

Special Economic Zone

Q 38. How are supplies by and to SEZs treated in GST?

Ans. There is no change in the SEZ scheme. All imports by SEZs are exempted from any duty/tax.

As per section 7(5)(b) of the IGST Act, 2017, a supply of goods or services or both to or by a SEZ developer or a SEZ unit is treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Further as per section 16 of IGST Act, 2017 supply of goods or services or both to a SEZ developer or a SEZ unit is considered as zero rated supply.

Q 39. What will be the IGST rates when goods or services or both are supplied to SEZ unit?

Ans. Supplies to SEZ unit or developer are considered as zero rated. As such, the supplier can choose to either supply on payment of IGST and claim refund or supply without payment of IGST and in that scenario can only claim the refund of unutilized ITC, if any. The IGST rates when supplying goods and services to SEZ unit on payment of tax and taking refund route, will be as per rate Notifications No. 01, 02 and 03/2017-Integrated Tax (Rate) dated 28.06.2017(for goods) and rate Notifications No. 08 and 09/2017 dated 28.06.2017(for Services) as amended from time to time.

Q 40. An SEZ unit in Mumbai avails hotel accommodation in Goa. Whether such supply is intra-state or inter-state supply?

Ans. It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

Accordingly, CBIC vide Circular No. 48/22/2018-GST dated 14.06.2018 has clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Q 41. Whether SEZ unit or developer needs to pay IGST when it received supplies which are under reverse charge mechanism?

Ans. All supplies to SEZs are zero rated. However, the suppliers are given two options. In this case, the supplier is not liable to pay GST as the supply is under reverse charge mechanism. The recipient is considered as deemed supplier. Therefore, SEZ has to pay GST in this case.

Q 42. What is the refund mechanism when a DTA supplier supplies goods/services to SEZ Unit?

Ans. The supplier to SEZs has following two options:

- (i) Supply goods or services or both to SEZ unit or developer on payment of Integrated tax and claim refund
- (ii) Supply goods or services or both to SEZ unit or developer without payment of Integrated tax under LUT/Bond and claim refund of unutilized ITC

Option I: Supply goods or services or both to SEZ unit or developer on payment of Integrated tax and claim refund

The supplier has to follow the procedure outlined in rule 89 of the CGST Rules, 2017. The refund in respect of supplies to a SEZ unit or a SEZ developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone

The refund application in form GST RFD-01 shall be accompanied with:

- (i) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- (ii) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;
- (iii) a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer; (Section 89(1) of CGST (Rules), 2017.)

Option II: Supply goods or services or both to SEZ unit or developer without payment of Integrated tax under LUT/Bond and claim refund of unutilized ITC.

The supplier has to follow the procedure outlined in rule 96A of the CGST Rules, 2017. He needs to submit a bond/LUT in FORM GST RFD-11 to the jurisdictional Commissioner,

binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

Q 43. Whether a DTA supplier has to furnish a Bond or LUT while supplying goods/services without payment of integrated tax?

Ans. Yes, a DTA supplier has to furnish a Bond or LUT while supplying goods/services without payment of integrated tax as per Section 16 of the Integrated Tax Act, 2017.

Q 44. Whether the Bond/LUT by a DTA supplier should be submitted to the Development Commissioner SEZ or the jurisdictional proper officer of GST?

Ans. As per Circular No.2/2/2017-GST dated 04.07.2017 Bond/LUT shall be furnished to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter.

Q 45. What are the requirement for submitting Bond/LUT?

Ans. The requirement of Bond/LUT will be as prescribed under Circulars No. 4, 8 and 40/2017.

The registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio. [Circular 8/2017 as amended by 40/2018 dated 06.04.2018].

Q 46. Whether Bond/LUT is required to be submitted in case of exempted /non-GST goods?

Ans. In case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. In this regard, the circular no. 45/19/2018-Central Tax dated 30-05-2018 clarifies that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax,

LUT/bond is not required

Q 47. If a DTA supplier is supplying the goods to SEZ unit without payment of integrated tax what will the taxable value as per the format prescribed for SEZ supply?

Ans. The taxable value will be the invoice value of the goods supplied to the SEZ unit.

Q 48. Whether Bank as a nominated agency in the non-processing area of SEZ will be eligible for exemption granted to SEZs?

Ans. No. Bank as a nominated agency in the non-processing area of SEZ will not be eligible for exemption granted to SEZ.

Q 49. Whether the exemption granted to nominated agency pre GST regime will continue in the post GST regime for importing gold?

Ans. The bank as a nominated agency will continue to get the exemption of Customs duty as prevailed before the GST regime vide Notification No. 57/2000-Cus dated 08.05.2000. Import of gold by specified banks and specified PSUs as mentioned in Notification No. 77/2017-Cus dated 13.10.2017 attracts Nil IGST. However, other banks will have to pay the IGST as per the Notification No. 26/2017-Cus dated 28.06.2017 as no exemption has been granted for payment of IGST duty to these.

Q 50. Can bank recover the IGST rate from the SEZ Unit while supplying gold to the SEZ Unit?

Ans. No. The banks cannot recover IGST rate from the SEZ Unit. However, the Banks can claim the refund of the IGST paid on imports after supplying the goods to the SEZ Unit.

Q 51. Whether services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an intra or inter-State supply?

Ans. Even though as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions is the location at which the immovable property is located and therefore the above supply should be intra state supply, it is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. Therefore, the services of short term

accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply. (CBIC Circular No. 48/22/2018- GST dated 14th June, 2018)

Q 52. Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?

Ans. Subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.
(CBIC Circular No. 48/22/2018- GST dated 14th June, 2018)

Q 53. Whether a company having a unit in SEZ and a unit in DTA require separate registration for both the units?

Ans. Yes, as per Section 8(1) of CGST (Registration) Rules, 2017 a person having a units(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone.

In the CGST Amendment Act, 2018, the concept of business vertical has been removed. However, following proviso has been inserted in section 25(2), making it mandatory for SEZs to have separate registration.

“Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.”

Q 54. Whether a SEZ unit or SEZ developer procure any goods or services from an unregistered supplier, and whether these will be zero rated supplies?

Ans. Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration.

Q 55. Whether SEZ Act/Rules are aligned with the GST?

Ans. SEZ Rules, 2006 have been synced with the GST Provisions vide SEZ (Amendment) Rules, 2018. The terms like Service Tax, Stamp Duty etc replaced with CGST/SGST/IGST/UTGST etc. GST registration certificate required instead of Sales tax

registration earlier for establishment / setting up of SEZ unit(s)

Q 56. Whether duty drawback is admissible on supplies by DTA units to SEZs?

Ans. Yes. Supplies made by DTA unit to SEZ Unit or developer are eligible for drawback in cases where the SEZ Unit or developer issues a disclaimer to the DTA supplier and drawback is claimed by the DTA supplier.

Drawback shall be processed and paid by the office of Principal Commissioner or Commissioner of Customs/ Customs (Preventive) in whose jurisdiction the DTA Unit falls. Brand rate fixation also to be done by the office of Principal Commissioner/ Commissioner of Customs/ Commissioner of Customs (Preventive).