

EXPORT OF SERVICES UNDER GST



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Introduction:

Exports are incredibly important to modern economies. One of the core functions of foreign policy is to foster the economic trade and encouraging exports therefore exports should not be burdened with domestic taxes. Exports enjoy a special treatment but implementation of Goods and Service Tax (GST) demanded that the **input-output chain should not be broken**. The **exemptions** on exports have a **tendency to break the chain**. Therefore a **“Zero-Rated Supply”** method is introduced under the GST by which the input-output chain is not broken and exporters will be able to claim the **refund of Input Tax Credit (ITC)**.

Supply of Export of service is very **Tricky Term** under GST. Sometimes a transaction seems to be supply of export of service but according to the provisions of the GST such transaction shall not be treated as export of service. Every supply of service made to a person belonging to the outside India and consideration received in convertible foreign exchange cannot be treated as supply of export of service.

Since the era of **‘Service Tax’** there was a lot of litigation on **Export of Services** and that’s the reason which makes this topic more interesting.

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Zero-Rated Supply:

As per the provisions are contained in Section 16(1) of the IGST Act, 2017, which states that “**zero rated supply**” means any of the following supplies of goods or services or both, 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.**

When a good or service is **Exempted** from payment of tax, it cannot be said to be zero because the inputs and input services which are consumed into the making of the good or provision of service has already suffered tax and **only the final product is Exempted.**

Zero rated means that the **entire value chain** of the supply is **exempt from tax**, not only the final product is exempt from the payment of taxes.

This can be done through:

1. By taking/availing credit of taxes paid on the input side for making/providing the output supply.
2. Taxes paid on the supplies which are zero rated are refundable.

Such an approach makes the goods or services zero rated supply.

Export of Services under GST:

There is a **misconception** in the minds of registered persons they mainly think that a supply of services provided to a person outside India and Consideration received in Convertible Foreign Exchange shall be treated as supply of export of service. But this is not the proper criteria to conclude the transaction as Export of Services.

To understand in detail Export of Services let's first study its definition.

Export of service is defined under section 2(6) of the IGST Act as under:

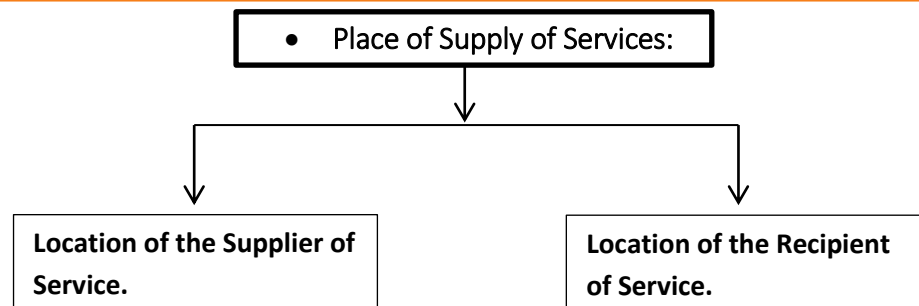
“**export of services**” means the supply of any service when,-

- (i) **the supplier of service is located in India;**
- (ii) **the recipient of service is located outside India;**

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- (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;

In-depth Analysis:



As per the provisions of Section 2 (71) of the CGST Act, 2017 "location of the supplier of services" means:

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

As per the provisions of Section 2(64) of the CGST Act, 2017 "location of recipient of services" means:

- (i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
- (ii) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- (iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (iv) in absence of such places, the location of the usual place of residence of the recipient.

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- There is a proviso to condition (iv) of Sub Section (6) of Section 2 of IGST Act, 2017 .Supply of services having place of supply in Nepal or Bhutan, **against payment in Indian Rupees, is exempted even if the payment is received in Indian Currency** looking at the business practices and trends.
- Even if conditions of Para (i) to (iv) are being fulfilled even then such transaction shall not be treated as export of service if the supplier and the recipient are **distinct persons**. Explanation to the distinct person is available in **Explanation 1 of Section 8(2) of the IGST Act (2017)**.

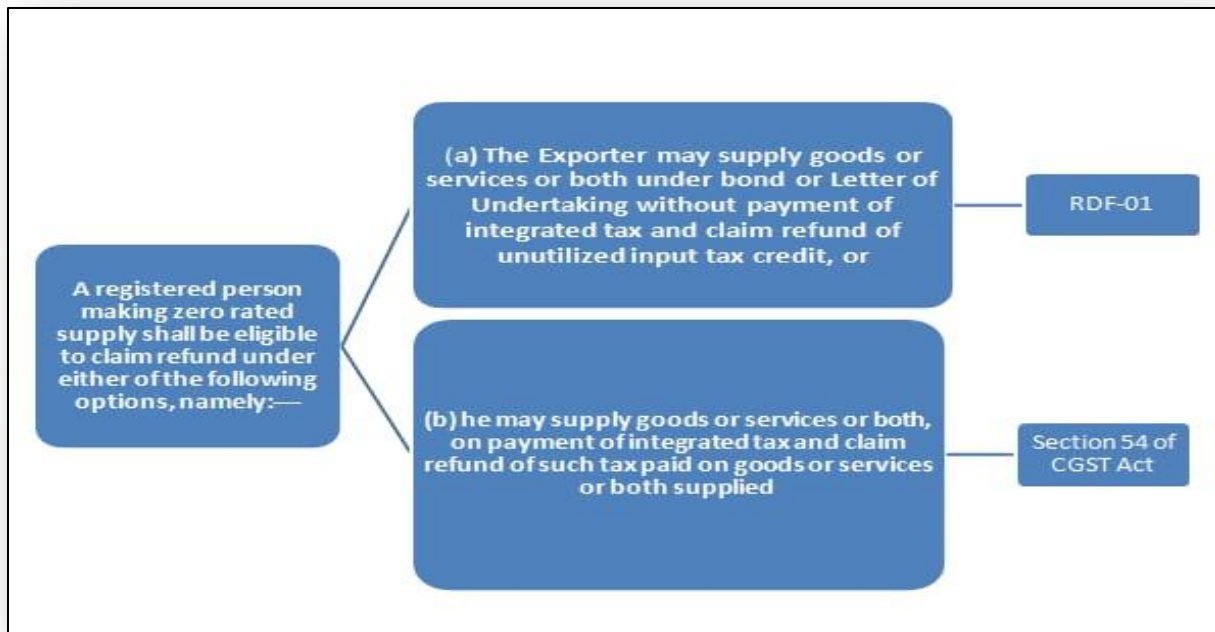
Explanation I in section 8(2) of the IGST Act, 2017 states that where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishment of distinct persons. Where the Indian arm is set up as a **liaison office or a branch they would be treated as establishments of the same entity** and hence the supply of service shall not qualify as export of services. However, if the Indian arm is set up as a **wholly owned subsidiary company incorporated under the Indian Companies Act**, the foreign company and the Indian subsidiary would not be governed by the provisions of distinct person or related person as both are separate legal entities.

Routes/Ways to claim the Refund:

According to Section 16(3) of the IGST Act, person making a Zero Rated Supply can opt for any of the following two options:

- To supply goods or services **under a bond or, a Letter of Undertaking (LUT) without paying IGST** and then claim a refund of unutilized ITC; or
- To supply **goods or services on payment of IGST** and then claim the GST refunds of such tax paid.

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The service exporters cannot get a direct GST refund into their bank accounts. For getting a refund, the service exporter has to file a set of documents with the jurisdictional GST officer where the company is situated.

In case of export of services there are no custom documents that can substantiate the occurrence of event of export as no shipping bill is required to be filed. Thus invoice and Bank Realization Certificate (BRC) are the only documents that can substantiate the occurrence of event of exports.

Invoice and BRC are the crucial documents for filing of the refund application.

Documents required by the Exporter of the Services to be filed for getting a GST refund:

- A covering Letter
- Bank Realization Certificates or Foreign Inward Remittance Certificates
- Export Invoices
- Form GSTR 3B and GSTR 1
- Application for Refund in the Form GST RFD 01
- Cancelled cheque
- If GST refunds claims exceed ₹2 lakh per quarter a certificate from a Chartered Accountant/Cost Accountant.

Landmark Judgment by Bombay High Court:

Services rendered abroad amounts to Export of Services, No GST applicable: Bombay HC

Facts:

- The petitioner/assesse is in the business of providing production services to “A Suitable Company Ltd.” (ASCL) located in London. The petitioner has entered into an agreement with ASCL for the purpose of providing the services. The agreement provides that if any refund of tax component is received by the petitioner, the production expenses shall be reduced from the consideration while computing the consideration towards production services. The amount of the tax component received as a refund will be deducted from the production expenses.
- The petitioner received and used various input services for supplying production services to ASCL, on which applicable CGST/MGST/IGST services were paid as charged by the vendors.
- The petitioner filed its **first refund** application for the period from April to July, 2019. The claim was **allowed by the Assistant Commissioner**.
- The petitioner filed **another refund** claim for the subsequent period of August 2019 to October 2019. The petitioner received a show cause notice (SCN). The petitioner replied to the notice. The **respondent rejected the claim of the petitioner on the ground that the incidence of tax has been passed on to the client, resulting in unjust enrichment of the petitioner**.
- The petitioner, being aggrieved by the order of the Assistant Commissioner, filed the appeal before the **Appellate Authority**. The appeal was **dismissed, and it was held that if a refund were granted, it would amount to unjust enrichment**.
- The petitioner contended that the principle of unjust enrichment does not apply to export services. **Being a zero-rated supply, the principle of unjust enrichment does not apply to the services rendered by the petitioner**. The agreement clearly stipulates that if a refund is received, it shall be deducted from the expenses of production. The principle of unjust enrichment does not apply to export services.
- The **department contended** that the petitioner has admitted that even in the case of alleged unjust enrichment by the petitioner, **the credit notes will**

nullify the effect of the same. The GST law does not contemplate any mechanism for paying back the GST by way of the issuance of credit notes.

Court Observation & Decision:

The court observed that the ASCL is located outside of India and the petitioner company is located in India. The production services are rendered by the petitioner in the U.K. It is, thus, clear that the services rendered by the petitioner fall within the expression “export of services”.

“When services are rendered abroad, CGST will not apply. In the case at hand, also, the petitioner has rendered services to the ASCL abroad, i.e., in the U.K. Therefore, GST does not apply to the services rendered abroad as they amount to the export of services. In addition to that the respondent could not establish that the incident of tax has been passed on to the recipient ASCL located in London. Thus, both the Adjudicating Authority and the Appellate Authority committed error in rejecting the refund of GST of the petitioner”

Conclusion:

Indian Government is following the globally accepted principle that **“taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters.”** It may be noted that Government is leaving no stone unturned to support domestic industry and make it more competitive in the international markets. Export centric industries are being reformed and introduced to better mechanisms so as to increase their competitiveness, boost exports, generate employment and contribute to the overall economy. This will go a long way in achieving our vision of building an **“Aatmanirbhar Bharat”**.

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****Thanks for Reading****