

GST Update

Weekly Update
20.07.2019

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 06.07.2019. It supplements the earlier GST Updates.
- There was no update on 13.07.2019
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- Two CBIC Circulars issued and one corrigendum to earlier CBIC Circular issued
- Two CBIC notification issued
- Two press releases issued by CBIC

Quarterly Statement by Composition taxpayers Form GST CMP-08

- **Notification No. 34/2019 – Central Tax dated 18th July, 2019**
- Quarterly Statement by Composition taxpayers for purpose of payment of tax
- Due date for furnishing the statement containing the details of payment of self-assessed tax in said FORM GST CMP-08, for the quarter April, 2019 to June, 2019, or part thereof,
- shall be the 31st day July, 2019 (Earlier 18th July, 2019)

Corrigendum to Refund circular

- Corrigendum dated 18th July, 2019 to Circular No. 45/19/2018-GST
- Para 4.2 of the circular substituted as below:
- For the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.
- Earlier the above was allowed for period only up to 30.06.2018

Goods sent/taken out of India for exhibition or on consignment basis

- **Circular No. 108/27/2019-GST dated 18th July, 2019**
- The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as it does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time.
- Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act.

Goods sent/taken out of India for exhibition or on consignment basis (Contd)

- Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?
- The registered person dealing in specified goods shall maintain a record of such goods as per the format at Annexure to this Circular No. 108/27/2019-GST

RECORD OF SPECIFIED GOODS SENT / TAKEN OUT OF INDIA AND BROUGHT BACK / SOLD ABROAD

Folio No./Reference No.	Description of specified goods	Quantity unit (Nos./grams/piece etc.)	Value per unit	Total value of the specified goods	Date of removal from place of business	Delivery Challan No. & date		Shipping Bill no. & Date		Details of specified goods supplied (i.e. specified goods not brought back)		Invoice no. & date		Details of specified goods brought back		Bill of Entry No. & Date	
						No.	Date	No.	Date	Quantity	Value	No.	Date	Quantity	Value	No.	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)

Goods sent/taken out of India for exhibition or on consignment basis (Contd)

- **Documentation required for sending / taking the specified goods(for exhibition or on consignment basis) out of India**
- The said activity is in the nature of “sale on approval basis”
- The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

Goods sent/taken out of India for exhibition or on consignment basis (Contd)

- **When is the supply of specified goods sent / taken out of India said to take place?**
- The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in section 31(7) of the CGST Act.
- The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.
- If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.

Goods sent/taken out of India for exhibition or on consignment basis (Contd)

- **Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?**
- When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, a tax invoice shall be issued in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.
- When the specified goods have neither been sold nor brought back, either fully or partially, a tax invoice shall be issued on the date of expiry of six months from the date of removal.

Goods sent/taken out of India for exhibition or on consignment basis (Contd)

- **Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?**
- The sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.
- The sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.

Supply of Information Technology enabled Services (ITeS services)

- The definition of intermediary inter alia provides specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as intermediary even where the supplier of services qualifies to be “an agent/ broker or any other person” if he is involved in the supply of services on his own account.
- Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions.

- **Scenario -I:** The supplier of ITeS services supplies back end services. In such a scenario, the supplier will not fall under the ambit of intermediary under section 2(13) of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier “A” supplying services, on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of section 2(13) of the IGST Act.

Supply of Information Technology enabled Services (ITeS services) (Contd)

- **Scenario -II:** The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under section 2(13) of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier “A” supplying backend services as mentioned in this scenario to the customer “C” of his client “B” would be intermediary in terms of section 2(13) of the IGST Act.

Supply of Information Technology enabled Services (ITeS services) (Contd)

- **Scenario –III:** The supplier of ITeS services supplies back end services, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under section 2(13) of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier “A” supplying services as well as support services listed in Scenario -II above to his client “B” and / or to the customer “C” of his client is intermediary or not in terms of section 2(13) of the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

- **Surrender of enrolment of GST practitioner**
- Rule 83B inserted in CGST Rules, 2017 and Form GST PCT-06 notified for the same
- A GST practitioner seeking to surrender his enrolment shall electronically submit an application in FORM GST PCT-06, at the common portal, either directly or through a facilitation centre notified by the Commissioner
- The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in FORM GST PCT-07, cancel the enrolment of such practitioner.

- **Amendment to Rule 138E**
- **Application for unblocking of the facility for generation of E-Way Bill**
- FORM GST EWB-05 notified for the same
- **Order for permitting / rejecting application for unblocking of the facility for generation of E-Way Bill**
- Commissioner may, for reasons to be recorded in writing, by order, permit or reject
- FORM GST EWB – 06 notified for the same

- **Tenure of Anti-Profiteering Authority enhanced to four years**
- Rule 137 of the CGST Act, 2017: The Authority shall cease to exist after the expiry of four years from the date on which the Chairman enters upon his office unless the Council recommends otherwise
- **Electronic Invoicing by Multiplex screens:** Rule 54(4A): A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46.



GST Portal Updates

- **Payment: Utilization of IGST Credit (*implemented in Form GSTR 3B only*)**
- Taxpayers **filing Form GSTR 3B** will have to utilize IGST credit towards payment of Integrated tax, and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax or Union territory tax, in any order.
- This can be done provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilised towards payment of Integrated tax, Central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of Integrated tax has first been utilised fully.
- (*Refer Section 49A of the CGST Act, 2017 & Rule 88A of the CGST Rules, 2017*)



GST Legal Updates

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

Case of Amit Cotton Industries Vs PR CC reported in 2019- TIOL-1443-HC-AHM-GST

Facts:

Writ-applicant had exported goods in July 2017. It is the case of the writ-applicant that it is eligible to seek refund of the IGST in accordance with the provisions of the IGST Act, 2017. However, according to the writ-applicant, without any valid reason the refund to the tune of Rs.19,05,121/- has been withheld. According to the writ-applicant, despite many representations addressed to the respondent no.2, i.e. the Deputy Commissioner of Customs, no cognizance has been taken so far as regards the claim for the lawful refund of the requisite amount..

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

Facts: (Contd....)

Writ-applicant vehemently submitted that there is no legal embargo on availing the drawback at the rate of 1% higher rate on one hand and availing refund of the IGST paid in regard to the 'Zero Rated Supply', i.e. the goods exported out of India, on the other.

It is submitted that the refund ought to have been sanctioned immediately irrespective of the fact, whether the drawback was claimed at the rate of 1% (higher rate) or at the rate of 0.15% (lower rate).

Writ-applicant further submits that the stance of the respondents that the writ-applicant is not entitled to claim refund as the writ-applicant had availed drawback at the higher rate in regard to the finished goods exported out of India, is not sustainable in law.

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

The Hon'ble High Court held as under

It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

Respondents have fairly conceded that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

The stance of the department is that, as the writ-applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to seek the refund of the IGST paid

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

The Hon'ble High Court held as under-

in connection with the goods exported, i.e. 'zero rated supplies'.

If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

The Hon'ble High Court held as under

Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies as enumerated in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017

Insofar as the circular is concerned, apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear.

Circular cannot run contrary to Statutory Provisions – Guj HC orders grant of IGST Refund

The Hon'ble High Court held as under

In view of the same, the writ-applicant is entitled to claim the refund of the IGST.

In the result, this writ-application succeeds and is hereby allowed.

The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

Any ISSUES/ queries?



- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_GoI
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU