



Chapter 14 - Import & Export under GST

Part A - ICAI TYK

1) Explain how imports are taxed under GST.

Sol: All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

2) Describe how exports are taxed under GST.

Sol: Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

3) Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.

Sol. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of Rs. 2.5 crore) vide Notification No. 37/2017 CT dated 4.10.2017. The other conditions for executing LUT have been specified in Circular No. 8/8/2017 GST dated 4.10.2017 as amended.

4) A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka. Whether the transaction will qualify as export of goods under GST? Analyse the scenario and offer your comments.

Sol. As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

5) A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of Rs. 2,00,000 on inputs and input services which have been used exclusively in effecting such zero rated supplies.

Examine if A Ltd. can avail ITC of input tax of Rs. 2,00,000 paid on inputs and input services used exclusively in effecting such zero-rated supplies.

Sol. As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of Rs. 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

- 6) Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.

Sol. Circular No. 48/22/2018 GST has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an 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. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter- State supply.

- 7) Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.

Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

Sol. The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an unregistered person receiving OIDAR service in taxable territory, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services [Notification No. 9/2017 IT (R) dated 28.06.2017].

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

- 8) 'Separate LUT is to be furnished for every export supply.' With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

Sol. No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply.

However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides inter alia that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 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.

- 9) AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods. Examine whether the view taken by AXT Ltd. is correct.

Sol. AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry.

Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.

Part B - PYQs/RTPs/MTPs

10) Elaborate the difference between zero rated supplies and exempt supplies. [RTP Nov'22]

Sol. The difference between zero rated supplies and exempted supplies is as follows:

Exempted Supplies	Zero Rated Supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services for authorized operations to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed.	No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC).
Credit of input tax needs to be reversed, if taken.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply.
No ITC allowed on the exempted supplies.	ITC allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land, and sale of building (c) of paragraph 5 of Schedule II, etc. shall be included.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or which exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies needs to register as refund of unutilized ITC of IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

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