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Recent changes and its impact under GST on supplies made to Merchant Exporter

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Introduction:

*"Merchant Exporter" means a person engaged in **trading activity and exporting** or intending to export goods. Merchant exporters are instrumental to boost exports which contribute to growth of Indian economy. To support the same, special benefit of procurement of goods without payment of duty is provided under earlier indirect tax laws (Central Excise/ VAT etc.) on following the procedure prescribed. Under GST, the said benefit was discontinued till 23.10.2017. Accordingly, merchant exporter is left out with no option but to procure goods with payment of duty and subsequently claim as refund. This has resulted in blockage of working capital due to increase in cash outflows.*

Addressing the above disruption, amendment was made vide notification 40/2017-Central Tax dated 23.10.2017, w.e.f 23.10.2017, wherein exemption is provided in excess of rate 0.05% (Effectively GST is to be paid @0.1% i.e, CGST @ 0.05% + SGST @ 0.05% (or) IGST @ 0.1%) in order to restore the position under earlier laws.

Conditions to be satisfied to avail exemption

- i.** The registered supplier shall supply the goods to the registered recipient on a tax invoice;
- ii.** Goods to be exported within a period of ninety days from the date of issue of a tax invoice issued by registered supplier.
- iii.** Merchant exporter shall indicate the GSTIN and the tax invoice number issued by the registered supplier in the shipping bill or bill of export, as the case may be;
- iv.** Merchant exporter shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;
- v.** Merchant exporter shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- vi.** Merchant exporter shall move the said goods from place of registered supplier – directly to the Port, ICD, Airport or Land Customs Station from where the said goods are to be exported; or (b) directly to a registered warehouse from where the said goods shall be move to the Port, ICD, Airport or Land Customs Station from where the said goods are to be exported;
- vii.** If the merchant exporter intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- viii.** In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment

of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

- ix. When goods have been exported, the merchant exporter shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

Whether availing the benefit under the said notification mandatory?

In accordance with explanation to sec 11(3) of CGST Act, 2017, *in case where an exemption is provided absolutely (wholly or partly), the taxpayer shall not collect tax in excess of effective rate.* However, as the present exemption (partly given) is subjected to several conditions as explained above, it is not compulsory but **optional** to avail the benefit of charging GST at nominal rate of 0.1%.

What are the consequences if GST is paid at applicable rate without availing the benefit?

If GST is collected at full rate without availing the benefit under concerned notification, the same needs to be remitted to the government though exempted partly (Sec 76 of CGST Act). Further, refund cannot be claimed by registered supplier as the incidence is passed on to the customer. However, merchant exporter can claim the refund of the same.

Whether paying GST @ 0.1% amounts to 'exempted supply' in the hands of 'Supplier' which requires the reversal of ITC availed?

In accordance with sec 2(47) of CGST Act, 2017, the term 'exempt supply' means which

- attract nil rate of tax; or
- **Wholly exempt;** and
- Includes non-taxable supplies

But, sale to merchant exporter is exempt **in excess of 0.1%** i.e, exempted partly but not wholly. Hence, the same is **not an exempted supply** and does not require reversal of credit.

However, as per sec 2(47) of Telangana SGST Act, 2017, the term 'exempt supply' is defined to mean **exempt** from tax under sec 11..... The word '**wholly**' is not preceded to the term 'exempt' in the SGST Act of Telangana conflicting the definition provided in CGST Act. Accordingly, even supplies which are partly exempted constitutes to 'exempt supply' as per TGST Act. And the state authorities may dispute to reverse the proportionate credit of **SGST** on common inputs/input services/capital goods.

This situation may not arise in other states like Karnataka, Andhra Pradesh etc. where there is no such conflict in definition between Central & State Acts.

Whether the benefit is available for advances received prior to 23.10.2017?

There is reduction in **effective rate** of GST (i.e, from normal rate of GST to 0.1% w.e.f 23.10.2017) on supplies made to merchant exporter. A query may be raised whether this reduced rate can be applied

even to the advances paid before, but supplies made after 23.10.2017. In accordance with sec 14(b) of CGST Act, 2017, in case of **change in rate** of tax and where **payments are received prior** to change in rate and invoice, **goods are supplied after** the change in rate of GST, the time of supply shall be the date of invoice. Accordingly, new rate is applicable for the entire supply.

On applying the above analogy, GST @ 0.1% is applicable on the advance receipts as well. However, GST at applicable rate might have already been paid on the advance receipt which is at higher rate. This results in excess payment of GST to the extent of advance receipts which can be claimed as refund by the merchant exporter

However, there could be another view possible, conflicting the view of 'change in effective rate of GST' as 'change in rate of GST'. This is so because the power given to government **to prescribe GST rate, is given under section 9(1)** of CGST Act, whereas the power **to exempt (wholly or partly) is given under section 11(1)** of CGST Act. Accordingly, the notification issued in accordance with sec 11(1), exempting the supply to merchant exporter in excess of 0.1% may not be treated as change in rate of tax and sec 14(b) of CGST Act, 2017 cannot be applied.

And GST is to be paid at applicable rate on receipt of advances and @0.1% on invoice value reducing the advance receipts.

Conclusion:

The amendment so given is certainly a positive sign to encourage such exports through merchant exporter. However, clarification is required w.r.t border transaction on 23.10.2017 and applicability of GST rate and such other issues as discussed above.

The article drafted is considering the amendments in GST till 10th Dec'17.

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