

The Institute of Chartered Accountants of India (Set up by an Act of Parliament)



**E-NEWSLETTER
SEPTEMBER - 2017**



Gandhidham Branch of WIRC of ICAI

2017

सभी कमजोरी,
सभी बंधन मात्र कल्पना हैं ..
कमजोर न पड़ें ! ..
मजबूती के साथ खड़े हो जाओ !
शक्तिशाली बनो !
मैं जानता हूँ कि सभी धर्म यही हैं.

कभी कमजोर नहीं पड़ें.
आप अपने आपको
शक्तिशाली बनाओ.
आप के भीतर अनंत शक्ति है.

-स्वामी विवेकानंद



CHAIRMAN'S MESSAGE



“Education is the manifestation of the perfection already in man”

– Swami Vivekananda

My Dear Professional Colleagues,

125 years ago on September 11, 1983 Swami Vivekananda delivered a popular speech at the 'Parliament of the World's Religions' at Chicago, USA. His historic speech in Chicago on September 1893 delivered with crisp logic and scientific insight attracted major attention. The speech earned him a two-minute standing ovation from the present dignitaries and the title of 'the cyclonic monk of India'. Though the speech was delivered 125 years ago some of the lessons from his speech are more important in today's time and inspire generations like Being Patriotic, Love for all religions, Goal of Science and so on.

As the gears now shifted from legal interpretation of GST Acts and rules to GST Implementation and return filing part, a full day seminar was organized on 12th August, 2017 on procedural part under GST and Income Tax Audit and Assessment proceedings. The program received overwhelming response in terms of participation and healthy discussion.

We at the Branch, celebrated the Independence Day by organizing the traditional flag hoisting ceremony and salute the tricolor with pride and patriotism. We celebrated with great zeal and enthusiasm by paying tribute to the freedom fighter.

The Audit season is in full swing and new reporting requirements needs to be attended properly like reporting of Specified Banking Notes, ICDS etc.

The notification of extension of due date of filing of Income Tax Audit and Income Tax Return to 31st October, 2017 is issued well in advance, so let us plan our work to enjoy the festive season in September as well as October.

I wish you all Happy Navratri and Happy Dussehra to celebrate the triumph of Good over Evil.

We would urge you to stay connected and continue to provide your unstinting support to all the endeavor of the Branch.

I would like to share with few lines of hindi poet Shri Rajendra Tripathi which is best suitable amid all the chaos of GST, GSTN, Income Tax and many more compliances :

हर यात्रा भटकन के नाम हो गयी
घर दफ्तर दुनिया में इस तरह बंटे
सूख कब निकला कब शाम हो गयी
जान नहीं पाए दिन किस तरह कटे ।
बेमतलब चिंताये
बोझ रही यार
रास्ते में होगी ही धुप कहीं छाँव ।

With warm regards

CA Kartik Varaiya

Chairman,

Gandhidham Branch of WIRC of ICAI

MANAGING COMMITTEE

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Legal Update

1] Best Judgment assessment should be rational and reasonable.

Prasad Construction and Co. v/s. CIT and others (2017) 388 ITR 579 (Patna)

Issue :

What is the requisite of best judgment assessment ?

Held :

Although there had been a concurrent finding by the authorities, the finding was not based upon any evidence and was without taking into account relevant materials. It was not necessary for the Assessing Officer to produce materials to show the basis on which he had estimated, but he must be rational and reasonable while assessing the assessee to the best of his judgment and there was an element of guess-work in a best judgment assessment. Making a best judgment assessment could not be a ground for fixing any unjustifiable sum of income or profit without reference to it in the preceding assessment years.

2] Recovery and Attachment : Procedure

Coromandel Oils (P) Ltd. v/s. Tax Recovery Officer & Ors. (2017) 291 CTR 600 (Mad)

Issue :

What procedure is required to be followed in the matter of recovery and attachment of property?

Held :

Appeal filed by the assessee has been allowed in full by Tribunal and demand of tax, in respect of the assessment year 2009-10 was nil, and with regard to two other assessment years, it has resulted in refund. Thus, to say that the order of attachment should still continue till the matter reaches the Supreme Court would be an interpretation, which would be inconsistent with the provisions of the Act, more particularly by reading together ss. 222 and 225. Assuming further that the Revenue succeeds in the tax case appeal, automatically the assessee will not be treated as defaulter, since the consequential orders have to be passed, notice of demand have to be issued, time has to be granted, thereafter, proceeding has to be initiated and certificate has to be issued by the TRO, declaring the assessee as defaulter, and only then, the order of attachment of immovable property of the assessee could be effected. TRO was directed to pass appropriate orders for lifting the order of attachment of the immovable property.

3] Tribunal has no power of enhancement of income.

Fidelity Shares and Securities Ltd. v/s. Deputy CIT (2017) 390 ITR 267 (Guj)

Issue :

Whether Tribunal has power of enhancement of income in appeal before it?

Held :

Hon. High Court while accepting the decision in the case viz. MCORP GLOBAL P. Ltd. v/s. CIT (2009) 309 ITR 434 (SC) has held that Tribunal has no power under the Income Tax Act to enhance the assessment in appeal in view of the statutory provisions.

4] Notice u/s 143(2) is mandatory even in u/s 147 proceedings: Sec. 292 BB does not help

Travancore Diagnostics P. Ltd. v/s. Asstt. CIT (2017) 390 ITR 167 (Ker)

Issue :

Whether notice u/s 143(2) is mandatory even in u/ s 147 proceedings? Whether Sec. 292BB can cure the defect even though assessee has attended in the proceedings?

Held :

Before making an assessment under section 147 read with section 143(3), notice under section 143(2) is mandatory. In the absence of a notice under section 143(2), it is obvious that no further proceedings can be continued for assessment under section 143 and without such a notice the Assessing Officer cannot assume jurisdiction and this defect cannot be cured subsequently since it is not a procedural defect, but a defect that goes to the root of the jurisdiction. Section 292BB creates an estoppel against the assessee in claiming that no notice has been served on him, if he has participated in the proceedings. However, the said section does not in any manner grant any privilege to the Assessing Officer in dispensing with the issuance of a notice under section 143(2) of the Act. Since the jurisdiction under section 143 is founded on the issuance of a notice under section 143(2), the Assessing Officer could have assumed jurisdiction only after issuing a notice under section 143(2). Even the participation of the assessee would not provide the benefit under section 292BB to the Revenue. The requirement that a notice be issued is mandatory and the Assessing Officer has no other option but to issue the notice before commencing the jurisdiction.

5] Capital expenditure for expansion of existing business is revenue expense.

CIT v/s. Kayal Syntex Ltd. (2016) 389 ITR 84 (Guj)

Issue:

When capital expenditure is incurred for expansion of existing business whether such expense is allowable as revenue expense?

Held:

In a case of a new unit being merely an expansion of the existing business of the assessee and not setting up of a new business the expense incurred in that regard would be allowable as revenue expenses under section 36(1)(iii) or section 37 of the Income Tax Act, 1961. The mere fact that the expenses have been capitalized in the books of account is not conclusive. Hon Court has followed its own decision in the case viz. CIT v/s. Ghaneshyam Steel Works Ltd. (2010) 195 Taxman 180 (Guj).

6] Capital Gain on sale of residential property and relief u/s 54

CIT v/s. Mrs. Shakuntala Devi (2016) 389 ITR 366 (Karn) @ P. 371-372

Issue:

When and how the relief in capital gain on sale of residential property is allowable?

Held:

The main purpose of section 54 of the Act is to give relief in respect of profits on the sale of a residential house. Necessary conditions to be fulfilled for the applicability of section 54 are: (i) Assessee should be an individual or a Hindu undivided family; (ii) Capital Gain should result from the transfer of a long term capital asset; (iii) Capital Gain must arise from transfer of building which is chargeable as "income from house property". (iv) Property should be a residential house; (v) Assessee must have within a period of two years after that date purchased another property; (vi) Property purchased must be residential; (vii) Exemption would be available only to the extent the sale proceeds are utilized; (viii) Where reinvestment in a residential property is not made before due date for filing return amount not so utilized till such date is required to be deposited in Capital Gain Account Scheme. Thus, if the above conditions are satisfied, the assessee is entitled to claim benefit of the provision of section 54.

SAMPLE DISCLOSURE FOR ICDS IN 3CD REPORT – APPLICABLE FOR F.Y.2016-17

Sample Disclosure as per Income Computation and Disclosure Standards (ICDS) for Tax Audit report

ICDS I – ACCOUNTING POLICIES

		Check Points	Points to be fed in 13(f)
1.	All significant accounting policies adopted by a person.	Financial Statements	Mercantile method of accounting employed. Expenses and Income are accounted for on accrual basis as per generally accepted accounting principles in India.
2.	Any change in an accounting policy which has a material effect shall be disclosed. The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable. Where such amount is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and also in the previous year in which such change has material effect for the first time.	3CD – Clause 13 (b), (c)	Applicable only if some

ICDS II – VALUATION OF INVENTORIES

1.	The accounting policies adopted in measuring inventories including the cost formulae used. Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost.	3CD – Clause 14 (a)	As per Cost or NRV whichever is lower on Specific Identification method/Weighted Average/ First In First Out valued as per Standard Cost/Retail Method Inventory has been valued as per exclusive method however
2.	The total carrying amount of inventories and its classification appropriate to a person.	3CD – Clause 35	Total amount of inventory with bifurcation · Raw Material · WIP · Finished Goods · Spares (Clause of financial statement may also be referred)

ICDS III – CONSTRUCTION CONTRACTS

1.	<ul style="list-style-type: none"> The amount of contract revenue recognised as revenue in the period; and the methods used to determine the stage of completion of contracts in progress. 	Management certificate	<ul style="list-style-type: none"> Total Amount recognized as contract revenue in the current financial year is Rs XX,xxx Proportion of contract cost with respect to estimated contract cost method/surveys of work performed method/physical proportion method has been used for calculation of percentage of completion
2.	<p>A person shall disclose the following for contracts in progress at the reporting date, namely:—</p> <ul style="list-style-type: none"> amount of costs incurred and recognized profits less recognized losses up to the reporting date; the amount of advances received; and the amount of retentions. 	Each contract needs to be looked upon. Advance as on BS to be reported	Amount to be shown

ICDS IV – REVENUE RECOGNITION

1.	In a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonable certainty of its ultimate collection along with nature of uncertainty.	Scrutiny	Not Applicable/The Rs XX,xx amount was not recognized due to lack of reasonable certainty
2.	The amount of revenue from service transactions recognised as revenue during the previous year.	Scrutiny	Amount to be shown
3.	The method used to determine the stage of completion of service transactions in progress.	Each contract needs to be looked upon. Advance as on BS to be reported	Proportion of contract cost with respect to estimated contract cost method/surveys of work performed method/physical proportion method has been used for calculation of percentage of completion
4.	<p>For service transactions in progress at the end of previous year</p> <ul style="list-style-type: none"> amount of costs incurred and recognised profits less recognised losses upto end of previous year; the amount of advances received; and the amount of retentions. 		

ICDS V – TANGIBLE FIXED ASSETS

1.	Description of asset or block of assets	3CD – Clause 18	As per clause 18 of Tax audit report
2.	Rate of depreciation		
3.	Actual cost or written down value, as the case may be		
4.	Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of— <ul style="list-style-type: none"> · Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004; · change in rate of exchange of currency; · subsidy or grant or reimbursement, by whatever name called 		
5.	Depreciation allowable		
6.	Written down value at the end of year		

ICDS VII – GOVERNMENT GRANTS

		Scrutiny	Particulars	Amount
1.	Nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year.		Total amount of Grants	
2.	Nature and extent of Government grants recognised during the previous year as income.	As per Profit & Loss Account	For FA – recognized as deduction from FA	
3.	Nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof.	MRL, Fixed asset register/schedule and grants received	For FA – not recognised as deduction from FA	
4.	Nature and extent of Government grants not recognised during the previous year as income and reasons thereof.	MRL & check grants received from financial	Other than FA – recognised as income Other than FA – not recognised as income	

ICDS IX – BORROWING COSTS

1.	The accounting policy adopted for borrowing costs.	Scrutiny	<ul style="list-style-type: none"> In case of specific borrowing, actual borrowing cost has been capitalized on that asset In case of general borrowing, borrowing cost is being capitalized as per Para 6 of ICDS IX.
2.	The amount of borrowing costs capitalised during the previous year.	Financials	Amount needs to be disclosed

ICDS X – PROVISIONS, CONTINGENT ASSETS AND CONTINGENT LIABILITIES

1.	<p>A brief description of the nature of the obligation.</p> <p>The carrying amount at the beginning and end of the previous year.</p> <p><u>Additional provisions made during the previous year, including increases to existing provisions. Amounts used, that is incurred and charged against the provision, during the previous year.</u></p> <p><u>Unused amounts reversed during the previous year.</u></p>	<p>Particulars (with description)</p> <p>Opening Balance of provisions</p> <p>Add: Provision Made during the year</p>		Amount
6	<u>The amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.</u>	<p>Less : Amount charges against provision</p> <p>Less : Amount reversed during previous years</p> <p>Closing balance</p>		
7.	<p><u>Following disclosure shall be made in respect of each class of asset and related income recognised as provided in para 11, namely :-</u></p> <ul style="list-style-type: none"> <u>a brief description of the nature of the asset and related income;</u> <u>the carrying amount of asset at the beginning and end of the previous year;</u> <u>additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and</u> <u>amount of asset and related income reversed during the previous year.</u> 	<p>Particulars (with description)</p> <p>Opening Balance</p> <p>Add: amount added during the year</p> <p>Less : Income received against asset</p> <p>Less : Amount reversed during previous years</p> <p>Closing balance</p>		Amount

Notes in case Income is being taxed on accrual basis irrespective of fact ICDS guides otherwise. For e.g. retention money, Interest on accrual etc.

Taxpayer has adopted a position that retention money/interest income on non-performing asset /xxxx is not to be recognized as revenue since it does not become “due” to the taxpayer in absence of accrual conditions as per Section 5 being met.

Reliance has been placed on judicial precedents like E.D. Sassoon & Co. Ltd. v CIT (1954) 26 ITR 27 (SC), CIT v Excel Industries Limited (2013) 358 ITR 295 (SC) and XXXXx. Accordingly, the total taxable income does not include the amount of said retention money/interest income on non-performing asset.

If any clause is not applicable, rather than leaving it blank. “Not applicable” should be written.

Appropriate management representation letter should be obtained from assessee.

Disclosures needs to be suitable modified as per specific requirements

(1) RECRUITMENT OF SPECIALIST OFFICERS - SCALE IV & II IN BANK OF MAHARASHTRA:

➤ **POST: CHIEF MANAGER-BALANCE SHEET :**

Age as on 01/09/2017: Min 25 Years, Max 35 Years.

Educational Qualifications: Graduation from recognized university with professional qualification of CA from the recognized institute/board.

Experience: 5 Years post qualification experience in dealing with Balance sheet analysis and management reporting, finalization of accounts at Head office level in any Bank/Financial Institution/ Listed NBFCs

➤ **POST: CHIEF MANAGER-TAXATION :**

Age as on 01/09/2017: Min 25 Years, Max 35 Years.

Educational Qualifications: Graduation from recognized university with professional qualification of CA from the recognized institute/board.

Experience: 5 Years post qualification experience in dealing with matter related to taxation such as Income Tax, Service Tax/ GST/ Tax audit and other tax related issues at Head Office Level at any Bank/Financial Institution/ Listed NBFCs

➤ **POST: CHARTERED ACCOUNTANTS :**

Age as on 01/09/2017: Min 21 years, Max 35 years

Educational Qualifications: Graduation from recognized university with professional qualification of CA from the recognized institute/board.

Experience: One year post qualification experience in Banks/FIs/NBFCs in Credit area.

➤ **IMPORTANT DATES :**

Commence of date of on-line application: 16/09/2017

Last Date of online application: 07/10/2017

Last Date for receipt of hard copy of online application with enclosures.: 17/10/2017

Date of GD/Interview: Will be informed separately.

➤ **WEBSITE :** www.bankofmaharashtra.in

(1) BSNL INVITES APPLICATION FOR THE POST OF JUNIOR ACCOUNTS OFFICER :

➤ **POST: DIRECT JUNIOR ACCOUNTS OFFICER (DR-JAO):**

Age as on 01/01/2017: Candidate shall not be Below 20 years and shall not exceed 30 years

Educational Qualification: M.COM/CA/ICWA/CS from a recognized institution/University (as on 01/01/2017 as per Recruitment Rule of BSNL)

Registration starts from: 11/09/2017

Registration ends on: 15/10/2017

Date of Exam: 05/11/2017

➤ **WEBSITE:** www.bsnl.co.in

(2) RECRUITMENT OF ADMINISTRATIVE OFFICERS (SCALE-I) IN AGRICULTURE INSURANCE COMPANY OF INDIA LIMITED:

➤ **POST: ADMINISTRATIVE OFFICER (SCALE I) (FINANCE):**

Age (as on 01.09.2017): Minimum Age: 21 years & Maximum Age: 30 years

Educational Qualification: B. Com with 60% marks OR M. Com with 60% marks OR **Chartered accountants (ICAI)** OR Company Secretary (ICSE) OR Cost and Management Accountant (The Institute of Cost Accounts of India) earlier known as Cost and Work Accounts (ICWAI) OR MBA (Finance)*(2 years full time course) with 60% marks from a recognized University

➤ **IMPORTANT DATES:**

On line Registration commences from
/Payment of fees: 15/09/2017

Last Date for Online Registration
/Payment of fees: 10/10/2017

Date of Online Examination: 18 or 19/11/2017

Supply of Services to SEZ Unit / SEZ Developer

Defining export of service has been very tricky due to intangible nature of service transaction and contradictory provisions in GST Law. Due to this nature of services, there has been constant confusion regarding meaning of export of services and its ramifications in various types of transactions. Let us discuss here one such case of supply of services to SEZ unit / SEZ Developers.

Supply of Services to SEZ Unit / SEZ Developer :

These supplies are treated as Inter-State Transaction & Zero Rated Supply as per Provisions of Sec 7(5) & Sec 16. (1) of IGST Act

Sec 7(5) of IGST Act, 2017:

Supply of goods or services or both :-

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or**
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.



Sec 16. (1) of IGST Act which is reproduced here.

“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.**



On account of zero rating of supplies, the supplier will be entitled to claim input tax credit in respect of goods or services or both used for such supplies even though they might be non-taxable or even exempt supplies. Every person making claim of refund on account of zero rated supplies has two options. Either he can export under Bond/LUT and claim refund of accumulated Input Tax Credit or he may export on payment of integrated tax and claim refund of thereof as per the provisions of Section 54 of CGST Act, 2017. Thus, the GST law allows the flexibility to the exporter (which, will include the supplier making supplies to SEZ) to claim refund upfront as integrated tax (by making supplies on payment of tax using ITC) or export without payment of tax by executing a Bond/LUT and claim refund of related ITC of taxes paid on inputs and input services used in making zero rated supplies.

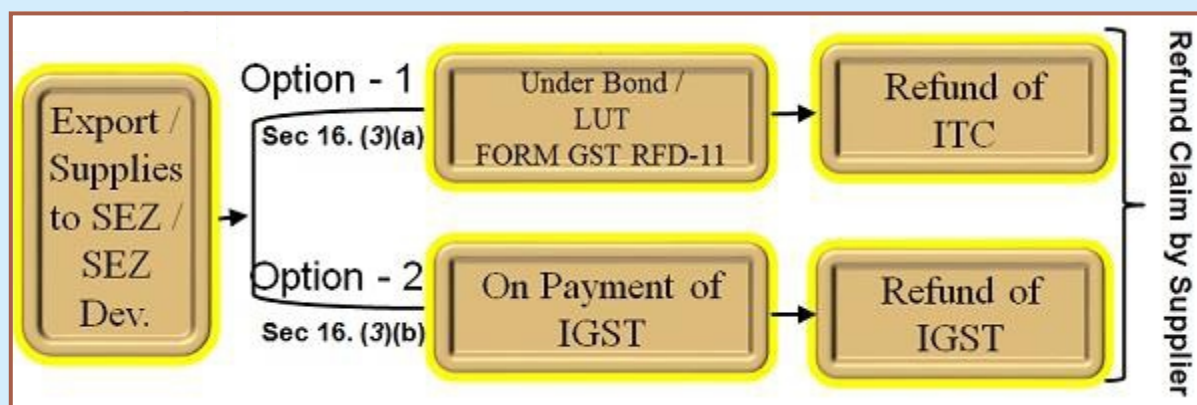
The relevant provisions in GST law are reproduced here below :

Sec 16. (3) of IGST Act : 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 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 of the Central Goods and Services Tax Act or the rules made there under.



Rule 96A of CGST Rules : Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking.-

(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 specified under sub-section (1) of section 50 within a period of —

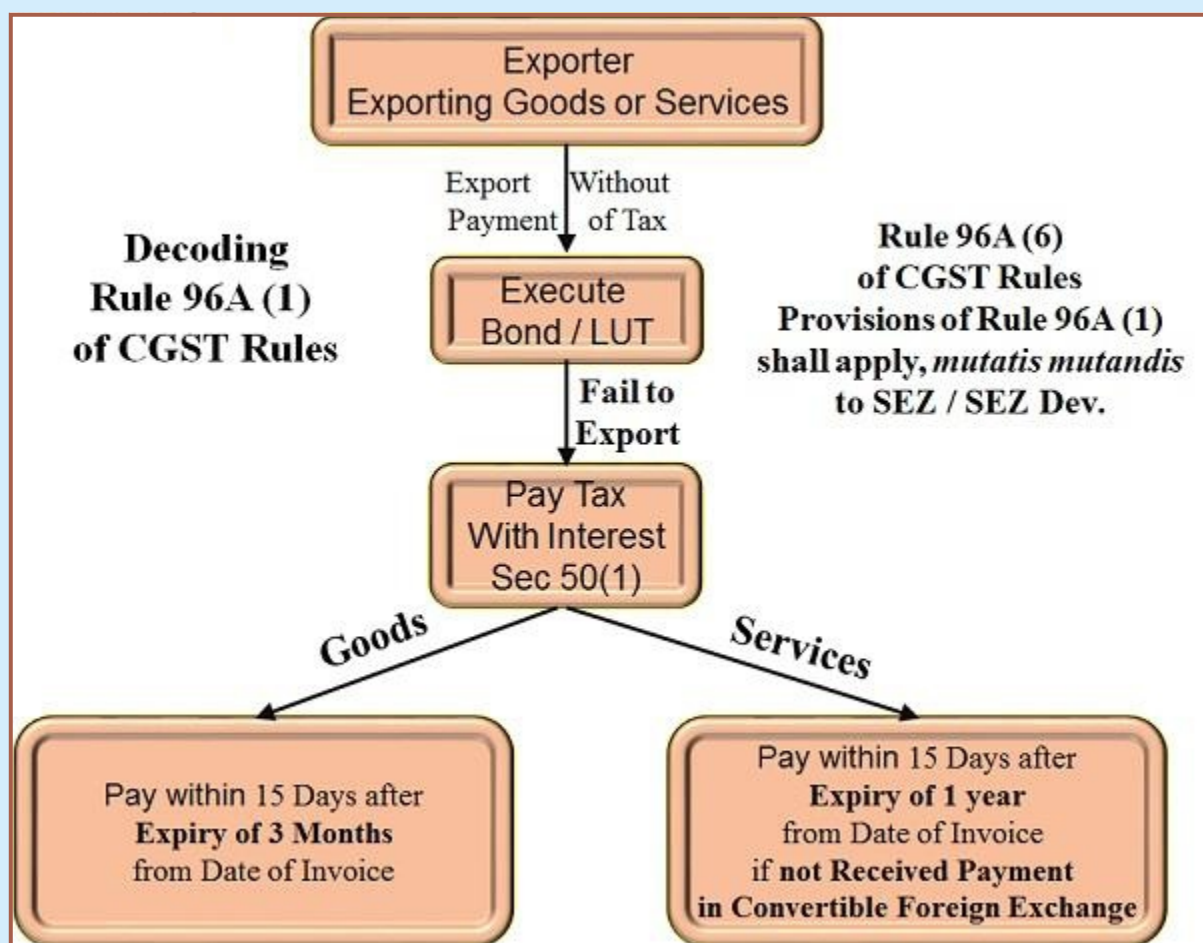
(a) fifteen days after the expiry of three months from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one 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**.

.....

.....

Rule 96A (6) of CGST Rules 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.”



Sec 2(6) of IGST Act: “**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**; 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;

From the above in respect of **Supplies of Services to SEZ / SEZ Developers** following points are very clear:

1. Supplies of Services to SEZ Unit / SEZ Developer, treated to be an **Inter-State Transaction** (Sec 7(5) of IGST Act)

2. Supply of Services to SEZ unit / SEZ Developers are treated as **Zero Rated Supplies**. (Sec 16. (1) of IGST Act)

3. All suppliers (of goods / **services**) to **SEZ Unit / SEZ Developers** are required to **execute LUT / Bond**. However they can **claim refund of un-utilized input tax credit** (Sec 16. (3) (a) of IGST Act & Rule 96A of CGST Rules)

4. Alternatively the suppliers may go for the option of **payment of integrated tax** and **claim refund of such tax**. (Sec 16. (3)(b) of IGST Act)

5. Either of the option can be made by the Supplier only and **only Supplier can Claim Refund**.

6. The payment for such service shall be received by the supplier of service in **convertible foreign exchange** (Sec 2(6) of IGST Act)

7. In case the supplier of services is **not Received Payment in Convertible Foreign Exchange**, the supplier is liable to **Pay Tax With Interest** under Sec 50(1) – (Rule 96A (1) of CGST Rules)

Practical Difficulties:

1. Execution of Bond / LUT by Supplier :

The **SEZ Unit / SEZ Developers** are now facing very piquant and zesty situation. Let us discuss for example services of Man Power Supply, Annual Maintenance, Engineering Supply, Production & Labor Contracts other such small supplies of services. **These suppliers may not be eligible for LUT** (Notification No. 16/2017 – Central Tax dated 7th July, 2017, eligible categories for LUT are : **Registered Person** who has received a Minimum Foreign Inward Remittance of **10% of Export Turnover** in the Preceding Financial Year – **not less than Rs. one crore** or A **Status Holder** as Specified in para 3.20 and 3.21 of the Foreign Trade Policy 2015-2020)

Then the other option is to go with **Bond**. Executing **Bond** required backing of **Bank Guarantee – not Exceeding 15% of Bond Amount**. For furnishing BG require certain banking formalities and also some expenses which the suppliers may not be interested especially small suppliers and onetime suppliers. This may result in very serious practical operational difficulties to SEZ units & SEZ developers.

2. Payment of IGST - Blockage of Funds & No Clarity on Claiming Refund :

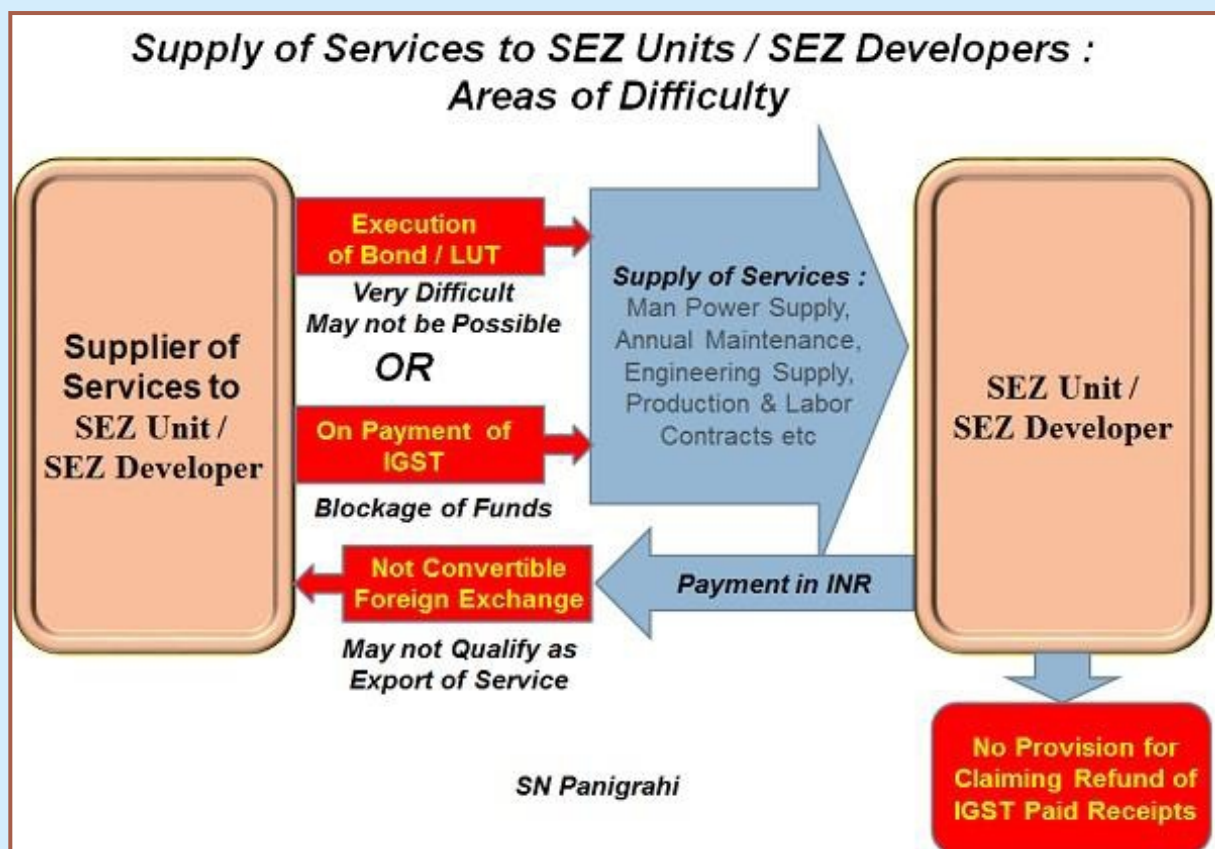
In case of supply on payment of IGST, the supplier can claim refund. This may result into blockage of funds and completing certain formalities. Moreover **procedures for claiming refund of IGST in case of supplies of services to SEZ units / SEZ developers is not prescribed**. (Rule 96(1) provided procedure for claiming refund of IGST in case of **goods exported out of India** and not for services)

3. Payment Not in Convertible Foreign Exchange :

Payment for supplies of most of the services to SEZ Units / SEZ Developers are always in **Indian Rupee Payment** and not in **Not Convertible Foreign Exchange**. Therefore the fundamental question shall arise whether such supplies be treated as **Export of Services** and **Qualify for Refund of Taxes**.

4. Refund of IGST paid on receipts Can't be Claimed by SEZ Unit / SEZ Developer :

In most of the cases small supplier of services are reluctant to supply under Bond / LUT and also may not interested in claiming refund of IGST after paying the tax because valid reasons as explained above. In such case there is no provision in GST Law to enable the SEZ Unit / SEZ Developer to claim refund of IGST Paid Receipts.



Earlier Provisions under Service tax

Vide service tax Notification No. 12/2013 on 1 July 2013 service tax levied on services received by units located in SEZ and SEZ developers is exempted. The new scheme grants an up-front exemption of service tax levied on specified services received by the SEZ units and the developer which are 'used exclusively for the authorized operations'.

Additionally, the refund would be available of service tax paid on specified services that are not exclusively used for authorized operations, or though used exclusively for authorized operation but procured after payment of service tax.

Suggestions :

1. Requirement of Bond / LUT for supply of services to SEZ Unit / SEZ Developer may be relaxed.
2. Provision may be made to claim credit of Input Taxes Paid by the SEZ Unit / SEZ Developer and also provisions shall be made to claim refund of the same subjective to condition that the supplier gives undertaking of not claiming refund.
3. The condition of receipt of payment in Convertible Foreign Exchange should be dropped for domestic suppliers of services.

GANDHIDHAM BRANCH OF WIRC OF ICAI

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