

This column is compiled by Consultant [EXIM Policy] of EPCH. It contains recent Public Notices, Notifications and Circulars of DGFT, CBEC and Department of Revenue. If a handicraft exporter has question[s] to ask on Foreign Trade Policy, he/she may please write / e-mail to EPCH at policy@epch.com

Impex # 1 Important FTP provisions made less beneficial on account of implementation of GST

Before the introduction of GST Scheme on 01-07-2017, DGFT, Ministry of Commerce & Export Promotion Councils including Export Promotion Council for Handicrafts (EPCH) made strong representations to Ministry of Finance & GST

DGFT issues Trade Notice amending (diluting) the benefits under Duty Exemption Schemes, etc. in the context of the implementation of the GST regime.

Council not to change the basic character of decades old total duty exemption schemes (ab initio) of FTP. EPCH even took a delegation of handicrafts exporters to Finance Minister to seek relief in respect of GST provisions that may cause harms & hardships to the exporters. The GST Council, however, did not relent on the ground that it is a fundamental of GST Scheme that one has to pay the tax first & take the Input Tax Credit (ITC) afterwards. 'The Chain' they said can not be broken.

In view of the above view of GST Council, DGFT has issued a Trade Notice No. 11/2018 dt. 30-06-2017 amending the provisions in FTP to be as per GST regime.

A copy of DGFT Trade Notice No. 11/2018 referred above is reproduced below:

Copy of DGFT Trade Notice No. 11/2018 dt. 30-06-2017

Subject: Important FTP provisions in the context of the implementation of the UST regime applicable w.e.f. 01.07.2017

The chapter wise provisions of the FTP 2015-20:

General Provision

- With effect from July 1, 2017, the term "Central Excise Authority" used in Foreign Trade Policy 2015-20 and Foreign Trade procedures 2015-20 should be read as "Jurisdictional Customs Authority".

Chapter 2

Changes in IEC notified through Trade Notice No.09/201'8 dated 12.06.2017.

Chapter 3

- The Duty Credit Scrips (issued under Chapter 3 of the FTP) cannot be used for payment of IGST and GST compensation cess in imports, and CGST, SGST, IGST and GST compensation cess for domestic procurement.

Chapter 4

- Under the GST regime, no exemption from payment of Integrated GST and Compensation Cess would be available for imports under Advance Authorisation.
- Importers would need to pay IGST and take input tax credit as applicable under GST rules.
- However, imports under Advance Authorisation would continue to be exempted from payment of Basic Customs Duty, Additional Customs Duty specified under Section 3(1), 3(3) and 3(5) of the Customs Tariff Act, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable.
- Applicable GST would need to be paid while making local procurement, using an invalidation letter of Advance Authorisation/DFIA. Recipient of goods can take Input Tax Credit (ITC) of the GST paid on such local procurement. This Input Tax Credit can be utilised as per GST rules.
- Advance Release Order facility shall not be available for procurement of inputs under Advance Authorisation scheme except for inputs listed in Schedule 4 of Central Excise Act, 1944 read with The Taxation Laws

(Amendment) Act 2017 No 18 of 2017, with effect from July 1, 2017. RAs are directed not to issue ARO except for Schedule-4 items as stated above.

- Imports/exports under the replenishment schemes for the Gems and Jewellery sector covered under chapter 4 of FTP and HBP shall be subject to Customs Notification issued/ to be issued in this regard.

Chapter 5

- Importers would need to pay IGST and take input tax credit as applicable under GST rules.
- ARO facility shall not be available for sourcing of Capital Goods manufactured indigenously

Chapter 6

• Imports by EOU/ EHTP/STP/BTP:

EOU are allowed duty free Imports of goods for their authorised operations. In GST regime, the import of goods covered under GST would be exempted from the whole of the duty of customs specified under the First Schedule to the Customs Tariff Act, 1975 (BCD) enabled by Notification no. 52/2003 - Cus. But such goods would attract integrated tax and compensation cess leviable under sub- section (7) and (9) of the said Act. The taxes so paid on imports will be neutralized by ITC.

The import of goods covered under Fourth Schedule of the Central Excise Act would be exempted from the whole of the duty of customs specified under the First Schedule to the Customs Tariff Act, 1975 (BCD) and also from the additional duty leviable under sub- sections (1),(3) and (5) of section (3) of the said Act (CVD & SAD) enabled by Notification no. 52/2003 - Cus.

• Domestic procurements:

For the indigenous procurement of goods covered under GST, the EOU will not get ab-initio exemptions. Such supplies would be on payment of CGST/SGST/UTGST/IGST. The taxes so paid will be neutralized by ITC. For the indigenous procurement of goods covered under Fourth Schedule, the EOU will continue to get ab-initio exemptions from central excise duty.

• DTA clearances of finished goods covered under GST:

EOUs would be required to pay only CGST & SGST or IGST, as the case may be, besides paying back of whole of the duty of customs specified under the First Schedule to the Customs Tariff Act, 1975 (BCD) exemptions, if availed, on inputs used in manufacture of such finished goods.

The DTA clearances of finished goods covered under Fourth Schedule of the Central Excise Act, 1944, the EOUs would be required to pay central excise duty equal to the aggregate of duties of customs in view of proviso to Section 3(1) of the Central Excise Act, the effective rate of such duties being covered by Notification No. 23/2003-CE.

• Inter unit transfer/supply for EOU to other EOUs:

Applicable GST would be payable on the transfer/supply of goods from one unit of EOU / EHTP / STP / BTP to another.

Chapter 7:

• Supplies made prior to the date of operationalisation of GST:

The supplies made to different deemed exports categories till the date prior to the date of operationalization of GST, the benefits would be available as per the provisions existed till the date of operationalisation of GST.

• Supplies after the date of operationalisation of GST:

- Advance Authorisation benefits under Chapter 4 shall be available for supplies under Chapter-7. The duty exemption benefits under AA would be limited to exemption from basic custom duty only. The exemption for items under Central Excise would be available for the items which continue under Schedule 4 of Central Excise Act, 1944 provided the items are eligible under the Advance Authorisation.

- **Deemed Export Drawback:** The drawback as provided under Chapter 7 would be limited to the refund of basic custom duty only. In respect of eligible items covered under Schedule 4 of Central Excise Act, 1944 refund would also be covered under the drawback provided the item is eligible for such supply.
- **The TED refund:** TED refund would be available only if exemption is not available in respect of items covered under Schedule 4 of Central Excise Act, 1944 provided the items are eligible for supply under the said category of deemed exports

Impex # 2

Issue related to exports without payment of Integrated Tax resolved

CBEC issues GST Circular clarifying that exports can be made without payment of integrated tax by furnishing Bond or Letter of Undertaking (LUT) in Form GST RFD-11.

GST Scheme is the biggest indirect tax reform in India since independence that has been introduced with effect from 01-07-2017. It is set to transform India's business landscape. When such is the upheaval, some hiccups could be expected here and there.

One such problem was faced by the exporters (immediately after commencement of GST Scheme on 01-07-2017) in exporting in the usual manner as before 01-07-2017. They were asked to pay Integrated GST or give

bond / LUT. Confusion prevailed in customs also and exports came to a standstill. This happened because the exporters were not aware/made aware that after introduction of GST, exporters were required to give bond/LUT as per rule 96A of CGST in Form GST RFD-11. Customs officers were also not well equipped in this respect.

The difficulty was, however, solved quickly by CBEC by issue of two GST Circulars Nos. 2/2/2017-GST dt. 04-07-2017 and 4/4/2017-GST dt. 07-07-2017 wherein the issue was clarified.

Copy of CBEC Circular No. 4/4/2017-GST dt. 07-07-2017 referred to above is reproduced below:

Copy of CBEC Circular No. 4/4/2017-GST dt. 07-07-2017

Subject: **Issues related to Bond/Letter of Undertaking for exports without payment of integrated tax - Reg.**

Various communications have been received from the field formations and exporters that difficulties are being faced in complying with the procedure prescribed for making exports of goods and services without payment of integrated tax with respect to furnishing of bonds/Letter of Undertaking. Therefore, in exercise of powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, for the purpose of uniformity in the implementation of the Act, these issues are being clarified hereunder.

2. As per rule 96A of the Central Goods and Services Tax Rules, 2017 (The CGST Rules), any registered person exporting goods or services without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT) in FORM GST RFD-11.
3. Attention is invited to notification No. 16/2017-Central Tax dated 01-07-2017 vide which the category of exporters who are eligible to export under LUT has been specified along with the conditions and safeguards. All exporters, not covered by the said notification, would submit bond. The procedure for submission and acceptance of bond has already been prescribed vide circular No. 2/2/2017-GST dated 4th July, 2017. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished.
4. A clarification has been sought as to whether the bond to be furnished for exports is a running bond (with debit / credit facility) or a one-time bond (separate bond for each consignment / export). It is observed consignment wise bond would be a significant compliance burden on the exporters. It is directed that the exporters shall furnish a running bond, in case he is required to furnish a bond, in FORM GST RFD -11. The bond would cover the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself. The

exporter shall ensure that the outstanding tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the tax liability in the yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability.

5. FORM RFD -11 under rule 96A of the CGST Rules requires furnishing a bank guarantee with bond. Field formations have requested for clarity on the amount of bank guarantee as a security for the bond. In this regard it is directed that the jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporter. If the Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount.
6. As regards LUT, it is clarified that it shall be valid for twelve months. If the exporter fails to comply with the conditions of the LUT he may be asked to furnish a bond. Exports may be allowed under existing LUTs/Bonds till 31st July 2017. Exporters shall submit the LUTs/bond in the revised format latest by 31st July, 2017.
7. It is further stated that the Bond/LUT shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of tax payers to respective authority is implemented. However, if in a State, the Commissioner of State Tax so directs, by general instruction, to exporter, the Bond/LUT in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented. Central Tax officers are directed to take every step to facilitate the exporters.
8. Attention is further invited to circular No. 26/2017-Customs dated 1st July 2017, vide which it has been clarified that the existing practice of sealing the container with a bottle seal under Central Excise supervision or otherwise would continue till 1st September, 2017. Such sealing shall be done under the supervision of the officer having physical jurisdiction over the place of business where the sealing is being done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.
9. These instructions shall apply to exports on or after 1st July, 2017. It is requested that suitable trade notices may be issued to publicise the contents of this circular. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board.

Impex # 3

Exporting under GST Regime

Important guidelines/

information for exporters after commencement of GST Scheme.

GSTIN / PAN and Invoice information in Shipping Bill:

1. Quoting GSTIN in Shipping bill is mandatory if the export product attracts GST for domestic clearance.
2. Quoting PAN (Permanent Account Number), which is authorised as 'Import Export code by DGFT, would suffice if the exporter exclusively deals with products which are either wholly exempt from GST or out of GST regime.
3. In case of exports by specialised agencies such as United Nations Organization or notified Multilateral Financial Institutions, Embassies and Consulates, the exporter can quote Unique Identity Number, instead of GSTIN, in the Shipping bill.
4. Without GSTIN or PAN or UIN, the Shipping bill cannot be filed.
5. The claim for refund of IGST paid or Input Tax Credit on inputs consumed in goods exported cannot be processed without GSTIN and GST Invoice details in Shipping Bill.
6. Commercial Invoice information should be provided in the Shipping Bill. Wherever Commercial Invoice is different from Tax Invoice, details of both have to be provided in the Shipping Bill.

7. Taxable value and Tax amount should be mentioned against each item in the Shipping bill for processing the refund amount. Multiple tax invoices issued by same GSTIN holder are allowed in one Shipping bill for the same consignee.
8. State code is part of GSTIN numbering scheme. However, in the Shipping Bill for the field "State of origin" declare the State code from where export goods originated as it was being done before.

Bond or LUT along with Shipping Bill:

9. As per rule 96A of the Central Goods and Services Tax Rules, 2017, any registered person exporting goods without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT) in FORM GST RFD-11.
10. The following registered person shall be eligible for submission of Letter of Undertaking in place of a bond: -
 - a. a status holder as specified in the Foreign Trade Policy 2015- 2020; or
 - b. 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, and he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the existing laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. (Notification No. 16/2017-Central Tax dated 07th July, 2017 refers).
11. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished.
12. The exporters shall furnish a running bond, in case he is required to furnish a bond, in FORM GST RFD -11. The bond would cover the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself.
13. Based on the track record of exporter, a bank guarantee required to be submitted along with the bond may be waived off by the jurisdictional GST Commissioner. The bank guarantee should normally not exceed 15% of the bond amount. (Circular No. 4/4/2017-GST dated 07th July, 2017 refers)

Drawback:

14. For a transition period of three months i.e. 1.7.2017 to 30.9.2017, composite rates of All Industry Rate (AIR) drawback are available to exporters.
 - I. These composite rates are subject to certain conditions during transition period that ensure that input credit / refund under GST and drawback of composite rates are not taken together for the export product.
 - II. Exporter has to produce certificate from jurisdictional GST officer to avail composite rate. This requirement is applicable to supplies for export made on or after 1.7.2017, as all exporters are required to operate under GST from that date.
 - III. The requirement of certificate is not a new requirement. All registered persons who were exporting under bond or on claim for rebate were producing such certificate prior to 1.7.2017 also.
 - IV. In case export goods have been cleared from the factory or warehouse etc. prior to 1.7.2017 but let export order has not been given till 30.6.2017, certificate from GST officer is not required. For such goods, only a declaration from exporter or certificate from the then Central Excise officer as applicable is required.
 - V. In case an exporter is unable to produce requisite certificate for claiming composite AIR at the time of export, then he should have the Shipping bill amended to claim lower AIR (Customs portion) at time of export. The exporter can claim balance amount of drawback as supplementary claim when he produces certificate.
15. Instructions issued to all jurisdictional authorities to ensure smooth clearance of export consignments.