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## **Understanding GST Model law – Def. Import and Export of goods**

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*The GST article series was started with the basic concepts, now on definition. Next would be the transitional provisions (specified and left out) and ending up with some miscellaneous parts of GST not covered in the series.*

### **Introduction**

Under present customs law, import of goods means bringing into India from place outside India. Import starts when goods cross the customs barrier in a foreign country and ends when they cross customs barrier in the importing country, India. When goods are imported into India, the goods are said to have crossed the customs barrier after the duty is paid and the goods are brought out of the limits of the customs station.

Similarly export of goods means taking goods from India to place outside India both under central excise and Customs.

Export sale is direct exports.

Next we examine concept of sale in course of import and sale in course of export before discussion on definitions of import and export of goods under GST.

### **Import and export of goods vs Sale in course of import and sale in course of export**

There is also a concept of sale or purchase in course of import under present VAT and sales tax laws. The concept of sale or purchase in course of import is:

- 1) The course of import of goods starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the goods cross the customs barrier;
- 2) The sale which occasions/causes the import is a sale in the course of import;
- 3) A purchase by an importer of goods when they are on high seas by payment against shipping documents is also a purchase in course of import; and
- 4) A sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents of title against payment or otherwise, to a third party by a similar process before goods cross customs frontier of India is also a sale in course of import.

The sale in course of export is a wider term than export sale. Sale in course of export includes:

- 1) Sale by transfer of documents after the goods cross customs frontier or
- 2) Penultimate sale for export which is last sale of any goods, where such sale took place after, and was for complying with existing agreement or order for export of such goods or
- 3) Export with help of agent.

Under GST law, supply of goods in the course of import into India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

An export of goods shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

### Import of goods under GST

**Section 2(10) of IGST Act:** Import of goods with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

### Export of goods under GST

**Section 2(5) of IGST Act:** “Export of goods” with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

Exports are treated as zero rated supplies.

Credit of input tax related to zero rated supplies can be availed. If not possible to be utilised, refund / rebate would be possible.

### Goods:

**Section 2(49) of CGST Act:** “Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

For the purpose of this clause, the term ‘moveable property’ shall not include any intangible property.

### Comments:

- Software and other intangibles such as knowhow/patents, not treated as goods.
- On import, Integrated GST [IGST] would be applicable on the imported goods. IGST would be equal to the SGST + CGST and would be available in the next stage of supply or sale as a set off. **BCD would continue to be levied on the import of goods.**
- Exports or sale in the course of exports would not be liable to tax under GST law. Exports would be treated as zero rated supplies.
- Eligible Credit related to exports would be available, also refund option to extent of unutilised credit to extent of exports of goods.
- Rebate of the tax paid on supply of goods or services which are exported out of India.
- The refund for exports to be fast tracked and further measures to be put in place and also made workable.
- The exports from India would show increasing growth as they would become much more competitive.

### Position under existing provisions

1. Import of goods into the country is liable to import duties comprised of Basic Customs duty[BCD], Countervailing duty (CVD) equal to excise duty on like goods manufactured in India, SAD-at 4% to off set VAT/CST on sale of indigenous goods in India.

2. CVD and SAD are Cenvatable to manufacturer of dutiable goods. The service provider can avail credit of CVD not SAD [which becomes a cost] for him.
3. Importer can procure materials against Advance authorization without payment of import duty/ machines against EPCG license for use for manufacture and export of goods.
4. Excise duty, VAT and CST are not payable on exports of goods. This is done to encourage exports.
5. Supplies made to SEZ for its authorized operations is treated as exports under Central excise. Cenvat credit attributed to SEZ supplies can be availed.
6. VAT is payable on supplies made to SEZ, the unit can go for refund.
7. CST is not payable on supplies made to SEZ unit against Form I given by purchasing dealer.
8. Benefits of refund of eligible credit on inputs and input services attributed to exported goods under Rule 5 of CCR, rebate under central excise and service tax are available.
9. Duty drawback at All Industry rate or Brand rate of drawback for exported goods.
10. Supplies to EOU are deemed exports. credit related to such supplies can be availed.

**Comment:** Deemed export concept continues under GST to be notified by Central/State Govt on recommendation of Council, refer to those transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange[CFE];

- Export duty is applicable at present only on ores/steel.
- Similarly, VAT and CST is not payable on penultimate sale of goods preceding the export of goods from India, when such last sale or purchase was for complying with export order.

### Landmark decisions

1. In *Kiran Spinning Mills vs. The Collector of Customs - 1999 (113)ELT753 (SC)* held that when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station
2. In *Nizam Sugar Factory Ltd Vs CST - 1957(8)STC 61(AP HC)* held that goods include all moveable property.
3. In *Tata Consultancy Services Vs St of Andhra Pradesh - (2004 TIOL-87-SC-CT-LB)* held that intangible assets like Software being movable transferable and storable are goods. **This position may not hold good under GST, where intangibles are not treated as goods.**
4. In *CTT Vs Rajesh Spices Company - 2008(11)VST 303(All HC)* when goods are purchased in India then taken outside, it is sale within State.
5. In *St of Karnataka Vs Azad Coach Builders P Ltd - 2010(36) VST 1 (SC)* foreign Buyer gave order for building coaches in a particular design, bus bodies which were built not usable for local market. There is an inextricable link between the foreign order and the coaches built which could not have been sold in India and therefore in course of export.

## Conclusion

In this article the paperwriters have examined the definition of import and export of goods and the possible implications under GST Model Law released on 25<sup>th</sup> November 2016.

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