

GST ANALYSIS TEXTILES & HANDICRAFTS INDUSTRY

**ORGANISED BY:-
JAIPUR BRANCH OF ICAI**

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**BY:- CA
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EXISTING STRUCTURE

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TEXTILE, GARMENTS AND HANDICRAFTS

	Central Excise	VAT
Textile	Mostly Nil rated	Mostly exempt under schedule I except non handloom silk and non woven fabrics
Garments	2% excise duty on 60% value of RSP is more than Rs. 1000 and sold under a Brand name	5.5%
Handicrafts	Mostly NIL rated	5.5%; Exempt based on article value upto Rs. 1000
Job Woks (Service tax)	Mostly exempt	



GST STRUCTURE

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GST STRUCTURE - TEXTILES

Item	GST Rate
Yarns (Natural – Silk, Animal Hair yarn etc)	5%
Man Made fibres / yarns	12%
Other artificial yarns	18%
Fabric	Mostly 5%; 12% in some cases
Garments	5% for sale value below Rs. 1000
Garments	12% for sale value above Rs. 1000
Made ups and others	18%
Handicrafts	Different rates and exemptions under tariff as Articles of wood, stone, marble etc.



ISSUES UNDER GST

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EXPORTS

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EXPORTS

Method of Exporting

Without Payment of tax under LUT

1. No Tax is to be charged in the Invoice.
2. Apply for refund of Accumulated ITC manually to the department.
3. Apply for refund monthly or quarterly or cumulatively for different months.
4. Invoice to contain a subscription **“Supply meant for export without payment of integrated tax under LUT”**
5. Invoice format.

Issues :-

1. Departmental intervention
2. Refunds of Capital goods is not available
3. Refund is restricted by state GST department in certain cases where invoices are appearing in GSTR-2A.

EXPORTS

Method of Exporting

1. On Payment of IGST in the Invoice

1. Tax as per applicable rates is to be charged in the Invoice.
2. In Shipping Bill also the IGST amount is to be mentioned.
3. GSTR-1 and GSTR-3B is to be filed accordingly. In GSTR-3B tax is to be paid setting off Input Tax Credit.
4. Tax amount paid above shall be refunded automatically by the customs department like Duty Drawback.
5. Invoice to contain a subscription **“Supply meant for export on payment of integrated tax”**.
6. Invoice format.

2. Benefits :-

1. No Departmental intervention. Direct credit to the accounts.
2. ITC on Capital Goods will also be refunded
3. Once the Input Tax Credit is exhausted, then the exporter can switch back to LUT method.

EXPORT BY POST

- Earlier it was difficult in case of exports by post, to establish the exports.
- Mostly post parcels were made in gift mode.
- Shipping Bill was not generated.
- Now the department of post has started generating the shipping bill but still it has flaws
- It is not linked with the ICEGATE portal data
- Refund on payment of IGST is still not possible
- However, refund based on LUT can be taken.

ISSUES RELATED TO REFUNDS ON PAYMENT OF EXPORTS – ERROR TYPES

Response Code	Response Description
SB000	Successful
SB001	Invalid SB Details
SB002	EGM not filed for SB
SB003	Invalid GSTN Id
SB004	GSTR3 is already received
SB005	Invalid Invoice Number
SB006	Gateway EGM Details not available
SB101	Return month is not valid
SB102	Request type is not valid
SB104	Port code is not valid.

HOW TO CORRECT ERRORS

- SB001 – Correct the details of Shipping bill in GSTR-I
- SB002 - Ask your CHA to file EGM on the port or in case of stuffing from ICD or dry port check that whether Gateway EGM has been filed
- SB003 – Revise your Shipping Bill and Get your GST number corrected in the Shipping Bill
- SB004 – No Issue, GSTR-3B must have been filed
- SB005 – Invoice details to be corrected in GSTR-I or Shipping Bill
- SB006 – Gateway EGM is to be filed

File a Concordance table form with the Custom House for processing for the refunds in relation to shipping bills filed upto 15-11-2018 only.

OTHER ISSUES

- Bank Details not updated in Customs PFMS System
- Bank details updated are incorrect
- GSTR-I incorrectly filed
- Data not transmitted from GSTN to ICEGATE

MANUAL REFUND PROCESSING

As per latest circular from the department following documents are to be furnished to the department for processing the refunds of unutilised ITC i.e. LUT Case.

- Copy of FORM RFD-01A filed on common portal
- Copy of GSTR-2A
- Copy of Statement 3A of FORM RFD-01A generated on common portal
- Copy of Statement 3 of FORM RFD-01A
- Invoices w.r.t. input and input services other than those which are appearing in GSTR2A
- BRC/FIRC for export of services
- Undertaking / Declaration in FORM RFD-01A

REFUND OF THE TRANSITIONAL CREDIT


- In most of the cases in earlier regime the ITC were either refunded to exporter or were not allowed.
- However even if the credits were allowed and carried forward as transitional credit under GST, there is no mechanism to allow the refund of such transitional credit.
- Such refunds can be taken only by way of refund under payment of IGST method.

EXPORTED GOODS REJECTED BY THE BUYER AND DESTROYED OUTSIDE INDIA

- As per new Rule 96B inserted on 23.03.2020 the refunds are ineligible if export proceeds are not received.
- The department will ask for repayment of refund by the exporter on expiry of time period allowed by RBI under FEMA
- Further as per sec 17(5)(h), it may be further asked that ITC to be reversed in relation to such destroyed goods as ITC is not available.

MERCHANT EXPORTING TRANSACTION

- Merchant Exporters are allowed to purchase the goods from manufacturers at the concessional rate of 0.1% to benefit them. However certain restrictions have been placed by notification no 40/2017 – CT Rate
- Merchant Exporter shall be registered under some export promotion council and shall indicate the name and GSTIN of the manufacturer supplier on the Shipping Bill
- The registered recipient shall move the goods from his place of directly port or the registered warehouse
- The goods shall be exported by the merchant exporter within 90 days
- Copy of the purchase order of the merchant exporter to the supplier to be submitted to the jurisdictional authority of the registered supplier.



**SEC 54(3) –
REFUND UNDER
INVERTED DUTY
STRUCTURE**

REFUND UNDER INVERTED DUTY STRUCTURE

- (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:
- Provided that no refund of unutilised input tax credit shall be allowed in cases other than—
 - (i) zero rated supplies made without payment of tax;
 - (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:
 - Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:
 - Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

REFUND UNDER INVERTED DUTY STRUCTURE

- 54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:
- **Notification 21/2018 dated 18.04.2018**
- “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- **Notification 26/2018 dated 13.06.2018**
- with effect from 1st July, 2017, in rule 89, for sub-rule (5), the following shall be substituted, namely :-
- Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

ISSUES

- There is no power to prescribe restrictions under Sec 54
- The restriction is also not prescribed
- Sec 54(3) talks about refund of unutilised Input tax credit in Inverted duty cases.
- ITC is not a mere concession now, it is the object of the law.
- Cascading effect removal is object of the constitution amendment act and GST law
- This notification is issued with the power of sec 164 which requires the recommendation of GST Council
- But these notifications are issued by the GST Implementation Council (comprising of some commissioners). A delegatee cannot further delegate without the express powers to do so.
- These notifications were not placed before the council before issuance
- When credit goes into the ECL then it loses the character of Input Service/Inpu/Capital goods. Then how the department's formula contends that the ITC of inputs is first to be used keeping the Input service out. It is also possible to contend that only Input services are used for payment of taxes first.

INVERTED DUTY STRUCTURE – CHALLENGE TO RULE 89(5)-CASES

- There were a batch of cases which were recently decided by Gujarat High Court in this matter and decision were pronounced in favour of the assessee that-
- The Net ITC shall include the ITC of Input Services for calculation of formula.
- The decision is yet to be uploaded/received but some of the cases in which this followed:-
 - Suchitra Dyeing and Printing Mills P Ltd
 - Kalakruti Processors P Ltd
 - South Gujarat Textile Processors Association



LAPSING OF CREDIT

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SHABNAM PETROFILS PVT LTD VS UOI 2019-TIOL-1656-HC-AHM-GST

Challenge: Validity of Notification No 20/2018-CT(R) dated 26.07.2018.

Provisions referred to:

- Section 54(3) of the CGST Act provides for refund of unutilized ITC at the end of the year. However, the first proviso thereto states that such refunds include inter alia when tax paid on inputs is higher than tax paid on outputs (i.e, inverted rates).
- But even in such cases, refund would be available to supplies of specified goods. Accordingly, Notification No 5/2017-CT(R) specified the goods where refund would ensure even in cases of inverted rate structure. The said Notification was amended vide the impugned Notification No 20/2018-CT(R) dated 26.07.2018 which inserted the following two clauses:
 - **Refund on ITC accumulated upto 31st July 2018:** Accumulated ITC in respect of certain inward supplies lying unutilized after payment of tax for and upto July 31st, 2018 would lapse after such date.
 - **Refund on ITC accumulated from/after 1st August 2018:** Refund would not ensure to ITC accumulated on certain supplies received on or after 1st August 2018.

SHABNAM PETROFILS PVT LTD VS UOI 2019-TIOL-1656-HC-AHM-GST

Question: Whether the central government could make a notification providing for lapse of accumulated ITC u/s 54(3)?

- **Credit must as soon as duty is paid on inputs and input services and used for making outward supplies:** Relying on the case of Dai Ichi Karkaria Ltd 1999 (112) ELT 353 (SC) and Eicher Motors Ltd Vs UOI 1999 (106) ELT 3 (SC) held that when credit has been validly taken, it is available to manufacturer without any time limit. The credit is indefeasible.
- **Section 54(3) does not provide for lapsing of accumulated ITC:** The only power conferred u/s 54(3) is to notify the goods and services not entitled for refund of ITC accumulated on account of inverted rates. It does not provide for lapsing of accumulated credit.
- **Notification No 20/2018-CT(R) suffers from the vice of excessive delegation:** The impugned Notification being made thereunder providing for lapsing of accumulated ITC would be ultra vires Section 54(3).
- **Special provisions in Sections 17(4) and 18(4) are made for lapsing:** Section 17(4) provides for opting of taking 50% of credit in case of a banking company or an NBFC and rest would lapse. Section 18(4) provides for lapsing of credit in case of composition scheme.

Therefore, High Court held that Notification No 20/2018-CT(R) dt 26.07.2018 is ex-facie invalid and liable to be struck down.



REVERSAL DUE TO HIGHER DUTY DRAWBACK

CREDIT OF INPUT TAX FOR THE MONTH OF JULY TO SEPTEMBER 2017

- There was a higher Duty Draw Back available for the month of July-September 2017.
- An undertaking was submitted to the customs department that no Input Tax Credit of CGST and IGST shall be availed for manufacturing of exported products.
- Clarification has also been issued that the credit in such cases won't be available.
- However ITC of SGST can be availed in such cases (subject of ROSL Status).

Consequences of taking such credit

- Ineligibility of refunds for these months.
- Ineligibility of Higher Duty Draw back. Customs department will ask for refund of such credits.

EXAMPLE

Based on the experience in the industry the credit to be taken not to be taken for the months of July, August and September 2017

Activity	July	August	September
Cloth Purchase	✓	✓	✓
Dyeing /Printing	✗	✓	✓
Cutting, Stitching and Finishing	✗	✗	✓
Indirect Expenses	✗	✗	✗

M/S AMIT COTTON INDUSTRIES VS PR. CC [2019-TIOL-1443-HC-AHM-GST I

- Refund claim on account of exports were withheld on the ground that the assessee has claimed 1% rebate [period of export-July 2017]
- Before the Court the respondents contended that in terms of circular No. 37/2018-Customs dt. 9.10.2018, the refund cannot be granted where the rebate is claimed.
- The Court interpreting the provisions of Section 54 of CGST ACT, 2017 read with Rule 96 of CGST Rules, (as applicable during the said period) held that there is no provision to withheld the refund and the circular is not applicable to the present case.
- The Court ordered refund of the amount due along with interest of 7% from the date of shipping bill.

G NXT POWER CORP. VS UOI (2019) 109 **TAXMANN.COM 305(KERALA)**

- **Facts:** The petitioner is an exporter, claimed refund of IGST as per the provisions of section 16 of IGST paid in cash on the Zero rated supply. The respondent department denied to grant the IGST, as the petitioner has already availed the benefit of Higher rate of duty drawback. Hence, the petitioner was directed to repay the amount of duty drawback with interest availed by them to get the refund of IGST paid in cash.

Held:

- Once the IGST paid in cash by the assessee / petitioner, it may on the account of erroneous or voluntarily, the authority has the obligation to refund of the amount of IGST paid in cash.
- The court directed to the respondents that they have full liberty to adjust the amount already availed by the petitioner on account of higher rate of duty drawback and to pay the balance of IGST payable. (i.e. IGST minus higher rate of duty drawback) within period of 6 weeks from the date of receipt of the order.
- If the respondents failed to comply with the directions given by the court within the timeline fixed by the court. Then, they have the obligations to pay the interest on the refundable amount from the dated of receipt of the refund application.



JOB WORK

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REQUIREMENT

- Material to be sent under the cover of Delivery Challan
- Challan requires to declare the approx. value of the goods sent. It need not declare the tax amount
- It must be accompanied with a valid Eway Bill
- Complete account of material sent/received/processed should be maintained
- Material after due process should be received back within 1 year
- If not received it will be deemed as a supply to Job Worker.

EWAY BILL REQUIREMENT

- Q. Whether Eway Required for sending material for Job Work in Jaipur?
- A. No, Eway bill not required for materials sent for **Job work** within a range of 50 Kms.
- Q. Whether eway bill required for sending material to Job Worker outside 50 Kms range?
- A. Yes, if the value of the consignment exceeds Rs. 50,000/-
- Q. Whether eway bill required for sending material to job worker outside the state?
- A. Yes, it is mandatory even though the value of the material is below Rs. 50,000/-
- Q. Whether testing/inspection also amount to Job Work?
- A. If the material is going to come back or move from Job worker's premise to any other place, then it is a process of Job Work.

OTHER COMPLIANCE

- ITC -04 form is required to be filled in case if the material is sent and received from Job Work.
- Requirement of filing has been dispensed with for FY 2018-19 and 2019-20.
- New format has been notified.



ITC OF SOLAR PROJECTS

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FACTS AND QUESTIONS

1. Solar Project is installed at some place in remote areas like Barmer and Jaisalmer.
2. From their the electricity is taken by the grid and used.
3. A Power Purchase Agreement is signed based on which the power is purchased by the DISCOM on net metering basis.
4. DISCOMs settle transactions amidst themselves as a sale purchase in their books.
5. Billing to the unit situated in these places is billed say Jaipur/Bhilwara/Alwar.

Q. Whether this is a barter transaction?

Q Whether the ITC related to Capital Goods will be available?


Q What would be the treatment of electricity purchased by the DISCOMS?

FACTS AND QUESTIONS

- Roof top solar power project is installed.
- All the electricity generated through the project directly goes to the grid
- Electricity is received in the plant as a regular electricity through meters
- Billing is done on net metering basis.

Q. Whether ITC shall be available for the capital goods?

Q. What will be the treatment of excess electricity purchased by the DISCOMs



C FORM FOR PROCUREMENT OF HSD

FACTS AND QUESTIONS

- HSD purchased for generating power and running of some machinery
- It is bought on VAT/CST at the highest rate of 22%-26%
- Since the C form is used for manufacturing / generation of electricity whether benefit of C form can be availed in the GST regime.

- TATA STEEL LTD, JAMSHEDPUR V/s THE STATE OF JHARKHAND
- Carpo Power Limited V/s State of Haryana and others
- The Hi-Tech Gears Ltd V/s State of Rajasthan and others




REVERSAL ON ACCOUNT OF MEIS

FACTS AND QUESTIONS

- MEIS scrips are received against exports.
- These scrips are exempt from GST w.e.f. 13.10.2017
- Reversal u/r 42 is required to be made in relation to all the common credit.

Q What are common credits in this case?

Q What if reversal is not made?



BENEFIT OF EPCG, ADVANCE AUTHORISATION

FACTS AND QUESTIONS

- Earlier the exporters were eligible to avail the benefit of EPCG, EOU and Advance Authorisation Scheme for procurement of imported inputs without payment of taxes
- With the roll out GST following additional restrictions were prescribed:-
 - Benefit to be available subject to pre-import condition
 - Benefit only if export under LUT is made. Export on payment of IGST was restricted
- These restrictions created a lot of chaos. However some changes were made
 - a) Pre Import condition was removed vide Customs Notfn No 01/2019 dated 10.01.2019
 - b) Export on payment of IGST was allowed subject to the condition that procurement under imports are made with payment of IGST at the time of imports and benefit of only custom duty is taken. (Amendment to Rule 96(10)- Notfn 16/2020 – CT dated 23.03.2020)



EWAY BILL ISSUES

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VERIFICATION OF DOCUMENTS AND CONVEYANCES

- Commissioner or any officer authorized by him may intercept a conveyance to verify e-way bill
- Commissioner shall also get RFID installed at places for verification of movement of goods.
- Physical verification of conveyance shall be carried out by authorized officer only. Only on specific information of tax evasion, it can be done by any officer.
- A report of inspection is to be submitted to portal within 24 hours.
- Final Report is to be submitted within 72 hours.
- Physical verification once done cannot be done again.
- If vehicle has been detained or intercepted for more than 30 minutes then the same can also be reported by the transporter on the portal.

ISSUES IN EWAY BILL - INTECEPTION

Process

1. Interception – form MOV-01 – Statements of person in Charge of Vehicle
2. Order of Physical Verification – MOV-02 – to be done in 3 days
3. Physical verification report – MOV-04 – within 3 days
4. Order of detention – MOV-06 – As early as possible
5. SCN for levy of tax and penalty u/s 129 – MOV-07
6. Order of tax and penalty u/s 129 – MOV-09
7. SCN for confiscation u/s 130 – MOV-10
8. Order for confiscation u/s 130 – MOV-11

CONSEQUENCES OF NOT GENERATING AN E-WAY BILL

- Penalty, detention and seizure u/s 129
- Goods and Conveyances used as a means of transport be liable to detention and seizure.
- **Release:-**
- Where owner is available
 - On Payment of tax and penalty of 100% of tax (In case of taxable goods)
 - On payment of 2% of value of goods or 25000/- whichever is less. (in case of exempted goods)
- Where owner is not available
 - On payment of tax and penalty of 50% of value less tax paid (taxable goods)
 - On payment of 5% of value of goods or Rs. 25000/- Whichever is less (exempted goods)

ISSUES

- Incorrect document details
- No Eway bill / No Invoice
- Incorrect addresses - Bill to ship to case/ bill from ship from case
- Incorrect weightment
- Incorrect transportation without connivance of the transporter
- Incorrect inspection – without any problem in the documents or material
- Changes in the Invoice after sending the material to the port
- Changes in the Eway bill details after preparation
- Finalisation of Freight after reaching material to the port
- Cancellation of Invoice
- Multivehicle consignment
- Debit note credit note scenario

THANK YOU

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