

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 259

Dear SEZ Members,

We have received various queries / concerns from SEZ Members in relation to procedural difficulties faced while procurement of goods / services from DTA suppliers post implementation of GST.

While Government is making all possible efforts to align the process by way of issuance of clarifications and instructions from time to time, however, it seems that PAN India level implementation of process and dispersion of conceptual level understanding among stakeholders may take few more weeks.

Given the above, EPCES is under continuous discussion with MoF officials with a view to address such concerns to the extent possible and within the given timeframe.

Meanwhile, as a continued effort to cater needs of Members, EPCES is issuing below process note including relevant provisions, notifications, legislative framework and procedure in respect of supplies made by DTA to SEZ units / developers.

Enclosures: Relevant legislative pieces

- **Rule 89** of CGST Rules along with **FORM RFD-01(Refund Application)**;
- **Rule 96A** of CGST Rules along with **FORM RFD-11(BOND/LUT Format)**;
- **Circular No. 2 – GST dated 04th July 2017** - Issues relating to furnishing of Bond/LUT for Exports;
- **Circular No. 4 - GST dated 07th July 2017** - Issues related to Bond/Letter of Undertaking for exports without payment of integrated tax;
- **Notification 16/2017 – Central Tax dated 07th July 2017**prescribing eligibility for furnishing LUT in place of Bond;

Summary of relevant provisions for DTA to SEZ supplies:

Particulars		GOODS		SERVICES	
		BOND/LUT	Payment of IGST	BOND/LUT	Payment of IGST
Type	Type of supply	Inter State Supply - Section 7(5)(b) of IGST Act			
	Nature	Zero Rated Supply - Section 16 of IGST Act			
Tax to be paid	Tax applicable	-	IGST	-	IGST
	By whom	-	DTA supplier	-	DTA supplier
	Charging tax on invoice	-	Supplier should not collect tax	-	Supplier should not collect tax
			Rule 89(2)(I)		Rule 89(2)(I)
Refund	Refund of:	Input Taxes	IGST Paid	Input Taxes	IGST Paid
	Rule:	Rule 89 of CGST Rules			
	Form:	Form RFD-01			
	Other important things/conditions	Format of Bond & LUT prescribed Rule 96A (Procedure for refund under Bond/LUT) Form RFD-11 (Format for Bond/LUT)	-	Format of Bond & LUT prescribed Rule 96A (Procedure for refund under Bond/LUT) Form RFD-11 (Format for Bond/LUT)	-
	Who can file refund:	DTA Supplier			
	Un-clarity in law	-		- What would come under the head "Shipping Bill/Bill of export" in Statement 4 of Form RFD-01 in case of services ?	- Whether there is any exemption to SEZ from condition of foreign exchange under Rule 96A ?
	Un-clarity in law	What will happen in case of DTA supplies to SEZ, supplies taxable under RCM?			

Taxability of supplies made by DTA unit to SEZ unit/developer:

- As per **Section 7** of the IGST Act, supply of **goods or services or both** to a unit located in SEZ or SEZ Developer shall be treated as an **inter-state supply**;
- Accordingly, tax (if any applicable on such supplies) should be **IGST irrespective of Place of supply or location of SEZ unit / developer**;
- **Section 16 of IGST Act** prescribes that supply of **goods or services or both** to a unit located in SEZ or to a SEZ Developer shall be treated as a **zero-rated supply**;
- Further, “*zero-rated supply*” has been defined to mean **any** of the following supplies of goods or services or both:
 - **Export** of goods or services or both; or
 - Supply of goods or services or both **to a SEZ unit or developer**
- **Section 16** also specifies that person making zero-rated supply i.e. **DTA unit supplying services/goods to SEZ unit/developer can claim refund under either of the following options**:
 - Supply goods/services under **bond or Letter of undertaking**, subject to conditions, **without payment of IGST** and claim **refund of unutilized input tax credit**; or
 - Supply goods/services, subject to conditions, on **payment of IGST** and claim refund of **such IGST paid**.

Analysis of above

- All supplies from DTA to SEZ units / SEZ developers to be treated as **inter-state supplies** to be governed by provisions of **IGST Act**;
- Further, such supplies are to be treated as **zero rated**;
- DTA supplier has option either to supply against execution of bond / LUT equivalent to IGST leviable on such supply or to pay IGST (on his own account **without passing the incidence to SEZ unit / developer**) and claim refund of IGST so paid;

Treatment of input tax credit on supplies to SEZ units/developers

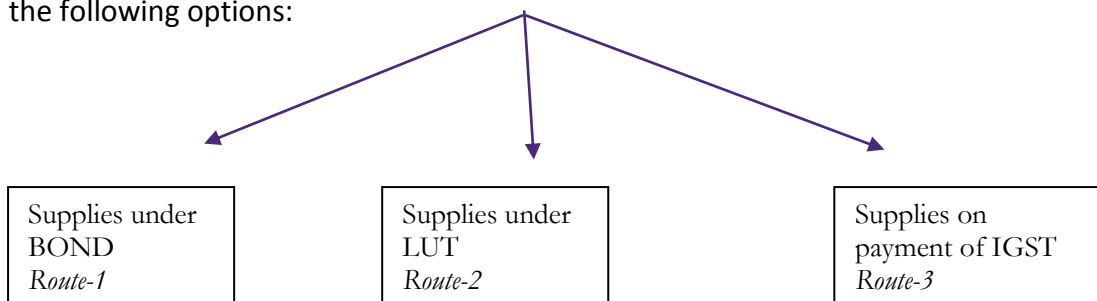
- The definition of “**exempt supply**” u/s **2(47)** of the CGST Act covers supplies attracting **nil** rate of duty;
- **Section 16(2)** of the IGST Act states that ITC can be availed in respect of **zero-rated supplies**, irrespective of the fact that such zero-rated supplies are covered under the scope of **exempt supply**;
- **Section 17(2)** of the CGST Act states that the availability of ITC shall be restricted only to taxable supplies **including zero-rated supplies** and ITC shall not be available on exempt supplies;
- **Section 17(5)** restricts ITC in respect of certain notified items as those which are ineligible for ITC claim;
- Further as per proviso of **section 54(3)** of CGST Act, no refund of input tax credit shall be allowed, if supplier (DTA unit) avails of drawback in respect of central tax or **claims refund of IGST paid on supplies**.

Analysis of above

- ITC should be available to DTA supplier in respect of zero rated supplies made to SEZ unit / developer by virtue of section 17(2);
- Such ITC may be utilised for payment of output tax liability as per provisions of GST law, however, refund of such accumulated ITC is not allowable;

Refund for zero-rated supply (supply to SEZ units/Developers)

DTA unit making zero rated **supplies to SEZ** shall be eligible to claim **refund** under **either** of the following options:



Route 1: Supply of goods or services or both under BOND without payment of integrated tax and claim refund of unutilized input tax credit

DTA unit shall furnish a **running bond**, which would cover the **amount of tax involved** in the supplies to SEZ based on **estimated tax liability** as assessed by the exporter himself.

The DTA Unit shall ensure that the **outstanding tax liability** on supplies is **within the bond amount**. In case the bond amount is insufficient to cover the tax liability in yet to be completed supplies, the DTA Unit shall furnish a **fresh bond** to cover such liability.

FORM RFD -11 under **Rule 96A of the CGST Rules** requires furnishing a **bank guarantee with bond**. The jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the **track record** of the DTA Unit.

If Commissioner is **satisfied with the track record of DTA Unit**, then furnishing of bond **without bank guarantee would suffice**. In any case, the bank guarantee should **normally not exceed 15% of the bond amount**.

Procedure:

- Supplier (DTA Supplier) shall file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- With regard to supplies made to SEZ unit/developers, abovementioned application shall be filed by:
 - (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**(*as stated below*)regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone
- Application shall be accompanied with **following documentary evidences** in order to establish claim of refund:
 - **In case of goods-**
A **statement** containing the **number and date of invoices** along with the **evidence regarding the endorsement**
 - **In case of services-**
A **statement** containing the **number and date of invoices**, the **evidence regarding the endorsement** and the **details of payment, along with the proof thereof**, made by the SEZ to the DTA supplier for authorised operations as defined under the Special Economic Zone Act, 2005.

List of documents required for executing Bond

1. The registered person will submit request on its **letter head** to concerned Assistant Commissioner, for acceptance of **GST RFD-11** signed by the proprietor/ partner/ director/ authorised signatory as the case maybe.
2. Along with letter following documents need to be submitted:-
 - a. Form GST RFD-11 duly filed and signed with seal on company letterhead.

- b. Bond as prescribed on **INR 100, Non-judicial stamp paper** duly signed by the proprietor/ partner/ director/ authorised signatory as the case maybe. The Bond would cover the amount of Tax involved (which generally equivalent to IGST levied on such good/services).
- c. Copy of GST registration Certificate (Provisional / permanent).
- d. Copy of Certificate of Importer-Exporter Code(IEC) issued by Ministry of Commerce, Govt. of India.
- e. Copies of VAT/ST Returns of all FY 2016-17 or GSTR-3 of all months of the preceding year.
- f. Bank guarantee of around 15%, of the amount of tax involved.
- g. Export bill/invoice

Note:-The above documents can vary depending on different jurisdictions.

Route 2: Supply goods or services or both under LETTER OF UNDERTAKING (LUT) without payment of integrated tax and claim refund of unutilized input tax credit

This route has been specified for the registered person **who intends to supply goods or services for export without payment of integrated tax**

This Route is available subject to fulfilment of **any one** of the below mentioned conditions, i.e. registered person is eligible for submission of **letter of undertaking in place of bond** are:

1. A **status holder** as specified in paragraph 5 of the Foreign Trade Policy 2015 – 2020 i.e. an exporter recognized as One Star Export House/ Two Star Export House / Three Star Export House / Four Star Export House/ Five Star Export House by DGFT/ Development Commissioner.
OR
2. 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.

LUT shall be valid for 12 months, however If the supplier fails to comply with the conditions of the LUT, it may be asked to furnish a bond.

List of documents required for LUT

1. The registered person will **submit request on its letter head** to concerned Assistant Commissioner, for acceptance of **GST RFD-11** signed by the proprietor/ partner/ director/ authorised signatory as the case maybe.
2. Along with letter following documents need to be submitted:-
 - a. Form **GST RFD-11** duly filed and signed with seal on company letterhead.
 - b. **Letter of Undertaking** as prescribed on company/ firms letterhead in duplicate duly signed by the competent person as per **Notification No. 16/2017** issued by CBEC.
 - c. **Certificate of status holder** as per para5 of Foreign Trade Policy 2015-2020.

Note- (The status holder is exempted from furnishing of Bank Guarantee for schemes under FTP, unless specified).

OR

Bank Certificate mentioning that the registered person/exporter 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.

CA Certificate certifying export turnover of preceding financial year.

- d. **Undertaking/ declaration** on letter head that he has not been prosecuted under any offence under the Central Goods and Services Tax Act, 2017 or under any of the existing laws in case where the amount of tax evaded exceeds **INR 2,50,00,000**
- e. Copy of **GST registration Certificate** (Provisional / permanent).
- f. Copy of **Certificate of Importer-Exporter Code (IEC)** issued by Ministry of Commerce, Govt. of India.
- g. Copies of **VAT/ST Returns** of all FY 2016-17 or GSTR-3 of all months of the preceding year.
- h. **Export bill/invoice**

Note:-The above documents can vary depending on different jurisdictions.

Calculation of refund amount (Common for Both Bond & LUT)

- In case of supplies to SEZ **without payment of IGST** under **bond/LUT**, refund of ITC shall be calculated in the following manner:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where,-

- (A) "**Refund amount**" means the **maximum refund** that is admissible;
- (B) "**Net ITC**" means input tax credit availed on inputs and input services during the relevant period;
- (C) "**Turnover of zero-rated supply of goods**" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;
- (D) "**Turnover of zero-rated supply of services**" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

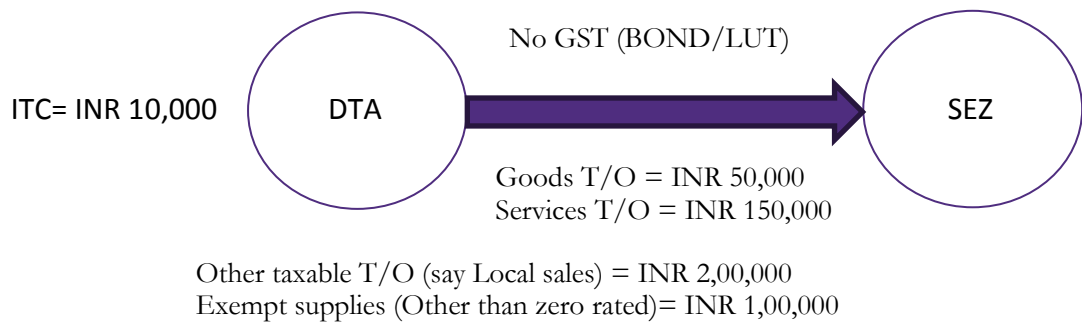
NOTE

Zero-rated supply of services is the **aggregate of the payments received** during the relevant period for zero-rated supply of services and zero-rated supply of services where **supply has been completed for which payment had been**

received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "**Adjusted Total turnover**" means the turnover in a State or a Union territory, as defined under sub-section (112) of section 2, **excluding the value of exempt supplies other than zero-rated supplies**, during the relevant period;

(F) "**Relevant period**" means the **period for which the claim has been filed**.



$$\text{Refund Amount} = \frac{(50,000 + 1,50,000) * 10,000}{(50,000 + 1,50,000 + 2,00,000 + 1,00,000 - 1,00,000)}$$
$$= \text{INR } 5,000$$

Route 3: Supply of goods or services or both, on PAYMENT OF INTEGRATED TAX and claim refund of such tax paid on goods or services or both supplied.

- Supplier (DTA Supplier) shall file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
- With regard to supplies made to SEZ unit/developers, abovementioned application shall be filed by:

(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

Note:- Application shall be accompanied with a declaration to the effect that the Special Economic Zone unit has **not availed the input tax credit** of the tax paid by the supplier.

This is for kind information of the members
