

CASE STUDY 4

Para A - Home Fab Private Limited incorporated in May 2023 having its registered office in New Delhi started construction of its premises building in NOIDA by using pre-fabricated structure common and prevalent in these times and building comprising about 1,00,000 square ft of covered area was ready to use by the end of July 2023 at a cost of ₹ 6.50 crores. The company also obtained GST registration in month of May 2023 in state of Uttar Pradesh.

The company had already ordered in advance import of certain new textile machinery from South Korea at a cost of about ₹ 8.65 crore. Further, indigenous previously used machinery at a cost of about ₹ 2.00 crores was also planned for installation. The company was able to bring imported as well as indigenous machinery to its premises in NOIDA only in 1st week of August 2023 and was able to kick start its commercial production of textile made-ups from 1st September 2023 only. The company has earned huge profits during P.Y. 2023-24.

Para B - The made ups of company got a very good response in the overseas market of USA under brand of *Home Fab* and the company had captured good chunk of export orders via *digital and online marketing platforms* beating its Chinese rivals.

The company has chosen to export on payment of IGST. Discussion takes place among staff members of inhouse GST team relating to preparation of tax invoice and related matters and four different opinions emerge out of their discussions:

Opinion I - The company is legally bound to raise a tax invoice in Indian Rupees only for its products exported in accordance with relevant rules and foreign currency amount is to be converted into Indian Rupees in tax invoice by using RBI reference rate in relation to date of invoice.

Opinion II - The company is legally bound to raise a tax invoice in Indian Rupees as well as commercial invoice in foreign currency in accordance with relevant rules and procedures governing such transactions. Further, foreign currency amount is to be converted into Indian Rupees in tax invoice by using exchange rate in accordance with exchange rate notification issued by CBIC relevant in relation to date of invoice.

Opinion III - The company is legally bound to raise a tax invoice in Indian Rupees only for its products exported in accordance with relevant rules and foreign currency amount is to be converted into Indian Rupees in tax invoice by using TT buying rate in relation to date of invoice.

Opinion IV - The company is legally bound to raise a tax invoice in Indian Rupees as well as

commercial invoice in foreign currency in accordance with relevant rules and procedures governing such transactions. Further, foreign currency amount is to be converted into Indian Rupees in tax invoice by using TT selling rate in relation to date of invoice.

The company has achieved export turnover of ₹50 crores during year ended 31st March,2024. It has also credited duty drawback from customs authorities amounting to ₹ 2.00 crores in its statement of profit and loss for the same period. During the year ended 31st March 2024, the company has also incurred research and development expenditure of ₹ 10.00 lakhs. The financial statements of the company reflected a net profit before tax amounting to ₹ 7.50 crores. for the same period.

Para C- The inhouse staff GST team of the company was marred in confusion from the very first month of export sales regarding discharge of GST liability on payment of IGST and refund issues. The export sales had begun from October 2023 and made-ups valuing ₹ 5 crores were exported during month of October 23 carrying a GST rate of 5%. The break-up of ITC for month of October 2023 is as under: -

Eligible ITC on inputs	0.15 crores
Eligible ITC on capital goods	0.03 crores
Eligible ITC in input services	0.02 crores

There were divergent opinions among team members pertaining to discharge of tax liability and refund issues given below before they could approach their tax consultant.

Opinion I - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ₹ 0.25 crores and it would be discharged by the company by availing ITC on inputs of ₹ 0.15 crores and balance of ₹ 0.10 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said amount of ₹ 0.25 crore would be refunded/refundable directly by customs in bank account of company.

Opinion II - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ₹ 0.25 crores and it would be discharged by the company by availing ITC on inputs of ₹ 0.15 crores, ITC on capital goods of ₹ 0.03 crore and ITC on services of ₹ 0.02 crores and balance of ₹ 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said amount of ₹ 0.25 crore would be refunded /refundable directly by customs in bank account of the company.

Opinion III - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 23 is ₹ 0.25 crores and it would be discharged by the company by availing ITC on inputs of ₹ 0.15 crores, ITC on capital goods of ₹ 0.03 crore and ITC on services of ₹ 0.02 crores and balance of ₹ 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B, GSTR-1, and GSTR-9, the above said amount of ₹ 0.25 crore would be refunded/refundable directly by customs in bank account of the company.

Opinion IV - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ₹ 0.25 crores and it would be discharged by the company by availing ITC on inputs of ₹ 0.15 crores, ITC on capital goods of ₹ 0.03 crores and ITC on services of ₹ 0.02 crores and balance of ₹ 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said ITC amounting to ₹ 0.20 crore would be refunded/refundable directly by customs in bank account of the company.

Para D-The company had imported machinery worth ₹ 8.65 crores from South Korea. The said cost was CIF Mundra port. However, the company had incurred ₹ 2.36 lakhs as clearing charges paid to DK Services Private Limited (including ₹ 0.36 lakhs on account of IGST) for availing services for getting consignments cleared from port.

Further, company had also incurred ₹ 3.00 lakhs on account of freight paid to D Transport services (a proprietary concern). This proprietary concern is not registered taxpayer under GST and company has deposited IGST of ₹ 0.15 lakhs on account of reverse charge.

Further, company had paid ₹ 1.77 crore to another company providing services relating to building construction (including ₹ 27,00,000/- on account of IGST) during year 2023-24.

I. Multiple Choice Questions

1. Which of the opinion given by the staff members of inhouse GST Team regarding preparation of an invoice for export transaction is *MOST LIKELY* in conformity with relevant legal provisions?
 - (a) Opinion I is in conformity with relevant legal provisions.
 - (b) Opinion II is in conformity with relevant legal provisions.
 - (c) Opinion III is in conformity with relevant legal provisions.
 - (d) Opinion IV is in conformity with relevant legal provisions.

2. Regarding tax liability of the said company for the month of October 23 under provisions contained in GST laws and rules, which statement is correct?
- (a) Opinion II is correct.
 (b) Opinion III is correct.
 (c) Opinion I is correct.
 (d) Opinion IV is correct.
3. In context of machinery purchase related transactions involving clearing charges, freight etc. discussed in Para D of the case study, consider the following table of compliances under income tax law as well as under GST law:

<i>Nature of Compliances</i>	<i>Appropriate response of company in accordance with law</i>
(1) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(i) TDS of ₹ 3,07,000/- is deducted on account of above three transactions and company is availing ITC of ₹ 51,000/- in respect of these transactions
(2) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(ii) TDS of ₹ 2,30,250/- is deducted on account of above three transactions and company is availing ITC of ₹ 36,000/- in respect of these transactions
(3) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(iii) TDS of ₹ 2,30,250/- is deducted on account of above three transactions and company is availing ITC of ₹ 27,51,000/- in respect of these transactions
(4) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(iv) TDS of ₹ 3,07,000/- is deducted on account of above three transactions and company is availing ITC of ₹ 27,36,000/- in respect of these transactions

Which of the following forms appropriate response by the company in accordance with law?

- (a) Combination (1) and (i)
 (b) Combination (2) and(ii)
 (c) Combination (3) and (iii)
 (d) Combination (4) and (iv)

4. The company is under statutory obligation to submit documentary evidence regarding proof of import of machinery. Which of the following statements is correct in this regard?
- (a) Bill of lading is appropriate documentary evidence regarding evidence of import of machinery and its copy is required to be submitted to jurisdictional office of GST by importer.
 - (b) Bill of Entry is appropriate documentary evidence regarding evidence of import of machinery and its copy is required to be submitted to jurisdictional office of GST by importer.
 - (c) Bill of lading is appropriate documentary evidence regarding evidence of import of machinery and its copy is required to be submitted to the concerned branch of bank through whom import transaction was channelised.
 - (d) Bill of Entry is appropriate documentary evidence regarding evidence of import of machinery and its copy is required to be submitted to the concerned branch of bank through whom import transaction was channelised.
5. Under provisions of Companies Act, 2013, the books of accounts and records are required to be kept at registered office of the company. However, the manufacturing facilities of company are located in NOIDA in state of Uttar Pradesh. In light of above, which of the following statements is in accordance with law?
- (a) The company can keep books of accounts and records at NOIDA by filing form AOC-2 within 30 days of passing board resolution.
 - (b) The company can keep books of accounts and records at NOIDA by filing form AOC-4 within 30 days of passing board resolution.
 - (c) The company can keep books of accounts and records at NOIDA by filing form AOC-5 within 7 days of passing board resolution.
 - (d) There is no recourse available to the company as books of accounts and records are to be kept at registered office of company.

II. Descriptive Questions

6. The promoters of the company are law compliant and do not want to be seen on the wrong side of law. However, they are also prudent minded and want to take tax benefits available legally and seek your advice.

Advise promoters of company of any such legally permissible benefits to lower its income tax liability for A.Y. 2024-25. Ignore the adjustment on account of depreciation under the Income-tax Act, 1961.

7. The company has exported made ups of ₹ 50 crores on payment of IGST during year 2023-24 carrying a GST rate of 5%. Further, the company had availed ITC of ₹ 2.00 crore during year 2023-24. The details of same are as under: -

Eligible ITC on inputs	₹ 1.50 crore
Eligible ITC on capital goods	₹ 0.36 crore
Eligible ITC on services	₹ 0.14 crore

Discuss whether there was any other legally permissible way to export its goods keeping in view provisions of GST law. Also make a cross comparison of export on payment of IGST vs. other legally compliant way in terms of financial burden/benefit and procedural requirements to the taxpayer company. Make suitable assumptions.

ANSWERS TO THE CASE STUDY 4

I. Answers to the Multiple Choice Questions

1. (b) The company is legally bound to raise a tax invoice in Indian Rupees as well as commercial invoice in foreign currency in accordance with relevant rules and procedures governing such transactions. Further, foreign currency amount is to be converted into Indian Rupees in tax invoice by using exchange rate in accordance with exchange rate notification issued by CBIC relevant in relation to date of invoice.

Reason: As per Rule 34 of CGST Rules, 2017, the rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act. The exchange rate notifications are issued by CBIC in exercise of powers conferred under section 14 of Customs Act on a periodic basis and value of taxable goods as reflected in tax invoice has to be arrived at in accordance with such notification. Further, commercial invoice in foreign currency amount is required to be raised for export transaction in accordance with procedures of customs.

2. (a) Opinion II is correct.

Reason: The IGST liability of company pertaining to zero-rated supplies (export) in Oct 23 is 5% of ₹ 5crores i.e. ₹ 0.25 crore. It is discharged by setting off eligible ITC of ₹ 0.20 crore. It is immaterial whether ITC is availed on inputs, capital goods or input services. The export supplies are zero-rated supplies and IGST paid of ₹ 0.25 crore would be refunded/refundable directly in bank account of the company by customs upon monthly filing of GSTR-3B and GSTR-1 for each tax period. Further, filing of GSTR-9 is an annual affair and hence nothing to do with refund of IGST.

The refund by customs is system generated upon filing of GSTR-3B and GSTR-1 for each tax period. The invoices transmitted to customs via GST network are matched with shipping bills and others details which are also system driven and refund scroll is generated. After scroll generation, refund is credited in bank account of exporter.

3. (a) Combination (1) and (i).

Reason: The TDS amount to be deducted during financial year 2023-24 is as under -

TDS to be deducted on clearing charges of ₹ 2.00 lakhs u/s 194 C is 2% in case of payment to companies.

TDS to be deducted on freight paid of ₹ 3.00 lakhs u/s 194 C is 1% in case of payment to individuals.

TDS to be deducted on payment made to building contractor company of ₹ 1.50 crore u/s 194 C is 2% in case of payment to companies.

Hence, total TDS to be deducted by company comes to ₹ 3,07,000/- (4,000 + 3,000 + 3,00,000).

It is to be remembered that TDS is not to be deducted on GST amount included in payments made to above service contractors in accordance with provisions of CBDT circular number 23/2017 dated 19.7.2017. Hence, for calculation of TDS, pre-GST amounts have to be arrived at.

Further, company has correctly availed IGST on services amounting to ₹ 51,000/-. The company is eligible to avail ITC on services for import of machinery amounting to ₹ 36,000/-. Further, credit of IGST paid on reverse charge

basis by the company on freight services amounting to ₹ 15,000/- is also available to the company. The IGST on building contractor services is not eligible as amount would be capitalised under building and the same is blocked under section 17(5) of CGST Act.

4. (d) Bill of Entry is appropriate documentary evidence regarding evidence of import of machinery and its copy is required to be submitted to the concerned branch of bank through whom import transaction was channelised.

Reason: , The importer of goods has to present to the proper officer electronically bill of entry. Therefore, bill of entry is appropriate document establishing import of goods. The bill of entry has to be submitted to the concerned bank branch through whom remittance was made as evidence for import of goods. It is not required to be submitted to GST office.

Bill of lading is issued in case of export transactions evidencing that goods have finally left the country.

5. (c) The company can keep books of accounts and records at NOIDA by filing form AOC-5 within 7 days of passing board resolution.

Reason: Books of accounts and records can be kept at place other than registered office of the company. The relevant form is AOC-5 which is to be filed on MCA portal in 7 days of passing board resolution.

II. Answers to the Descriptive Questions

6. In a major tax policy initiative, section 115BAB has been inserted w.e.f. A.Y. 2020-21 to provide an option to new manufacturing or electricity generating domestic companies set up and registered on or after 1.10.2019 and commences manufacturing or generating electricity on or before 31.3.2024 for availing concessional income tax rates subject to fulfilment of certain conditions contained thereunder like non-availability of profit-linked deductions and investment-linked tax deduction under the Act, non-availability of deduction for contribution to research and development, additional depreciation etc.

Section 115BAB provides for concessional rate of tax @15% (plus surcharge@10% plus HEC@4%).

The option for section 115BAB has to be exercised in the **very first year** in which the **eligible company is set up**, failing which it cannot exercise such option in the future years. However, once the company exercises such option under 115BAB, as the case

may be, in a year, it would continue to be governed by the special provisions u/s 115BAB thereafter and cannot opt for regular provisions in any subsequent year.

It may be noted that companies exercising option under section 115BAB are not liable to minimum alternate tax under section 115JB.

The following are the conditions specified under section 115BAB:

- (a) the company has been set-up and registered on or after the 1.10.2019, and has commenced manufacturing or production of an article or thing on or before the 31.3.2024 and, —
 - (i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:
 - (ii) does not use any machinery or plant previously used for any purpose.

Any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled -

- (A) such machinery or plant was not, at any time previous to the date of the installation used in India;
- (B) such machinery or plant is imported into India from any country outside India; and
- (C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Further, where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of the machinery or plant used by the company, then, the condition specified that the company does not use any machinery or plant previously used for any purpose would be deemed to have been complied with.

- (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

The business of manufacture or production of any article or thing referred to in clause (b) shall not include business of,—

- (i) development of computer software in any form or in any media;
 - (ii) mining;
 - (iii) conversion of marble blocks or similar items into slabs;
 - (iv) bottling of gas into cylinder;
 - (v) printing of books or production of cinematograph film; or
 - (vi) any other business as may be notified by the Central Government in this behalf; and
- (c) the total income of the company has to be computed -
- (i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A other than the provisions of section 80JJAA or section 80M;
 - (ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).
 - (iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

In the present case, company is eligible to opt for concessional tax rate of 15% (plus surcharge@ 10% plus HEC @ 4%), since it satisfies the following condition -

- (1) It is a company registered after 1.10.2019 and has started production on or before 31.3.2024.

- (2) Its business is not formed by splitting or reconstruction of business already in existence.
 - (3) Although it has used plant and machinery previously used, it falls within overall cap of 20% stipulated u/s 115BAB. The total value of plant and machinery used by the company is ₹ 10.65 crores. However, value of machinery previously used is only ₹ 2.00 crore which is 18.78% of total value of plant and machinery. Hence, this newly set up domestic company satisfies this criterion also.
 - (4) The company is engaged in business of manufacturing of an article or thing and research in relation to it.
 - (4) The company's business does not fall into prohibited categories.
 - (5) The company has not taken benefit of other beneficial provisions as listed out under section 115BAB.
 - (6) The company has to exercise the option by filing Form 10-ID by due date of filing first return of income under section 139 for A.Y. 2024-25.
7. Under provisions of section 16(3) of IGST Act, 2017, a registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—
- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
 - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

It is to be noted that changes made in Section 16(3) by Finance Act, 2021 requiring person making zero rated supplies to claim of refund of unutilized ITC without payment of IGST under bond or LUT only are still to be notified.

Therefore, for the year under consideration, both routes as discussed above are available to exporter.

Therefore, under IGST Act, 2017, a taxpayer engaged in zero-rated supplies can make export without payment of tax under LUT or bond or alternatively, it can export on payment of IGST. In case of export under LUT/bond, refund of unutilised ITC would be refundable so that exports remain competitive. However, under Rule 89(4) of CGST Rules, 2017, net ITC means ITC on inputs and input services only. Hence, in case of export under LUT, ITC on capital goods is not refundable.

However, in case of export on payment of IGST, entire IGST paid would be refunded due to same reason. Hence, refund of ITC on input and input services is available under LUT route whereas refund of ITC on input, input services and capital goods is refundable on exports made on payment of IGST.

Export under LUT or bond

Tax liability	0
Refund of unutilized ITC	₹ 1.64 crore

Export on payment of IGST

Tax liability	₹ 2.50 crore
Set off by using ITC	₹ 2.00 crore
Set off by payment of cash	₹ 0.50 crore
Refund of IGST paid	₹ 2.50 crore

Hence, in export under LUT, ITC of input and input services amounting to ₹ 1.64 crore is refunded/refundable. In case of export on payment of IGST, entire ITC of ₹ 2.00 crore is refunded along with tax of ₹ 0.50 crore deposited by company in cash.

Therefore, under export via LUT route, refund of ITC of ₹ 1.64 crore would be available to the company. However, under export via payment of IGST, entire ITC of ₹ 2.00 crore is refundable.

In terms of procedural requirements, separate refund application has to be filed electronically for exports under LUT. However, for exports on payment of IGST, refund is automatically granted by customs on valid filing of GSTR-3B and GSTR-1 and validation of tax invoice data with shipping bills and other information.

Further, in case of export under LUT, no tax is to be deposited by the company and refund of ITC has to be applied by way of separate application. Therefore, it does not involve any cash outgo.

In case of export on payment of IGST, it involves cash out go of ₹ 50.00 lakhs which is refunded automatically in a few days. Therefore, it involves temporary blockage of working capital for certain period of time. However, since refund process is system driven and automated as provided in rules under this route, it results in quicker refunds including refund of entire ITC and cash deposited.