

Remittance in Vostro Account- Qualifies as export?

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1. [SETTING THE CONTEXT](#)

India has been vigorously promoting its services overseas in sectors such as Information Technology, Business Process Management, medical tourism, education, and financial services. Despite, from the pre-GST Service Tax era to the present, the conditions for "export of service" are complicated surrounding place of supply & realisations leading to interpretative challenges and litigations.

Recommendations of 52nd GST Council Meeting held in New Delhi on October 7, 2023 eases the export of services.

2. [MACRO ECONOMIC POLICY TRENDS](#)

Under 'Make in India' initiatives and FTP 2023, Government is making India a preferred export hub, aligned with broader macroeconomic strategy of reducing trade deficits, boosting foreign exchange reserves, and generating employment.

Internationalization of INR has been a topic of keen interest for policymakers and is deeply intertwined with India's geopolitical ambitions and strategies, beyond economics.

3. [Why India Wants to Internationalize INR?](#)

Economic Benefits

- a. Trade Efficiency: By eliminating exchange rate risks & related costs.
- b. Strengthening Foreign Exchange Reserves: By increased demand for INR.
- c. Financial Market Development: By attracting foreign investments.

Geopolitical Aims

- a. Reducing Dollar Dependence
- b. Strategic Partnerships
- c. Global Influence

This is a multi-pronged strategy aimed not only at economic gains but also at establishing India as a global powerhouse.

4. FEMA Regulations

Regulation 3 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015

3. Duty of persons to realise foreign exchange due :-

- A. person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the Act, or the rules and regulations made thereunder, or with the general or special permission of the Reserve Bank, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing -*
- a. that the receipt by him of the whole or part of that foreign exchange is delayed; or*
 - b. that the foreign exchange ceases in whole or in part to be receivable by him.*

However, **Regulation 4(2)** specifies: *A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.*

Thus, receipt in Rupees in some cases, is deemed to have satisfied the condition of receipt of Foreign Exchange under FEMA Regulations.

5. RBI permitting 'International Trade Settlement' in INR

RBI has been focusing on the internationalization of INR through various key initiatives and Regulations on trade invoicing in INR have been relaxed to allow for both exports and imports.

As per Para 2.52(b) of FTP 2015-20, "export proceeds against specific exports may also be realised in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his nonresident bank (after deducting bank service charges) on account of this transaction would be taken as export realisation under export promotion schemes of FTP."

RBI Master Direction 16/2015-16 dated January 1, 2016 (as amended), also cites the above para from FTP 2015-20 and states that there is no restriction on invoicing of export contracts in INR.

Further RBI vide its **Circular No.10 dated July 11, 2022 - RBI/2022-2023/90 A.P. (DIR Series)** permitted 'International Trade Settlement' in INR:

In order to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR.

3 (b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

RBI has issued FAQ dated 01/12/2022 on this.

6. FTP & DGFT

DGFT has introduced a provision in the Erstwhile FTP vide Notification No. 33/2015-20 dated 16.09.2022, to allow for International Trade Settlement in INR.

DGFT's Notification 43/2015-20 dated 09.11.2022 and Public Notice 35/2015-20 dated 09.11.2022 issued for grant of exports benefits and fulfilment of Export Obligation for export realisations in INR as per RBI guidelines.

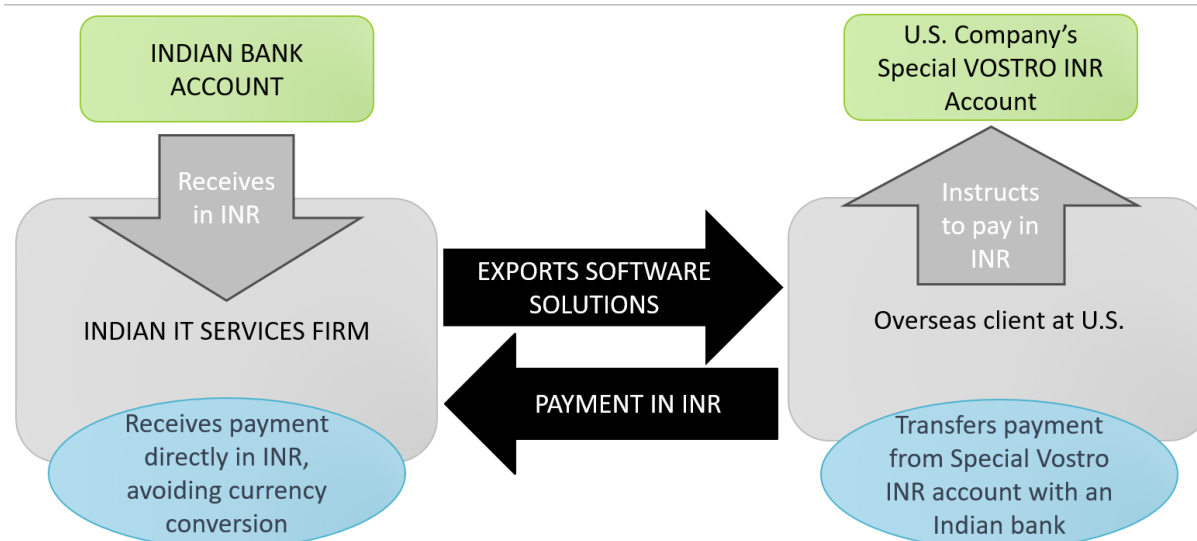
A key highlight of FTP 2023 was INR to be accepted under FTP Schemes and extending FTP benefits for Rupee realisations through Special Vostro accounts setup as per RBI circular issued on 11 July 2022 and is well resonated in Para **2.52 Denomination of Export Contracts** and **2.53 'applicability of FTP Schemes for Export Realisations in Indian Rupees'**

7. Special VOSTRO INR Account

A specialized banking mechanism facilitating cross-border transactions, allowing foreign bank to maintain INR account with a correspondent bank in India for trade settlement.

Say, An Indian IT services firm exports software solutions to U.S. company. Instead of receiving payment in USD which would require conversion to INR, it receives directly in INR to its Indian bank account. U.S. company would direct its local bank to transfer the payment from its Special Vostro INR account held with an Indian bank.

Special VOSTRO INR Account A real world example



8. Case Decisions under Service Tax Law

In Nipuna Services Ltd. vs. CCE - 2009- CESTAT-BANG, it was held "Revenue is denying the refund for the simple reason that the appellant themselves had not directly received the payment in foreign currency. our view, the stand of the Revenue is not sustainable. If Revenue's contention is accepted, it amounts to levying service tax on

services exported. It is axiomatic that goods and services exported would not be subjected to local taxes. Denying the refund would violate this fundamental principle of taxation."

In Sun-Area Real Estate Pvt. Ltd.- 2015- CESTAT-MUM, the Tribunal observed, *"I am of the view that when a foreign bank is maintaining dian rupees in their account obviously, such Indian rupees was obtained in lieu of foreign exchange. For example, if any payment is made from India to any foreign country, it is to be made in foreign exchange and thus there is a outflow of foreign exchange but if the payment is made in Indian rupees, there is a saving of foreign exchange and if the said Indian rupees is received in India, the same is in lieu of foreign exchange which was saved at the time of repatriation of Indian rupees to foreign country. On this logic under the Foreign Exchange Management Act also it provided that if the payment in India rupees is received in India through banking channel it is deemed to be convertible foreign exchange. I am of the considered view that even though the appellant received the payment in Indian rupees but the same is deemed to be convertible foreign exchange and accordingly the condition as provided under Rule 3(ii) of Export of Service Rules, 2005 stand complied with."*

In Verifone Technology dia Pvt Ltd Vs Commissioner -CESTAT-BANG - it was observed, *"it is clear that payment received in dian rupee for which FIRC issued by the Standard Chartered Bank and the payment is routed through foreign bank, shall fulfill the condition of payment (convertible foreign exchange)".*

There are several other orders on similar cases in the Service Tax era._

9. "EXPORT OF SERVICES" under GST

Section 2(6) of the IGST Act 2017 defines "Export of Services" wherein one of the conditions specified is:

(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

Here, it is pertinent to note that the wordings in clause (iv) above ***"..... in Indian rupees wherever permitted by the Reserve Bank of India "*** was originally not part of the definition and was later inserted by the Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) - Brought into force w.e.f. 01st February, 2019._

10. CGST Rules

Rule 89(2) on 'Documentary evidences in refund application Form GST RFD-01'_provides as below:

89(2)(c) a statement containing the number and date of invoices and the relevant BRC or FIRC, as the case may be, in a case where the refund is on account of the export of services;

Unfortunately, this is a very narrowed provision leading to ambiguity for the refund sanctioning officer.

11. GST CIRCULARS

Circulars, binding only upon the revenue officers, sets practical procedures for refunds. Annexure-A of Circular No. 125/44/2019-GST dated 18th November, 2019 lists Supporting documents for refund:

1	Refund of unutilized ITC on account of exports without payment of tax	BRC/FIRC in case of export of services
2	Refund of tax paid on export of services made with payment of tax	BRC/FIRC /any other document indicating the receipt of sale proceeds of services

CBIC issued Instruction No.03/2022-GST dated 14th June 2022 to the Commissioners regarding '**Procedures relating to sanction, post-audit and review of refund claims**' stipulating:

*'(I) In case of refund on account of services, whether the claimant has furnished the BRC/FIRC/ **other relevant document** evidencing receipt of export remittances in respect of zero-rated service for which refund is being claimed.'*

12. Unwarranted insistence on BRC/FIRC and issues faced by Exporter of Services.

Despite clarity in the IGST Act, due to ambiguity in the rules, circulars & instructions, GST officers are hesitant to sanction refund orders without BRC/FIRC document, due to the limitation of powers and inadequate parallel guidance under the GST law. Apparently, it is impossible for any exporter to obtain BRC/FIRC in the instances of receipt of INR through Special VOSTRO INR Account, since the proceeds are not received in FOREX.

Such ambiguity, limited understanding and limitation of powers resulted in:

- A. Unwarranted rejection of Export refunds.
- B. Denying substantial benefits of zero-rated supply, since condition for 'export of services' u/s 2(6)(iv) of the IGST Act is not complied from the views of the Revenue officers.

Such unnecessitated disputes and nonalignment of GST implementation practices with Macro Economic policies are brought to the attention of GST Council through representations and this latest step seeks to quell the uncertainty.

13. 52nd GST Council Meeting - A Major Relief!

The 52nd GST Council Meeting brought forth a crucial recommendation:

Para (v) of "Measures for facilitation of trade" in the Press Release:

"V) Issuance of clarification relating to export of services-: The Council has recommended to issue a circular to clarify the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017"

It effectively aims to widen the ambit of 'export of service' from the Department officer's perspective, reducing disputes and accelerating refunds.

14. WAY FORWARD!

The Council promises significant relief and clarity to service exporters. A much-litigated

issue ever since Service Tax Regime is atleast put to rest now. All such exporters who faced rejections despite receipt through Special VOSTRO INR Account should now get the dispute settled and obtain the refund. It is the responsibility of the taxpayer to exercise the rights and demand interest for any delay!

It is a crucial step toward making India a more favourable destination for service exports, and it resonates with the broader macroeconomic vision that India has set for itself.

The actual Circular under GST is still much awaited and hopefully should reflect larger objectives!