

# Export and Imports by SEZ



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At

WIRC-ICAI



# EXPORTS

## Introduction

- SEZs Policy was announced in April 2000
- Governed by the SEZ Act, 2005
- And SEZ Rules, 2006
- Objectives
  - i. generation of additional economic activity ;
  - ii. promotion of investment from domestic and foreign sources ;
  - iii. promotion of exports of goods and services ;
  - iv. creation of employment opportunities ;
  - v. development of infrastructure facilities

## Supplies to SEZ- Is it Deemed Exports?

CGST Act

### 147. Deemed Exports.

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Notification no. 38/2017 Central Tax 18.10.2017

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 th June, 2017 (as amended) against Advance Authorisation.

## Exports - GST Act

IGST Act, 2017

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

2 (6) “export of services” means the supply of any service when,—

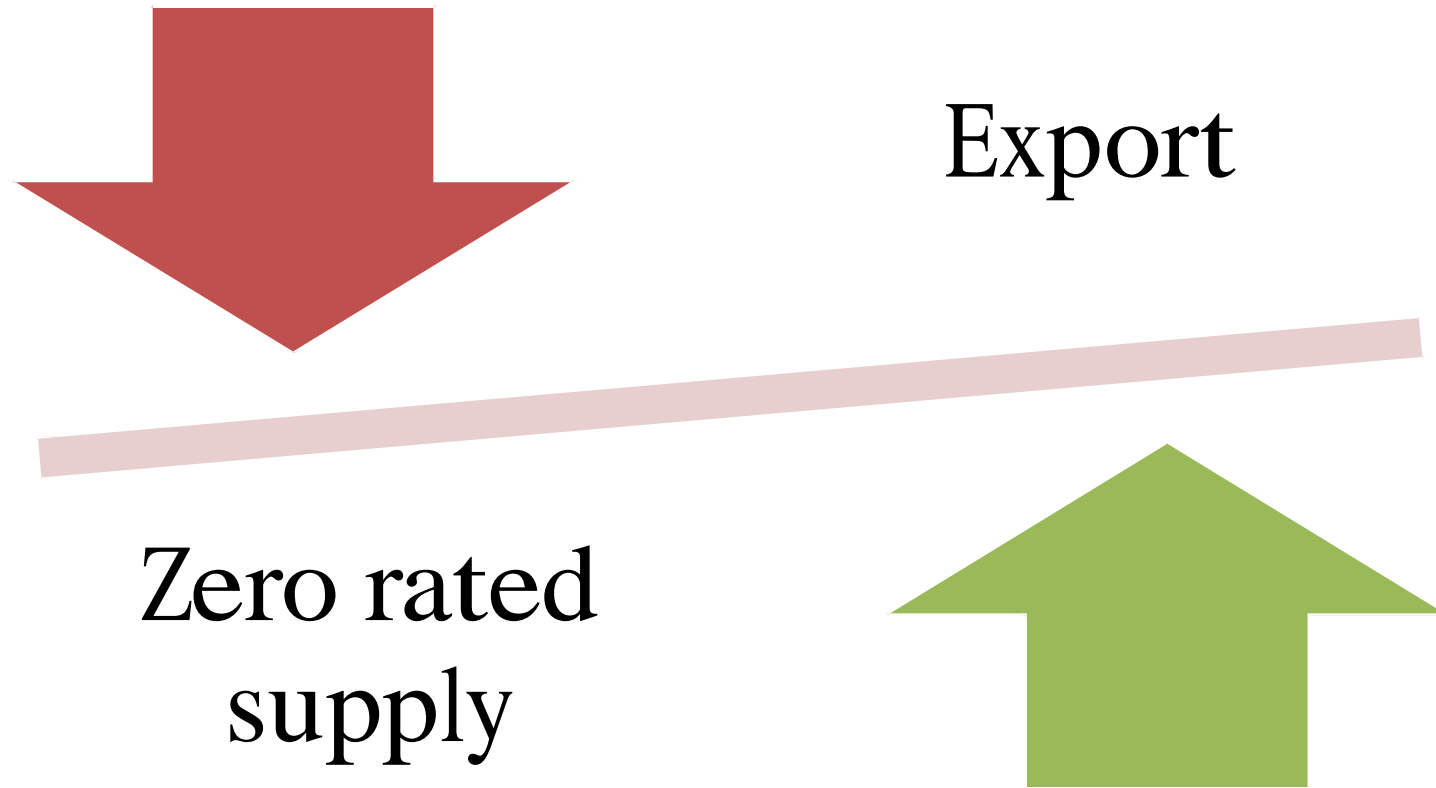
- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

## Exports-SEZ Act

2 (m) “export” means –

- (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;

## Export v. Zero rated supply



## Zero rated supply

16. Zero rated supply.

(1) “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 unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply maybe an exempt supply.

(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 section 54 of the Central Goods and Services Tax Act or the rules made thereunder.



## Is LUT required for supplies to SEZ without payment of tax?

CGST Rule 96A.

Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking.- (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified

CGST Notification no. 18/2017

(a) a status holder as specified in 1 [paragraphs 3.20 and 3.21] of the Foreign Trade Policy 20152020;or

(b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year, and he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12

Circular dated 4.7.2017

2. Whereas, as per rule 96A of the Central Goods and Services Tax Rules, 2017, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking. This bond or Letter of Undertaking is required to be furnished in FORM GST RFD-11 on the common portal. Further, Circular No. 26/2017- Customs dated 1<sup>st</sup> July, 2017 has clarified that the procedure as prescribed under rule 96A of the said rules requires to be followed for the export of goods from 1st July, 2017.

## LUT

Circular dated 4.10.2017

e) Time for acceptance of LUT/Bond: As LUT/Bond is a priori requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/bond should be processed on top most priority. It is clarified that LUT/bond should be accepted within a period of three working days of its receipt along with the self-declaration as stated in para 2(d) above by the exporter. If the LUT / bond is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.

What if LUT filed late?

Circular dated 15.3.2018:

- 4.1. In this regard, it is emphasised 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 taking into account the facts and circumstances of each case.

## What if LUT not filed at all?

- Section 51. of SEZ Act The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

## Import IGST Act

- 2(10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;
- (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;

## Import SEZ Act

- o) “import” means-

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) receiving goods, or services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

## Customs

### Customs Tariff Act, 1975

Section 3(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article ..

26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -
- (a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
  - (b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
  - (c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
  - (e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

## SEZ Act

Section 7. of SEZ Act : Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

(i) a Unit in a Special Economic Zone; or

(ii) a Developer;

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.



## Exemptions to imports by SEZ

- Notification No. 64/2017- Customs dated 5.7.2017
  - hereby exempts all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon under subsection (7) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) read with section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017).
- Notification No. 18/2017 -Integrated Tax (Rate) dated 5.7.2017
  - hereby exempts services imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Service Tax Act, 2017 (13 of 2017).

## THE FIRST SCHEDULE-Enactments

1. The Agricultural Produce Cess Act, 1940 (27 of 1940).
2. The Coffee Act, 1942 (7 of 1942).
3. The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946).
4. The Rubber Act, 1947 (24 of 1947).
5. The Tea Act, 1953 (29 of 1953).
6. The Salt Cess Act, 1953 (49 of 1953).
7. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
8. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).
9. The Sugar (Regulation of Production) Act, 1961 (55 of 1961).
10. The Textiles Committee Act, 1963 (41 of 1963).
11. The Produce Cess Act, 1966 (15 of 1966).
12. The Marine Products Export Development Authority Act, 1972 (13 of 1972).
13. The Coal Mines (Conservation and Development) Act, 1974 (28 of 1974).
14. The Oil Industry (Development) Act, 1974 (47 of 1974).
15. The Tobacco Cess Act, 1975 (26 of 1975).
16. The Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978).
17. The Sugar Cess Act, 1982 (3 of 1982).
18. The Jute Manufactures Cess Act, 1983 (28 of 1983).
19. The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of 1986).
20. The Spices Cess Act, 1986 (11 of 1986).
21. The Research and Development Cess Act, 1986 (32 of 1986).

## Merchant trading v. SEZ

Notification no. 40/2017 Central tax Rates dated 23.10.2017

- Supplies @ 0.1%
- Both to be registered under GST law
- Registration with EPC
- Export within 90 days
- GSTIN and Invoice no. of supplier to be mentioned in shipping bill
- Copy of the order to jurisdictional officer of supplier
- Copy of shipping bill/bill of export- to supplier

## Free Trade Warehousing Zone

- Chapter 7A of Exim Policy
- Section 2 (n) of SEZ Act: “Free Trade and Warehousing Zone” means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on;
- 2(za) "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

## Refund

### Rule 89 CGST

- In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –
  - (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
  - (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

## Place of supply- IGST Act

Section 7(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.

Section 8 - the following supply of goods shall not be treated as intra-State supply, namely:—

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

Intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

## Advance Ruling

- Gogte Infrastructure Development Corporation Ltd. – AAR Karnataka dated 21.03.2018
  - Whether hotel accommodation and restaurant services provided by them within the premises of hotel to employees and guests of SEZ be treated as zero rated supply of goods and services to SEZ Units in Karnataka?
    - No
    - Transaction is not for authorised operations and therefore, it is intra-state supply
    - Taxable

