

Integrated role of GST and Customs

Presented by B S V MURTHY

29/04/2020

Coverage of the topic

- Introduction
- Some relevant definitions
- Imports under GST
- Exports
- Export Promotion Schemes

Introduction

- Both Customs and GST laws seek to provide level playing field to domestic suppliers vis-à-vis international suppliers and make exports competitive.
- Supply of goods or services or both, --
- when the supplier is located in India and the place of supply is outside India;
- to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- in the taxable territory, not being an intra-State supply,
- shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. (Article 269A)
- CGST Act, SGST Act, IGST Act, Customs Act, Foreign Trade Policy, Handbook of policy and procedure, Notifications issued together form an integrated scheme of indirect taxation. It has to be noted that policy provisions per se do not override the tax laws.
- As far as FTP is concerned, the DGFT is the final authority.
- Lack of understanding of the problems of the trade – e.g. high sea sales, warehousing and document for taking credit.

Some relevant definitions I

- “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962.
- "customs area" means the area of a customs station ¹⁴[or a warehouse] and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.
- According to IGST Act, 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.
- Warehouse can be a public warehouse, private warehouse or a special warehouse.

Some relevant definitions II

- "export of goods" means taking goods out of India to a place outside India.
- **"Deemed Exports"** refers to those transactions in which the goods supplied do not leave the country and the payment for such supplies is received either in Indian rupees or in free foreign exchange. (S 147).
- **standard input output norms** ([SION](#) in short) defines the amount of input/inputs required to manufacture unit of output for export purpose

Some relevant definitions III

- “Export of services” means the supply of any service when, –
 - the supplier of service is located in India;
 - the recipient of service is located outside India;
 - the place of supply of service is outside India;
 - 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
 - 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.

Important difference between import and export of service.

Some relevant definitions IV

- An **intermediary** means a broker, an agent or any other person, by whatever name called, who between two or more persons, either arranges or facilitates the supply of goods or services or both; An **intermediary** cannot change the nature of supply as provided by his principal
- **Fixed establishment** is defined to mean a place, other than the registered place of business, which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.
- Definition of India for customs purposes is up to territorial waters but for GST purposes covers the area as per the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976. This has been done to treat supplies within economic zone as intra-state supplies.

Some relevant definitions VI

‘Location of recipient of service’ means:

(i) Registered place;

(ii) a fixed establishment;

(iii) where a supply is received at more than one establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the recipient.

Some relevant definitions VII

- 'Location of supplier of service' means:
 - Registered premises ;
 - Location of fixed establishment;
 - the location of the establishment most directly concerned with the provision of the supply; and
 - in the absence of such places, the location of the usual place of residence of the supplier;

•

Imports under GST

- In the case of imports of both goods and services, the importer pays IGST and compensation Cess where applicable. ITC of both are available.
- However in the case of OIDAR services imported by non-taxable and unregistered persons, the supplier has to pay IGST.
- In the case of imports, the levy is under IGST but for levy and collection, machinery of customs law is used.
- Levy and collection of IGST is the point when the bill of entry is filed.
- Taxable value = Transaction value + Basic customs duty + other duties
- Goods in warehouse: IGST payable when ex bond bill of entry is filed. No GST if sold while in the warehouse.
- Taxable value of warehoused goods = Last transaction value or value determined at the time of filing into bond bill of entry whichever is higher.

Import of goods sold on High seas

- When original importer sells the goods to another buyer before the goods are entered for customs clearance, it is **High Sea sales (HSS)**.
- HSS and third country shipments neither supply of goods nor supply of services as per schedule III.
- Therefore no IGST is leviable.
- The assessable value is determined on the basis of the price paid by the last HSS buyer who files the bill of entry for home consumption. He has to file entire chain of documents.
- No IGST on goods imported by SEZ units and EOUs (31-3-21).
- Passenger baggage is exempt from IGST and compensation cess.

Import of services

- Where the location of the supplier of service is outside India, location of recipient and the place of supply is in India, it is import of service.
- In general import of services without consideration is not a supply. But business test is not required to be fulfilled for supply of service with consideration. However import of services from a related person or from own establishment for furtherance of business is a supply even if made without consideration.

Exports

- Exports to outside India and SEZ are zero-rated. Zero rated means the taxes on inputs are either refunded or ITC of taxes paid on inputs and services is allowed.
- Fundamentally IGST is a destination based consumption tax and hence if the place of supply is outside India, it cannot be levied. (Exports with levy of export duty are exceptions).
- The exporter has an option to pay IGST, export the goods and claim refund of the tax paid or export on execution of a bond/LUT without payment of tax and claim refund of ITC.
- Because of the extended meaning given to India, goods have to travel beyond 200 nautical miles for getting treated as export.

Deemed exports -Essential conditions to qualify

- Applicable only for the supply of goods (not applicable to services).
- Goods are not required to be taken outside India.
- Such supply of goods must be notified by the Central Government as Deemed exports under Section 147 of the Central Goods and Services Tax Act, 2017 (CGST Act).
- Goods must be manufactured or produced in India.
- Payment can be received in Indian Rupees or in convertible foreign exchange.
- 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 either by the supplier or by the recipient.

Supplies notified as Deemed Exports

- Supply of goods by a registered person against Advance Authorisation
- Supply made to an Export oriented undertaking (EOU) or Hardware Technology Park unit, Software Technology Park unit, Biotechnology Park unit
- Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
- Supply of gold by a bank or Public Sector Undertaking against Advance Authorisation as per Customs law.
- The definition of deemed exports under FTP is different from the definition under GST law and should not be considered while applying GST provisions.

Merchant exports

- “**Merchant Exporter**” means a person engaged in trading activity and exporting or intending to export goods.
- Merchant Exporter can export the goods either directly from the premises of the manufacturer, with or without sealing of the export consignments, or through his premises under bond/LUT.
- Merchant Exporters can Procure from Domestic Suppliers at Concessional Rate of GST @ 0.10% subject to the condition that they Export the Goods so procured within 90 days from the date of issue of Tax Invoice.
- GSTIN of the supplier and the tax invoice number are to be indicated on shipping bill/bill of export.
- Such Merchant exporter shall be registered with an Export Promotion Council or a Commodity Board.

Merchant exports II

- A copy of the order placed at concessional rate shall be provided to the jurisdictional tax officer of the registered supplier
- Such goods shall be directly moved to the port, Inland Container Depot (ICD), Airport or Land custom Station (LCS) or to the registered warehouse from where it shall be moved to the port/ICD/Airport/LCS
- In case the goods are bought from multiple registered suppliers, the goods from each registered supplier shall move to a registered warehouse which shall be further moved to the Port/ ICD/Airport/LCS for export.
- After the goods are exported, a copy of shipping bill/bill of export with proof of EGM and export report shall be filed to the registered supplier as well as its jurisdictional tax officer.

Subcontracting of part of service by exporter

- Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:- (i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value; (ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.
- It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid. 3. Thus, even if part consideration for the services is paid to the sub-contractor, that portion will also be considered as export realization subject to the condition that RBI has permitted direct payment to the subcontractor.

Common provisions/aspects for export of goods and services

- Supplies to SEZ unit or SEZ developer only for authorized operations. Endorsement of receipt from specified officer is required.
- Supplies to EOUs are treated as deemed exports.

Export under Bond/LUT

- Validity period
- Online filing
- Deemed acceptance
- Bond in place of LUT – prosecuted for amount >250 lakhs – 15% BG
- Running Bond
- Sealing
- Export proceeds

Export Promotion Schemes

- Advance Authorisation (AA)
- Duty free import authorisation (DFIA)

AA & DFIA

1. Import of inputs for export products without payment of customs duties.
 2. Supplies against AA, EPCG and to 100% EOUs also are considered.
 3. EO to be fulfilled within 18 months.
 4. Export proceeds in freely convertible foreign currency unless permitted otherwise.
1. Inputs will be allowed only as per SION norms.
 2. Only BCD is exempt.
 3. DFIA can be issued post export basis.
 4. For each SION input and for each port separate scrip is issued.
 5. Within 12 months of application, exports have to be made giving the details of application.

AA & DFIA - II

5. As per SION or declaration
6. Inputs, fuel, oil, catalysts, mandatory spares to the extent of 10% of total value, spares for manufacture can be imported.
7. Actual user condition. Inputs as such cannot be sold, after EO is fulfilled, outputs can be sold. Waste/ scrap can be sold on payment of duty.
8. Manufacturer exporter or merchant exporter tied with supporting manufacturer eligible.
6. Transferable DFIA can be issued within 12 months of export or within 6 months of realisation of proceeds whichever is later.
7. DFIA is valid for 12 months.
8. No DFIA for actual user condition inputs.
9. Usage of inputs has to be established.
10. Value addition is 20%.

AA & DFIA - III

9. Domestic sourcing is allowed.

10. Quantity used in export product has to be furnished in the shipping bill and endorsed for redemption.

11. Annual advance authorisation is allowed.

12. 15% value addition.

Reward Schemes – MEIS I

- The objective of MEIS is "to provide rewards to exporters for offsetting infrastructural inefficiencies and associated costs involved in export of goods/ products, which are produced/ manufactured in India
- Under MEIS, exports of notified goods to notified markets will be eligible for rewards in the form of duty credit scrips.
- Realised FOB value or value in the shipping bill whichever is lower for calculating the reward.
- Scrip is valid for 24 Months from the date of Issue
- Scrip can be used for payment of Basic Customs Duty.
- It is freely transferable
- The GST on the sale of scrip is exempted.
- In case of exports of goods through courier or foreign post office using e-commerce, FOB value up to Rs. 500000 per consignment shall be entitled for rewards under MEIS.

Reward Schemes – MEIS II – Ineligible categories

- Supplies made from DTA units to SEZ units
- Deemed Exports
- SEZ / EOU / EHTP / BPT / FTWZ products exported through DTA units
- Exports through transshipment
- Export products which are subject to export duty or minimum export price
- Exports made by units in FTWZ (Free trade and warehousing zone)

Reward Schemes – SEIS I

The objective of SEIS is "to encourage export of notified Services from India".

Under - SEIS, Service providers of notified services will be eligible for rewards in the form of duty credit scrips.

- The rates of reward under SEIS are 3% and 5% on the net foreign exchange earned from notified services.
- SEIS shall apply to 'Service Providers located in India.
- The invoice description need to match with the notified services list.
- Minimum net free foreign exchange earnings in the year of rendering service to be eligible for Duty Credit Scrip:
 - For Individual Service Providers and Sole Proprietorship - \$ 10,000/-
 - Other Service Providers-\$ 15,000/-
- The scrip is issued on Net Foreign Exchange earned by the Unit:

Net Foreign Exchange = (Gross Earnings of Foreign Exchange relating to service sector in the Financial year) minus (Total expenses / Payment / remittances of Foreign Exchange by the IEC holder, relating to service sector in the financial year).

Reward Schemes – SEIS II - Ineligible categories

- Export turnover relating to services of units operating under SEZ / EOU / EHTP / STPI / BTP Schemes or supplies of services made to such units
- Clubbing of turnover of services rendered by SEZ / EOU / EHTP / STPI / BTP units with turnover of DTA Service Providers
- Service providers in Telecom Sector
- Payments for services rendered from EEFC account (Exchange earners' foreign currency)
- Others as per para 3.09 of FTP
- As in the case of MEIS, the reward scrips under SEIS will not carry any actual user condition and will be freely transferable and usable for all types of goods and services including for payment of Import Duties, Excise and Service Tax.

Reward Schemes – Status holders I

- **Status Holders** are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. **Status Holders** are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.
- DGFT awards status-holder position to the exporters on the basis of export performance in the current year and previous three years. The export performance is counted on total FoB/FoR value including deemed exports.
- USD 3 millions export performance - “One Star Export House”.
- USD 25 millions export performance - “Two Star Export House”.
- USD 100 millions export performance - “Three Star Export House”.
- USD 500 millions export performance - “Four Star Export House”.
- USD 2000 millions export performance - “Five Star Export House”.

Reward Schemes – Privileges of Status holders - II

- Status- holders are entitled for waiver of GR forms up to the limit of Rs 10 lakh or 2% of average annual export realization whichever is lower.
- Licences, certificates, permissions and custom clearance is allowed both for exports and imports on self declaration basis.
- Status-holders are exempted from submitting Bank Guarantee for FTP schemes save specified otherwise anywhere in FTP or HBP.
- Negotiating export bills through a bank is not compulsory; however, the export proceeds should be routed through banking channels.
- Two star export houses and above are permitted to establish 'Warehouses' as per guidelines of Revenue department.

Reward Schemes – Privileges of Status holders - III

- Three star export houses and above entitled for the benefits of Accredited Clients Programme (ACP) under CBIC guidelines.
- Three, Four and Five star status holder can self- certify their manufactured goods as originated from India (certificate of origin) to qualify for preferential treatment under PTAs, FTAs, CECA and CEPA.
- Eligible for fixation of Input-Output norms on priority within 60 days.
- Entire foreign exchange earnings (100%) can be retained in EEFC account.
- Normal repatriation period for export proceeds is enhanced from 180 days to 360 days.

Export Promotion Capital Goods (EPCG) Scheme

EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Alternatively, the Authorization holder may also procure Capital Goods from indigenous sources.

EPCG scheme shall include:

- (i) Capital Goods including in CKD/SKD condition
- (ii) Computer software systems;
- (iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories and Catalysts for initial charge.

Export Promotion Capital Goods (EPCG) Scheme - II

- Import of capital goods for Project Imports notified by Central Board of Excise and Customs is also permitted under EPCG Scheme.
- Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorization.
- Authorization shall be valid for import for 18 months from the date of issue. Revalidation of EPCG Authorization shall not be permitted.
- Second hand capital goods shall not be permitted to be imported under EPCG Scheme.
- EPCG scheme covers manufacturer exporters with or without supporting manufacturer (s), merchant exporters tied to supporting manufacturer (s) and service providers.

Export Promotion Capital Goods (EPCG) Scheme – Export Obligation - III

- EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products within the overall EO period including extended period.
- Such average would be the arithmetic mean of export performance in the preceding three licensing years for same and similar products.
- In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO stipulated
- Shipments under Advance Authorization, DFIA, Drawback scheme or reward schemes under Chapter 3 of FTP; would also count for fulfillment of EO under EPCG Scheme.

Export Promotion Capital Goods (EPCG) Scheme – Export Obligation - IV

- For fulfillment of Export obligation, Export shall be physical export. However, deemed exports as specified in paragraph 7.02 (a), (b), (e), (f) & (h) of FTP shall also be counted towards fulfillment of export obligation, along with usual benefits available under paragraph 7.03 of FTP.
- EPCG License can be invalidated in favour of the Domestic Supplier, wherein such supplier can procure the imported components against the Advance License Duty Free and pass on the exemption to the EPCG Holder. Further the GST levied on such sale may be claimed as refund either by the supplier or the recipient with the GST authority.

EPCG - Post Export EPCG Duty Credit Scrip

The scheme facilitates units to avail the benefit of Duty Saving under EPCG License without being bound by the export obligation condition

- Post Export EPCG Duty Credit Scrip(s) shall be available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme.
- Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s), similar to those issued under Chapter 3 of FTP.
- Specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. However, average EO shall remain unchanged.
- Duty remission shall be in proportion to the EO fulfilled.