

## [UNDER GST LAW]

### Guidance Note for Importers and Exporters – under GST (with reference to customs duty)

#### 1. Introduction:

The purpose of this guidance note is to bring clarity about the impact of GST, which would come into force *with effect from* 01.07.2017, for importers and exporters.

On the imports side there would be no impact on levy of Basic Customs duty, Education Cess, Anti-dumping duty, Safeguard duty and the like. However, the Additional duties of Customs, which are in common parlance referred to as Countervailing Duty (CVD) and Special Additional duty of Customs (SAD), would be replaced with the levy of Integrated Goods and Services Tax (IGST), barring a few exceptions. On the exports side, export would be treated as zero-rated supply. Under zero-rated supply IGST paid on export goods or the input tax credit proportionate to the goods and services consumed in goods exported under bond/LUT would be refunded.

A brief summary of the changes that would impact importers and exporters upon roll out of GST are encapsulated below:

#### Imports under GST

#### II. Duties at the time of import:

In the GST regime, IGST and GST Compensation cess will be levied on imports by virtue of sub-sections (7) & (9) of Section 3 of the Customs Tariff Act, 1975. Barring a few commodities such as pan masala, certain petroleum products which attract levy of CVD, majority of imports would attract levy of IGST. Further, a few products such as aerated waters, tobacco products, motor vehicles *etc.*, would also attract levy of GST Compensation Cess, over and above IGST. IGST and GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017. It may also be noted that IGST would also be levied on cargo which has arrived prior to 1st July but a bill of entry is filed on or after 1st July 2017. Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract IGST and GST Compensation cess, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of IGST and GST compensation Cess, as applicable.

#### III. Duty Calculation:

**IGST rate:** IGST rates have been notified through notification 01/2017-Integrated Tax (Rate), dated 28-06-2017. IGST rate on any product can be ascertained by selecting the correct Sl. No. as per description of goods and tariff headings in the relevant schedules of the notification. Importers are advised to familiarize themselves with IGST and GST compensation cess rates, schedule and exemptions which are available on CBEC website. The Customs duty calculator would be made available on CBEC and ICEGATE website. There are seven rates prescribed for IGST- Nil, 0.25%, 3% 5%, 12%, 18% and 28%. The actual rate applicable to an item would depend on its classification and would be specified in Schedules notified under section 5 of the IGST Act, 2017. The rates applicable to goods of Chapter 98 are as under :

- 9801- Project Imports- 18%
- 9802- Laboratory Chemicals- 18%
- 9803- Passenger baggage – Nil Rate
- 9804- Specified Drugs and medicines for personal use- 5%
- 9804- Other drugs and medicines for personal use- 12%
- 9804- All other dutiable goods for personal use- 28%

Likewise, different rates of tax have been notified for goods attracting Compensation Cess which is leviable on 55 item descriptions (of supply). These rates are mostly ad valorem. But some also attract either specific rates (*e.g.* coal) or mixed rates (ad valorem + specific) as for cigarettes. The coverage of the goods under GST compensation cess is available on CBEC website along with their HSN codes and applicable cess rates. The IGST Rates of Goods, Chapter wise IGST rate, GST Compensation Cess rates, IGST Exemption/Concession are available on CBEC website for trade and departmental officers as well.

**Valuation and method of calculation:** IGST is leviable on the value of imported goods and for calculating integrated tax on any imported article, the value of such imported goods would be the aggregate of -

- (i) the value of imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value fixed under sub-section (2) of the that section and
- (ii) any duty of Customs chargeable on that article under section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, or as duty of Customs but does not include to the tax referred in the sub-section 7 (IGST) and sub-section 9 (Compensation Cess).

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti-dumping and safeguard duties. The inclusion of anti-dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

Although BCD, Education Cesses and IGST would be applicable in majority of cases, however, for some products CVD, SAD or GST Compensation cess may also be applicable. For different scenarios the duty calculation process has been illustrated in Annexure - I of this document.

#### **IV. Changes in import procedures:**

**Importer Exporter Code (IEC):** In GST regime, GSTIN would be used for credit flow of IGST paid on import of goods. Therefore, GSTIN would be the key identifier. DGFT in its Trade Notice No. 09 dated 12.06.2017 has stated that PAN would be the Import Export code (IEC). However, while PAN is identifier at the entity level, GSTIN would be used as identifier at the transaction level for every import and export. Further, in scenarios where GSTIN is not applicable, UIN or PAN would be accepted as IEC. It is advised that all importers need to quote GSTIN in their Bills of Entry in addition to IEC. In due course of time IEC would be replaced by PAN/GSTIN.

**Bill of Entry Regulations and Format:** To capture additional details in the Bill of entry such as GSTIN, IGST rate and amount, GST Compensation Cess and amount, the electronic as well as manual formats of Bill of entry including Courier Bill of entry are being amended. For the benefit of the trade, modified Forms have been hosted on the departmental website, [www.cbec.gov.in](http://www.cbec.gov.in). Further, suitable notifications shall be issued to amend the relevant regulations and introduce modified Forms.

#### **V. Import under Export Promotion Schemes and duty payment through EXIM scrips:**

Under the GST regime, Customs duties will be exempted on imports made under export promotion schemes namely EPCG, DEEC (Advance License) and DFIA. IGST and Compensation Cess will have to be paid on such imports.

The EXIM scrips under the export incentive schemes of chapter 3 of FTP (for example MEIS and SEIS) can be utilised only for payment of Customs duties or additional duties of Customs, on items not covered by GST, at the time of import. The scrips cannot be utilized for payment of Integrated Tax and Compensation Cess. Similarly, scrips cannot be used for payment of CGST, SGST or IGST for domestic procurements.

#### **VI. EOUs and SEZ:**

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional duties leviable under Section 3 (1) and 3(5) of the Customs Tariff Act. GST would be leviable on the import of input goods or services or both used in the manufacture by EOUs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the

DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act. In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods. DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

#### **VII. Imports/Procurement by SEZs**

Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, there is no change in operation of the SEZ scheme.

#### **VIII. Project Import:**

Currently for items imported under project import scheme (*i.e.* CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit. In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

#### **IX. Baggage:**

Full exemption from IGST has been provided on passenger baggage. However, basic customs duty shall be leviable at the rate of 35% and education cess as applicable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

#### **X. Refunds of SAD paid on imports:**

The need for SAD refunds arose mainly on account of the fact that traders or dealers of imported goods were unable to take credit of this duty (which was a Central tax) while discharging their VAT or Sales tax liability (which was State levy) on subsequent sale of the goods. Unless corrected through a mechanism such as refund (of one of the taxes) this would have resulted in “double” payment of tax.

With the introduction of GST on 01.07.2017, credit of “eligible duties” in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock, is permissible to registered persons not liable to be registered under the existing law (for instance, VAT dealers) under transitional provisions (Section 140(3) of the CGST Act). Further, eligible duties as defined in sub-section (10) include SAD. In other words, dealers/traders can take ITC of SAD paid on goods imported prior to 1st July 2017. Sub-section (5) of section 140 also allows a registered person to take credit of eligible duties in respect of inputs received on or after 1 July 2017 but the duty on which has been paid under the existing law. These provisions taken together ensure that SAD paid by dealers/traders can be set-off against their GST liability as and when imported goods

are supplied by them in the domestic market. However, certain items which are out of the GST net would be eligible for SAD refunds as earlier.

#### **XI. Imports and Input Tax Credit (ITC):**

In GST regime, input tax credit of the integrated tax (IGST) and GST Compensation Cess shall be available to the importer and later to the recipients in the supply chain, however the credit of basic customs duty (BCD) would not be available. In order to avail ITC of IGST and GST Compensation Cess, an importer has to mandatorily declare GST Registration number (GSTIN) in the Bill of Entry. Provisional IDs issued by GSTN can be declared during the transition period. However, importers are advised to complete their registration process for GSTIN as ITC of IGST would be available based on GSTIN declared in the Bill of Entry. Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

Customs EDI system would be interconnected with GSTN for validation of ITC. Further, Bill of Entry data in non-EDI locations would be digitized and used for validation of input tax credit provided by GSTN.

#### **Exports under GST**

#### **XII. Drawback:**

No amendments have been made to the drawback provisions (Section 74 or Section 75) under Customs Act 1962 in the GST regime. Hence, the drawback scheme will continue in terms of both section 74 and section 75. Option of All Industry Rate (AIR) as well as Brand Rate under Section 75 shall also continue.

Drawback under Section 74 will refund Customs duties as well as Integrated Tax and Compensation Cess paid on imported goods which are re-exported.

At present Duty Drawback Scheme under Section 75 neutralises Customs duty, Central excise duty and Service Tax chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of export goods. Under GST regime, Drawback under Section 75 shall be limited to Customs duties on imported inputs and Central Excise duty on items specified in Fourth Schedule to Central Excise Act 1944 (specified petroleum products, tobacco *etc*) used as inputs or fuel for captive power generation.

A transition period of three months is also being provided from date of implementation of GST *i.e.* 1.7.2017. During this period, existing duty drawback scheme under Section 75 shall continue. For exports during this period, exporters can claim higher rate of duty drawback (composite AIR) subject to conditions that no input

tax credit of CGST/IGST is claimed, no refund of IGST paid on export goods is claimed and no CENVAT credit is carried forward. A declaration from exporter and certificate from jurisdictional GST officer in this regard has been prescribed in the notification related to AIRs. This will prevent double availment of neutralisation of input taxes. Similarly, the exporter can claim brand rate for Customs, Central Excise duties and Service Tax during this period.

Exporters also have the option of claiming only the Customs portion of AIR and claim refund/ITC under GST laws.

All Industry Rates for the transition period shall be notified before 1.7.2017. The AIR for post transition period shall be notified in due course of time.

The certificates from jurisdictional GST officer as referred above may not be available during initial days. As per Systems design, whenever higher rate (composite rate) of drawback is claimed, the non-availment of credit certificate is a mandatory document and unless it is recorded as available, shipping bill will not move to LEO stage. In such a situation, all field formations shall ensure that exports are not delayed for requirement of the said certificate. The way out in such situation for the exporter is to amend the shipping bill to claim lower rate. The exporter will have an option to file supplementary claim as per Drawback Rules at a later date once the certificate is obtained. A similar issue in respect of Cenvat credit has been examined and clarified in the past *vide* Instruction no. 609/159/2016-DBK dated 13.03.2014.

Secondly, it could be possible that export goods may be manufactured by using both Central Excise/Service Tax paid and CGST/IGST paid inputs and inputs services or only CGST/IGST paid inputs and inputs services. In such situation, an exporter opting to claim composite rate of duty drawback during transition period has to give specified declaration and produce certificates as stated above so that he does not claim double benefit. Exporter will have to reverse the ITC if any availed and also ensure that he does not claim refund of ITC/IGST. Requisite certificate from GST officer shall also be required to this effect. As mentioned earlier, exporters will also have option of claiming credit/refund of CGST/IGST and claim Customs rate drawback.

### **XIII. Refund of IGST paid on exports and Export under Bond scheme:**

Under GST regime exports would be considered as zero-rated supply. Any person making zero rated supply (*i.e.* any exporter) 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 (Refunds) of the Central Goods and Services Tax Act or the rules made there under (*i.e.* Refund Rules 2017).

For the option (a), procedure to file refund has been outlined in the Refund Rules under GST. The exporter claiming refund of IGST will file an application electronically through the Common Portal, either directly or through a Facilitation Centre notified by the GST Commissioner. The application shall be accompanied by documentary evidences as prescribed in the said rules. Application for refund shall be filed only after the export manifest or an export report, as the case may be, is delivered under section 41 of the Customs Act, 1962 in respect of such goods.

For the option (b), the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return.

For both option (a) and (b) exporters have to provide details of GST invoice in the Shipping bill. ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

#### XIV. Change in export Procedures:

Electronic as well as manual Shipping Bill formats including Courier Shipping Bill are being amended to include GSTIN and IGST related information so as to ensure that the export benefits like refund of IGST paid as well as accumulated input tax credit can be processed seamlessly. For the benefit of the trade, modified Forms have been hosted on the departmental website, [www.cbec.gov.in](http://www.cbec.gov.in). Further, suitable notifications shall be issued to amend the relevant regulations and introduce modified Forms.

#### XV. Export under factory stuffing procedures:

In the context of GST, taking into account the obligation of filing GSTR1 and GSTR2 by exporters who are registered under GST, Board intends to simplify the procedure relating to factory stuffing hitherto carried out under the supervision of Central Excise officers. It is the endeavour of the Board to create a trust based environment where compliance in accordance with the extant laws is ensured by strengthening Risk Management System and Intelligence mechanism of the department. Suitable circular in this regard would be issued. Until then the extant instructions on the issue may be followed.

Note: The above guidance note should not be used in any quasi-judicial or judicial proceedings, where only the relevant legal texts need to be referred to.

### ANNEXURE-I

#### Case 1.- Where product attracts IGST but not CVD

Suppose Assessable Value (A.V.) including landing charges =Rs. 100/-

- (1) BCD- 10%
- (2) IGST-12%
- (3) Education cess – 2%
- (4) Higher education cess -1%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) Education cess- Rs. 0.2 [2% of (a)]
- (c) Higher education cess- Rs. 0.1 [1% of (a)]
- (d) IGST- Rs. 13.236 [A.V.+(a) +(b) +(c)]x12%

#### Case 2. Where product does not attract CVD but attract IGST as well as compensation cess

Suppose Assessable Value (A.V.) including landing charges =Rs. 100/-

- (1) BCD- 10%
- (2) IGST-12%
- (3) Education cess – 2%
- (4) Higher education cess -1%
- (5) Compensation cess- 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) Education cess- Rs. 0.2 [2% of (a)]
- (c) Higher education cess- Rs. 0.1 [1% of (a)]
- (d) IGST- Rs.13.236 [A.V.+(a)+(b)+(c)]x12%
- (e) Compensation cess- Rs. 11.03 [A.V.+(a)+(c)+(d)]x 10%

Case 3. Where product attract both CVD & IGST:

Suppose Assessable Value (A.V.) including landing charges =Rs. 100/-

- (1) BCD-10%
- (2) CVD-12%
- (3) IGST-28 %
- (4) Education cess – 2%
- (5) Higher education cess-1%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) CVD = Rs 13.2 [ 12% of (A.V.+ BCD)]
- (c) Education cess-Rs. 0.464 [2% of (BCD+CVD)]
- (d) Higher education cess-Rs. 0.232 [1% of (BCD+CVD)]
- (e) IGST- Rs. 34.69 [A.V.+(a)+(b)+(c)+(d)]x 28%

Case 4. Where product attract CVD, IGST & Compensation cess:

Suppose Assessable Value (A.V.) including landing charges =Rs. 100/-

- (1) BCD-10%
- (2) CVD-12%
- (3) IGST-28 %
- (4) Education cess – 2%
- (5) Higher education cess -1%
- (6) Compensation cess-10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) CVD = Rs 13.2 [ 12% of (A.V.+ BCD)]
- (c) Education cess- Rs. 0.464 [2% of (BCD+CVD)]
- (d) Higher education cess- Rs. 0.232 [1% of (BCD+CVD)]
- (e) IGST- Rs. 34.69 [A.V.+(a)+(b)+(c)+(d)]x 28%

(f) Compensation cess – Rs. 12.389 [A.V.+(a)+(b)+(c)+(d)]x 10%

Note: In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, calculation of Anti-Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti-Dumping Duty amount and Safeguard duty amount.

**Information guide on GST**

CBEC WEBSITE – [www.cbec.gov.in](http://www.cbec.gov.in)

GSTN WEBSITE - [www.gstn.org](http://www.gstn.org)

GST COUNCIL WEBSITE - [www.gstindia.com/tag/gst-council](http://www.gstindia.com/tag/gst-council)

CBEC MITRA – [cbecmitra.helpdesk@icegate.gov.in](mailto:cbecmitra.helpdesk@icegate.gov.in)

Toll free helpline – 1800-1200-232

*Toll-free number* - 1800 425 4251

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OUTREACH PROGRAMMES –Available on CBEC website (under Column of GST AWARENESS)-[www.cbec.gov.in](http://www.cbec.gov.in)