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In Association with

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International Conference on

**Commerce, Banking, Economics, Management, Law,  
Social Sciences and Environmental Concerns**

Saturday 27th January 2018

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**CA. Hrishikesh Wandrekar**

of

Assistant Professor, L. S. Raheja College of Arts & Commerce, Mumbai.

has participated and presented the paper entitled

**ZERO RATED SUPPLIES AND REFUNDS IN GOODS AND SERVICES TAX**

at the International Conference on *Commerce, Banking, Economics, Management, Law, Social Sciences and Environmental Concerns* held at SEMT's M B Harris College of Arts & A. E. Kalsekar College of Commerce and Management, Nallasopara (W) Dist. Palghar on Saturday 27th January 2018..

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VOLUME - VI, ISSUE - I, Part - V  
AUGUST - 2017 to JANUARY - 2018

# GENIUS

Peer Reviewed and Referred  
UGC Listed Journal

Journal No. 47100

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**fijanta Prakashan**  
Aurangabad. (M.S.)

AN INTERNATIONAL MULTI DISCIPLINARY HALF  
YEARLY RESEARCH JOURNAL

GENIUS ISSN - 2279-0489

IMPACT FACTOR 4.248 ([www.sjifactor.com](http://www.sjifactor.com))



ISSN 2279-0489

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HALF YEARLY RESEARCH JOURNAL

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ज्ञान-विज्ञान विमुक्तये

IMPACT FACTOR / INDEXING

2016 - 4.248

[www.sjifactor.com](http://www.sjifactor.com)

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M.Sc (Math's), M.B.A. (Mkt), M.B.A (H.R),  
M.Drama (Acting), M.Drama (Prod & Dirt), M.Ed.

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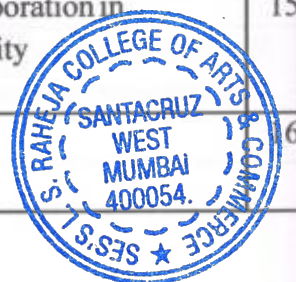
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## Zero Rated Supplies and Refunds in Goods and Services Tax

CA. Hrishikesh Wandrekar

Assistant Professor, L. S. Raheja College of Arts & Commerce.

### Abstract

The Government of India has introduced Goods and Services Tax from 1<sup>st</sup> July, 2017. The concept of Goods and Service Tax is promoted as One Nation One Tax, with removal of state barriers and borders for free movement of goods and services. This legislation aims to bring all economic activities into the mainstream economy and eliminate the black economy. The Government is also trying to promote its 'Make in India' agenda through the introduction of GST by offering various schemes for exports, reduction of costs and tax refunds. This paper explores the various GST provisions dealing with zero rated supplies and GST refunds to exporters. This paper also tries to identify the various challenges that have arisen for exporters in the course of implementation of GST.

**Key words:** GST, Zero Rated Supply, Refund

### Introduction

The Goods and Services Tax (GST) has been brought into effect from 1<sup>st</sup> July, 2017. This landmark legislation promises to change the entire gamut of indirect taxation in India. Indirect taxation in India was a complicated affair, with the levy of myriad duties. These various duties were levied and administered by different government bodies, at the central, state or local level. This resulted in multiple compliances for the businesses as well as led to collection and administrative inefficiencies on the part of the revenue authorities. These multiple compliances resulted in substantial costs, conflicting tax provisions and tax litigation. This made business enterprises uncompetitive in the international market. The paperwork involved at different levels of government machinery also made completion of business transactions cumbersome. Multiple check posts, registration forms and other myriad documentation made movement of goods inefficient, affecting the business. The overall experience gave India an image of not being a business friendly country. The introduction of GST resulted in the myriad central, state and local taxes being subsumed into a single tax. This will result in efficient tax collection and administration, ease in compliances and tax burden on businesses. The Government will set up a comprehensive IT infrastructure to administer this tax. The introduction of GST will also boost the concept of 'Make in India', where local businesses will be encouraged to manufacture, for the domestic as well as for export market. The concept of inter-sectoral tax credit will also bring down costs and make



businesses competitive. The Government has come out with a slew of provisions to encourage exports and process GST refunds of exporters.

This paper attempts to navigate through the GST provisions applicable to exports and identify the benefits that will accrue to exporters. This paper also attempts to identify the pitfalls and problems faced by exporters in the GST era.

### Concept of Supply and Export

Goods and Services Tax is leviable on all forms of supply of goods & services. Such supply includes a 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. GST is a destination based tax. The taxability of a transaction depends upon the destination of the goods & services supplied. This destination is determined as per the 'Place of Supply Rules' defined under the GST provisions.

Central Goods and Services Tax (CGST) and State / Union Territory Goods and Services Tax (SGST / UTGST) are levied on all intra-state transactions within India. Integrated Goods and Services Tax (IGST) is levied on all inter-state transactions within India.

A country can tax only those transactions which are completed within its sovereign borders. Hence, a transaction terminating outside the sovereign borders of a country cannot be subjected to tax of that country. By this logic, export transactions are not subjected to GST. Hence it is important to understand the conditions that need to be fulfilled in order for a transaction to be classified as a supply of goods or services outside India.

As per Section 5 of the IGST Act, "**export of goods**" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Similarly, Section 6 of the IGST Act defines "**export of services**" as 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;

Section 16 of the IGST Act defines concept of 'Zero Rated Supply'. This is the supply of goods or services not subjected to GST. Zero Rated Supply is defined as any of the following supplies of goods or services, 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.

### Export to Nepal / Bhutan

Indian Rupee is an accepted currency in Nepal & Bhutan. Hence, traditionally remittances against exports made to these countries are received in Indian Rupees as an alternative to US Dollar or Euro. However, services rendered outside India are held to be an export of service only if the consideration against the same has been received in convertible foreign exchange. A similar condition however is not applicable for export of services. This created an anomaly where an export of goods to Nepal / Bhutan were treated as zero rated supply, irrespective of whether the consideration was received in Indian Rupee or otherwise. An export of service however would not be treated as zero rated supply if consideration and was received in Indian Rupee and would be subject to GST.

This anomaly has been rectified through Notification No. 42/2017 Integrated Tax (Rate) dated 27<sup>th</sup> October, 2017 and services made to Nepal or Bhutan for which consideration is received in Indian Rupee are now treated as zero rated supply. However supply of services received before the date of the notification would not be exempt from GST if the consideration has been received in Indian Rupee.

### Supplies as Deemed Exports

The Central Government vide Notification No. 48/2017 – Central Tax dated 18th October, 2017 notified the following supplies of goods as deemed exports :-

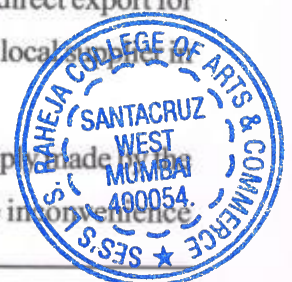
- 1) Supply of goods by a registered person against Advance Authorisation.
- 2) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
- 3) Supply of goods by a registered person to Export Oriented Unit.
- 4) Supply of gold by a bank or Public Sector Undertaking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

Such supplies will be exempt from GST with effect from the date of notification.

### Merchant Exports

In certain transactions, an exporter obtains goods from a local supplier (merchant exporter) for the purpose of export against an existing export order. This is a trading transaction where the exporter obtains goods subsequently to receiving an export order. Such a transaction is in the nature of an indirect export for a local supplier and was exempted from sales tax in the hands of the exporter as well as the local supplier under the VAT regime on production of Form H.

Under GST, the supply made by the exporter continued to be zero rated, but the supply made by the local supplier to the exporter was subjected to GST at the applicable rate. To mitigate the inconvenience



caused, the Government reduced the rate of GST applicable on merchant exports to 0.1 percent vide **Notification No. 40/2017-Central Tax (Rate)** dated 23rd October, 2017, on fulfilment of the following conditions:

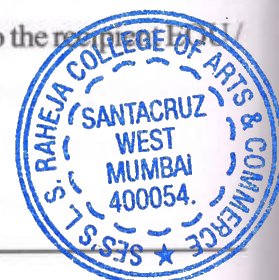
- i) Supplier shall supply the goods to the Recipient on a tax invoice.
- ii) Recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the Supplier.
- iii) Recipient shall indicate the GSTIN of the Supplier and the tax invoice number issued by the Supplier in respect of the said goods in the shipping bill or bill of export.
- iv) Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce.
- v) Recipient shall place an order on Supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the Supplier.
- vi) When goods have been exported, the Recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the Supplier along with proof of export general manifest or export report having been filed to the Supplier as well as jurisdictional tax officer of such supplier.

Further, the Supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

#### **Procurement of supplies of goods from DTA by EOU**

Circular No. 14/14 /2017 - GST dated 6th November 2017 clarifies that supplies of goods by a registered person to EOU/ EHTP / STP / BTP units would be treated as deemed exports under Section 147 of the CGST Act, 2017 and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies. The following procedure and safeguards are prescribed for supplies to EOU / EHTP / STP / BTP units in terms of Notification No. 48/2017- Central Tax dated 18.10.2017: -

- 1) The recipient EOU/ EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form-A" containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to the registered supplier, its jurisdictional GST officer and the jurisdictional GST officer in charge of such registered supplier.
- 2) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/ EHTP / STP / BTP unit.

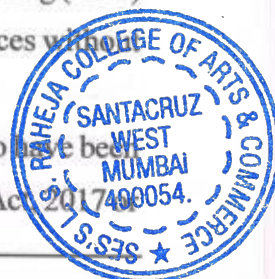


- 3) On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to the registered supplier, its jurisdictional GST officer and the jurisdictional GST officer in charge of such registered supplier.
- 4) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.
- 5) The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form and provide a copy of the same to the jurisdictional GST officer each month.

### Refund to Exporters – Basic Provisions

As discussed earlier, a country can levy taxes only on its citizens and on transactions carried out within its international borders. Hence, if tax is levied on inputs or input services, which have been utilized for making zero rated supplies, the incidence of tax is indirectly transferred to the foreign country to which such zero rated supplies are made. This also results in an increase in the cost of goods or services exported. To mitigate this effect the following provisions are made in the CGST Act:

- 1) Credit of input tax may be availed for making zero-rated supplies; notwithstanding that such supply may be an exempt supply.
- 2) 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 (LUT), 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, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.
- 3) Hence refund can be claimed of the following amounts:
  - a) GST paid on the export of goods / services, in cases where a Bond / LUT is not furnished; or
  - b) GST paid on inputs utilised for the export of goods / services, provided input credit for the same has not been availed.
- 4) The following conditions have been specified for furnishing a Letter of Undertaking (LUT) instead of a bond by a registered person who intends to export goods or services without payment of GST:
  - a) Facility to furnish a LUT is available to all exporters except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017.



the Integrated Goods and Services Tax Act, 2017 or any of the existing laws in force in a case where the amount of tax evaded exceeds Rs. 2.5 Crore.

- b) Letter of Undertaking needs to be furnished on the letter head of the registered person, in duplicate, for a financial year in the annexure to Form GST RFD – 11 and to be executed by the authorised person of the enterprise.
- c) Where the registered person fails to pay the tax due along with interest, within the specified period, the facility of export without payment of integrated tax will be deemed to have been withdrawn. However, the facility of export without payment of integrated tax shall be restored on payment of the tax liability.
- d) The LUT will be valid for the whole financial year in which it is tendered.
- e) A Bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount of tax exceeding Rs. 2.5 crore. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.
- f) Till the date the form for application of refund Form GST RFD – 11 is not activated online, the same may be furnished manually to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

### **Refund Provisions – Deemed Exports**

Earlier only the recipient of deemed exports (actual exported) was eligible to file the application for claiming refund in case deemed exports supplies. The Government vide Notification No. 47/2017 Central Tax dated 18th October, 2017 made the following amendments and the following parties may make refund claims in case of Deemed Exports:

- a) The recipient of deemed export supplies; or
- b) The supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

### **Refund to International Tourist**

An international tourist cannot be called upon to bear the burden of GST levied on supply of goods which are taken out of India. Hence, the integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed. Here, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

## Challenges

- 1) The implementation of GST has been a case of putting the cart before the horse. The law has been rolled out with much fanfare. But the underlying government machinery has not been adequately put in place to deal with the wide gamut, complexity and sheer volume of transactions. Jurisdictional officers have been appointed months after the law has come into effect. These officers are often ill informed and untrained about procedural and legal issues. This has led to widespread confusion amongst businesses with respect to interpretation of the law and procedural aspects.
- 2) The GST Portal has been found wanting in dealing with the large number of transactions. Various forms and procedures as laid down in the law have not been made functional on the portal as on date. Hence the proposed aim of having a fully electronic tax administration has not come into effect till date. The law lays down procedures for speedy processing of refunds. However, the IT systems glitches and late appointment of jurisdictional officers have resulted in delayed refunds.
- 3) The Central Government vide Circular No.24/24/2017- GST dated 21st December, 2017 has clarified that due to the non-availability of the refund module on the common portal the applications/documents/forms pertaining to refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed and processed manually till further orders. This clarification has come 6 months after the implementation of GST.
- 4) The procedure for making application for refund has been modified a number of times. There has also been a lack of clarity with respect to the furnishing of Bond & LUT. These procedural ambiguities have delayed refund applications.
- 5) Transactions of deemed exports & export of services to Nepal / Bhutan were initially taxed under GST and were declared exempt, or subject to concessional rate at a later date. This has created confusion among businesses as certain transactions during the year were taxed, while other similar transactions remained exempt.
- 6) The delay of refunds has put a severe strain on the working capital of businesses.

## Conclusion

India is at cross roads of tax reforms. The new taxation regime focuses on business discipline and compliance. It is in our best interest to align our business processes and accounting practices to comply with the GST regulations. Correspondingly, it is in the interest of the Government to adopt business friendly, ensure a robust IT environment, ensure quick delivery of refunds and make



tax-payer friendly. This will ensure healthy GST compliance by businesses. The way ahead is not without hurdles. However, these hurdles can be overcome through proper planning, implementation, education, sensible regulation and legislation.

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