

Decoding of Rule 96B of the CGST Rules, considering customs, FTP, and FEMA provisions

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Legal Provision

Section 16 (1) of IGST Act, 2017 A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, **be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.)** for receipt of foreign exchange remittances, in such manner as may be prescribed.

Rule 96B(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India **within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period**, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non- realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or section 74 or section 74A of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), **but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits**, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within three months from the date of realisation of sale proceeds, **the amount so recovered shall be refunded** by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Analysis

The Proviso to Section 16(3) only addresses the deposit of the refund received under export without payment of IGST due to non-realization of sale proceeds, but it does not specify the non-realization of sale proceeds in cases where a refund is claimed under export with payment of IGST. The same is specified in Rule 96B(1); therefore, it raises an anomaly of differentiation in the Act for both refunds.

Next, when it comes to Rule 96B, in my view, this rule has to be read as a check and control mechanism with respect to the receipt of foreign currency, but it should not impose taxes on export transactions when a manufactured good in India is ultimately exported.

The provisions specify that sale proceeds should be received within the period allowed under FEMA. Here, there are two questions

- ✓ Whether the sale proceeds mentioned here are the total invoice value or FOB value?
This question arises because in case of export without payment of IGST for refund of unutilized ITC, we will take FOB value as the turnover of zero-rated supplies for calculation of refund as per Rule 89(4). However, IGST refund will be claimed on total invoice value. The Customs duty drawback, RoDTEP Scrip is also be given as a percentage of FOB value. Therefore, Ideally, we can consider the amount to be realized is the amount on which benefit is given i.e., FOB or CIF value.

- ✓ Whether the sale proceeds to be received in convertible foreign currency or not?
This question arises because, in Rule 96B, it is specified only that the receipt should be within the period allowed under the FEMA Act, 1999 (42 of 1999), but the manner of receipt is not specified. In my view, we should not interpret it narrowly but holistically because
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 - When you consider the proviso to Section 16, where it is specified that the word foreign exchange remittances
 - Definition of foreign exchange in FEMA includes deposits, credits, and balances payable in foreign currency
 - Section 3 of FEMA Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner
 - Section 8 of FEMA Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.
 - Section 11(1) The Reserve Bank may, to secure compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction regarding the making of a payment or the doing or desisting from doing any act relating to foreign exchange or foreign security.
 - Regulation 8 of FEMA (export of goods or services) Regulations specifies that the export value shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000. These regulations specify that for trade transactions, receipt/payment for export to or import from countries other than member countries of ACU shall be in Indian Rupees or in any foreign currency.
 - Master Direction No.16/2015-16 issued under Section 10(4) and 11(1) of FEMA Act,1999

- ✓ All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees, but export proceeds shall be realised in freely convertible currency.
- ✓ However, 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 ACU or Nepal, or Bhutan.

Considering the above provisions, regulations of FEMA, we can understand that any receipt from a foreign country should be through an Authorized dealer, and the Reserve Bank at any time, can issue directions to the Authorized dealer with respect to receipt of payment. These directions are also legally valid as per FEMA provisions. Therefore, we can say that even though it is not clearly mentioned in Rule 96B as per master directions, all export proceeds shall be realized in freely convertible currency all unless otherwise permitted by the RBI

Upon going through the Master Direction, one has to be aware of the following scenarios concerning the realization of export proceeds

- When payment for goods sold to overseas buyers during their visits is received in this manner- Receipt of Funds in their Nostro account, through a credit card where reimbursement from the card issuing bank will be realized in foreign exchange
- Processing of export-related receipts through Online Payment Gateways
- Settlement System under ACU Mechanism –
 - ✓ Participants in the Asian Clearing Union will have the option to settle their transactions either in ACU Dollar or in ACU Euro or in ACU Japanese Yen.
 - ✓ Trade transactions with Myanmar can be settled in any freely convertible currency in addition to the ACU mechanism.
 - ✓ All eligible current account transactions including trade transactions with Sri Lanka may be settled in any permitted currency outside the ACU mechanism with effect from July 08, 2022, until further notice.
 - ✓ In the wake of signing of MOU between RBI and Maldives Monetary authority - India's bilateral trade transactions with Maldives may also be settled in INR and/or MVR in addition to the ACU mechanism, as hitherto.
- Third party payments for export / import transactions are permitted subject to conditions
- Settlement of Export transactions in currencies not having a direct exchange rate.
- International Trade Settlement in Indian Rupees (INR) by opening an open Rupee Vostro Accounts.
- Settlement of export and imports by opening an Foreign Currency account or EEFC account
- Counter trade proposals involving adjustment of value of goods imported into India against value of goods exported from India through an Escrow account opened in India in US dollar
- AD banks have been permitted to factor the export receivables on a non-recourse basis.
- Prior approval of the Reserve Bank is required for export of machinery, equipment, etc., on lease, hire basis

The above list is not exhaustive, but a taxpayer needs to check all the RBI's permissible modes of realization before concluding that sale proceeds are not realized in freely convertible foreign exchange.

The Hon'ble Gujarat High Court in the case of Afortune Trading Research Lab LLP(2024) 15 Centax 520 (Mad.) held that merely because receipts were routed through intermediary and received in Indian currency ipso facto would not mean that the assessee had not exported services within the meaning of Section 2(6) of IGST Act, 2017.

The Hon'ble Gujarat High Court in the case of Kuehne Plus Nagel Pvt. Ltd. (2025) 32 Centax 176 (Guj.) held that the Refund claim of unutilized ITC on export of services cannot be rejected on the ground of non-submission of FIRC when a Chartered Accountant's certificate for receipt of net foreign exchange, as also other documents, were submitted.

As per Section 15 of the CGST Act, 2017, the value of a supply of goods or services or both shall be the transaction value, which is the price paid or payable for the said supply of goods or services or both. Subsection 3 allows the deduction of post supply discounts, and Section 34 of the CGST Act allows issuance of a credit note for excess taxable value. For example, I had purchased the material used in production and exported the finished product, having an invoice value of Rs 1 Crore, due to some quality issues or other reasons, an amount of Rs 10 Lakhs is not realized, and the exporter has issued a credit note for this, which is allowed under GST therefore, realizable value is only Rs. 90 Lakhs which is realized. It may look aggressive, but just a thought process.

The Proviso to Rule 96B states that a refund shall not be recovered when the short realization has been written by the RBI on merits. What are all the scenarios that are covered under this write-off, and are there any conditions for write-off?

As per AP(DIR Series) Circular No.08 an exporter who has not been able to realise the outstanding export dues despite best efforts, may either self-write off or approach the AD Category – I banks for write off with appropriate documentary evidence

Particulars	Limit	Limit(%) in relation to
Self-write-off by an exporter (Other than the Status Holder Exporter)	5%	Total export proceeds realised during the calendar year preceding the year in which the write-off is being done
Self-write-off by Status Holder Exporter	10%	
Write-off by AD Category-1 Bank	10%	

The above write-off is permitted only for cases covered under categories given under the circular which include insolvency of the buyer (no limit), goods destroyed at the port of import(no limit), buyer not traceable, and amount not exceeding 10% not realized despite all efforts made by the exporter.

One of the conditions for the write-off is to surrender proportionate export incentives if any, availed of in respect of the relative export bill. In my view, it will not impact the IGST refund sanctioned because when the IGST Act itself allows a refund, the direction given by the RBI cannot again restrict it. Also, IGST refund is sanctioned as per the GST Act, but not an export promotion incentive like RoDTEP, AA, etc.. under customs and FTP

Surrender of export promotion incentives is also not required in case write off is allowed on merits by the RBI and the exporter produces a certificate from the foreign mission of India. The exporters are always open to applying to the RBI to write off the export proceeds.

AD category 1 banks can write off the export bills without any limit in case of payment of claims by ECGC and private insurance companies regulated by Insurance Regulatory and Development Authority (IRDA), but there is an exception that claims settled in rupees by insurance companies should not be construed as export realization in foreign exchange.

Payment of commission, either by remittance or deduction from the invoice value, is allowed upon application submitted by the exporter.

Free foreign exchange remitted by the buyer after deduction of bank service charges is taken as export realisation under the export promotion schemes of the FTP

Reduction in Invoice Value

- ✓ AD -1 banks may allow cash discount to the extent of amount of proportionate interest on the unexpired period of usance based on rate in contract.
- ✓ AD -1 banks may approve a reduction in invoice value to the extent of 25% for any reason, subject to conditions that the exporter is not in caution list, advised to surrender proportionate incentives availed of if any.

In the case of exporters who have been in the export business for more than three years, reduction in invoice value may be allowed, without any percentage ceiling provided export outstanding does not exceed 5% of avg export realization preceding the 3 years.

Therefore, the exporter should bear in mind that there is an option of writing off before paying back the export incentives or IGST refund.

Non -realization of export proceeds due to Re-import of exported goods on which IGST is paid

Sometimes the exported goods may be returned due to rejection of material due to quality issues, legal issues, etc., where the exporter will not realize the invoice amount. There may be two situations in that case

Where returned goods were processed and re-exported.

As per the GST provisions, Rule 96B and Rule 86 (4B), the IGST has to be repaid in cash through DRC-03, along with interest, and the original ITC utilized will be reccredited to the electronic credit ledger.

To avail the IGST exemption as per Notification No.45/2017- Customs at the time of re-import, the refund, which is given at the time of export, should be given back. Therefore, what should happen is that the amount that is paid through DRC-03 as per Rule 96B should be provided to customs authorities as proof of repayment, and thereby no payment of IGST on reimport. The original ITC, which is reccredited as per Rule 86(4B), can be claimed again as a refund since the reimported goods were again processed and exported.

However, practically, the customs authorities were not accepting DRC-03 but charging IGST anyway (whether with payment or without payment) by treating re-import as fresh. In this case, since reimported goods were exported again then there is no restriction on the eligibility of ITC of IGST paid. It will not be treated as repayment of a refund; the exporter must comply with Rule 96B

by repayment of IGST through DRC-03 and re-credit the ITC utilized. There is no dual benefit, but neutralizing the original export and treating reimport as fresh.

Where returned goods were not processed and re-exported but destroyed.

In such a case, there may be problems in availing the ITC of IGST paid at the time of reimport because there is a restriction under Section 17(5) concerning goods destroyed. In such a case, it is ideal to repay the IGST refund by DRC-03 and submit the same to the customs authorities to claim exemption under Notification No.45/2017- Customs.

Non -realization of export proceeds due to post supply discount, reduction in quantity and quality due to damage, and shipment loss in transit. Etc.

Consider the write-off option, permissible limits of short realization as per RBI regulations before repaying the refund amount to the extent of short realization.

Interest liability on repayment of the refund

In my opinion, considering the objective of Section 16, the very intention of the zero-rating is to make the entire supply chain of 'exports' tax-free, i.e., to fully 'zero-rate' This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Therefore, when the entire supply chain is tax-free, despite not paying GST on inputs, the exporter is paying GST and claiming a refund as per the methods prescribed in Section 16. Therefore, the exporter does not need to pay interest even if the refund is paid back on account of non-realization of sale proceeds or goods returned.

When the inputs are utilized for finished goods that are exported, even if the same are returned, the ITC will not become ineligible. The refund amount repaid on account of non -non-realization will be again credited to the electronic credit ledger through PMT-03. If the returned goods are again processed and re-exported, it will be claimed again as a refund. Also, as per Rule 96B (2), after recovery of the refund, if the amount is realized, **the amount so recovered** can be reapplied for refund within 3 months from realization. The word used is amount recovered therefore, the interest recovered should also be refunded.

Disclosure of the amount of short realization in GST Returns.

In case of return of IGST shipments, it is better not to disclose under Table 9B of GSTR-1 because in that case, IGST on credit note will be adjusted in GSTR-3B (payment of lower GST), and the original refund sanctioned should be repaid to the GST authorities by DRC-03 along with interest. However, considering the above discussion (where payment of GST on zero rated supply is only to get the refund but there is no GST liability or interest etc if we did not disclose the credit note in the GST return but disclose the same in GSTR-9 there is no complexities like giving back the refund with interest, recrediting the amount and again apply for refund in case of reprocessing or subsequent realization of sale proceeds. The same applies for export without payment, also if the exporter is applying refund without payment of IGST.

Conclusion:

It is always important to look into all the relevant provisions of GST, FEMA, Customs, and FTP before repayment of any refund on account of short realization. If the export justifies non-realization to the RBI by making an application, there is no need of repayment of refund.

Repayment of the refund will be added as a cost in the next shipments. The scope of section 16 is very wide, and IGST payment is only a refund mechanism, but the supply is actually a zero rated.

For any clarifications or feedback, please feel free to reach us @ leela@hnaindia.com.