TABLE OF CONTENTS

IMPORT AND EXPORT

TABLE OF CONTENTS

IMPORT AND EXPORT

Import of Goods

Sec 2(10) of IGST Act ‘‘**IMPORT OF GOODS**” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Sec 2(11) of IGST Act ‘‘**IMPORT OF SERVICES**” means the supply of any service, where—
(i) the supplier of service is located outside India;
(ii) the recipient of service is located in India; and
(iii) the place of supply of service is in India;

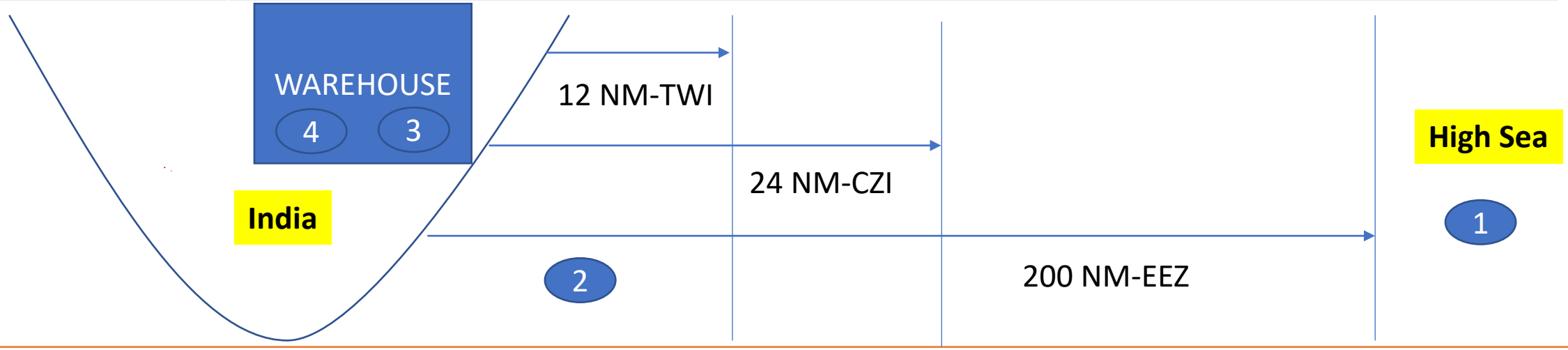
Sec 2(56) of CGST Act **“INDIA”** means

- the territory of India as referred to in article 1 of the Constitution,
- its territorial waters, seabed and sub-soil underlying such waters,
- continental shelf,
- exclusive economic zone or
- any other maritime zone
- as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976,
- and the air space above its territory and territorial waters;

Import of Goods

As per the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (for short "the Maritime Zone Act"), the maritime zones of India are as per limits given below –

Area of India	Limit/Extension of the area
(A) Territorial Waters	12 nautical miles from the baseline. (1 nautical mile = 1.852 kilometre)
(B) Contiguous Zone	Area beyond territorial water but upto 24 nautical miles from baseline.
(C) Continental Shelf	Stabbed and subsoil of the submarine areas beyond the territorial waters but upto 200 nautical miles from the baseline.
(D)Exclusive Economic Zone	Area beyond territorial waters but upto 200 nautical miles from baseline (i.e. sea/water and airspace over the continental shelf of India)



TWI – Territorial Waters Of India, CZI – Contiguous Zone of India, EEZ – Exclusive Economic Zone - THE TERRITORIAL WATERS, CONTINENTAL SHELF, EXCLUSIVE ECONOMIC ZONE AND OTHER MARITIME ZONES ACT, 1976

Import of Goods

Meaning of India

Illustration GER Ltd. Of Germany supplies luxurious Car worth ₹ 1 Crore to IND Ltd. Of India. Before the car reaches Indian Port but after crossing of the territorial waters of India, IND Ltd. Sells it to T1 Ltd. By way of transfer of documents of title.
T1 Ltd. Clears the said car for warehousing and stores the said goods in customs bonded warehouse.
T1 Ltd. Sells the said car from warehousing to T2 Ltd., and T2 Ltd., clears the said car from the custom bonded warehouse.

Ans the following with brief reasons –

(i) Is GST leviable on Import of goods from GER Ltd. By IND Ltd.?
(ii) Is GST leviable on supply of goods by IND Ltd. To T1 Ltd.?
(iii) Is GST leviable on supply of goods by T1 Ltd. To T2 Ltd.?
(iv) Is GST leviable on clearance of goods by T2 Ltd. From the Custom bonded warehouse?

(CA – Final, Jan 2021, 5 marks)

Meaning of India

Ans

(i) GST on import of goods is levied at the time when customs duty is levied on the said goods under the Customs Act, 1962, i.e., on importation. **Importation gets completed when the goods become part of the mass of goods within the country*.** Thus, GST is not leviable on import of goods from GER Ltd. by IND Ltd. since the import of goods is not complete.

(ii) GST is not leviable on supply of goods by IND Ltd. to T1 Ltd. as 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 is treated neither as a supply of goods nor a supply of services.

(iii) GST is not leviable on supply of goods by T1 Ltd. to T2 Ltd. since supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services.

(iv) Yes, GST is leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse as customs duty is levied on warehoused goods at the time of clearance thereof from the warehouse and as mentioned in point (i), GST on import of goods is levied at the time when customs duty is levied thereon.

*** Garden Silk Mills Ltd. UOI 1999 AIR SCW 4150 (SC 3-member bench)**

Import of Goods

Points to note for Import of Goods –

1. IGST on import of goods is in addition to duty of customs [Sec 7(2) read with section 5 of IGST Act, 2017]

Supply of goods imported into territory of India till they cross the custom frontiers of India is deemed to be an inter-State supply. IGST on goods imported into India is levied and collected in accordance with the provisions of Sec 3 of the Customs Tariff Act, 1975. Thus, though goods imported into India are leviable to IGST under the IGST Act, machinery of the customs law is used to levy and collect the same. The place of supply of goods, imported into India is the location of the importer (Sec 11 of IGST Act, 2017). Thus, if an importer say is located in Rajasthan, the State tax component of the IGST accrues to the State of Rajasthan.

2. Point when IGST is levied on imported goods [Proviso to section 5(1) of IGST Act, 2017]

IGST on goods imported into India is levied and collected at the point when duties of customs are levied on the said goods under the Customs Act, 1962. Custom duty is leviable when importation of goods gets complete, i.e. when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. Thus, the point of levy and collection of IGST is the point when the bill of entry for home consumption is filed.

3. Taxable value of imported goods for levying IGST [Sec 3(8) of the Customs Tariff Act, 1975]

The value of the imported goods for the purpose of levying IGST =	the assessable value of the imported goods determined under section 14 of the Customs Act, 1962 + Basic Custom Duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess

4. Applicability of IGST on goods supplied while being deposited in a customs bonded warehouse [Sec 3(8A) of the Customs Tariff Act, 1975]

The Customs Act, 1962 permits goods that have entered India to be deposited into a bonded warehouse on filing 'into-bond' bill of entry, without payment of duty. The importer is at liberty to transfer the ownership of such goods to another person while the goods remain deposited in the warehouse.

However, supply of warehoused goods to any person before clearance for home consumption is neither a supply of goods nor a supply of services in terms of paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.

Value of Basic customs duty paid on the warehoused goods at the stage of ex-bonding	Value determined under Sec 14 of the Customs Act, 1962 **at the time of filing of the INTO-BOND Bill of Entry**
Value of imported goods for levying IGST in case of supply of warehoused goods is	(a) Transaction Value (Sale value) **OR** (b) Value determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess **WHICHEVER IS HIGHER**

Import of Goods

If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.

If only a part of the goods are sold, the two values that are to be compared are

(i) Transaction value of the goods sold and

(ii) Proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic Customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

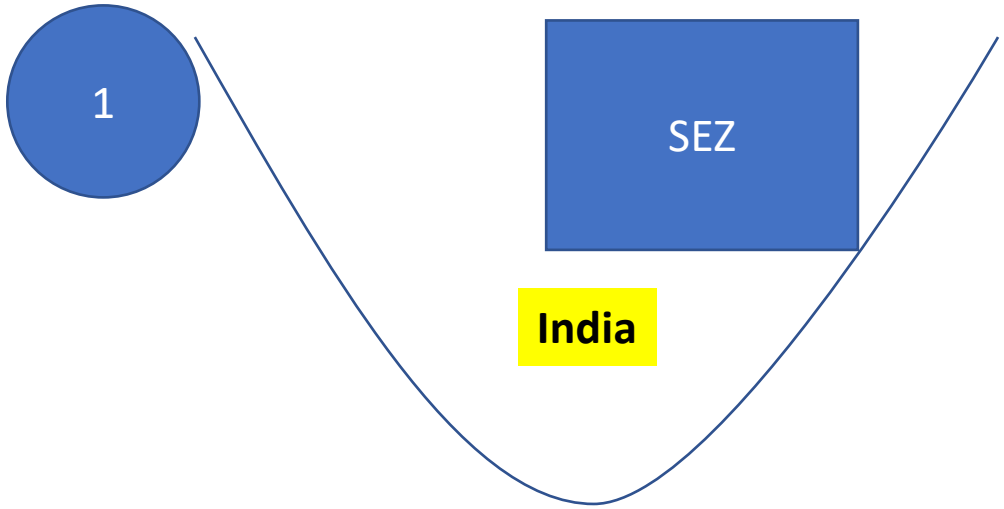
5. **Taxability of High Sea Sale** – High Sea Sales is neither a supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

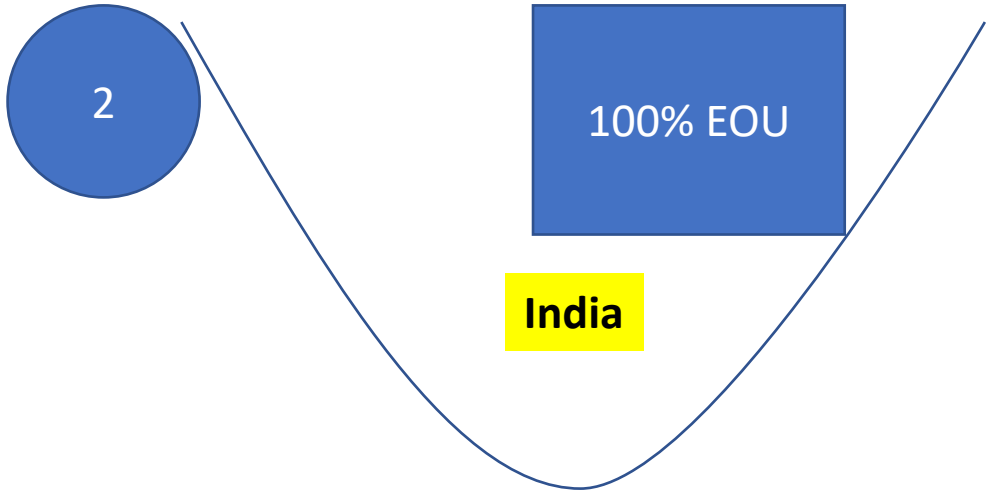
As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore,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

Circular No. 33/2017 Cus dt 1-8-2017 has clarified that the importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high seas sales contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

Import of Goods

6. **Third Country shipment/Out an Out Sales –** Is neither a supply of goods nor supply of services in terms of paragraph 7 of Schedule III to the CGST Act.
7. **Taxability of goods imported by SEZ** – Goods imported by SEZ for authorized operation are exempted from whole of IGST.
8. **Taxability of goods imported by EOU** – Goods imported by EOU attract liability to custom duty. However, Import of goods by 100% EOU are allowed duty free import of goods (exempt from Custom duties, IGST and GST Compensation Cess) only till **31-3-2022**.
9. **Import as baggage** – Passenger baggage is exempted from IGST as well as GST compensation cess. The basic customs duty at the rate of 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.





Import of Services

Points to note for Import of Services –

1. Taxability of import of Service (Section 7 of the CGST Act read with para 4 of Schedule I to the CGST Act)

	Consideration	Business Test	Supply
Import of Services	Yes	Yes	Sec 7(1)(b) of CGST Act, 2017
Import of Services	Yes	No	Sec 7(1)(b) of CGST Act, 2017 Eg – Downloading a song for consideration for personal use.
Import of Services	No	Yes	If from a related person or from his establishment outside India, The supply under Schedule I para 4 of CGST Act, 2017
Import of Service	No	No	No, eg Facebook and Google

2. Person liable to pay tax on import of service

S. No.	Particulars	Person Liable
a)	In case importation of services, the recipient of imported services who is located in India (other than non-taxable online recipient of OIDAR services)	Recipient of Services
b)	In case of importation of OIDAR services by a non-taxable online recipient	OIDAR
c)	In case of services supplied by a person located outside India (eg. A foreign shipping line) by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India	Importer of goods
d)	In case of importation of notified services through ECO	ECO

Import of Services

3. Exemptions related to import of service **(Chapter on Exemptions)**
4. Importation of OIDAR Services **(Sec 14 of IGST Act, 2017)**
5. Services provided through ECO located outside India **(Sec 5(5) of IGST Act, 2017)**
6. **Registration for importer of goods and services**
   - **A) Registration for importer of goods** – Importers are not required to take compulsory registration u/s 24. As per Sec 24(i), persons making any inter-State taxable supply is required to take compulsory registration; importer of goods is not making outward supply of taxable goods;
     - Neither are they required to charge tax on RCM.
     - However, they have to quote their GSTIN in the bill of entry for claiming ITC on such IGST.
   - **B) Registration of importer of exempted goods** – **Sec 23** states that a person engaged exclusively in the supply of goods that is not liable to tax or is wholly exempt are not required to obtain registration. Thus an importer of exempted goods are not required to obtain registration. In such cases, PAN of the importer and exporter will suffice **(Instruction No. 10/2017 Cus dated 06-07-2017)**
   - **C) Registration for importer of services** – **Sec 24(iii)** of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax on RCM. Accordingly, importer of services who are required to pay IGST under RCM have to obtain compulsory registration under GST.

7. **ITC in case on import of goods and services**. – ITC available subject to conditions listed under Section 16 and 17 of the CGST Act, 2017.

Zero Rated Supplies (Sec 16 of IGST Act, 2017)

Sec 16(1) "**ZERO RATED SUPPLY**" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Sec 16(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

Sec 16(3) 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 LUT, 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.

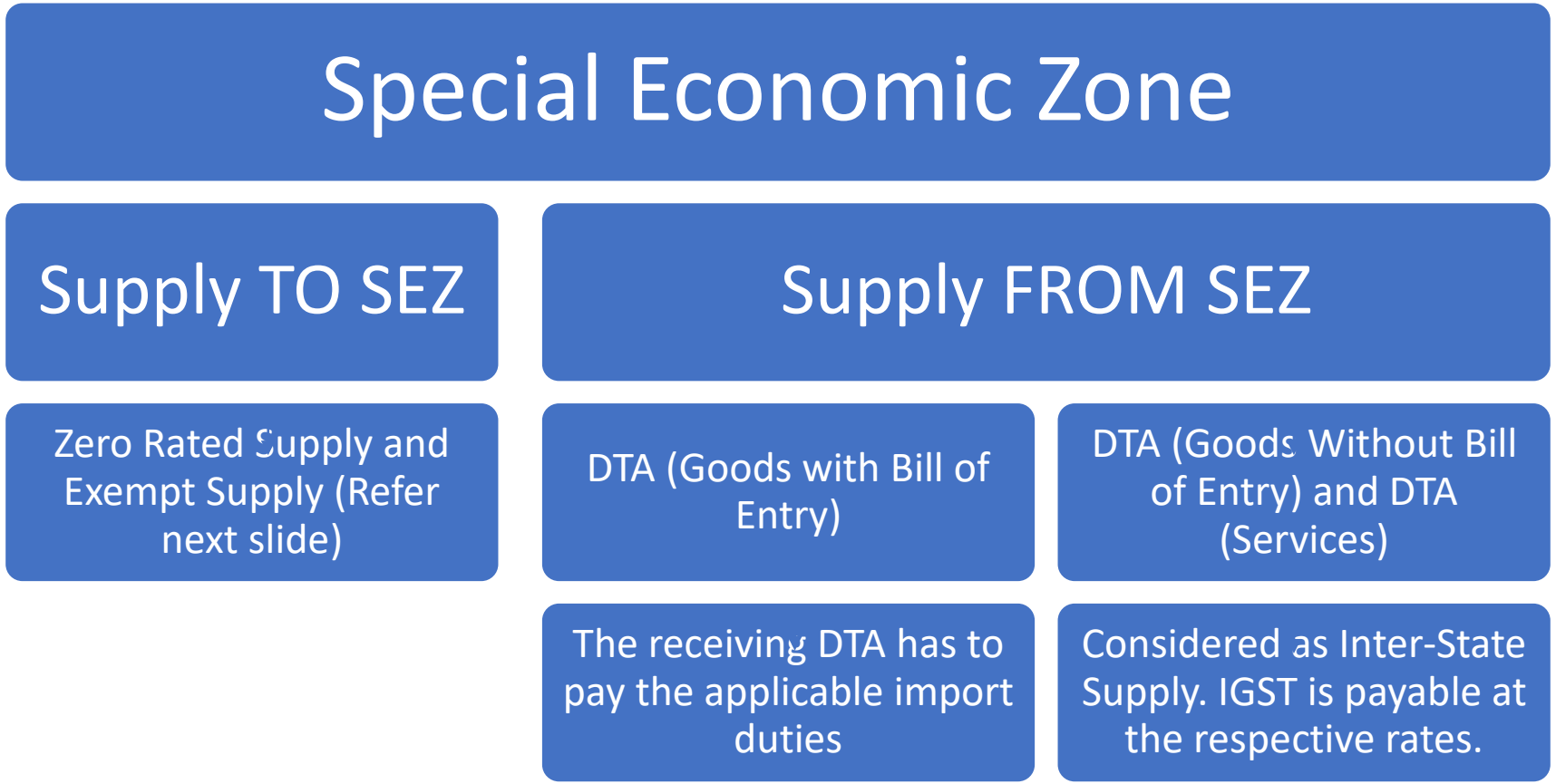
Difference between Zero Rated and Exempted Supplies

Exempted Supplies	Zero Rated Supplies
Exempt supply means supply of any goods or services or both which attract 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 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
Credit of input tax needs to be reversed, if taken (Rule 42 of CGST Rules, 2017). No ITC on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration	A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or 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

SEZ

Special Economic Zone (SEZ)

These Zones are **foreign Land in India** and are used for importing goods/services or procuring goods/services domestically primarily for export purposes. Supply to and supply from SEZ unit to domestic tariff area is considered as Inter-State Supply of Goods and services.



SEZ

Supplies to SEZ unit or SEZ Developer

- **Supply to a SEZ unit/developer is zero-rate but all the supplies are not zero-rated - Circular No. 48/22/2018 GST dt 14-6-2018** has clarified that the supplies to a SEZ unit/developer shall be zero rated and the supplier shall be eligible for refund of unutilised ITC or tax paid as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorised operation. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

- **Services of short term accommodation, conferencing, banqueting etc, provided to a SEZ unit/developer shall be treated as an inter-state supply. - Circular No. 48/22/2018 GST dt 14-6-2018** has clarified the following issue also -
- As per **section 7(5)(b) of IGST Act, 2017**, the supply of goods and/or services to a SEZ unit/developer shall be treated to be 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/UT, it would be treated as an intra-State Supply.
- It is 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 relation 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.**

SEZ

Import by SEZ

1. Imports of goods by SEZ is exempt from IGST [NN 64/2017-Customs, dt 5-7-2017]

   All goods imported -

   - by a unit or a developer in the Special Economic Zone
   - for authorized operations
   - Are exempt from whole of IGST leviable u/s 3(7) of Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017.

2. Imports of services by SEZ is exempt from IGST [NN 18/2017-IT(R), dt 5-7-2017]

   All services imported -

   - by a unit or a developer in the Special Economic Zone
   - for authorized operations
   - Are exempt from whole of IGST leviable u/s 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017

Exports of Goods and Export of Services

Sec 2(5) of IGST Act, 2017 "**EXPORT OF GOODS**" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Sec 2(6) of IGST Act, 2017 "**EXPORT OF SERVICES**" means the supply of any service when,—

(i) the supplier of service is located in India;
(ii) the recipient of service is located outside India;
(iii) the place of supply of service is outside India;
(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Note –

1. Transaction is between separate entities, i.e. not merely between two establishments of an entity (Branch and Head Office) of one taxable person are not treated as two separate entities for this purpose. In other words, provision of outbound services inter se Branch and Head Office is not construed as export of services. **However, Notification No. 9/2017 IT(R) dated 28-6-2017 exempts the services provided by an Indian establishment to its foreign establishment from IGST if the place of supply is outside India.**

2. Payment in Special INR Vostro Account - To qualify as export of services, one of the essential conditions is that currency should be received in foreign exchange or in INR whenever permitted by the RBI. The CBIC has issued a circular no. 202/14/2023-GST dated 27-10-2023 to clarify that export remittances received in Special INR Vostro account, as permitted by RBI, will qualify as consideration of export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

Deemed Exports

Sec 2(39) of CGST Act, 2017 "**DEEMED EXPORTS**" means such supplies of goods as may be notified under section 147;

Sec 147 of CGST Act, 2017 - The Government may, on the recommendations of the Council, notify certain supplies of **goods** as deemed exports, **where goods supplied do not leave India**, and **payment for such supplies is received either in Indian rupees or in convertible foreign exchange**, if such **goods are manufactured in India.**

Note –

1. Deemed exports are not zero rated supplies by default, unlike the regular exports.
2. **Hence, all supplies notified as supply for deemed exports are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT.**
3. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

Deemed Exports

Notification No. 48/2017-Central Tax dated 18-10-2017 (Amended vide NN 1/2019-CT dt 15-1-19)

S.No.	Description of supply notified as deemed export
1.	Supply of goods by a registered person against Advance Authorisation **[Provided** that **goods so supplied**, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, **shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods)** and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,; **Provided** further that **no such certificate** shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.] **[Inserted vide NN 1-2019-CT dt 15-1-2019]**
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
3.	Supply of goods by a registered person to Export Oriented Unit.
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

1. "**Advance Authorisation**" means an authorisation issued by the DGFT under Chapter 4 of the FTP 2015-20 for import or domestic procurement of inputs on ~~pre-import basis~~ **[Omited vide NN 1-2019-CT dt 15-1-2019]** for physical exports.
2. "**Export Promotion Capital Goods Authorisation"** means an authorisation issued by the DGFT under Chapter 5 of the FTP 2015-20 for import of capital goods for physical exports.
3. "**Export Oriented Unit**" means an EOU or Electronic Hardware Technology Park Unit (EHTP) or Software Technology Park (STP) Unit or Bio-Technology Park (BTP) Unit approved in accordance with the provisions of Chapter 6 of the FTP 2015-20.

Deemed Exports

Note –

1. Advance authorization is an order issued by DGFT.
2. It enables
   - Import of inputs without paying IGST (There is an exemption given vide NN 79/2017-Cus dt 13-10-2017 to holder of AA for duty free import of goods) or
   - Refund of IGST or CGST+SGST on purchase of inputs from domestic market.
3. These inputs are to be physically integrated into export goods.
4. When the exemption of duty free import of goods by holder of AA was granted by the government, they had put a pre-import condition. Pre-import condition meant that the exporter had to first import inputs from outside India and then use it in manufacture of goods for export purposes and after that only he will be entitled to exemption on import of goods.
5. In case of the exporters qua AA holders having continuous export business, there is practice prevailing to export the goods well before the first import made against the advance authorization. Such export products are actually manufactured using the existing stock. The cycle of import and export goes on. Manufacturers (of export product) would not be maintaining the one to one correlation of the imports vis-à-vis corresponding export orders. In fact, the advance authorization scheme itself provides for the export in anticipation of benefits under this scheme.
6. So, w.e.f. 15-1-2019, the pre-import condition has been done away with.

Merchant Exports

The merchant exporter can avail the benefit of low rate of GST (0.1%=.05%+.05%) prescribed under **Notification No. 41/2017-ITR and 40/2017-CTR** both dated 23-10-2017 if the following conditions are fulfilled –

i. the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;
ii. the registered recipient shall export the said goods within a period of **90 days** from the date of issue of a tax invoice by the registered supplier;
iii. the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
iv. the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;
v. the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

Merchant Exports

vi. the registered recipient shall move the said goods from place of registered supplier –
   (a) directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or
   (b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;
   Registered principal place of business of the registered recipient or registered additional place of business of the registered recipient are deemed to be a registered warehouse.**(Circular No. 42/2017 Cus dated 7-11-2017)**

vii. if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

viii. in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

ix. when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

2. The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

Merchant Exports

Circular No. 37/11/2018 GST dated 15-3-2018 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. **The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of IGST.**

Circular No. 8/8/2017 GST dated 4-10-2017 has clarified that there is **no provision** for issuance of CT-1 Form – **which enables merchant exporters to purchase goods from a manufacturer without payment of tax** – under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods **(As defined under Foreign Trade Policy 2015-20)**

Exports of Service – Circular No. 78/52/2018-GST dated 31-12-2018

Issue - In case an exporter of **services** outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

Clarification –

1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:-
   (i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value;
   (ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act read with section 13(2) of the IGST Act are satisfied.

2. It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid.
3. Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of

Exports of Service – Circular No. 78/52/2018-GST dated 31-12-2018

services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

(i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India; and

(ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Illustration: ABC Ltd. India has received an order for supply of services amounting to $ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

Transaction with EOUs

Transaction with EOUs

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter. **(Circular No. 8/8/2017 GST dt 4-10-2017 as amended)**

However, supplies to EOUs are treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.

Export of goods or services under bond or LUT (Rule 96A of the CGST Rules, 2017)

(1) Any registered person availing the option to supply **goods** or **services** for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest (@18% p.a.*) specified under **sub-section (1) of section 50** within a period of -

(a) 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; or

(b) 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India (**RBI**). [as amended by NN 03/2019-CT, dt 1.2.2019]

* (as notified by Notification No. 13/2017-CT dt 28-6-2017)

(2) The details of the export invoices contained in **FORM GSTR-1** furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Provided that where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under **section 37** of the Act, the supplier shall furnish the information relating to exports as specified in **Table 6A** of **FORM GSTR-1** after the return in **FORM GSTR-3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in **Table 6A** furnished under the first proviso shall be auto-drafted in **FORM GSTR-1** for the said tax period.

Export of goods or services under bond or LUT (Rule 96A of the CGST Rules, 2017)

(3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of **section 79**.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

Note - Board has notified that all registered persons are eligible to furnish a LUT in place of a bond except those who have been prosecuted for cases involving an amount exceeding ₹ 250 lakhs **(Notification No. 37/2017 CT dated 4-10-2017**

(6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

Clarification on Furnishing bond/LUT

Circular No. 8/8/2017 GST dated 4-10-2017 as amended by Circular No. 40/14/2018 GST dt 6-4-2018 & Circular No. 88/2019 GST dt 1-2-2019

a) **Eligibility to export under LUT**: The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds ₹ 250 lakh.

b) **Validity of LUT**: The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A 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. 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 integrated tax or under bond with bank guarantee.

c) **Form for bond/LUT:** The registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

d) **Documents for LUT:** No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

e) **Acceptance of LUT/bond**: An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio.

Clarification on Furnishing bond/LUT

f) **Bank guarantee:** Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹250 lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

g) **Clarification regarding running bond:** The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

h) **Sealing by officers:** Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

i) **Purchases from manufacturer and Form CT-1**: It is clarified that there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

j) **Transactions with EOUs:** Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

Clarification on Furnishing bond/LUT

k) **Realization of export proceeds in Indian Rupee:** Attention is invited to para A (v) Part- I of RBI Master Circular No. 14/2015-16 dated 01stJuly, 2015 (updated as on 05th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

l) **Jurisdictional officer:** In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Export to Nepal and Bhutan

Export of Goods	Export of Services
Export of Goods to Nepal or Bhutan falls within the definition of 'export of goods' under the IGST Act as goods are taken from India to a place outside India. The RBI regulations allow payment in Indian Rupees in case of exports to Nepal and Bhutan. In case of export of goods under GST law, receipt of export proceeds in convertible foreign exchange is not a pre-requisite. Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.	Earlier, one of the conditions for a service to qualify as "export of services" was that the payment for such service must be received by the supplier in convertible foreign exchange. (Sec 2(6)). Since in the case of exports to Nepal and Bhutan the payment is received in Indian rupees as per RBI regulations, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees was exempted from payment of tax vide Notification No. 9/2017 IT(R) dated 28-6-2017. Further, such services, though exempted, were also not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 & 43 of CGST Rules. Therefore, ITC attributable to such exempt supply of services was not required to be reversed. However, with effect from 1-2-2019, section 2(6) has been amended to provide that in case of export of services, wherever permitted by the RBI, receipt of payment in Indian rupees will be allowed. As stated earlier, the RBI regulations allow payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees can now be considered as export of services subject to fulfillment of other conditions. Thus, exemption available to such services vide the said notification has been withdrawn and clause (a) of explanation to rules 42 and 43 has also been omitted as the exclusion of such services from value of exempt supplies is no more required.
Under the amended position, exports of both goods and services to Nepal and Bhutan are treated as 'Normal Exports', i.e. goods and services can now be exported to Nepal and Bhutan under LUT.	

Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized (w.e.f. 23-3-2020) (Rule 96B)

Realisation and Repatriation of proceeds of export of goods / software / services (Master Circular No.14/2014-15 dt 1-7-2014)

It is obligatory on the part of the exporter to realise and repatriate the full value of goods / software / services to India within a stipulated period from the date of export, as under:

(i) It has been decided in consultation with the Government of India that the period of realization and repatriation of export proceeds shall be **9 months from the date of export for all exporters** including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice.

(ii) **Goods exported to a warehouse established outside India**: As soon as it is realised and in any case within **15 months from the date of shipment of goods**.

Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized (Inserted vide NN 16/2020-CT w.e.f. 23-3-2020) (Rule 96B)

Rule 96B(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within **30 days of the expiry of the said period** or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of **section 73 or 74** of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under **section 50**:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999, but the **RBI writes off the requirement of realisation of sale proceeds** on merits, the **refund paid to the applicant shall not be recovered**.

Rule 96B(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of **3 months from the date of realisation of sale proceeds**, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India

Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized (Inserted vide NN 35/2021-CT, dt 24-9-2021 w.e.f. Date to be Notified) (Rule 96C)

Rule 96C - Bank Account for credit of refund

[For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, "bank account" shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.] **[Inserted vide NN 35/2021-CT, dt 24-9-2021 w.e.f. Date to be Notified]**

Duty Drawback under GST (Sec 2(42) of CGST Act, 2017)

Sec 2(42) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;

Under Customs, full drawback (BCD, GST etc.) is allowed in case of re-export of imported goods.

However, in case of manufacture of goods using duty/tax paid inputs, drawback is allowed only of custom duties and not of IGST or GST Cess paid on import.