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GST Refund for EOU/STPI Units

‘Taxes should not be exported’. The commerce and finance ministry have applied this principle consistently over the decades to ensure that the products manufactured in India and the services exported from India are competitive in the global market. The export incentive schemes of drawback or refund or rebate have been designed with the objective to return the taxes suffered on inputs, input services and capital goods to the manufacturer or the service provider who are engaged in export of goods or services. While an incentive policy is easy to draft, implementation of the policy and prevention of misuse of the incentive is a Herculean task for the tax authorities.

Just like its predecessors, GST legislation also offers various schemes of refund for exporters. In this article we shall specifically examine the eligibility for refund of output IGST wherein the export is made by the EOU/STPI unit upon payment of IGST.

Section 54(3) of the [CGST Act, 2017](#) (‘Act’) provides that, a registered person may claim refund of unutilised input tax credit (ITC) at the end of any tax period, provided he has made zero rated supplies (export of goods or services) without payment of taxes. This refund of ITC is available both to a Domestic Tariff Area (DTA) unit and an EOU/STPI unit engaged in export of goods and/or services without payment of taxes.

Section 16(3) of the [IGST Act, 2017](#) (‘IGST Act’) provides that, a registered person making zero rated supplies shall be eligible to claim refund under the following options:

1. Supply of goods or services or both without payment of IGST and claim refund of unutilised ITC; or
2. Supply of goods or services or both with payment of IGST and claim refund of such IGST paid on export of goods or services or both

Till now it appears good. However, in relation to refund of output IGST paid on exports under Section 16(3)(b) of the IGST Act, the EOU/STPI units have to navigate through a series of amendments made to Rule 96 of the [CGST Rules, 2017](#) (‘Rules’) to figure out whether they are eligible for the output IGST refund. Let us examine these amendments and find out where does it lead to.

Rule 96 of the [CGST Rules, 2017](#) (‘Rules’) contains the provisions on procedures to be followed for the purpose of refund claim of input or output GST. Rule 96(9) of the Rules provided that persons claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of [Notification No. 48/2017-CT dated 18.10.2017](#) (deemed exports) or [Notification No. 40/2017-CT\(R\) 23.10.2017](#) or [Notification No. 41/2017 – IT\(R\) dated 23.10.2017](#) (merchant exports). So, an exporter was not eligible for refund of output IGST if he had received supplies from the supplier who had claimed the duty benefits on deemed exports and from merchant export

suppliers who availed concessional rate of GST on the supplies made to the exporter.

Rule 96 was amendment vide [Notification No. 3/2018 dated 23.01.2018](#). A new sub-rule Rule 96 (10) was introduced which in addition to the three non-qualifying notifications mentioned above, added two more notifications on which if the supplier had availed the benefit, the exporter would not be eligible for refund of the output IGST – [Notification No. 78/2017-Customs dated 13.10.2017](#) (BCD and IGST exemption for EOU/STPI units) and [Notification No. 79/2017-Customs dated 13.10.2017](#) (duty benefit on procurement of goods through Advance Authorization/EPCG scheme). Here, the EOU/STPI unit would not be eligible for refund of IGST paid on exports if the supplier of goods was availing the exemption of BCD and IGST on his imported goods in terms of exemption provided under [Notification No. 78/2017-Customs](#).

This amendment vide [Notification No. 03/2018 dated 23.01.2018](#) created lots of confusion and generated many questions:

1. Whether the EOU/STPI would be ineligible for the refund of output IGST if the supplier to the EOU/STPI availed exemption on his inputs or does the ineligibility arise because the EOU/STPI unit itself availed the benefit of exemption on goods it imported duty free under [Notification No.78/2017-Customs](#)?
2. Should the condition of not availing the benefit under [Notification No. 78/2017-Customs](#) be applied at an EOU unit level or at the level of each supplier to the EOU unit (given that Rule 96 (10) said that if the supplier has availed the benefit then the EOU unit would not be eligible for output IGST refund)?
3. Does even a single duty-free import under [Notification No. 78/2017-Customs](#) by the EOU/STPI unit disqualify it from the output IGST refund for the entire period?

Further, the connection was not clear as to why the EOU/STPI unit would not be eligible for benefit of output GST refund if the supplier had availed certain duty-free inputs for his business. There were no clear answers to the above questions and many more such questions in the closet. However, there were definitely more amendments in the line.

Rule 96 (10) was again amended vide [Notification No. 39/2018 dated 04.09.2018](#). The rule was now amended to read as *‘the person claiming the refund of IGST paid on exports should not have received the supplies’* instead of the earlier provision of *‘the person claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit’*. So now, the onus of not having availed the benefit shifted from the supplier of goods to the EOU/STPI unit to the EOU/STPI unit itself. Per this amendment, any EOU unit which had availed the benefit of duty under the notifications mentioned above on input goods would not be eligible for output IGST refund.

The harassed Rule 96(10) was again amended vide [Notification No. 53/2018-CT dated 09.10.2018](#). In this bizarre amendment, the onus of not having availed the benefit of certain notifications was again shifted back from the EOU/STPI unit to the supplier of goods to the EOU/STPI unit. Through this amendment, Rule 96(10) now wanted the supplier of goods to not have availed the benefit of [Notifications Nos. 48/2017, 40/2017, 41/2017, 78/2017](#) and [79/2017](#) for the EOU/STPI to qualify for output GST refund. This notification seems to be a mistake as another amendment was released on the same day.

On the same day, 09.10.2018, Rule 96(10) was again amended vide [Notification No. 54/2018-CT](#). Pity the Rule 96(10). Vide this amendment, the onus of not having availed the benefit of certain notifications was re-shifted back to the EOU/STPI unit. Further, an exception was carved out that if the exporter has availed duty-free benefit on import of capital goods against Export Promotion Capital Goods Scheme (EPCG) then he would still be eligible for refund of output IGST. This amendment primarily gave relief to the DTA exporters who would be availing the EPCG scheme benefits. The DTA exporter would now be able to claim refund of output IGST even if he has procured capital goods duty free under the EPCG scheme. This discriminates between the EOU scheme vs. the EPCG scheme and EPCG scheme would become more beneficial in as much as it relates to refund of output IGST on exports.

So, where do EOU/STPI units stand today on refund of output IGST paid on exports?

As per the existing provision of Rule 96(10), after all the above amendments, an EOU/STPI unit would not be eligible for refund of output GST if the unit has procured duty-free goods under [Notification No. 78/2017-Customs](#) or has availed benefits under other notifications discussed above, as may be applicable. However, it is not clear as to how to apply (input goods period based, refund claim period based, fiscal year based, etc.) [Notification No. 78/2017-Customs](#) to determine whether the EOU/STPI is eligible for output GST refund. For the time being, Rule 96(10) is open to a variety of interpretations.

Another nagging unanswered question is, why should the EOU/STPI unit be denied the benefit of refund of output IGST paid on exports if it has made duty-free procurement of imported goods? In such a constrained scenario, the EOU/STPI units would be forced to go only for refund of unutilized input GST credit. Further, in the absence of refund for input GST credit on capital goods and ineligibility to go for refund of output IGST, the EOU/STPI units can be forever trapped in irrecoverable credit .

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