

Refund Mechanism for Export of Services under GST

Background

GST is a destination based consumption tax where in the levy of tax moves along with goods and /or services. Destination of export of goods/and services would be outside India and hence there would be no GST liability on such transactions.

Export of Service:

Sec 2(6) of the revised model IGST law provides the definition for export of services.

–Export of services| means the supply of any service when;

- (a) the supplier of service is located in India,
- (b) the recipient of service is located outside India,
- (c) the place of supply of service is outside India,
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
- (e) the supplier of service and recipient of service are not merely two establishments of a same person.

The definition of location of recipient of service and location of supplier of service provided under draft IGST law is similar to that of existing service tax provisions.

i.e. when the registration is obtained, then the location of such registered premise or else the fixed establishment. In absence of those, the location of usual place of residence shall be considered as location of service provider/ receiver as the case may be.

The place of supply of service shall be determined as per Place of supply provisions provided to Sec 9 and 10 of revised Model IGST law.

Further, Sec 3(5) of the IGST law provides that supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce and accordingly IGST provisions shall be applicable.

Zero rated supply

Chapter VIII, Section 16 of the Model IGST law provides provisions on zero rated supply of goods and /or services.

–zero rated supply| means any of the following taxable supply of goods and/or services, namely -

- (a) export of goods and/or services;

- (b) supply of goods and/or services to a SEZ developer or an SEZ unit.

It also provides that the Credit of input tax may be availed for making zero-rated supplies in accordance with Sec 17 of model CGST law (Provisions relating to Input Tax credit).

Refund Mechanism

Sub section 3 of Sec 16 of Model IGST law provides follow two refund mechanisms in case of export of goods and/or services:

(a) a registered taxable person may export goods or services under bond without payment of IGST and claim refund of unutilized input tax credit in accordance with provisions of section 48 of the CGST Act, 2016 (Provisions on Refund).

(b) a registered taxable person may export goods or services, on payment of IGST and claim refund of IGST paid on goods and services exported in accordance with provisions of section 48 of the CGST Act, 2016.

The detailed conditions, safeguards and procedure would be separately prescribed in this regard vide GST Refund rules.

Section 48 - Refund of tax

An application for Refund of any tax and interest or any other amount paid if any shall be made to proper officer of IGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed in this regard.

The application shall be accompanied by—

- (a) Documentary evidence to establish that a refund is due to the applicant, and
- (b) Documentary evidence to establish that the amount of tax/interest/any other amount was paid by him and the incidence of such amount had not been passed on to any other person.

Where the amount claimed as refund is less than five lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences and instead, he may file a declaration certifying that the incidence of such tax and interest had not been passed on to any other person.

In case of claim for refund on account of export of goods and/or services proper officer may sanction refund on a provisional basis to the extent of ninety percent of the total amount so claimed and thereafter make an order for final settlement of the refund claim after due verification of documents furnished by the applicant.

Further, the refundable amount shall be paid to the applicant instead of crediting the fund, in case of refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India.

Explanation is added to clarify the following:

-refund includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit in certain cases.

-relevant date

In the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

- (i) Receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; OR
- (ii) Issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;

If any tax ordered to be refunded under section 48 to any applicant is not refunded within sixty days from the date of receipt of application, interest at such rate as may be specified shall be payable in respect of such refund.

Present law

Under current service tax provisions, there is no scheme providing rebate of service tax on export of services. Alternatively, the exporters of services could seek refund of accumulated Cenvat credit under Rule 5 of Cenvat credit rules.

The said Rule read with Notification 27/2012-CE (NT) provide that the refund of Cenvat credit shall be allowed in respect of input or input service used in providing output service which has been exported without the payment of service tax subject to safeguards, conditions and limitation, set out in the appendix to the said Notification. As such, only those input service will be eligible for refund of Cenvat Credit which has been used in providing output service which has been exported.

The procedure of refund claim would be in line with refund of excise duty under Central excise provisions.

Section 11B of the Central Excise Act, provides for time limit of one year from relevant date for refund application. In other words no refund can be claimed after expiry of one year from the relevant date.

The relevant date in case of export of services would be the date of export. Notification No.14/2016 – CE(NT) dated March 01, 2016 has been issued to clarify that the time limit of one year shall be considered from the date of receipt of payment in foreign exchange when service is provided prior to date of receipt. If the payment is received in advance, the date of invoice shall be considered for arriving the one year time limit.

Transitional Provisions

As per Sec 178 of model GST law, every refund claim filed for refund of any amount of Cenvat credit, duty, tax or interest paid before the appointed day (GST implementation), shall be disposed of in accordance with the provisions of earlier law (Excise/Service tax) and any amount eventually accruing to applicant shall be paid in cash.

Further, Sec 180 of the model GST law provides that in case of every refund claim of any tax paid under earlier law, filed after the appointed day, for the services exported before or after the appointed day, shall be disposed of in accordance with the provisions of earlier.

Further in both the above cases, it is provided that, where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse.

No refund claim shall be allowed on Cenvat credit balance which has been carried forward as on appointed day.

As per Sec 181, Every claim for refund of tax deposited under the earlier law in respect of services not provided and claim filed after the appointed day, such claim shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to applicant shall be paid in cash.