

Challenges / issues relating to SEZs under GST regime

As the government's beloved baby Goods and Service Tax ('GST') has turned one, it has been a year full of amendments, clarifications and updates so that the dream of 'One Nation One Tax' & ease of doing business is successfully met. India's biggest indirect tax reform was brought to life and became a reality on July 01, 2017. With the introduction of GST, 17 of the erstwhile taxes have been subsumed into one single tax, which will not only give a boost to the economy but will also bring about transparency in tax ecosystem in India.

However, as the law is in its nascent stage, there are many issues which have to be dealt with and clarified by the government. Here we analyze some of the issues which are being faced in relation to SEZs and the supplies made to SEZs:

1. Multiple registrations and compliances

Foremost issue that comes to mind is that the SEZs alike other assesses are also required to get themselves registered in all states in which it has got operations, thereby increasing the requirements of meeting the compliances and record maintenance under the GST laws as well.

The rules in relation to registration also require that if SEZs have a separate unit in domestic tariff area (DTA), they are required to get such unit registered separately. So talking about a SEZ in West Bengal which has operations in West Bengal as a regular supplier and operating SEZ, the law requires separate registration for both such entities thereby increasing the compliance burden. However, under the earlier tax regime only the suppliers of goods were required to get themselves registered in every state in which they operated and the service providers had an option to take centralized registration under the provisions of Service Tax.

2. Payment of IGST on supplies made to SEZ and inability to claim refund of input tax credits by the suppliers

The law provides 2 options for making supplies to a SEZ:

- a) Supply on payment of IGST and claiming the such IGST as refund;
- b) Supply without payment of IGST on execution of Letter of Undertaking and claiming refund of input tax credit;

If the supplier opts for the former, the functionality to apply and claim refunds on the GST systems are still not out which in turn leaves suppliers with less working capital and accordingly the suppliers would be reluctant to make supplies to the SEZ meaning thereby that the competitiveness of the SEZ would suffer since they would be unable to get the requisite inputs in adequate quantities and proper timelines.

On the other hand, if the supplier opts for the latter one, the GST rules provide for refund of unutilized input tax credits on account of goods exported out of India and not for the goods supplied to SEZs which thereby again means that the working capital of the supplier being locked with the government authorities.

3. Reverse Charge Mechanism

The provisions of reverse charge under GST are the most mischievous provisions. The government gave a huge relief to the industry by deferring reverse charge mechanism on supplies received from an unregistered person till September 30, 2018. However, the specific supplies as notified by government are still under the purview of RCM and the liability has to be discharged by the recipient of such supplies and all the provisions of GST shall apply to the recipient as if he is the person liable to pay tax on such supplies.

Now let's take an example of the specified supply of an advocate providing legal services to SEZ, or a case wherein SEZ purchases some goods from an unregistered supplier; in this case the SEZ is the recipient of such goods/services and in the absence of clarifications would be required to pay tax under RCM.

Further, if the SEZ makes the payment of GST under RCM, the next question that arises is about the claiming of the same as ITC and then getting it back in form of refunds. However, there are no specific provisions which deal with such a situation thereby increasing the working capital requirement of the SEZs.

4. Bill to SEZ, ship to DTA (complexities involved)

As per the provisions of GST laws the Place of Supply, where the goods are billed to a SEZ and shipped to a person in DTA shall be the place of such SEZ, i.e. to be treated as an inter-state transaction and same shall be treated as a zero rated supply. Now the supplier has option either to pay tax on such zero rated supplies and claim refund of such taxes paid or make such supplies without payment of taxes.

When the person opts to pay tax on such supplies and then claim refund, shall be required to obtain an endorsement from SEZ's officer that the goods are being brought into the SEZ, which is not the case in the above transaction and the officer may not provide such endorsement thereby the supplier may get stuck with his working capital.

On the other hand, as per SEZ Act, for claiming tax deductions, goods are required to be brought into the SEZ area, but in the instant case since the goods are not actually brought in the SEZ area, it is not possible to treat such transaction as a zero rated supply on furnishing of Letter of Undertaking.

5. Compulsory registration by the suppliers making supplies of goods to SEZ

As per the provisions relating to registration under GST, every person making interstate supplies of goods shall be required to get registered compulsorily irrespective of the turnover; by virtue of this provision, every person making supplies of goods to a SEZ shall be compulsorily required to get registration under GST and discharge liabilities and adhere to the compliances applicable.

In respect of supplier of services, the government has relaxed the registration requirement for assesses having aggregate turnover up to INR 20 lakhs.

With the government actively responding to difficulties faced by the industries it is expected that above issues would also be addressed by the government in the due course of time and the Good and Simple Tax would be made simpler.

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