

Issues in GST Refunds - Export of Goods With Payment of IGST

Jan 24, 2023



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Exports are key drivers to promote the country's economic growth. Accordingly, exports are always in the priority list of the Government and have been the area of focus in all policy initiatives of the Government for many decades. Also, in the Indian tax legislations, exports continue to enjoy this special treatment including seamless refund claims against exports.

Under GST law, export of goods or services are treated as “zero-rated supplies”. The exporter can claim refund of GST paid on their procurement under any of the below two options:

1. Export of goods or services or both under bond or letter of undertaking (LUT) without payment of GST and claiming **refund of unutilized input tax credit (ITC); and**
2. Export of goods and service or both, on payment of GST (*by utilising the ITC*) and claim the refund of such GST paid on exports.

These refunds are subject to certain restrictions and safeguards which are prescribed in GST Law. Particularly, in case of refund of GST paid on exports ('rebate') as referred supra in S.N. 2, certain issues are being faced by exporters and one of the key concerns is to adhere Rule 96(10) of the CGST Rules, 2017.

RULE 96(10) AND ISSUES THEREIN:

Rule 96(10) seeks to restrict a claim of **rebate** in following cases:

1. If the said exporter has **received supplies** on which any of the following benefits is availed:
 - Deemed Export except EPCG as prescribed in Notification No. 48/2017-CT dated Oct 18, 2017
 - Merchant Export Scheme as prescribed in Notification No. 40/2017-CT(R) and Notification No. 41/2017-IGST(R) dated Oct 23, 2017
2. If the said exporter is **importing and availing** following benefits:
 - Import without payment of duty under export-oriented unit (EOU) Scheme as prescribed in Notification No. 78/2017-Custom dated Oct 13, 2017
 - Import without payment of duty under advance authorisation (AA) scheme as prescribed in Notification No. 79/2017-Custom dated Oct 13, 2017

The objective of the above-mentioned restrictions was to ensure that no double benefit is being availed by the exporters in the form of claiming exemption on IGST payable on import of goods (AA, EOU etc) in addition to claiming rebate. The same has been highlighted in the minutes of the GST Council meeting dated 28th September 2018.

While the rule has restricted the claim of rebate in the cases mentioned above, due to the restriction, exporters of goods are facing some challenges, which are as under:

1. The language employed in Rule 96(10) implies that even if the exporter has received a single supply of goods on which the benefit of the abovementioned notifications has been availed by the supplier or exporter, as applicable, then the said exporter would be disqualified from claiming rebate, leaving him with only one option of exporting goods without payment of IGST under bond/LUT and claiming refund of unutilized ITC therein. However, under this option, an exporter cannot claim refund of ITC on capital goods, which keeps on accumulating.
2. There also exists an ambiguity as to whether the said restrictions are applicable at GSTIN level or entity level, and furthermore, timing of applicability is open for interpretation whether it has to be seen on a monthly, yearly or any other basis.
3. EPCG license holders are entitled to claim rebate through an exception in the said rule, however, similar benefit is denied to an EOU unit procuring capital goods.
4. If the exporter at a later stage, wishes to regularise his past rebate by making payment of IGST on which earlier exemption has been claimed, there is no clarity whether ITC of such IGST payment shall be available basis TR6 challans or amended Bill of entries.
5. The restriction in the claim of rebate, when there are some exemption availed input procurement, have to be done away so long as the ITC has been availed legally. There may be instances where the accumulation of ITC has taken place due to procurement of capital goods or on account of carry forward of excess credit validly availed in the past periods. The removal of this restriction would also help the exporters in faster monetisation of accumulated ITC and release working capital. The credit being validly taken and continues to be available for adjustment against output tax liability, it cannot cause loss of revenue as well, even if both the benefits are claimed, it being a mere timing difference.

Due to the above restriction, the exporters are facing liquidity issues, which is against the spirit of government's initiative to promote exports and make Indian products competitive in international markets and therefore these restrictions should be re-visited. Also, in case, the Government intends to continue with the restriction, appropriate clarifications on various open areas referred supra may be issued.

The number of amendments made to the rule, including the retrospective amendments, highlights the lack of clarity in the rule. There have been a number of litigations and investigations by tax authorities on this issue, which are still open. Considering the lack of clarity, the exporter community also expects appropriate relaxations and amendments to conclude these past disputes as a onetime measure on a principal and procedural level.

During the journey of GST over a period of last five and a half years, the Government has been very proactive in addressing the issues faced by taxpayers and especially the exporter community by simplifying/expediting refunds and consistently adapting to digital needs of the taxpayer fraternity. However, there are still challenges to be addressed and few are discussed above. Hopefully, the Government will keep up the same spirit and address this as well to facilitate the export community.