



AMERICAN CHAMBER OF COMMERCE IN INDIA

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Mr. Upender Gupta
Commissioner - GST Policy Wing
Central Board of Excise & Customs
Ministry of Finance
Government of India
New Delhi -110001

Dear Mr. Gupta,

AMCHAM India: Inputs on GST provisions

Congratulations on the successful implementation of GST, the game changer in India's tax policy. AMCHAM India, the apex chamber of the U.S. companies in India, has collated certain challenges being faced by industry and would like to submit them for your consideration. Following inputs are placed before you for your perusal towards suitably modifying and amending the provisions of the Act for its further effective implementation.

1. Refund under GST: As per the current procedure prescribed under Circular No. 17/17/2017 – GST dated 15.11.2017 issued by CBIC, the jurisdictional authority shall sanction the refund claim only for respective GST. Non jurisdictional refunds are being forwarded to nodal authorities and result in avoidable delays as well as duplicacy of documentation. It is recommended that as basic condition for refund / document verification remains the same irrespective of nature of GST taxes involved, the delays can be done away with by authorizing the Jurisdictional officer to sanction and disburse the entire refund claim post verification. A similar issue is faced connected with provisions under Section 77 of the CGST Act, wherein taxes inadvertently deposited under incorrect head, per interpretation of place of supply, are claimed through the refund route, adversely effecting working capital. We recommend that such deposits to incorrect heads, may be allowed to be adjusted on GSTN portal as set off in GST returns. This will ease the stress on blockage of working capital.

As per Rule 96(10) of the CGST Rules, provides that registered persons including importers shall not be eligible for refund of IGST paid on export of goods or services, if the benefit of reduced tax incidence or no tax incidence under certain specified notifications has been availed. It is recommended that this restriction be removed since neither does Section 16(3) of the IGST Act read with Section 54 of the CGST Act nor does the overall Scheme of Foreign Trade Policy and/or concept of 'Make in India' by the Government provide for such restriction. It is noteworthy that there is no revenue loss to the Government even if the aforesaid restriction is removed.

A large point in contention within industry has been non qualification of transactions between an Indian branch office and Head Office outside India as 'export of services' under clause (v) of Section 2(6) of the IGST Act, given that establishment of a person in India to any establishment of that person outside India are treated as distinct persons. Since in a

number of businesses, Indian branch offices procure various services and recover the same from Head office located outside India in foreign currency, any GST paid on procurements becomes cost for the businesses by virtue of the above notification, as output services/chargeback to Head Office is exempted under these provisions. This merits due consideration and we recommend that GST paid on eligible procurements should be granted to branch offices in India by way of refund.

2. **GST Compliance:** Per the existing guidelines, the burden of compliance rests with the principal manufacturer even if the manufacturing is done by a job worker and dispatches are directly made from job workers premises. This is also so even if the job worker already stands registered under GST. We recommend that an option be provided to job worker to undertake compliances on behalf of the principal manufacturer and ease the superfluous requirement of principal manufacturer having to register the job worker's premises as well. This would be a further step in ease of doing business.

Time limit to receive back capital goods from job worker presently stands at a maximum of 3 years. In consideration of the fact that certain manufacturing processes require a larger time than as has been envisaged, and also since the Commissioner has been empowered to sanction an additional two years for the purpose, we request that the original time of three years be reviewed and considered as five years for capital goods.

Rule 89 of CGST Rules permits refund of GST paid on zero-rated supply or refund of unutilized Input Tax Credit in case of such supply of services/goods to a SEZ unit or developer. An ambiguity exists in the process for this, where suppliers are required to get their invoices endorsed from the specified officer in SEZ to substantiate that the supplies made by them to SEZ unit/ developer are used for authorized operations. In this context, the absence of definition of the term 'authorized operations' carried out by SEZ as well as the prescribed procedure to obtain endorsement on invoices raised to SEZ unit, require clarity. It is recommended that either no endorsement from specified officer should be mandated for refund purposes, or if at all the provision is to continue, a common procedure may be prescribed for obtaining one-time endorsement may be considered.

While Section 34(1)/(3) only provides for 3 specified reasons for issuance of credit/debit notes, the GST return format for tax adjustments against credit/debit notes for other reasons such as correction in invoices, change in POS etc. is also catered for. It is suggested that ambit of Section 34(1)/(3) may be expanded to include all possible reasons including bad debts for tax adjustments purposes. In addition to suggesting that reference to a financial year may be done away with.

3. **Input Tax Credit:** Rule 39(1) (a) of CGST Rules, 2017 requires that ITC availed in a particular month should be distributed by ISD in the same month and the details of the same shall be furnished in GSTR-6 return. It is recommended that this provision be modified to provide for distributed any time before filing of Annual Return for the relevant financial year to which such ITC pertains.

Suitable amendment as deemed appropriate is recommended to Section 16(4) and proviso to Section 39(9) regarding the time limit to avail ITC on invoices relating to a particular financial year. This is recommended since ITC reconciliation is being undertaken for the first time and there are numerous reasons for mismatches which will require vendors to make correction in their outward return. The objective of this recommendation is avoidance of non-reconciliation of credit with incorrect reporting by suppliers that can potentially lead to ITC denial for recipient.

With a view to mitigate instances of denial of carry forward of transitional credit of service tax with reference to Section 140(1) of CGST Act as amended by CGST Amendment Act, 2018 dated 29.08.2018, recommendations have been made to replace the words "eligible duties" with "eligible duties and taxes as defined under Explanation 2 to section 140' to bring Rule 117 of CGST Rules at par with Section 140 of CGST Act. In addition, it is recommended that suitable notification may be considered to be issued by the Government providing mechanism to claim refund of closing balance of such eligible CENVAT credit cesses i.e. KKC, EC & SHEC and avoid disputes related thereto.

We recommend that as per section 16(2) of CGST Act, the condition of availing ITC by recipient stating that the Supplier should have remitted the taxes charged from the recipient to the Government be reviewed. Since in certain cases, sales invoices are uploaded by suppliers in a delayed manner, this results in denial of benefit ITC to the recipient. This mechanism calls for a review in the interest of the recipient.

There also exists a case for calling to widen the ambit for Input Tax Credit. Credit against services of the nature as covered in Section 17(5) (c)/ (d)/ (h) in the course or furtherance of business should be allowed and reference to the same should be deleted from Section 17(5), since these are genuine business expenditure incurred in normal course of running the business. Credit restriction imposed on such services has resulted in increasing cost of procurements for the businesses.


4. GST Exemption: As against terms of GST provisions, services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by such persons are treated as GST exempt, the same not being available to other persons involved in entire supply chain factually becomes cost in the supply chain resulting into cascading of taxes. It is recommended that the GST exemption benefit provided to such training services should be extended across the supply chain.

5. Recommendations have also been made with regard to review of interest period connected with Second proviso to Section 16(2) of CGST Act, regarding liability to pay interest from the date of credit availment for non-payment of invoice value including taxes to vendors, with respect to Notification No. 10/2017-Integrated Tax (Rate) dt.28-6-2017 exemption of ocean freight from levy of IGST as a supply of service when the same is in relation to transportation of imported goods, and with regard to Section 12 and 13 of CGST Act to enhance the time limit (time of supply) prescribed in case of supply of goods and services under reverse charge mechanism 90 - 120 days from 30 / 60 days, as was prescribed in the erstwhile service tax law.

The inputs are based on direct industry feedback.

We would appreciate your indicating a suitable time for us to meet with you for further deliberations.

With best regards,



Ranjana Khanna
Director General CEO

American Chamber of Commerce in India