

# EXPORT OF SERVICES, SUPPLIES TO SEZ AND ISSUES IN REFUNDS WITH RELEVANT ADVANCE RULINGS

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# GST Law

## Positives for Export

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- GST is a destination based tax. Thus Consumption of Exports happen outside India. Hence, final goods/services exports by a supplier enjoy zero rate of tax.
- ITC on inward supplies allowed for making exports. Such ITC is eligible for refund.
- Self-declaration facility for exporters irrespective of refund amount.
- Job work on intimation and delivery challan.
- Government empowered to notify deemed exports.
- LUT granted unconditional.
- Thus, favorable environment to boost exports.



# GST Law

## Positives for Export

Sr. No.	Provisions	Section/Rule	Act
1	Inter state supplies include exports	7(5)	IGST
2	Exports of Services	2(6)	IGST
3	Establishments of distinct persons	Expl - Sec 8	IGST
4	Location of <b>Supplier</b> of Services (LoS)	2(15)	IGST
5	Location of <b>Recipient</b> of services (LoR)	2(14)	IGST
6	India	2(56)	CGST
7	Taxable territory	2(22)	IGST
8	Zero Rated Supply	16(1)	IGST
9	ITC Eligibility	16, 17	CGST
10	POS of Services where LoS or LoR is outside India	13	IGST
11	Circular		CGST
12	Various Advance Rulings		

# GST Law

## Interstate Supplies include exports

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Sec 7(5) of IGST Act: 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

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

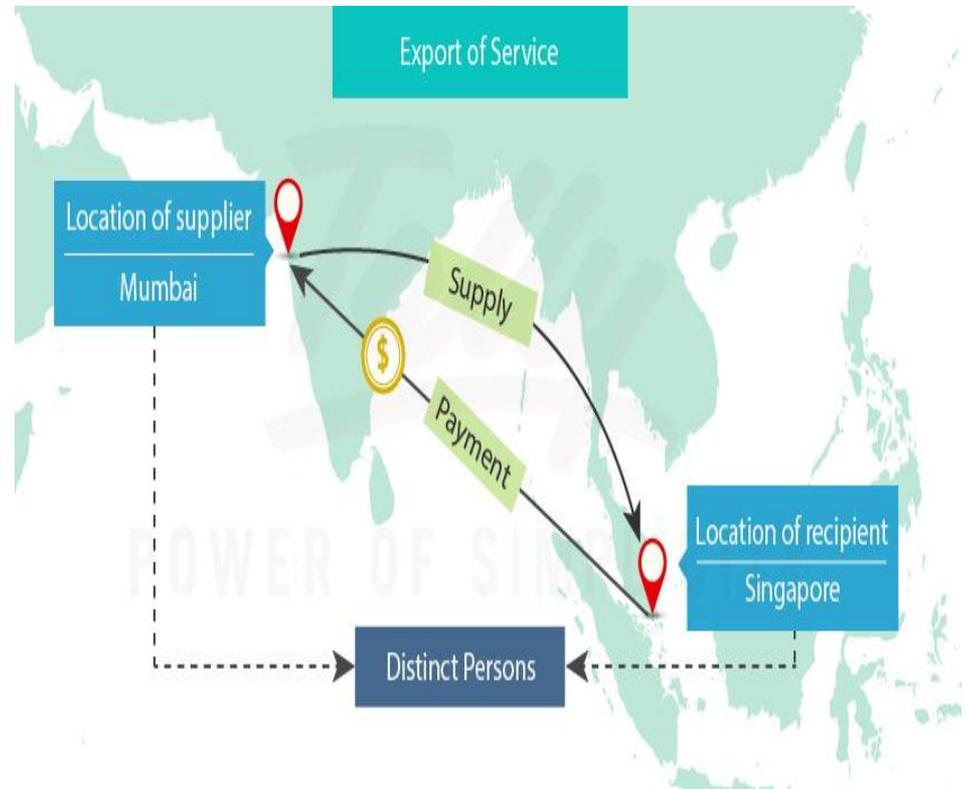


# GST Law

## Exports of Services

Sec 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 or **in Indian rupees wherever permitted by the Reserve Bank of India\***; 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;



\* Inserted by IGST Amendment Act, 2018 w.e.f. 01.02.2019

# GST Law

## Establishments of distinct persons – Sec 8 of IGST Act

### Explanation 1-

an establishment in India and any other establishment outside India;

### Explanation 2 –

Branch/ agency/representational office through which business is carried on in any territory, shall be treated as having an “**establishment**” in that territory.



Circular No. 5/5/2017 – GST dated 11.08.2017

- Supplies of Services to Nepal or Bhutan will be deemed export of services if payment received by supplier in convertible foreign exchange.
- Exemption was available under **9/2017 – IT Rate** under Sr. No. 10D Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees. The same has been rescinded by Not. 2/2019 – IT (Rate)

# GST Law

## Location of Supplier/ Location of Recipient

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Sub Clause of Sections	Location of Recipient Sec 2(14) of IGST Act	Location of Supplier Sec 2(15) of IGST Act
Supply received/ made from Registered POB	Such Registered POB	Such Registered POB
Supply received/ made from other than Registered POB (Fixed Establishment) [FE – 2(7) of IGST Act]	Such FE	Such FE
Supply received from more than one establishment	Establishment most directly concerned with receipt of supply	Establishment most directly concerned with provision of supply
In absence of above places	Usual place of residence of recipient	Usual place of residence of supplier

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# GST Law

## India / Taxable territory

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**"India"** means the territory of India as referred to in article 1 of the Constitution,

- its territorial waters, seabed and sub-soil underlying such waters, continental shelf,
- exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976),
- and the air space above its territory and territorial waters;

**"taxable territory"** means the territory to which the provisions of this Act apply;



# GST Law

## Zero Rated Supply

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"Zero rated supply" means following supplies of goods/services/both,

- a. export of goods or services or both; or
- b. supply of goods or services or both to a SEZ developer or a SEZ unit.

**Note:**

All goods/services, whether taxable under gst or not, qualify as "zero rated supply"

Zero Rated Supply under GST



# GST Law

## ITC position under Zero Rated Supply

### Procurements and ITC position to RP:

GST is charged at full rate to Exporter. Thus, ITC position as under

- Subject to Sec 17(5) of CGST Act
- For zero rated supply incl. exempt supply (nil-rated, wholly exempt, or non taxable supplies)

### Two options available to RP making zero rated supply for claiming refund:

- a. Supply under LUT without payment of IGST and claimed refund of unutilised ITC on inward supplies.
- b. Supply on payment of IGST at prevailing GST rates and discharge liability by utilising cash/ input tax credit.

Option (b) not allowed if benefits mentioned u/r 96(10) availed.

Not 41/2017 – IT (Rate) for procurements by merchant exporter at 0.1% is applicable to taxable goods only.



# GST Law

## Deemed Exports – Applicability for Services ?

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Notification 48/2017 – CT, dated 18.10.2017 notifies foll supplies by RP as deemed exports:

- Supply of **goods** by a registered person against Advance Authorisation.
- Supply of **capital goods** by a registered person against Export Promotion Capital Goods Authorisation
- Supply of **goods** by a registered person to Export Oriented Unit
- 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.

Not applicable to Services.  
Govt. has only notified supply of goods situations.



# GST Law

## Place of supply of Service – Sec 13 of IGST Act

- Place of Supply of Services determined as per Sec 13 of IGST Act.
- General Provision as per Sec 13(2) applies except specified services as mentioned in Sec 13(3) to 13(12)
  - Location of recipient of services
  - Location of supplier of services where location of recipient of services is not available in ordinary course of business.
- Sec 13(13): In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.



# GST Law

## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
1	<p>Services in respect of goods that are required to be made physically available by the recipient to the supplier, or to a person acting on behalf of the supplier of services in order to provide the services</p>	<p>Location where services are <b>actually performed</b></p>
	<p>Above Services provided from a remote location by way of electronic means</p>	<p>Location where <b>goods are situated</b> at the time of supply</p>
	<p>Services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process* and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process*</p> <p>*Inserted by IGST Amendment Act, 2018</p>	<p>General Provision Sec 13(2) shall apply.</p> 

# GST Law

## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
2	Services supplied to an individual (whether as recipient/ on his behalf which requires physical presence of supplier	Location where services are <b>actually performed</b>
3	<ul style="list-style-type: none"><li>▪ Directly in relation to immovable property</li><li>▪ Incl. experts like architects, interior decorators and real estate agents</li><li>▪ Accommodation by a hotel, inn, guest house, club or campsite.</li><li>▪ Grant of right to use immovable property.</li><li>▪ For carrying out/ co-ordination of construction work</li></ul>	Place where immovable property is located or intended to be located.



# GST Law

## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
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2	admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation.
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Place where event is actually held.



### Note:

- POS is location in taxable territory when supply in more than one location, incl. taxable territory.
- POS is location in taxable territory where service supplied at more than one location, incl. in taxable territory.

# GST Law

## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
3	a. services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders; b. intermediary services; c. services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.	Location of Supplier of Services 

Note:

**"intermediary"** means a broker, an agent or any other person, by whatever name called,

- who arranges or facilitates the supply of goods or services or both, or securities,
- between two or more persons,
- but does not include a person who supplies such goods or services or both or securities on his own account;

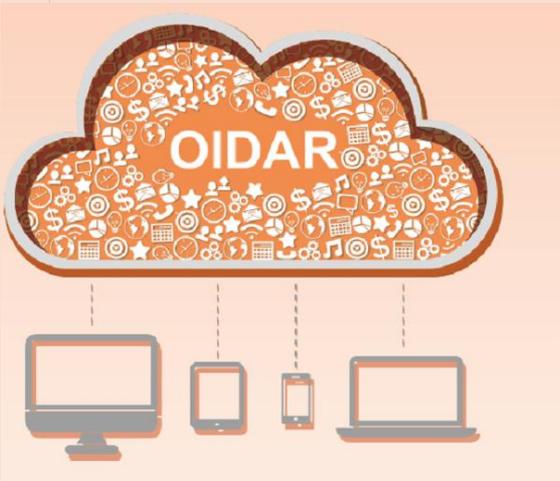
# GST Law

## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
4	<p>Services of transportation of goods, other than by way of mail or courier.</p> <p><b>*Proviso to Sec 12(8)</b> : Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</p> <p><b>*Inserted by IGST Amendment Act, 2018</b></p>	<p>Place of destination of <b>goods</b></p> <p><b>Does it qualify as export ?</b></p> 
5	Passenger transportation services	Place where passenger embarks on the conveyance for a continuous journey
6	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	<p>First scheduled point of departure of that conveyance for the journey.</p> 

# GST Law

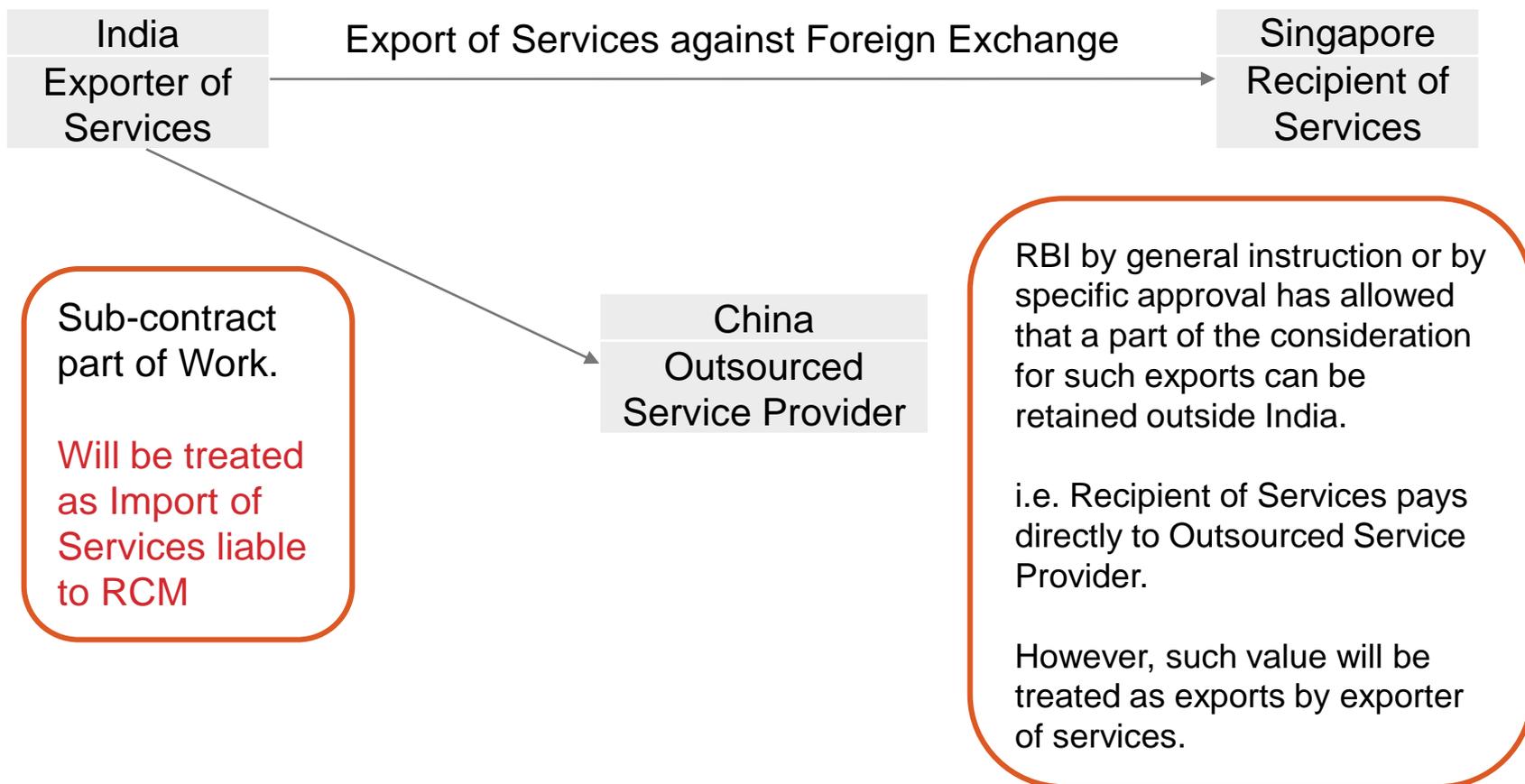
## Place of supply of Service – Sec 13 of IGST Act

Sr. No	Type of Services	Place of Supply
7	<p data-bbox="189 386 685 511">Online information and database access or retrieval services</p> <p data-bbox="189 565 685 644"><b>Refer Sec 2(17) of IGST Act.</b></p> 	<p data-bbox="724 386 1078 425">Location of Recipient</p> <p data-bbox="724 476 1773 558">Location of recipient deemed to be in India, if any 2 of following conditions are satisfied</p> <ul data-bbox="724 568 1818 1272" style="list-style-type: none"><li data-bbox="724 568 1818 649">▪ the location of address presented by the recipient of services through internet is in the taxable territory;</li><li data-bbox="724 654 1818 782">▪ the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;</li><li data-bbox="724 833 1818 915">▪ the billing address of the recipient of services is in the taxable territory;</li><li data-bbox="724 919 1818 1001">▪ the internet protocol address of the device used by the recipient of services is in the taxable territory;</li><li data-bbox="724 1005 1818 1086">▪ the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;</li><li data-bbox="724 1090 1818 1172">▪ the country code of the subscriber identity module card used by the recipient of services is of taxable territory;</li><li data-bbox="724 1176 1818 1272">▪ the location of the fixed land line through which the service is received by the recipient is in the taxable territory.</li></ul>

# GST Law

## Advance Rulings/ Circulars

### CIRCULAR NO. 78/52/2018-GST - CENTRAL TAX, DATED 31-12-2018



# GST Law

## AR – Printing Service and Goods delivery in India

### **SWAPNA PRINTING WORKS PRIVATE LIMITED - 2018-VIL-331-AAR**

GST - West Bengal AAR - whether activities undertaken by procuring orders from a foreign party to print religious texts and thereafter deliver them to various places in India can be classified as "supply of goods" or "supply of services" - whether this activity can be classified as "export" –

HELD - The Applicant's activity of printing the Bible under the specific orders received from The Gideons International is a **supply of service** classifiable under SAC 9989 - the **Applicant's supply is not the export of service as the recipient of the service is located in India** - The applicant's service is supplied to the recipient located in India and the consideration is received in INR. The applicant is, therefore, liable to pay GST on such supplies

# GST Law

AR – Goods are required to be physically made available to Supplier

## **SEGOMA IMAGING TECHNOLOGIES INDIA PRIVATE LIMITED - 2018-VIL-304-AAR**

GST - Maharashtra AAR - Whether the supply of photography service for clicking photographs of diamonds which will then be uploaded by foreign holding company on its website. These transactions are liable to GST?

HELD – Sec 13(3)(a) - Services supplied in respect of **goods which are required to be made physically available by the recipient of services** to the supplier of services (or his agent) in order to provide the services. – thus, place of supply within India, hence GST applicable. Further above, transaction will not qualify as export of service.

# GST Law

## AR – Goods are required to be physically made available to Supplier

### **BEHR-HELLA THERMOCONTROL INDIA PVT LTD - 2018-VIL-269-AAR**

GST - Maharashtra AAR - Export of Service - Zero Rate Supply - Section 13(3) of IGST Act - place of supply of services - testing services provided by the Applicant in relation to the prototype goods supplied by the overseas group entities - Whether the applicant is liable to pay IGST on the testing services provided to its overseas group entities, being a zero-rated supply - Revenue is of the view that the applicant is not liable to pay IGST on the testing services provided to its overseas group entities being export of service –

HELD - The facts and situation of the case clearly attract the provisions of Section 13 (3)(a) of the IGST Act and therefore it can be inferred that the said services of testing of the prototypes, **which are physically made available by the service receiver to the applicant, are provided in India** and therefore liable to tax - The argument of the applicant that the services are completed only when the test reports are sent to their overseas clients is not tenable - the agreement between the applicant and the service recipient is only with respect to conducting of tests and providing of test report and is not with respect to its further use or otherwise by the service recipient - even if the findings of test report are not used in any way by the service recipient, it cannot be said that the service of testing is not provided by the applicant to the service recipient - the testing services being provided by the applicant is liable to IGST and cannot be treated as zero rated supply

# GST Law

## AR - Intermediary

### **MRS. VISHAKHAR PRASHANT BHAVE MICRO INSTRUMENTS - 2018-VIL-294-AAR**

GST – Maharashtra AAR – the applicant is providing services to its principals at Germany, by way of procuring Purchase Orders from the parties in India - whether the Commission received by the applicant in convertible Foreign Exchange for rendering services as an 'Intermediary' between an exporter abroad receiving such services and an Indian importer, is an "export of service" falling under section 2(6) & outside the purview of section 13 (8) (b), attracting zero-rated tax under section 16 (1) (a) of the IGST Act, 2017 - whether the impugned supply of service forming an integral part of the cross-border sale/purchase of goods, will be treated as an "intra-state supply" – place of service

HELD – Applicant is covered by the definition of an intermediary because they are **acting as a broker and facilitating the process for sale of materials by their foreign principals to the Indian parties**. It is clear from the facts of transaction that the applicant is neither providing services nor supplying the goods on their own account - Since the place of supply of services in the instant case is in taxable territory, the said intermediary services cannot be treated as export of services under the provisions of the GST laws - In order to classify as 'export of service', as per section 2(6) of the IGST Act, 2017, one of the crucial condition as contained under sub-clause (iii) requires that the place of supply of service should be outside India. In the subject case, the place of supply shall be location of the supplier of services and therefore such 'intermediary services' cannot be classified as 'export of services' - in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5) (c) shall be applicable and hence IGST is payable under such transaction - The said supply will be treated as Inter-State Supply and not intra state supply and IGST will be levied @ 18%

# GST Law

## AR - Intermediary

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### **VSERVGLOBAL PRIVATE LIMITED - 2018-VIL-270-AAR**

GST - Maharashtra AAR – Export of Service – Zero Rate Supply – whether the Business Support Service comprising of Back Office Support and Accounting Services, provided to overseas client amounts to export of services and therefore qualify as zero rated supply as per section 16 of the IGST Act or whether the applicant is an 'intermediary' in terms of section 2(26) of the IGST Act.

**HELD - A sum of all activities indicate applicant as a person who arranges or facilitate supply of goods or services or both between the overseas client and customers of the overseas client,** and therefore applicant is clearly covered and falls in the definition of an intermediary as defined under the IGST Act - the place of supply in case of services provided by the applicant being intermediary would be the location of the supplier of services i.e. the location of the applicant. To qualify a transaction of supply of services as export of services that transaction has to satisfy all five ingredients of the definition of export of services simultaneously - the services proposed to be rendered by the applicant do not qualify as 'export of services' and thus not a 'zero rated supply' as per section 16(1) of the IGST Act, 2017

# GST Law

## AR - Intermediary

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### **SABRE TRAVEL NETWORK INDIA PVT LTD - 2018-VIL-314-AAR**

GST - Maharashtra AAR - Whether the marketing, promotion and distribution services provided by applicant to its parent company, situated in Singapore qualify as export of service –

HELD - the applicant is not providing services on their own account but on account of Sabre APAC, and thus it is very apparent that the applicant is providing Intermediary Services in the instant case - Since the **place of supply of services in the instant case is in taxable territory, the said intermediary services cannot be treated as export of services** under the provisions of the GST laws - in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5) (c) shall be applicable and hence IGST is payable under such transaction

# GST Law

## AR - Intermediary

### **GLOBAL REACH EDUCATION SERVICES PVT LTD - 2018-VIL-06-AAR**

GST – West Bengal AAR - Export of Services - The Applicant provides Overseas Education Advisory whereby it promotes the courses of foreign universities among prospective students - Whether the service provided to the Universities abroad is to be considered “export” within the meaning of Section 2(6) of the IGST Act, 2017, hence, a zero-rated supply under the GST –

HELD – in the case of Export of Services all the conditions as laid down under Section 2(6) of IGST Act is to be followed in totality without any violation, and that there is no scope of partial compliance of the conditions laid down therein - the Applicant is facilitating recruitment / enrolment of students to foreign Universities - If promotion of university courses were the principal supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not. **If the Applicant receives ‘commission’ based on recruitment / enrolment through it, the principal supply is clearly facilitating the foreign university in recruitment/enrolment with promotional services ancillary to the principal supply** - Being an intermediary service provider, the place of the Applicant’s supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. The place of supply under the above legal framework is the territory of India. As the condition under section 2(6)(iii) of the IGST Act is not satisfied, the Applicant’s service to the foreign universities does not qualify as Export of Services, and is, therefore, taxable under the GST Act

# GST Law

## Part II : SEZ

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# GST Law

## Definitions

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Sec 2(19) of IGST Act:

**"Special Economic Zone"** shall have the same meaning as assigned to it in section 2 (za) of the Special Economic Zones Act, 2005 (28 of 2005);

### **Sec 2(za) of SEZ Act, 2005**

"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;



**SEZ Unit is not defined in IGST Act.  
Reference to be taken from SEZ Act.**

**"Unit"** means a Unit set up by an

- entrepreneur in a Special Economic Zone and
- an existing Unit,
- an Offshore Banking Unit and
- a Unit in an International Financial Services Centre whether established before or established after the commencement of this Act;

# GST Law

## References to SEZ Act

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Sec 2(20) of IGST Act:

**"Special Economic Zone developer"** shall

- have the same meaning as assigned to it in section 2 (g) of the Special Economic Zones Act, 2005 (28 of 2005) and
- includes an **Authority** as defined in clause (d) and a **Co-Developer** as defined in clause (f) of section 2 of the said Act;

Sec 2(g) of SEZ Act, 2005

**"Developer"** means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an authority and a Co-Developer;



**"Authority"** means a Special Economic Zone Authority constituted under sub-section (1) of section 31;

**"Co-Developer"** means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of section 3;

# GST Law

## Applicability of GST – SEZ Transactions

Sr. No.	Type of Supply	Applicability of GST	Section
1	Supplies from DTA to SEZ Unit/Developer	Zero rated	16(1)(b) of IGST Act
2	Supply by SEZ Developer/ Unit		
	*Exports	Zero rated	16(1)(a) of IGST Act
	*Another SEZ Unit/ Developer	Zero rated	16(1)(b) of IGST Act
	Supply of Goods to DTA	DTA – Same as imports – Customs + IGST	Sec 5(1) r.w. Sec 7(5)(b) of IGST Act.
	Supply of Services to DTA	IGST	Sec 5(1) r.w. Sec 7(5)(b) of IGST Act.

\*SEZ supplies by SEZ Unit - Notification No. 37/2017 - Central Tax – LUT is applicable.

# GST Law

## Relevance for “authorized operations”

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Sec 16(3) of IGST Act:

RP making zero rated supply shall be eligible to claim refund on supply of goods/services/both (LUT/ WPAY IGST) subject to such conditions, safeguards and procedure as may be prescribed in accordance with the provisions of section 54 of the CGST Act or **the rules made thereunder**.

CGST Rules prescribe as under:

Second Proviso to Rule 89(1) specifies the application for refund shall be filed by the—

- 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;
- supplier of services along with such evidence regarding receipt of services **for authorised operations** as endorsed by the specified officer of the Zone:

Rule 89(2) – Refund Application to be **accompanied with evidence regarding the endorsement by specified officer** as per second proviso to Rule 89(1)

Third Proviso to rule 46 – Invoice issued for SEZ shall bear endorsement to the effect that supply are **for authorised operations**.

# GST Law

## Relevance for “authorized operations”

Commerce Ministry has clarified vide letter dated 02.01.2018 that 66 services will continue to be ‘default authorised services’ under GST Era.

### Issue:

While the specified officer can definitely endorse the fact that goods have been admitted to SEZ (based on delivery of goods into the zone), how can the officer endorse if such goods have been admitted for authorized operations.

Additionally, how will the specified officer endorse the receipt of services / use of such services for authorized operations given that the services are intangible and could have been entirely performed outside the SEZ.



Update dated March 19, 2018 - News and Updates tab on the GST Portal provides that “taxpayers who have not migrated as SEZ, can send their request to become SEZ on the email [reset.sezflag@gst.gov.in](mailto:reset.sezflag@gst.gov.in) and attach the copy of Letter of Approval as SEZ unit / developer”

# GST Law

## AR – SEZ to SEZ | SEZ - DTA Supply

### **M/s SAPTHAGIRI HOSPITALITY PRIVATE LIMITED - 2018-VIL-181-AAR**

GST - Gujarat AAR - Service provided by Co-Developer in non-processing zone of SEZ - Zero Rated Supply –

HELD - **Rendering of services from SEZ to DTA does not qualify as Zero rated supply** in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit / developer making inter-state supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ –

The supplies made by applicant, a SEZ Co-developer, from their **hotel located in non-processing zone of SEZ to the clients located in SEZ for authorized operations will be treated as zero rated supplies** under the provisions of Section 16(1) of Integrated Goods and Service Tax Act, 2017 r/w Section 2(m) of SEZ Act, 2005

# GST Law

## AR – Food Supply to SEZ – Zero Rated Supply ?

### **M/s COFFEE DAY GLOBAL LIMITED - 2018-VIL-124-AAR**

GST - Karnataka AAR - SEZ - Zero Rated Supply - Whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as defined under Section 16 of the IGST Act 2017 –

HELD - The applicants' contention is that any supply of goods or services to SEZ units is zero-rated - the **term 'any supply' is not used anywhere in the statute**. Therefore the interpretation of the applicant is not correct - Though the IGST Act, in Section 16(1)(b) does not categorically say that the supplies of goods and services should be for authorized operations, it is implicit therein when it says that the supplies are for the SEZ Developer or SEZ Unit. **Therefore the litmus test for any supply to be termed as zero-rated supply is to ascertain essentially whether it is for authorized operations or not** - The applicant has not made out a case that the activity undertaken by them is certified as an authorized operation by the proper officer of the SEZ.

Thus, the activity undertaken by the applicant does not qualify to be a zero-rated supply - The supply of non-alcoholic beverages / ingredients to such beverages, to SEZ units using coffee vending machines by the applicant, do not qualify as zero rated supply, as defined under Section 16 of the IGST Act, 2017

# GST Law

## AR – Food Supply to SEZ – Zero Rated Supply ?

### **MERIT HOSPITALITY SERVICES PVT LTD - 2018-VIL-22-AAAR**

GST - Maharashtra AAAR - Applicant located in SEZ is providing snacks and food to the employees of various companies and that the food is prepared at their own kitchen and it is distributed to various companies at different locations - applicant have to supply the food at "A Ltd's" premises and the distribution of food is directly done by the staff of "A Ltd".

Whether Restaurant Service @ 5% or Outdoor Catering Service @ 18% or Zero rated supply to SEZ units?

HELD - the supply made by the appellant to the employees of the unit located in SEZ cannot be construed as zero rated supply by any stretch of imagination, as the employees can neither be treated as SEZ developer nor as SEZ unit. Accordingly, GST will be applicable as per the classification of the services determined in terms of the scheme of the classification of services - it is apparent that the food is being cooked at one place and being distributed to the various different locations of the companies with whom they have entered into contract. Thus, this event is not covered under the definition of the Restaurant services. Thus, the appellant claim that it is running Restaurant Services in the SEZ area is not tenable and hence the GST rate of 5% as envisaged by the appellant is not correct - The services of supplying food by the appellant to the employees of the unit located in the Special Economic Zone is not covered under the zero rated supplies in terms of Section 16(1)(b) of the IGST Act, 2017 and the services of the appellant are also not in the nature of restaurant services.

# GST Law

## AR – Auth Supplies to SEZ – Zero Rated Supply ?

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### **GARUDA POWER PRIVATE LIMITED - 2018-VIL-114-AAR**

GST - West Bengal AAR - Whether a supplier to SEZ units and developers is liable to pay tax - Applicant a **trader of diesel engines and its spare parts along with services of diesel engine, either on AMC basis** or on an as and when required basis, is seeking a ruling on whether or not the supply of goods and on-site services to customers in SEZ area to any SEZ unit or SEZ developer is zero rated supply.

HELD - Since the Applicant supplies to units and developers of Special Economic Zones only, **the provisions of Section 16 of IGST Act will be applicable and the tax liability will be at zero rate** under sub section 1(b) of the IGST Act. He may supply without paying tax subject to the provisions under section 16(3)(a), or he may supply on payment of tax and claim refund subsequently under section 16(3)(b) of the IGST Act - The Applicant shall be liable to pay tax when supplying to Units and Developers of Special Economic Zones subject to the provisions of Section 16 of the Integrated Goods and Services Act, 2017

# GST Law

## AR – Hotel Accommodation outside SEZ - SEZ – Zero Rated Supply ?

### **GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LTD - 2018-VIL-30-AAR**

GST - Karnataka AAR - Whether the Hotel Accommodation & Restaurant services provided within the premises of the Hotel to the employees & guests of SEZ units, be treated as supply of goods & services to SEZ units.

HELD - Supply of goods or services or both to a SEZ developer or a SEZ unit are treated as 'Zero Rated Supply' in terms of Section 16(1)(b) of IGST Act 2017 - on reading Section 16(1)(b) of IGST Act 2017 & Rule 46 of CGST Rules 2017 together it is clearly evident that the supplies of goods or services or both towards the authorised operations only shall be treated as Supplies to SEZ Developer / SEZ Unit - **The Hotel Accommodation & Restaurant services being provided by the Applicant, within the premises of the Hotel, to the employees & guests of SEZ units, cannot be treated as supply of goods & services to SEZ units** and hence, the intra state supply and are taxable accordingly

**Position corrected by Circular issued by CBIC dated 14.06.2018 after AR date 21.03.2018**

# GST Law

## AR – Immovable property service Supply to SEZ – Zero Rated Supply ?

### **CIRCULAR NO. 48/22/2018- GST - DATED 14-6-2018 - Contrary to AAR.**

- It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.
- In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.
- Accordingly, following services enjoy benefit of zero rated supply:
  - It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
  - Event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

# GST Law

## Part III : Refund for Zero-Rated Supply

### **GST Refund**

**What is available and what is not?**



# GST Law

## Refund Provisions

Refund available in two situations: (Sec 54)

- Supply with payment of IGST (either in cash or through ITC)
- Supply without payment of IGST (LUT). Manual Refund application will have to be filed for unutilised credit.
- No refund of unutilised ITC where the goods exported out of India are subjected to export duty
- No refund of ITC shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.



**Cir. No.37/11/2018-GST dt. 15.3.18**

- Supplier availing drawback only with respect to BCD shall be eligible for refund of unutilized ITC of CT / ST/ UT / IT / compensation cess
- Refund of ITC on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax.

# GST Law

## Refund Provisions

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Refund procedure of integrated tax paid on exports of goods or services: (Rule 96)

### **A. Goods**

The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

- a. the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- b. the applicant has furnished a valid return in FORM GSTR-1 and FORM GSTR-3B for relevant tax period.

After processing refund claim at the back-end, admissible refund amount credited to specified bank account of applicant.

### **B. Services**

The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

# GST Law

## Refund Provisions

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The persons claiming refund of integrated tax paid on exports of goods or services

should not have received supplies on which the benefit of the Government of India has been availed by the respective counter-party suppliers (who have supplied to persons claiming refund):

- **Not. No. 48/2017-CT**, dated 18 October, 2017: It covers domestic supplies made against advance authorisation, supply of capital goods against EPCG authorisation, supply of goods to EOU and supply by gold bank or PSU against advance authorisation except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme
- **Not. No. 40/2017 - CT (Rate)**, dated the 23 October, 2017: It Covers supplies made to merchant exporter at the rate of 0.1% in case of IGST and 0.05% in case of CGST & SGST.

should not have availed benefit under following notifications:

- **Not. No. 78/2017-Customs**, dated the 13 October, 2017: Exemption provided from customs duty & IGST under Customs on goods imported or procured from public or private warehouse or from international exhibition by 100% EOU, STP, EHTP units.
- **Not. No. 79/2017-Customs**, dated the 13 October, 2017: Exemption provided from customs duty & IGST under Customs on imports under EPCG, Advance Authorisation, Advance Authorisation for Annual Requirements, Advance Authorisation for Deemed Exports, Advance Authorisation for export of prohibited goods and Narrow woven fabrics, etc.

# GST Law

## Circulars/ Notifications

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Various Circulars issued from time to time for resolving errors arising on GST Refund under WPAY:

- **Not. No. 42/2017-Customs**, dated 7 Nov, 2017: Clerical errors like Incorrect SB number in GSTR-1, Invoice number and IGST paid amount mismatch, EGM error, Wrong bank account in customs are provided solutions.
- **Cir. No. 37/11/2018-GST** dated 15 Mar 2018: Amendments in Table 9 of GSTR-1, Benefits of LUT extended to all taxpayers applying LUT after exports are done, Discrepancies between value of GST invoice and shipping bill/ bill of export, Filing Frequency of refunds, FIRC for export of goods, Requirements of invoices for processing claims for refund are provided solutions.
- **Cir. No. 06/2018-Customs** dated 16 Mar 2018: Resolved EGM related errors faced by exporters in claiming refund.
- **Cir. No. 15/2018-Customs** dated 06 Jun 2018: DG Systems have developed this utility now which would facilitate processing of IGST refund claims stuck due to SB003 error in the manner similar to SB005 error.
- **Cir. No. 05/2018-Customs** dated 23 Feb 2018: Refund of IGST on Export– Invoice mis-match Cases –Alternative Mechanism with Officer Interface.
- **Cir. No. 12/2018-Customs** dated 29 May 2018: Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems.

# GST Law

## Refund Provisions – LUT Computation

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Refund is computed as under:

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

"**Net ITC**" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both (*i.e. for benefits availed under 48/2017-Central Tax, Not. 40/2017-Central Tax (Rate), 78/2017-Customs, 79/2017-Customs.*)

(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, other than the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both;

(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:-

**Zero-rated supply of services** = Payments received for Zero-rated supply of services (+) 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 (-) advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

# GST Law

## Refund Provisions – LUT Computation

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"Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

"Relevant period" means the period for which the claim has been filed.

# GST Law

## Refund Procedures

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- File Form GST RFD-01 on portal with requisite documents.
- Proper officer will scrutinize within 15 days and grant ack in GST RFD-02.
- Deficiencies, if any in the claim shall be communicated in GST RFD-03, thus requiring applicant to submit fresh refund application.
- If, everything perfect GST RFD-04 shall be issued granting 90% refund within 7 days of acknowledgment in GST RFD-02.
- Proper Officer shall than issue GST RFD-05 (Payment advice) directing refund should be credited to bank.
- Final Order after required scrutiny in Form GST RFD-06.
- If any amount rejected, than GST RFD-07 will be issued to the applicant.



# GST Law

## Refund Procedures

Sr. No	Types of Zero rated supply	Invoice Details	Shipping bill details	BRC/FIRC details	Endorsement in SEZ	Proof for payment made by SEZ for authorised operations	Declarations *	Other Documents.
1	Export of <b>Goods</b>	✓ <input type="checkbox"/>	✓ <input type="checkbox"/>					
2	Export of <b>Services</b>	✓ <input type="checkbox"/>		✓ <input type="checkbox"/> <input type="checkbox"/>				
3	Supply of <b>goods to SEZ</b>	✓ <input type="checkbox"/>			✓ <input type="checkbox"/>			
4	Supply of <b>Services to SEZ</b>	✓ <input type="checkbox"/>			✓ <input type="checkbox"/>	✓ <input type="checkbox"/>	✓ <input type="checkbox"/>	
5	Deemed Exports	✓ <input type="checkbox"/>					<input type="checkbox"/> <input type="checkbox"/>	✓ <input type="checkbox"/>

\*General declarations applicable in cases.

# GST Law

## Q n A

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