supply

- ❑ **Section 7(1) of IGST Bill** - Supplies of goods and / or services in the course of inter-State trade or commerce
- Supply of goods / services when location of supply & place of Supply are in :
  - (a) 2 different States;
  - (b) 2 different Union territories; or
  - (c) a State and a Union territory
- Supply of goods imported into the territory of India till they cross the customs frontiers of India
- Supply of services imported into the territory of India
- 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.

## Export of Goods & Services

### ❑ **Export of Goods -**

(5) “export of goods” with its grammatical variations and cognate expressions,  
**means taking goods out of India to a place outside India;**

### ❑ **Export of Services -**

(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;** and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in section 8;



## □ Import of Goods & Services-

(10) “import of goods” with its grammatical variations and cognate expressions,

**means bringing goods into India from a place outside India;**

## □ Import of Services -

(11) “import of services” means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

## □ Place of Supply for Goods – *Imports & Exports*

<b>Goods</b>	<b>Place of Supply</b>
Goods imported into India	Location of the importer
Goods exported from India	Location outside India

## Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
Services supplied in respect of goods that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service	<p>Location where the services are actually performed</p> <p>(NA for services supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India)</p> <p>If provided at more than one location, including a location in the taxable territory, place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided</p> <p>If supplied in more than one State, place of supply of such services shall be taken as being in proportion to the value of services so provided in each State as per terms of the contract or agreement or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf</p>

Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
<p>Services are provided from a remote location by way of electronic means in respect of goods</p>	<p>Location where goods are situated at the time of supply of service</p> <p>If provided at more than one location, including a location in the taxable territory, place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided</p> <p>If supplied in more than one State, place of supply of such services shall be taken as being in proportion to the value of services so provided in each State as per terms of the contract or agreement or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf</p>
<p>Services supplied to an individual or a person acting on behalf of the recipient, which require the physical presence with the supplier for the supply of the service</p>	<p>Location where the services are actually performed</p>

Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
<p>Services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior Decorators</p>	<p>Location at which the immovable property is located / intended to be located</p> <p>If provided at more than one location, including a location in the taxable territory, place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided</p> <p>If supplied in more than one State, place of supply of such services shall be taken as being in proportion to the value of services so provided in each State as per terms of the contract or agreement or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf</p>

Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
<p>Services supplied by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission</p>	<p>Place where the event is actually held</p> <p>If provided at more than one location, including a location in the taxable territory, place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided</p> <p>If supplied in more than one State, place of supply of such services shall be taken as being in proportion to the value of services so provided in each State as per terms of the contract or agreement or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf</p>

Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
Banking company, or a financial institution, or a non-banking financial company, to account holders / Intermediary services / services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month	Location of the supplier of service
Transportation of goods, other than by way of mail or courier	Place of destination of the goods
Passenger transportation service	Place where the passenger embarks on the conveyance for a continuous journey
Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey

Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
<p>Online information and database access or retrieval services</p>	<p>Location of recipient of service</p> <p>Person receiving such services shall be deemed to be located in the taxable territory <b>if any two</b> of the following non-contradictory conditions are satisfied, namely:</p> <ul style="list-style-type: none"> <li>(i) the location of address presented by the recipient of service via internet is in taxable territory;</li> <li>(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;</li> <li>(iii) the billing address of recipient of service is in the taxable territory;</li> <li>(iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;</li> <li>(v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;</li> <li>(vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;</li> <li>(vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.</li> </ul>



Place of Supply for Services - *location of supplier or location of recipient is outside India*

Nature of Service	Place of Supply of Service
Services not covered above	Location of recipient of service If not available location of the service provider
<p>Note: Central Government is further empowered to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules</p>	

## □ What is Deemed Exports?

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30 <sup>th</sup> June, 2017 (as amended) against Advance Authorisation.

## □ What Deemed Exporters has to do?

S.No.	Evidence
(1)	(2)
1.	Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2.	An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
3.	An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

## ❑ Whether Exporters can import without payment of IGST?

<b>ADVANCE AUTHORISATION HOLDER</b>	<p>Yes. However, goods are imported prior to exports otherwise <b>No, when it is for replenishment.</b></p> <p>This exemption is applicable upto 30th Sept October'18.</p>
<b>EPCG HOLDER</b>	<p>Yes.</p> <p>This exemption is applicable upto 30th Sept October'18.</p>
<b>EOU / EHTP / STP / BTP</b>	<p>Yes.</p> <p>This exemption is applicable upto 1<sup>st</sup> Oct'18.</p>

# Meaning of Zero Rates Supplies & its impact on ITC

## What is Zero Rated Supplies?

“Zero Rates Supplies” means :

(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 unit.

*Reference Section 16 of the IGST Act, 2017*

## Impact of Zero Rated Supplies on ITC

- Input tax credit is allowed on the zero rates supplies.
- Do we need to reverse the Input Tax Credit on exempted goods / nil rated exported?
- Whether restriction on Input Tax Credit will prevail
- On export of promotional items or FOC Supply. Whether the ITC needs to be reversed?

## Refund of ITC to Exporter

The exporter can claim refund by choosing one of the option,

- Pay tax on the export and claim refund of the tax paid on the export (erstwhile terminology – Rebate)
- Export the goods without payment of taxes (under Bond / LUT) and claim the Input Tax Credit Refund in proportion of Exports under LUT to Total Turnover within the state. (Input Tax credit Refund)

As per the provisions of the act, the exporter can opt for both the options simultaneously



## Impact of this retrospective amendment

- Exporters opted for EOU / Advance Authorisation / Merchant Exporter are unable to obtain the refund of credit transferred from earlier regime.
- Even one transactions will impact entire operations within that GST Number.
- Impact on the transaction pertaining to period prior to issue of notification.

## Refund of ITC to Exporter

The Government has issued notification no 3/2018 dated 23<sup>rd</sup> January 2018 by which CGST Rules, 2017 were amended. As per the amendment, below exporters cannot claim refund under Option A as mentioned above i.e. Rebate.

- Export Oriented Units (EOUs)
- Advance Authorisation Holders
- Merchant Exporters procuring the goods at concessional rate of 0.1% GST.

The aforesaid notification has been amended the CGST Rules, 2017 retrospectively from 13<sup>th</sup> October 2017.

# Refund of ITC to Exporter

## Refund of Inputs under Rule 89 of the CGST Rules, 2017

➤ Who will file the refund?

Case	Refund to be filed by
Physical Exports	Exporter
Deemed Exports (Like supplies to EOUs, Advance Authorisation etc)	Recipient or Supplier
Supplies to SEZ Unit / Developer	Supplier

# Refund of ITC to Exporter

## Refund of Inputs under Rule 89 of the CGST Rules, 2017

- Extent of Refund : Lowest of below three,
  - ❑ ITC availed during the period (Excluding ITC on CG) X Exports under Bond / Total Turnover during the period.
  - ❑ ITC balance as on date of application.
  - ❑ ITC balance for the end period for which refund claim pertains

## Other Important Issues

## High Sea Sales

- High Sea sales (HSS) is a sale carried out by the carrier document consignee to another buyer while the goods are yet on high seas or after their dispatch from the port/ airport of origin and before their arrival at the port / airport of destination.
- Customs Circular 33/2017 dated 1<sup>st</sup> August 2018 clearly states that the IGST is payable on the importation and no GST will be levied on the transactions entered before the importation.
- High Sea Sales will be Exempt supplies and therefore reversal of ITC under Rule 42 & 43 of CGST Rules, 2017 is must.

## Sale from Bonded Warehouse

- Sale goods which are lying in Private Bonded Warehouse / Public Bonded Warehouse is covered under the definition of the “Supply”.
- Customs Circular 46/2017 dated 24<sup>th</sup> November 2018 clearly states that the GST will be applicable on the sale of goods from Bonded Warehouse.
- Double taxation of IGST
- No impact on Input Tax Credit as the transaction entered is taxable.

## Supply from SEZ / FTWZ in India

- SEZ / FTWZ are deemed foreign territory.
- Goods supplied into India by SEZ / FTWZ are treated as imports.
- Applicable Custom Duties are payable on supply of the goods from SEZ to DTA.
- Can non registered Supplier / Service Provider supply SEZ ?
- Whether Reversed Charge is payable by SEZ on specified services?



## Free of Cost Imports

- Goods can be imported Free of Cost for purposes like Job work, Testing, Repairs etc
- Applicable custom duties are required to be paid even though the goods are Free of Cost.
- Whether the condition of payment towards invoice within period 180 days will have any role to play in case of FOC imports?

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed

# Drop Shipments

- Goods can be supplied from one country to another. The billing is done from India.
- The Advance Ruling by Kerala states that these transaction are not subjected to GST.
- The advance ruling do no consider the provision mentioned in section 7 (2) of the IGST Act, 2017 which states that,

*Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*

## Drop Shipments

- The advance ruling do no consider the provision mentioned in section 7 (5) of the IGST Act, 2017 which states 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.
- This issue is still needs further clarity and deliberation.

Thank You....



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