

GST NEWSLETTER

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INDEX

1. **Article –**
Value of Zero-rated supply **01**
2. **Case laws –**
 - a. Inclusions and Exclusions
In aggregate turnover **04**
 - b. Classification of E-books
3. **Notifications and Circulars** **05**
4. **Due Dates** **06**

GST Newsletter:
Compiled and Edited by

VKCA INDIRECT TAX DIVISION

CA PRASANNA K S | ADV. T. R. RAJESH

ADV. PRATEEK J | PRAKRUTHI C

ARTICLE

Value of Zero-rated supply

Exports are an important activity for any country as it brings in the very crucial Foreign Currency needed for international trade and to balance the current deficits of the country. It's the primary mode of earning foreign exchange followed by foreign investments and remittances. Hence, it's a known fact that the activity is one of most regulated in the country right from compliances and regulations by customs authorities to benefits and relaxations in taxes.

Under GST, exports are charged to tax at zero-rate and any taxpayer exporting goods or services has the option to apply for a Letter of Undertaking (LUT) and export without payment of taxes. Further, they can claim a refund of the input tax credit (ITC) incurred by them on purchases and expenses used for making such exports. The intention behind taxing the exports at zero-rate and providing refund of ITC is that taxes incurred for making such exports should

not be exported. In the absence of such provisions for zero-rate, the exporter will pass on the taxes incurred for making the exports and thus lose the competitive edge in the international market due to higher prices.

In case goods are exported under LUT, the refund will be based on calculation of proportionate refund of ITC with regard to export sale value and domestic sale value.

In case goods are exported without any LUT or bond, then exporters have to pay GST on the exports, utilize the ITC against such output tax and claim refund of the output tax paid. In this case, the refund is based on the actual output tax amount paid for the exports and not proportionately.

The CBIC, in Notification No. 16/2020 – Central Tax dated 23-03-2020, amended the definition of zero-rated supply of goods, thus changing the way export refunds will be provided.

- Before the amendment, the turnover of zero-rated supplies were valued as *“the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both”*.
- After the amendment, the turnover of zero-rated supplies will be valued as *“Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both”*.

The amendment to the value of turnover definition has various implications to trade and business, the most likely being the amount of ITC that will be refunded to the exporters. In this article we will explore the implications:

What is the major difference between valuation before and after the amendment?

Post-amendment, when a taxpayer calculates and files GST RFD-01 for refund claim then invoice value raised by them to the customers shall not be the only criteria for calculating the value of zero-rated supplies. The below table will explain the

difference:

Particulars	Pre-amendment	Post-amendment
Domestic sale value	Rs. 100 per unit	Rs. 100 per unit
Zero-rated sales	Rs. 200 per unit	Rs. 200 per unit (OR) *Rs. 150 per unit (Rs. 100* 1.5) <i>whichever is lower</i>
No. of units sold during the period	Domestic – 10,000 units	Domestic – 10,000 units
	Exports – 15,000 units	Exports – 15,000 units
Total sales (value per unit * no. of units sold)	Domestic – Rs. 10 lacs	Domestic – Rs. 10 lacs
	Export – Rs. 30 lacs	*Export – Rs. 22.50 lacs (Rs. 150*15,000)
	^Total – Rs. 40 lacs	
Proportion of zero-rated to total sales	75% (30 lacs / 40 lacs)	56.25% (22.50 lacs / 40 lacs)
ITC claimed	30 lacs	30 lacs
Eligible refund	22.50 lacs (30 lacs*75%)	16.88 lacs (30 lacs*56.25%)

* When calculating the value of zero-rated sales, the actual sales as per invoice or 1.5 times of the domestic sales, whichever is lower, shall be considered i.e. Rs. 22.50 lacs. This is done on a per unit basis and constitutes the numerator when calculating the proportion of zero-rated sales to total sales.

^ When calculating the total sales of the taxpayer, the actual sales as per the invoices raised i.e. Rs. 40 lacs shall be considered, for both domestic and export sales. This constitutes the denominator when calculating proportion of zero-rated sales to total sales. This is because there is no change in the definition of adjusted total turnover as per Rule 4E read with Section 2(112) of the CGST Act, 2017 and total sales shall include the invoice value of zero-rated supplies.

From the above, it can be seen that there is a reduction of Rs. 5.62 lacs due to the change in valuation of exports.

What does like goods from similarly placed suppliers mean?

This is an ambiguous definition inserted into the rule. However, considering the rules of interpretation, it can be assumed that:

- a) Like goods refer to goods having the same HSN classification. Ex: Manufacturers of agarbattis (incense sticks) having HSN code 3307 at GST rate of 5% shall rely on the value of the goods carrying the same HSN code and sold domestically in order to determine the value of zero-rated sales.
- b) Similarly placed suppliers refer to suppliers other than the taxpayer who manufacture or sell the same goods domestically within India i.e. the taxpayer's competition in the market. The issue that arises here is the price of such products as well as the quality of the products sold by other suppliers which may vary and also affect the prices.

It is expected that the CBIC will provide relevant clarifications for the same in order to avoid litigations.

How does this impact taxpayers?

For the purpose of analyzing the impact, the taxpayers can be classified as:

1. Taxpayers with only zero-rated supplies:

Taxpayers who entirely export goods or supply to SEZs without any sales in the domestic markets are affected the most. This is because the value of zero-rated supplies as per the amendment is restricted to 1.5 times the value of domestic supplies or the invoice value of zero-rated supplies, whichever is lower. But for this category of taxpayers, the lack of domestic supplies means they have to look for value of domestic supplies made by other similar suppliers of the same goods. This leads to complications where identifying the correct similar supplier and the prices at which they supply.

2. Taxpayers who have both taxable sales and zero-rated sale:

For these taxpayers, it is not difficult to identify the value of domestic sales and they can rely on this value to arrive at the value of zero-rated sales. It is to be noted that the rule provides preference to value of taxable sales made by the supplier themselves and only if the same is not available, the taxable sales value of other suppliers has to be considered.

Does this amendment impact all taxpayers making zero-rated sales?

Any taxpayer who has opted to make zero-rated sales under a bond or a Letter of Undertaking (LUT) shall be impacted by this amendment. These taxpayers have opted to sell goods without payment of tax and hence, the only available option is to claim refund of ITC incurred for making the zero-rated sale. However, taxpayers who have opted to pay tax and claim refund of such tax paid will not be affected by the amendment.

Conclusion:

This amendment has changed the way in which taxpayers can claim ITC refund. The intention of this seems to be to restrict refunds to taxpayers who price their goods at premium rates for exports. However, products meant for exports usually have superior quality and manufacturing standards in order to make them suitable for exports to other countries, but the same has not been taken into consideration. Taxpayers involved in exports or SEZ supplies have to efficiently plan their refund application, perhaps with the help of tax professionals, in order to analyze and mitigate the effects of this amendment.

CASE LAWS

Facts of the case: M/S. ANIL KUMAR AGARWAL

The applicant is an un-registered person under GST and is in receipt of various amounts of money for which he has approached AAR, Karnataka in order to determine which of the receipts are to be considered for calculation of aggregate turnover for registration.

Provisions of the law:

As per section 2(6) of the CGST / KGST Act, 2017, "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Ruling:

The AAR held that the following supplies form part of aggregate turnover of the applicant:

1. Interest income received from various sources.
2. Remuneration received from private limited company as Non-executive director.
3. Rental income from Commercial and residential property.

The AAR also held that the following supplies do not form part of aggregate turnover of applicant:

1. Partner's salary received as partner of a firm.
2. Salary received from private limited company as Executive director (employee).
3. Maturity proceeds from life insurance policies
4. Capital gain or loss from sale of shares.
5. Dividend proceeds from shares.

Hence, from the above ruling it can be understood that remuneration received from limited companies is excluded from GST i.e. it's non-GST supply if the same is received as salary. Only remuneration to directors in non-executive position is subject to GST under reverse charge mechanism.

Facts of the case: M/S LAW WEEKLY JOURNAL

The applicant is a publisher of law journals which is sold by them as printed books and the same is also made available in DVD's/CD's/Dongle as an e-version of the books along with a proprietary software to search for sections, case laws and citations along with regular updates. The applicant has approached the AAR, Tamil Nadu to determine whether the same can be classified as E-books and whether ITC incurred for book publishing can be set-off against sale of E-books.

Provisions of the law:

As per Section 2(30) of the CGST Act, 2017 "Composite Supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply."

Ruling:

The AAR held that DVD/CD & Dongle loaded with The Law weekly Desktop Software is an optical media loaded with software and the license to use the software during the subscription period is a supply of service made along with the principal supply of goods in the said 'Composite Supply'. The DVD/CD & Dongle being 'Storage Devices' containing the software is the principal supply under the HSN code 8523 at GST rate of 18%. Further, the AAR held that under HSN code 9984 E-books refer to 'e-books' are electronic version of a printed book falling under the tariff item 4901 and supplied online which can be read on a computer or a hand held device, while in the case at hand and the DVDs/CDs/Dongle do not contain electronic versions of the journals but an executable software application and therefore do not fall under the explanation of 'e-book' given in the said entry. Hence, the supply of DVD/CD/Dongle is a supply of storage devices as principal supply with information technology software as secondary supply. This supply cannot be classified as services. The AAR also refused to comment on the claim of ITC incurred for books publishing against sale of DVD/CD/Dongle as it was beyond the purview of the AAR.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF APRIL 2020

- **Eight Central Tax Notification.**
- **One Integrated Tax Notification.**
- **One Union Territory Notification.**
- **Two Central Tax Circulars.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017.	37/2020-Central Tax, dt. 28-04-2020
2.	Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of May, 2020.	36/2020-Central Tax, dt. 03-04-2020
3.	Seeks to extend due date of compliance which falls during the period from "20.03.2020 to 29.06.2020" till 30.06.2020 and to extend validity of e-way bills.	35/2020-Central Tax, dt. 03-04-2020
4.	Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending March, 2020 till 07.07.2020 and filing FORM GSTR-4 for FY 2020-21 till 15.07.2020.	34/2020-Central Tax, dt. 03-04-2020
5.	Seeks to provide relief by conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods of February, 2020 to April, 2020.	33/2020-Central Tax, dt. 03-04-2020
6.	Seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to April, 2020.	32/2020-Central Tax, dt. 03-04-2020
7.	Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.	31/2020-Central Tax, dt. 03-04-2020
8.	Seeks to amend CGST Rules (Fourth Amendment) in order to allow opting Composition Scheme for FY 2020-21 till 30.06.2020 and to allow cumulative application of condition in rule 36(4).	30/2020-Central Tax, dt. 03-04-2020
9.	Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.	03/2020-Integrated Tax, dt. 08-04-2020
10.	Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.	01/2020-Union Territory Tax, dt. 08-04-2020
11.	Circular clarifying issues in respect of challenges faced by registered persons in implementation of provisions of GST issued - Reg	137/07/2020, Circular no, dt. 13-04-2020
12.	Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19) - Reg	136/06/2020, Circular no, dt. 03-04-2020

DUE DATES OF GST FOR THE MONTH OF MAY 2020

MAY 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
GSTR-7 & GSTR-8	*GSTR-1		GSTR-6			
10	11	12	13	14	15	16
17	18	19	*GSTR-3B/5/5A	21	22	23
24	25	26	27	28	29	30
31						

* For taxpayers with Annual Turnover more than Rs.1.50 Crores or who has opted for monthly return.

RELAXATION IN LATE FILING OF RETURNS AND LATE PAYMENT OF TAX:

Turnover > 5 Crores	Turnover >1.5 Crores and <5 Crores	Turnover < 1.5 Crores
No late fees on GSTR 3B if filed within 24 th June 2020	No late fees on GSTR 3B if filed within 29 th June 2020	No late fees on GSTR 3B if filed within 3 rd July 2020
No interest on GSTR 3B if filed within 4 th June 2020	No interest on GSTR 3B if filed within 29 th June 2020	No interest on GSTR 3B if filed within 3 rd July 2020
Interest of 9% p.a. if filed after 4 th June 2020 and within 24 th June 2020	NA	NA
Interest of 18% p.a. if filed after 24 th June 2020	Interest of 18% p.a. if filed after 29 th June 2020	Interest of 18% p.a. if filed after 3 rd July 2020
No late fee on GSTR 1 if filed within 30 th June 2020	No late fee on GSTR 1 if filed within 30 th June 2020	No late fee on GSTR 1 if filed within 30 th June 2020

Disclaimer:

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VINAY & KESHAVA LLP
CHARTERED ACCOUNTANTS

Bangalore, India. Landline: +91 80 23167560 | 80 23167561

Affiliate Offices: Delhi | Mumbai | Kolkata | Chennai | Hyderabad | Jaipur | Ahmedabad | Guwahati | Cochin

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