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Table of Contents

**Insightful Articles on GST, Customs and Foreign
Trade Policy Topics**

03

Spotlight on Export Benefit Schemes

13

Updates in GST

15

Updates in Customs and FTP

17

GST Portal News and Updates

20



**Insightful Articles on
GST, Customs and
Foreign Trade Policy
Topics**



ITC eligibility w.r.t. electricity used at residential township/colony and reversal w.r.t. duty credit scrips



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The case before the High Court of Chhattisgarh (Bharat Aluminium Company Ltd. 2025-TIOL-1217-HC-CHHATTISGARH-GST) concerns the entitlement of Input Tax Credit (ITC) under GST for electricity used at the petitioner’s residential township and the applicability of rule 42 of the CGST Rules on account of exempt supplies of sale of Duty Credit Scrips (DCS).

Facts

Bharat Aluminium Company Limited (BALCO) operates aluminium manufacturing plants in Korba, Chhattisgarh. It uses coal for generating electricity via two power plants. This power is:

- Captively consumed in manufacturing aluminium products which are also exported,
- Sold to the State Electricity Board, and
- Partly supplied to maintain a residential township for its employees.

BALCO claimed ITC of GST and Compensation Cess paid on coal used for generating electricity, including the portion supplied to the township, arguing that township maintenance is a business activity integral to its manufacturing operations.

Additionally, BALCO claimed that no reversal of ITC would be warranted under rule 42 of the CGST Rules against the sale of Duty Credit Scrips (DCS), considering the retrospective application of an amendment provided in the CGST Rules to exclude such supplies from the value of exempt supplies.

Issue

1. Whether supplying electricity to the township for employees’ residential use constitutes an activity “in the course or furtherance of business” under GST, thereby entitling BALCO to ITC on inputs (coal) used for generating that electricity.

2. Whether reversal of ITC is warranted under Rule 42 of the CGST Rules on account of supply of Duty Credit Scrips, in light of the question as to whether the amendment (Notification No. 14/2022 dated 5-7-2022) has retrospective application.

Court’s Analysis and decision

On the first issue, the Court relied heavily on precedents including the Supreme Court decisions in Gujarat Narmada Fertilizers Co. Ltd. and Maruti Suzuki Ltd., which clarify that ITC can only be claimed for inputs used in activities integrally connected to business and manufacturing. The Court held that supplying electricity to the township is a welfare activity incidental to business but not part of the business itself.

Since the electricity consumed in the township is not for manufacturing or business operations, ITC on coal attributable to this supply must be reversed as per Rule 42 of CGST Rules. The Court emphasized that ITC is a concession, not a substantive right, and its availability depends strictly on statutory provisions and conditions.

On the second issue, the Court examined the amendment to Rule 43 of the CGST Rules inserting Explanation 1(d), which excluded the value of exempt supplies of DCS from the aggregate exempt supply value used for ITC reversal calculations.

The Court observed that while the rule-making authority has power to make rules retrospectively under Section 164(3) of the CGST Act, the amendment did not expressly state retrospective effect.

The Court applied principles of statutory interpretation and Supreme Court precedents holding that an explanation or clarification must address prior ambiguity or vagueness to justify retrospective application. Since this amendment was based on GST Council recommendations, it was substantive and prospective, not clarificatory or retrospective. Thus, the petitioner could claim ITC benefits only from 5-7-2022 onward, not for prior periods.

Issue

With due respect to the Court’s decision, in the paper writer’s view, the following aspects need to also be considered:

On the issue of restriction of ITC towards supply of Electricity to Township

a. Business is a very wide term: The availability of credit under GST is dependent on whether the expense is a business expense i.e. whether it is used in the course or furtherance of business. ‘Business’ is a very wide term as was held by the High court in the case of Coca Cola India Pvt. Ltd.

b. Decisions allowing credit related to township: The following decisions would be relevant to refer

a. It has been held by the Tribunal in the case of Mangalam Cement Ltd. that the residential colony was constructed adjacent to the factory because of the reason that the factory manufacturing cement, which runs round the clock, is located at a remote place which is away from the city. Unless the residential colony is constructed near the factory, the appellant will not be in a position to get the proper/adequate manpower for running its plant/activities. Thus, the credit was held to be available for the expenses incurred for maintenance of the township regarding it as a business expense.

b. The AP HC in the case of ITC Limited The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity. Though this is not a completely settled issue as there are certain decisions pending in other cases before the Courts and under GST also, we have some advance rulings that are not in favour.

Though this is not a completely settled issue as there are certain decisions pending in other cases before the Courts and under GST also, we have some advance rulings that are not in favour.

2009 (15) STR 657 (Bom). 2013 (32) S.T.R. 288 (A.P.)

C. Not supply of maintenance services:

In the present case, the electricity is used at the township for maintenance activities. Thus, if this is not a case of supply of electricity to the residents of the township the reliance on the decisions of Maruti Suzuki supra and Gujarat Narmada Fertilisers supra, can be distinguished.

D. No supply does not mean credit not eligible:

Further, in case no charges are collected from the residents for this maintenance activity, this would not be a supply at all to the residents. Just because it is not a supply does it mean that there is no credit available. No.

This view is also accepted by the Court since it has agreed that the electricity that is captively consumed for manufacturing is an eligible credit since it is a business expense and the business of the Petitioner being a taxable one, credit should not be denied.

On the same grounds, for the electricity that is used in the township, one has to understand that the township is a necessity for the business of the Petitioner to exist. If not for the township, maybe the Petitioner would not be able to get workforce or there could be delays in production leading to shut down or losses. Thereby, township, more than a welfare activity is a necessity for the business of the Petitioner.

E. Business expenses in books should be regarded as used in course or furtherance of business:

What is a business expense is not defined under the GST law. In this background, an easy yardstick could be that, when the expense is regarded as a business expense for the purposes of accounting in books/for the purposes of income tax, the same should be accepted as a business expense for GST as well. This is similar to how the capital goods are defined under GST, i.e. capital goods are those goods that are capitalised in the books of the assessee.

F. No mechanism to reverse common credit pertaining to non-business purpose:

Even if one assumes that the usage of electricity requires reversal of credit since it is not a business expense, there is no mechanism in the law to quantify the credit that is attributable to the usage in the township.

This is for the reason that if it is assumed that ITC of coal is not eligible to the extent used in the township, then it is a common credit i.e. used for both taxable supplies and for welfare purposes.

Whereas, rule 42 which provides mechanism for reversal of credit, provides for reversal of credit that is exclusive to non-business expense. It does not provide the manner of computing for identifying the ITC attributable to non-business purpose from a common credit.

In such a situation, one can take a view that when no mechanism is provided, the reversal is not required to be done. When the law has not envisaged this situation, a view can be taken that no credit needs to be reversed for the electricity that is used at the township. Though there are also decisions in the past which have held that in such scenarios the credit should be reversed on a reasonable basis. Hence, one may have to take a reasoned decision based on amount involved and the risk appetite.

On the issue of applicability of Rule 42 against the sale of DCS prior to 05.07.2022

The explanation inserted to exclude value of supply of duty credit scrips shall be construed to be effective with retrospective effect, since the purpose of explanation is to explain/give clarity to a provision. An explanation harmonizes and clears up ambiguity in the main provision. As the said amendment is aimed at providing a remedy which the legislature initially failed to provide.

Originally, when the CGST Act, 2017 came into force, there was no explanation provided after Rule 43, for exclusion of any exempted turnover for computation of reversal under Rule 42. It was only vide the following notifications that the list of exclusions had been provided, on the basis on recommendations of the GST Council

1. Notification No. 55/2017-Central Tax dt 15.11.2017 excluded Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees

2. Notification No. 03/2018 – Central Tax dt 23.01.2018 excluded

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

3. Notification No. 14/2022 – Central Tax, dated 05.07.2022 excluded the value of supply of Duty Credit Scrips

At this juncture, it is important to assess whether the amendment made in January 2018 to exclude interest income from the value of exempt supply, had a retrospective application (being clarificatory in nature) or was a prospective amendment.

In this regard, it is pertinent to draw reference to volume-I of 'Agenda for 25th GST Council Meeting', wherein in Page 270 the proposal made to the GST Council was to introduce an amendment to exclude interest income for the purpose of reversal of ITC under Rule 42, which would **restore/continue** the position as was existing under the erstwhile service tax regime. The said agenda item was also duly approved by the GST Council, in the 25th GST Council Meeting, which resulted in the issuance of **Notification No. 03/2018 – Central Tax dt 23.01.2018.**

Though the said Notification is silent on the retrospective operation of the said amendment, it is clear beyond doubt that the intention of the GST Council was the position under the service tax regime shall be continued and that no reversal of ITC would be required on account of such interest income. Hence, the said amendment shall be construed to have retrospective application.

Similarly, reference to page 224 of the volume-I of 'Agenda for 47th GST Council Meeting' indicates that the proposal to exclude value of supply of duty credit scrips was clarificatory in nature and not a prospective change. This can be specifically noted in the language of the proposed amendment in the said agenda note, which provided as follows

“2.2 Various representations have been received from field formations and trade and industry seeking clarification as to whether the registered persons, who make such exempted supply of DCSs, are required to reverse ITC under rule 42 on common inputs and input services used for both taxable (including zero-rated) supply as well as the said exempted supply of DCSs.

2.3 The issue was deliberated by the Law Committee. The Law Committee opined that though supply of MEIS/Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exported for making taxable supplies including zero rated supplies should not be considered as common credit on such taxable supplies and the exempted supply of DCS. **Therefore, there should be no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters.** Accordingly, the Law Committee recommended that clause (d) may be inserted in Explanation 1 after rule 43 of CGST Rules, 2017 to clarify the aforesaid stand.”

The aforesaid agenda makes it clear that the proposal was to clarify that no reversal of ITC would be required under Rule 42 of the CGST Rules, 2017 against the sale of duty credit scrips, which is based on the recommendation of the Law Committee.

The GST Council being a Constitutional Body, comprises of the Union Finance Minister as the Chairman and all the State Finance Ministers as its members. Hence, in case of doubt, one can refer to the basis of the recommendation of the GST Council, to understand the intention behind such amendments.

In case of any ambiguity prevailing in law, the intention of the legislature should be analysed in interpreting the provisions of the statute as held by the Hon'ble Supreme Court in the case OF K.P. VARGHESE v. THE INCOME TAX OFFICER .

In Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited , the Hon'ble Supreme Court held that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. The circumstances under which provisions can be termed as “declaratory statutes” was explained by Justice G.P. Singh as under

In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.

1981 AIR 1922, 1982 SCR (1) 629 , 2015 (1) Supreme Court Cases, 1

It also appears that the reversal of ITC under Rule 42 towards supply of duty credit scrips has been done including the value of ITC availed against the coal purchased for generation of power, which was partly used for manufacture of goods. This in itself appears to be a gross error (even assuming for a case scenario that the reversal of ITC is required under Rule 42), as the base of common ITC against sale of duty credit scrip cannot be extended to include inputs and input services used for manufacture of goods.

In the humble opinion of the authors, the decision of the Hon'ble High Court does not appear to be in line with the provisions and the spirit of the GST law, for the reasons explained above. This could be due to various reasons which could also include the arguments put forth/the arguments not considered by the Court or any other reason. Accordingly, it would be interesting to see how the case is argued at the Apex Court including how would such Court consider these aspects and resolve the said dispute, if the matter is challenged by the Petitioner before the highest Court of the Country.

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to yikram@hnaindia.com or shilpijain@hnaindia.com



The recent judgment of the Kerala High Court dated April 11, 2025, in the case of **Indian Medical Association (IMA) Kerala State Branch vs. Union of India** marks a watershed moment in the taxation of services provided by associations to their own members under the Goods and Services Tax (GST) regime. This decision not only struck down a key retrospective amendment, including Section 7(1)(aa) and section 2(17)(e), which had attempted to tax such services but also reaffirmed a fundamental legal principle—the doctrine of mutuality—that has governed similar taxation issues since the service tax era.

Background and Legal Controversy

The controversy began when the Indian Medical Association, Kerala State Branch—a mutual benefit association providing various services and benefits to its member doctors—received demand notices from GST authorities. These notices relied on a retrospective amendment introduced by the Finance Act, 2021, specifically **Section 7(1)(aa) of the Central GST Act (CGST Act), 2017**, which redefined “supply” to cover services between associations/clubs and their members starting from July 1, 2017.

Prior to this amendment, services furnished by members club to their own members were not subject to taxes primarily due to the doctrine of mutuality, which legally regards the association and its members as a single entity. Consequently, transactions within were not “supplies” from one distinct person to another, an essential element for GST applicability under Article 366(12A) and the broader constitutional framework.

The Doctrine of Mutuality: A common Law principle recognized by judiciary.

The doctrine of mutuality is not a creation of statutory law but a common law principle developed through judicial interpretation. Indian courts have consistently recognized that an association comprising its members functions collectively, not as separate supplier and recipient. While no specific provision in tax law originally codified this concept, the judiciary has relied on common law to safeguard it, emphasizing that taxation must respect established principles of justice and fairness. The key facets of this principle include:

- **Identity of Contributors and Beneficiaries:** Members contribute funds and receive benefits mutually.
- **No Profit Motive:** Surpluses are utilized for association activities or returned to members.
- **No Transfer to Third Parties:** Transactions are internal and do not constitute commercial services.

Erstwhile Tax Regime: Precedents Protecting Mutuality

Before GST's introduction, the service tax framework contained provisions specifically taxing “clubs and association services.” Yet, several judicial pronouncements consistently upheld the doctrine of mutuality, exempting member-based services from indirect tax liability:

• **Young Men's Indian Association case (SC)** recognised mutuality in the context of Income Tax.

• **Supreme Court ruling in State of West Bengal vs. Calcutta Club Ltd. 2019 (29) GSTL 545 (SC):**

The Court held that supplies made by a club or association to its own members are not taxable under the West Bengal Sales Tax Act and VAT law, as this violates the principle of mutuality. This ruling was later extended to service tax jurisprudence as well, strengthening the protection available to associations.

• **Ranchi Club Ltd. v. Chief Commissioner (Jharkhand HC, 2012) and Sports Club of Gujarat Ltd. v. Union of India (Gujarat HC, 2013):**

These High Courts ruled that associations and their members are not separate taxable entities in their mutual transactions, protecting them from service tax liability.

• **CIT v. Bankipur Club Ltd. (SC, 1997):**

It laid down the tripartite test for mutuality (identity of contributors and beneficiaries, no profit motive, no third-party dealings), which has decisively influenced tax jurisprudence.

CBEC circulars and clarifications introduced monetary thresholds for collections exempt from service tax (₹5,000 per month per member), further providing operational relief.

Transition to GST and the Retrospective Amendment Controversy:

With the roll-out of GST in July 2017, the definition of “supply” codified in Section 7(1) of the CGST Act did not initially include transactions between clubs/associations and their members. In addition, the definition of ‘business’ under Section 2(17)(e) was expanded to specifically include the provision by a club, association, or society of facilities or benefits to its members. However, the Finance Act, 2021, through Section 7(1)(aa), retrospectively expanded “supply” to cover such transactions from the inception date of GST.

This retrospective amendment was met with opposition and litigation, arguing it violated the constitutional principles underlying GST and the entrenched mutuality doctrine.

Kerala High Court Judgment: Key Highlights

In a division bench ruling, the Kerala High Court declared Section 7(1)(aa) unconstitutional and ultra vires the Constitution on the following grounds:

• **Doctrine of Mutuality Remains Supreme:** The court affirmed that a member's club cannot supply goods or services to itself or its members because they form a single economic unit, lacking the duality required to constitute a supply.

- **Violation of Constitutional Framework:** The Court ruled that taxing services between associations and their members retrospectively was unconstitutional. It clarified that this was not based on Article 366(12A), but on the principle of mutuality, since associations and their members are the same entity and no real supply exists. The Court also noted that such a change could only be made through a **constitutional amendment**, not just by changing the GST law.

- **Impact on Associations Nationwide:** This restores tax exemption on resident welfare associations (RWAs), trade unions, clubs, and other member-based associations, relieving them of retrospective GST demands.

- **Legislative Competence and Remedies:** The court emphasized that altering the scope of “supply” at this fundamental level needs constitutional amendment, not mere statutory modification.

Earlier Conflicting View Reversed

This decision overturned an earlier single-judge ruling from July 2024, which had upheld the retrospective amendment applying GST to such transactions but limited its retrospective effect.

Implications for GST Law and Associations

- The judgment protects the interests of many associations and RWAs across India, offering hope to challenge retrospective tax demands.

- It highlights judicial checks against legislative overreach, especially on retrospective tax laws infringing constitutional boundaries.

- The ruling underscores the enduring relevance of established legal principles like mutuality, even amidst evolving indirect tax regimes.

- It could drive legislative refinements or even Supreme Court scrutiny on the matter, shaping GST jurisprudence for years.

Subsequent Notices by DGGI Post-Judgment:

Despite the Kerala HC striking down the amendment retrospectively, the Directorate General of GST Intelligence (DGGI) issued notices seeking compliance and GST recovery from IMA regarding supplies rendered. These notices have caused confusion and contention since they are issued based on provisions that have been quashed by the HC. The IMA and other associations have challenged these notices, relying on the HC ruling as a shield against tax demands and recovery actions.

Applicability of HC Judgment at National Level:

A High Court's decision is binding only **within its territorial jurisdiction** (Kerala in this case) unless upheld or stayed by the Supreme Court. However, the judgment is highly persuasive and influential in other jurisdictions and is often followed by tribunals and other HC benches. National-level applicability would require either Supreme Court affirmation or adoption of the reasoning by other judicial forums.

The Kusum Ingots Supreme Court judgment clarified that while a High Court's jurisdiction is territorially limited to its state, if it strikes down a Central legislation as unconstitutional, that decision generally holds nationwide applicability unless stayed or overruled by the Supreme Court. This principle promotes uniformity of law across India and prevents contradictory rulings in different states. However, technically, this nationwide applicability is an obiter dictum and subject to debate. Despite this, many High Courts have followed it, and the Supreme Court has implicitly accepted it in practice for consistency in constitutional matters involving central laws.

Can the Department Initiate Proceedings Under a Struck Down Section?

Once a section or amendment is declared unconstitutional and struck down by a competent court, it ceases to have legal force **from the date specified by the court** (usually retrospective to the amendment date). Departmental proceedings based on such provision **lack legal validity and can be challenged successfully**. Continuing proceedings under a non-existent (non-existent) law violates principles of natural justice and legal certainty. However, if higher courts stay the HC verdict or the matter is sub judice, authorities may proceed cautiously. The Hon'ble Supreme Court has emphasized that tax authorities cannot initiate proceedings on the same subject matter if already adjudicated or when the provision relied upon stands invalid.

Conclusion:

The Kerala High Court's April 2025 ruling in *Indian Medical Association vs. Union of India* stands as a landmark victory for associations, clubs, and RWAs subjected to GST demands on member services. By reaffirming the doctrine of mutuality and striking down the retrospective amendment under Section 7(1)(aa) of the CGST Act, the court has restored a core legal safeguard against unwarranted taxation. This judgment bridges a long line of precedents protecting mutual associations from indirect taxes since the service tax regime, offering clarity and relief within the GST framework. Moving forward, the ruling emphasizes constitutional sanctity over retrospective tax impositions and calls for careful legislative action in the complex domain of indirect taxation. While the Government has already appealed the decision, no stay has been granted, and the case is pending before the Supreme Court vide SLP (C) Nos. 18349-18350/2025.



Evaluation Criteria For Export Benefits Under Customs And Foreign Trade Policy



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Exports are a key contributor to any economy. A trade surplus economy, wherein exports are more than imports, boosts foreign exchange reserves and strengthens its currency. Exports contribute to 20% of the total GDP of our country. Considering its huge scale, the Government promotes the Indian exporters by way of providing certain benefits. One of the key benefits is exempting or remitting the duties and taxes paid on purchases. Taxes like GST are refunded upon making exports, customs duties are remitted by way of drawback and exempted by way of certain schemes like advance license, export oriented unit etc.,

The above is in line with the principle that the product should be exported and not the taxes associated with it, thereby making the product / service competitive in the export market.

Since there are many schemes available to the exporter of goods, determining the suitable scheme is a task. **Selecting a wrong scheme could sometimes cost more than not selecting any scheme.** Therefore, the exporter shall assess various factors while selecting the scheme. In this article, we have tried to summarize few questions which one should ask while analyzing major schemes. Let us understand the beneficial schemes for exporters of goods and then determine their suitability.

REMISSION SCHEMES

1. GST REFUNDS

Exports are considered as zero-rated supplies under the GST law whereby the exporter has the option to claim refund of GST paid on his domestic purchases or imports. This though is subject to the provisions contained in the GST law. However, the problem with this approach is working capital blockage for a certain period of time. For example, ABC Ltd. has during:

- a. **April 2025** - Imported or domestically procured raw material on payment of applicable duties and taxes.
- b. **September 2025** – Manufactured and exported the finished goods.
- c. **October 2025** - Filed the refund application.
- d. **November 2025** – Received refund.

From the above it is evident that there is a gap of 8 months from the date of payment of GST on procurements and date of receipt of refund. Assuming the GST paid on procurements is Rs. 1 crore and the government bond yield rate is 7% (approx.), the loss due to working capital blockage would be Rs. 4.66 lakhs for these 8 months.

Thus, aspects not addressed in this scheme are:

- a. Working capital blockage,
- b. Additional costs in respect of filing refund application and receiving the refund,
- c. No refund of the duties paid on imports like basic customs duty, social welfare surcharge etc.,

How would these duties be refunded to the exporter? Here comes the role of duty drawback.

2. DUTY DRAWBACK

On export of goods manufactured in India, the exporter is eligible for a % of the FOB value of such exports as a drawback. This is rebate of duty chargeable on any imported material used in the manufacture of exported goods excluding IGST and compensation cess .

These drawback percentages are derived after factoring the customs duties cost in the value of finished goods. This is called as All Industry Rate (**'AIR'**) Drawback . However, if there is no AIR prescribed for any product or if the exporter is not satisfied with the AIR provided by the Drawback Committee (only in case the drawback received is less than 80% of duties paid), he may approach the Customs office for determining a higher drawback rate, which is known as brand rate.

It should be noted that drawback under this provision is granted on the assumption that the customs duties are embedded in the exported product in the entire supply chain and hence it is eligible irrespective of whether the exporter has imports or not.

However, the problem with duty drawback is:

- a. Exporter needs to wait for drawback till he exports the finished goods. This blocks huge working capital. In our above example it's a delay of 6 months from payment of taxes on procurement.
- b. Also, sometimes it is possible that the AIR drawback is much lower as compared to duties paid on imports. In such case, the exporter again needs to file an application for brand rate drawback, which is a time consuming process.

Duty drawback is feasible for only those exporters who have paid lesser import duties and sourced majority of inputs from the domestic market.

3. RODTEP SCHEME

Apart from GST and customs duties, the exporter could also pay some local taxes like excise duty and value added tax (**'VAT'**) on petroleum products, electricity duty etc., These taxes are neither reccredited nor refunded to the exporter by way of any of the above schemes. To nullify the burden of these taxes, RoDTEP scheme is introduced. It refunds those duties/taxes/levies borne on the exported product which are not currently refunded or reccredited . However, the expense should have nexus with the exported product.

RoDTEP can be claimed at the time of filing shipping bill for exports. The exporter has to show his intention to claim RoDTEP by selecting 'Yes' in the RoDTEP column on the shipping bill . A scroll will be created by DGFT for each shipping bill where RoDTEP claim is made. This scroll will be reflected on the ICEGATE portal, and the exporter can convert this scroll to a scrip, which can be used against payment of import duties. It should be noted that the RoDTEP scrip balance can be used to set off only basic customs duty and no other duties . Also, if the exporter is unable to use these scrips, he may sell them.

It is to be noted that RoDTEP and drawback are two separate schemes and have their own purposes. Drawback reimburses customs duties while RoDTEP reimburses duties which are not reimbursed by any scheme. Therefore, both the benefits can be claimed together for a single shipping bill, subject to other conditions.

EXEMPTION SCHEMES

Till now, we have discussed about duty remission schemes wherein duties and taxes are paid first and later claimed as refund. Let us proceed our discussion with duty exemption schemes wherein duties are exempted at the source i.e. at the time of import itself. Though it is important to note that exemption schemes are generally subjected to certain conditions like fulfillment of export obligation.

4. ADVANCE AUTHORISATION

The list starts with advance license, which allows the manufacturer to import raw material duty free . The manufacturer can use the raw material in production of finished goods, which can be exported.

The license is granted based on Standard Input Output Norms (SION) notified by the Norms Committee. For instance, according to SION, producing 1 kg of ties requires 1.05 kg of fabric. If an exporter commits to exporting 100 kg of ties, he would be permitted to import 105 kg of fabric duty-free under this scheme.

Also, the exporter in general is required to achieve a minimum value addition of 15% . In this example, if the CIF value of imported fabric is Rs. 1,00,000, the exporter is required to ensure that the FOB value of the exported ties is at least Rs. 1,15,000 or more to comply with the 15% value addition requirement. In this example, if the exporter wants to import more than 105 kg fabric, he has to import the same by paying duties. Another option could be to enhance the import quantity in license which correspondingly amends export obligation.

Important aspects to note are:

- a. Apart from imports, procurement from indigenous sources without payment of taxes is possible under the category of deemed exports
- b. This scheme is applicable only for manufacturers or merchant exporters tied to a supporting manufacturer .
- c. The license is valid for 12 months . Hence, for every 12 months, a license will have to be taken in case of regular exporter.
- d. The exporter is liable to discharge the export obligation by 18 months from the date of advance authorization, which is extendable.
- e. The scheme provides duty exemption only for raw material and not capital goods. Therefore, if any exporter intends to import capital goods, the scheme would not be suitable.

Suitability

- Exporters with tight finances can opt for this scheme as the license holder is entitled to import and procure indigenously, inputs without payment of duty and taxes.
- Since the value addition is less i.e., only 15%, it would be suitable for business with decent margins.
- Some of the export promotion schemes restrict the exporter from making domestic supplies. However, there is no such restriction in advance authorisation. The exporter who makes domestic supplies parallelly with exports can opt for this scheme subject to payment of the duties and taxes on import due to domestic clearances.

Advance authorisation is not suitable for those exporters who export on regular basis. Multiple licenses need to be obtained for such exporters. Also, it is to be noted that the goods exported in discharge of export obligation against advance authorisation are not eligible for duty drawback. However, RoDTEP benefits are available.

5. EPCG SCHEME

EPCG stands for Export Promotion Capital Goods scheme. It is one of the duty exemption schemes which allows the license holder to import the capital goods duty free which could be used in manufacturing or providing service. The license holder can either import the capital goods duty free or procure domestically without paying taxes under deemed exports. The license so provided is valid for 24 months from the date of issuance of license and revalidation is not permitted.

Under the EPCG scheme, there are two export obligations for the exporter viz., (1) specific export obligation and (2) average export obligation. The specific export obligation is equivalent to exporting an amount of resultant goods equivalent to six times of duty saved on import of capital goods, which needs to be fulfilled in a period of 6 years. On the other hand, the average export obligation requires the exporter to maintain an export turnover which is at least as high as average export turnover in the three fiscal years prior to issuance of license. For service exports, the export obligation is fulfilled by earning foreign exchange through rendering service.

Important aspects to note are:

1. The exporter is required to fulfill export obligation over two blocks within a period of 6 years from the date of issue of authorisation, which is extendable for another two years.
2. The license is valid for 24 months and export obligation is required to be fulfilled within 6 years.
3. The scheme provides duty exemption only for capital goods and not raw material. Therefore, if any exporter intends to import raw material, the scheme would not be suitable.

Suitability

- Suitable for exporters who do not have any import of raw materials but have import of capital goods.

- The capital goods so imported can be used for producing goods which are intended to be cleared in domestic market also. To mean, the license holder can make domestic supplies and exports parallelly. The only condition is that he needs to satisfy export obligation within 6 years or extended period. Therefore, license holders who have both exports and domestic supplies can choose this scheme.

- Suitable for service providers who import heavy machinery and export their services. For example, hospitals importing high end machines for treatment.

- When the capital goods are expensive (duties are high) and the license holder has clear path of exporting goods or services, he may choose this scheme based on projections.

Further, the exporter can claim duty drawback and RoDTEP benefits on the finished goods exported under EPCG scheme. Therefore, the exporter can claim EPCG, drawback and RoDTEP benefits simultaneously. In case of multiple capital goods imports, there could be increased compliances due to requirement of applying for multiple licenses.

If the exporter has huge import of raw material also along with capital goods, then EPCG alone would not be sufficient. In such cases, the exporter can either take EPCG together with advance authorisation or obtain EOU license. If he opts for EPCG together with advance authorisation, he cannot use the same export performance (same shipping bills) to fulfill export obligation under both the schemes.

6. EXPORT ORIENTED UNIT (EOU)

EOU scheme allows the exporter to import duty free raw materials and capital goods. The export obligation under the EOU scheme is designed in such a way that the exporter needs to achieve positive net foreign exchange (NFE) i.e., exports less imports should be positive, in a block period of five years. The EOU license is valid for a period of five years, and the exporter has an option to renew the license for another five years and so on.

If the exporter is unable to achieve the export obligation, duty reversal along with huge penalties will attract. EOU is not an easy process since it requires huge compliances and heavy documentation. Also, an EOU can make domestic sales only upon achieving positive NFE and after intimating the same to the proper officer. In case of domestic sales, the EOU is liable to reverse customs duties exempted on import of raw material along with interest, which are used in manufacturing those finished goods.

Suitability

- Exporters who import raw material and capital goods.
- Exporters who majorly have exports on a regular basis matching the imports at the least. If the exporter makes domestic sales even after achieving NFE, he needs to reverse duties on inputs along with interest. This would be a huge cost if the exporter has significant domestic supplies also.
- Recently set up business which needs time to export. NFE is to be achieved in five years. So, even if the unit takes time to export in the initial years, it would still have time to achieve export obligation.
- Big companies planning to have their business for a sustainable period.

Apart from above benefits, EOU has few drawbacks like renewal after 5 years, payment of duties along with interest in case of domestic supplies, cumbersome compliances and permissions, heavy documentation etc., Therefore, all these factors need to be taken into account while determining suitability of EOU for a business. Further, the exporter is not eligible for duty drawback for the shipping bills filed under EOU scheme. However, he is eligible for RoDTEP benefits.

Comparison of EOU and Advance License +EPCG

As discussed in paragraph 5, in case the exporter is having import of raw materials and capital goods, he also has an option of obtaining advance license along with EPCG. However, in that case, he is required to fulfill two export obligations which is not feasible in most of the cases. Let us compare it with the following example:

Particulars	AA + EPCG	EOU
Import of Capital Goods	Rs. 2,00,000	Rs. 2,00,000
Duties saved on this import (BCD – 10%; SWS – 1% & IGST – 18%)	Rs. 61,960	Rs. 61,960
Export obligation for capital goods	Rs. 3,71,760	Rs. 2,00,001 (even Rs.1 gives a positive NFE) – without considering any amortization.
Import of raw material (CIF value)	Rs. 1,00,000	Rs. 1,00,000
Export obligation	Rs. 1,15,000	Rs. 1,00,001
Total export obligation – FOB value	Rs. 4,86,760	Rs. 3,00,001 approx.

This way the export obligation for advance authorisation along with EPCG could be higher sometimes. However, the exporter is also required to consider the duty drawback benefit he would be receiving on the shipping bills filed under EPCG scheme. If such benefit is high and the exporter can anyway undertake this higher export obligation, he can choose for advance authorisation along with EPCG scheme. Again, the decision would be very subjective and would be decided based on import and export projections.

DUTY DEFERMENT & EXEMPTION

7. MOOWR SCHEME

MOOWR stands for Manufacturing and Other Operations in Warehouse Regulations. In general, the importer can either clear the goods for home consumption or to a bonded warehouse. If the goods are cleared for home consumption, the importer is required to pay duties upon clearance. However, if the goods are deposited in a bonded warehouse, the importer can defer the duty payment till goods are cleared from warehouse. Normally, no operations can be undertaken in a warehouse. However, MOOWR is a special kind of warehouse where the importer can undertake manufacturing or other operations on the goods deposited.

After manufacturing or undertaking other operations, if the importer exports the finished goods, no duty is payable on inputs used in manufacturing those exported goods. However, if the resultant goods are cleared for home consumption, duty needs to be paid on inputs, but without any interest.

The importer can also defer duty on import of capital goods till they are cleared in domestic market or reexported. If capital goods are cleared in domestic market, duty to be paid on full value (no depreciation). If reexported, duty stands exempted.

Suitability

- Exporters who import raw material and capital goods.
- MOOWR is only a one time license without requirement of periodic renewals. Hence suited for business that plan to run for sustainable period.
- Businesses having only domestic sales can also opt for this scheme if they merely wish to defer the duty and tax payments on import. There is no export obligation in MOOWR as it is just a duty deferment scheme.
- Setting up a MOOWR unit requires lot of documentation and compliances. Therefore, not very suitable for small scale exporters who do not import on a regular basis.

Both the RoDTEP and duty drawback benefits are not available for goods partly or wholly manufactured in the MOOWR unit. Therefore, the exporter should be very careful when selecting this option by doing a cost benefit analysis before opting for either MOOWR or EOU.

The key benefit of EOU and MOOWR is ability to make domestic sales. Both EOU and MOOWR allow domestic sales by paying applicable duties on related raw material. However, EOU can make domestic sales only upon achieving NFE, while MOOWR does not have such restriction and MOOWR does not require payment of interest. This gives MOOWR an advantage. Also, EOU has to achieve NFE in 3 years which is not a condition for MOOWR.

KNOW YOUR CONCESSION

Every exporter should be well informed about the incentives and schemes offered by the Government including related compliances, to take an informed decision. Each scheme comes with its own benefits and challenges. One should look at the factual aspects and conditions of the scheme before making a choice. Sometimes, combination of two or more schemes together could derive the maximum benefits. However, while doing so, a careful assessment needs to be undertaken to ensure there is no overlap or violation of the conditions prescribed under each scheme. Also, while determining the suitable scheme, take account of export projections, applicable drawback and RoDTEP rates, domestic sales percentage etc.,

Ultimately, the selection of the right scheme is highly subjective to each business. For example, two companies with similar export-import volumes and domestic sales percentage might still need to opt for different schemes if there is a change in the HSN code of their export products. Hence, a comprehensive analysis across multiple parameters is required, to derive optimum results. As already mentioned, choosing a wrong scheme can sometimes lead to higher costs than not availing any scheme at all.

References

- Section 16 of the Integrated Goods and Services Tax Act, 2017
- Rule 2(a) of the Customs and Central Excise Duties Drawback Rules, 2017
- Notification No. 77/2023 – Customs (N.T.) dated 20.10.2023
- Rule 6 of the Customs and Central Excise Duties Drawback Rules, 2017
- Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017
- Paragraph 4.54 of the Foreign Trade Policy, 2023
- Public Notice No. 01/2021 dated 04.01.2021
- Paragraph 4.56 of the Foreign Trade Policy, 2023
- Notification No. 21/2023 – Customs dated 01.04.2023
- Paragraph 4.09 of the Foreign Trade Policy, 2023
- Section 147 of the Central Goods and Services Tax Act, 2017
- Paragraph 4.05(a) of the Foreign Trade Policy, 2023
- Paragraph 4.39 of the Handbook of Procedures, 2023
- Notification No. 52/2003 – Customs dated 31.03.2003
- Paragraph 6.04 of the Foreign Trade Policy, 2023
- Paragraph 6.01 of the Handbook of Procedures, 2023
- Paragraph 6.07 of the Foreign Trade Policy, 2023
- Notification No. 77/2023 – Customs (N.T.) dated 20.10.2023
- Section 65 of the Customs Act, 1962

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Spotlight on Export Benefit Schemes

02 Remission of Duties and Taxes on Exported Products ('RoDTEP Scheme')

Part 1: Introduction to the scheme and some common myths busted

RoDTEP benefit is given for certain products in order to remit those duties which are neither re-credited nor refunded. This scheme was introduced by the Government with effect from 2021. It is given by way of scrips which can be used for payment of basic customs duty on imports or can be sold in open market. Since the RoDTEP amount is very minimal, typically ranges from 0.3% to 4.3% on FOB value, the exporters does not give enough attention to this scheme, though big scale exports could fetch more RoDTEP claim. In this section, we tried to cover few common myths about the RoDTEP scheme along with their answers are provided below:

1. I don't have any import of goods, so RoDTEP is not useful for me.

Incorrect. RoDTEP scrips can also be sold in the open market to other exporters. Therefore, even if an exporter does not have any import of goods, he can claim RoDTEP benefits and sell the scrips.

2. I ticked the RoDTEP claim in shipping bill, so I will automatically receive the benefit.

The answer is partially true. In most cases, ticking the RoDTEP option in the shipping bill results in scroll generation on the ICEGATE portal. However, if there are transmission errors or mismatched details, scrolls may not be generated. To avoid these issues, exporters should maintain a RoDTEP tracker for monitoring shipping bills.

3. Since I am claiming duty drawback, I cannot claim RoDTEP.

Incorrect. There is no restriction on claiming RoDTEP benefits simultaneously with the duty drawback. RoDTEP and duty drawback are independent schemes with different objectives.

4. I am an advance license holder, EOU or SEZ. So, I cannot claim RoDTEP benefits.

Incorrect. Initially, these categories were excluded from RoDTEP benefits. However, with effect from March 2024, the said scheme was extended to these exporters as well. It was briefly discontinued between February 2025 and May 2025 but restored in June 2025.

5. I missed selecting the RoDTEP option in my shipping bill, so I lost the benefit.

Incorrect. While it is mandatory to opt for RoDTEP at the time of filing the shipping bill, the High Courts in multiple instances have held that this is merely a procedural aspect. Exporters can seek amendments to the shipping bill and still claim RoDTEP benefits.

6. Once I receive RoDTEP, I have no more compliances w.r.t this benefit received.

No, in case the RoDTEP claim exceeds Rs. 1 crore in a financial year, the exporter is required to file Annual RoDTEP Return on DGFT portal. For FY 2023-24, the due date of filing is 30 June 2025 and for FY 2024-25, the due date is 31 March 2026. In case the return is not filed, the exporter cannot generate further scrolls and utilise scrips.

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Updates in GST

GST	
Notification-Central Tax	
Notification No. and Date of issue	Subject
Notification no. 12/2025-CT-GST dated 20.08.2025	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of July,2025 HNA Comments: Notification no. 12/2025-CT-GST (dated August 20, 2025) Seeks to extend the due date for furnishing FORM GSTR-3B for the month of July,2025 upto 27.08.2025, for the taxpayers registered in Mumbai (City), Mumbai (sub-urban), Thane, Raigad and Palghar districts of Maharashtra. Read more



Updates in Customs and FTP

Type	Number & Date	Subject
Customs Notification	35/2025 – Customs dated 18.08.2025 & 36/2025 – Customs dated 28.08.2025	<p><u>Exemption of customs duties on cotton</u></p> <p>Summary: Import duties on cotton imports (5% BCD + 5% AIDC) is exempted till 31.12.2025.</p> <p>HNA Comments: This was done due to cotton production touching its lowest in 15 years, causing shortages. Applies even to consignments in transit where BOE is not filed by 18.08.2025.</p>
Customs Instruction	26/2025 – Customs dated 14.08.2025	<p><u>SCOMET Repository on Customs</u></p> <p>Summary: Exporters often face difficulty identifying SCOMET applicability. In such cases, the exporters may seek DGFT clarification in case of doubt. The CBIC also maintains a repository of DGFT clarifications w.r.t SCOMET applicability for reference.</p> <p>HNA Comments: The SCOMET list being more technical in nature is often difficult to interpret. This is a welcome move by the CBIC which facilitates the exporter to easily determine SCOMET applicability for their products, reducing complexities.</p>
Customs Instruction	27/2025 – Customs dated 26.08.2025	<p><u>Validation of BIS certification</u></p> <p>Summary: Earlier, officers were only checking BIS numbers on BoE without verifying their validity, leading to some products getting cleared on invalid BIS registrations. Now officers shall verify validity of BIS status online for all applicable products.</p> <p>HNA Comments: This enables stringent conditions w.r.t imports where BIS is applicable and curbs import of sub-standard goods that earlier slipped through due to invalid BIS registrations.</p>
DGFT Notification	24/2025-26 dated 11.08.2025	<p><u>Port restrictions on the import of goods from Bangladesh</u></p> <p>Summary: Imports of certain jute items from Bangladesh restricted to Nhava Sheva port. Land border imports not allowed, except for Nepal/Bhutan transshipments. Such transshipped goods cannot be re-exported to India.</p> <p>HNA Comments: The Government is imposing strict restrictions on import of certain products from Bangladesh through land routes. Last month certain textile products have been restricted, and this month jute products like jute fabrics, sacks, bags etc., are being restricted.</p>
DGFT Notification	25/2025-26 dated 19.08.2025	<p><u>Changes in Diamond Imprest Authorisation</u></p> <p>Background: DIA scheme allows eligible exporters to import natural cut & polished diamonds duty-free, provided they re-export with at least 10% value addition. Exemptions earlier covered all duties and taxes, including BCD, IGST, and Compensation Cess. The applicant need to submit GST & ITR returns for last 3 years.</p> <p>Amendment: Exporters can apply for DIA before filing ITR for last FY, if they submit a CA/CMA certificate, but they shall submit ITR by 31st December of that year. IGST and Compensation Cess exemptions removed; only customs duties remain exempt. IGST and Cess must now be paid, but ITC credit can be claimed.</p>
DGFT Notification	28/2025-26 dated 28.08.2025	<p><u>Change in export obligation period for certain products</u></p> <p>Summary: EO under an advance license for chemical products (subject to QCOs) extended from 180 days to 18 months.</p> <p>HNA Comments: This amendment aligns with the standard EO period of other advance licenses. Relief is aimed at the chemical industry, which contributes 10.6% to India's exports.</p>

Type	Number & Date	Subject
<p>DGFT Public Notice</p>	<p>20/2025-26 dated 26.08.2025</p>	<p><u>Suspension of SION norms for certain food products</u></p> <p>Summary: SION norms suspended for items like rice, wheat, biscuits, tea bags, and mustard oil. Exporters must use self-declaration or ad hoc norms.</p> <p>HNA Comments: Without SION norms not available, exporters shall approach Norms Committee for ad hoc norms when seeking advance licenses, on self-declaration or self-ratification basis.</p>
<p>DGFT Trade Notice</p>	<p>11/2025-26 dated 27.08.2025</p>	<p><u>Revision of SION norms for certain food products</u></p> <p>Summary: DGFT plans to revise SION norms for the aforesaid food products. Exporters, importers, and industry bodies invited to submit feedback. Ensures updated norms reflecting industry needs.</p>



GST Portal News and Updates

Sl.No	Date	Functionality	Subject
1	01-08-2025	Gross and Net GST revenue collections for the month of July 2025	<p>The Gross and net revenue for the month of July-25 was declared. The same can be checked by clicking on –</p> <p>July 2025 Collections</p>
2	21-08-2025	Advisory on extension of GSTR-3B due date in few districts of Maharashtra State	<p>In view of the natural calamity caused by heavy rains, the due date of GSTR-3B for the July-2025 tax period has been extended from 20th August, 2025 to 27th August, 2025 for the following districts of Maharashtra state:</p> <ol style="list-style-type: none"> 1.Mumbai (City) 2.Mumbai (sub-urban) 3.Thane 4.Raigad 5.Palghar <p>For further details, please refer to Notification No. 12/2025 – Central Tax dated 20th August, 2025 issued by CBIC.</p>
1	28-08-2025	Advisory –System Enhancement for Order-Based Refunds	<ol style="list-style-type: none"> 1. As per the available functionality, taxpayers could claim refunds under the category "On account of Assessment/Enforcement/Appeal/Revision/Any Other Order" (ASSORD) only if: <ul style="list-style-type: none"> • The cumulative amount of the Demand ID showed a negative balance (i.e., refund eligible). • The status of the Demand ID was "Refund Due". <p>This restriction prevented taxpayers from claiming refunds when individual components (minor heads) of a demand showed negative balances and the overall cumulative balance was zero or positive.</p> 2. For the above scenario, several references have been made by the tax payers and tax officers stating that the taxpayers are not able to claim the refund. Accordingly, the following changes have been implemented in the system: <ul style="list-style-type: none"> • Refunds can now be claimed irrespective of the Demand ID status • Refunds are allowed even when the cumulative balance is positive or zero, provided any minor head has a negative balance • Only negative balances will be auto-populated in the refund application (Form RFD-01); taxpayers cannot claim any refund for the positive amounts within the demand • Order Number Suggestions: The system automatically suggests the most recent demand order associated with a negative balance such as order-in-original, rectification order or appellate order etc. • Tooltips: Clear guidance is provided near the Order No. and Demand ID fields to help taxpayers enter the correct details. 3. A comprehensive user manual and FAQs would be shared shortly. In case of any discrepancies or system-related queries, a ticket may be raised with the GST helpdesk.

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