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Duty Free Shops & its Refund Procedure in GST- Saga Continues!!



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Introduction

The taxability on duty-free shops has always been debatable concept in taxation regime. The perplexity as to whether the sale by retail outlets established at departure area of the international airport beyond immigration counters would qualify as export has been a matter of concern for all the stakeholders in the industry. Various rulings in the erstwhile law and in the current law, with different school of thoughts had made the concept much



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more perplexed and complex rather than simplifying the issue. Thus it is pertinent to understand the situation that existed in the earlier regime and in the prevailing law with recent judgments.



Provisions and treatment under the erstwhile law

To cater the complexities of a transactions involved in sale by Duty Free Shops established at departure area of the international airport beyond immigration counters under new regime, it is pertinent to understand the situation that existed under earlier regime. Before moving ahead to the taxability of goods sold by Duty free shops, it would be germane to acquaint ourselves with the jurisdiction power of the Government to tax this transaction under the earlier regime.

As per Section 5 of the CST Act, 1956 any goods shall be deemed to have been exported out of India if the same are sold beyond the Customs frontiers of

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India. In order to maintain the viability and uniformity in law Section 2 (ab) of CST Act, 1956 clearly spelled out as to what shall mean crossing the custom frontiers of India. The same read as under:-

2(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

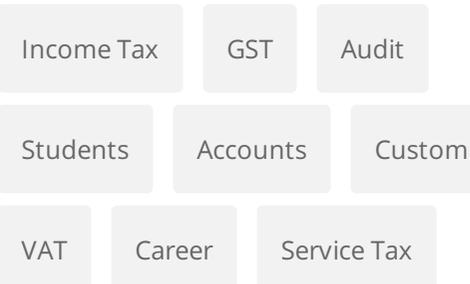
Explanation- For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);]

The Hon'ble Supreme Court in the case of M/s Hotel Ashoka (Indian Tour Dev. Cor. Ltd.) v. Assistant Commissioner of Commercial Taxes [2012] 21 taxmann.com 588 (SC) had examined the issue of levy of VAT on the goods sold from duty free shops. It observed that under the provisions of Article 286 of the Constitution of India and Section 5 of the CST Act, goods which were sold beyond Customs frontiers of India, the State Government was not permitted to levy VAT on sale or purchase of such goods. Thus, jurisdiction of such transactions lay with Centre and it was governed by CST Act, 1956.

Coming to the taxability part, it would depend on whether sale of goods by Duty Free shops is covered under Exports of goods or not. Export out of India was defined under Section 5(1) of the CST Act which provides, inter alia, that sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.



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The apex Court in its decision took note of the fact that Duty Free Shops are located in a Zone which is entered by crossing the customs frontier of India, i.e., they are not within the customs frontiers of India and any sales from the said area is duly covered under Section 5(1) of the CST Act, 1956. The apex Court further opined, that, sale need not be effected by transfer of documents of title to the goods only. The Supreme Court said that this is only one of the methods whereby delivery of the goods is affected. Delivery may be physical also. In the case of the duty free shops which are outside the customs frontiers of India, the goods have been sold to the customers by giving physical delivery.

Thus the Supreme Court held that duty free shops fall outside the custom frontier of India and transaction beyond custom frontier of India is recognized as export transaction under CST Act, 1956. Thus, sale of goods by duty free shop was free from any CST liability.

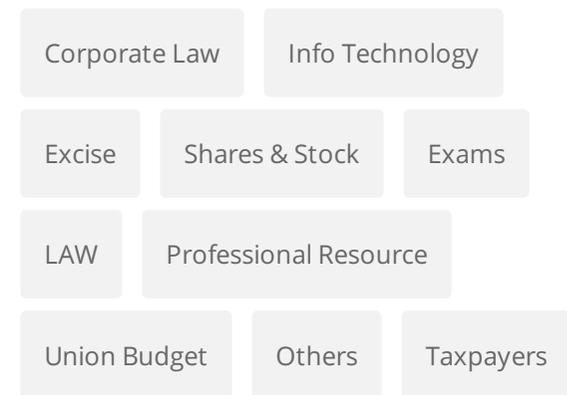
Provisions and treatment under GST law

The provisions of law relating to GST on exports has under gone paradigm shift in the new regime. GST Act has adopted the methodology of 'zero rated' supply which covers 'export transactions' and 'supply to SEZ' along with certain notified supplies deeming to be as 'deemed export'.

In regard to the supplies made by duty free shops, definition of exports along with notified deemed export supplies need to be taken into consideration.

It is observed that "export of goods" has been defined under Section 2(5) of the IGST Act, 2017 as taking goods out of India to a place outside India.

India is defined under Section 2(56) of the CGST Act, 2017 as '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".

It is noticeable that nowhere in the GST, exports have been linked with the custom frontier of India so the Judgment *ibid* of the Supreme Court cannot be applied for determining that whether supply by 'Duty Free Shops' are export or not. It is the definition of India which needs to be critically analyzed to decide whether the transaction is covered under exports or not.

In re: Rod Retail (P.) Ltd., [2018] 92 taxmann.com 317 (AAR - New Delhi) it was held that the duty free shops are established beyond the Customs Frontiers of India but it is certainly in the territorial water of India as pronounced by advance ruling and thus, this transaction does not fall under the ambit of exports. The export of goods as per the IGST Act, 2017 takes place only when goods are taken out to a place outside India and not merely on crossing the Customs Frontiers of India. Also, no such transaction is notified as deemed export in GST. Thus, sale of goods by duty free shops will attract liability of GST.

Similar, order was passed by Madhya Pradesh High Court in *Vasu Clothing (P.) Ltd. v. Union of India* [2018] 97 taxmann.com 467 (Madhya Pradesh) wherein it was held that any supplies made by retail outlets established at departure area of the international airport beyond immigration counters cannot be in anyway treated as territory outside India, and hence the supplies shall be taxable under the GST regime.

However, it is observant that the literal interpretation of the provisions of GST law read with rulings and orders passed by various authorities breach the

cardinal principle of "export the goods and not the taxes" as the goods sold by duty free shop to international outbound passengers will ultimately be taken outside India, and taxing such transactions will agitate the whole idea of "export the goods and not the taxes".

Thus, the Central Government vide Notification No. 11 /2019 - Integrated Tax (Rate) dated 29th June 2019 exempted the supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Services Tax Act, 2017. The broad idea of bringing this notification into picture was to exempt the output tax liability of these Duty Free Shops located at the departure area of an international airport.

However, the corresponding implications of this notification resulted in mandatory reversals of Input Tax Credit under Rule 42 & 43 of CGST Rules 2017, and accumulated taxes on inward supplies of 'indigenous goods'.

Hence, a series of notifications were issued by Central Government to allow refund under Section 55 of the taxes paid on the inward supplies of 'indigenous goods'.

The Central Government vide Notification No. 31 /2019 - Central Tax dated 28th June 2019 made amendment in Central Goods and Services Tax Rules, 2019 and inserted Rule 95A so as to allow refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters, making tax free supply to an outgoing international tourist.

Later the Central Government vide Notification No. 11 /2019 - Central Tax (Rate) dated 29th June 2019, and Notification No. 10/2019 - Integrated Tax (Rate) dated

29th June 2019 specified that the retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons shall be entitled to claim refund of applicable central tax paid on inward supply of such goods, subject to the conditions specified in Rule 95A of the Central Goods and Services Tax Rules, 2017.

The gist of aforesaid notifications on the subject can be summed up as under:

a) It must be kept in mind that the refund under Section 55 is of the taxes paid on the inward supplies 'indigenous goods'. However such retail outlets would still be required to reverse their input tax credit, as per Rule 42 and 43, because their outward supplies would be exempt supplies.

b) The refund would only be in respect of goods and no refund of input or capital goods will be allowed.

c) The expression 'indigenous goods' has not been defined in the act and thus will have to be construed in accordance with common parlance. The exemption to such retail outlet is not confined to 'indigenous goods' but is only restricted to 'outgoing international tourists'. However, the refund is restricted only in respect of 'indigenous goods'.

d) 'Outgoing International Tourist' would mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

e) It would be very difficult for retail outlets to draw a distinction between a normal tourist travelling abroad and between an outgoing international tourist.

The retail outlet will have to rely upon the declaration in Annexure B of the said Notification.

Recently with a view to ensure expeditious processing of refund claims, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017 specified the conditions, manner and procedure for filing and processing of such refund claims vide Circular No. 106/25/2019-GST dated 29th June 2019 which has been explained by way of flow chart.

Standard Operating Procedures (hereinafter referred as SOP for the sake of brevity) for claiming refund of taxes under Section 55 Of CGST Act, 2017 read with Rule 95A Of CGST Rules 2017.

S.O.P (1): On Receipt of duty paid indigenous goods into Retail Outlets

- The details of goods brought to the retail outlets and their supplies to eligible passengers shall be maintained as per Annexure A (Format attached) in electronic form.

S.O.P (2): On Sale of goods to an eligible passenger by the retail outlets without payment of taxes

- The retail outlet shall seek following documents/declarations from the passengers:
 1. Details of the Passport (via Passport Reading Machine);
 2. Details of the Boarding Pass (via a barcode scanning reading device);
 3. A passenger declaration as per Annexure B(Format attached);
 4. A copy of the invoice clearly evidencing that no tax was charged from the eligible passenger by the retail outlet.

S.O.P (3): Monthly Filing of GST Returns as per the provisions of GST Act

S.O.P (4): Manual Filing of FORM GST RFD-10B till the time online utility for filing the refund claim is made available on the common portal.

The said refund application shall be accompanied with the following documents:

1. An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been received by such retail outlets;
2. An undertaking by the retail outlets stating that the indigenous goods on which refund is being claimed have been sold to eligible passengers;
3. Copies of the valid return furnished in FORM GSTR - 3B by the retail outlets for the period covered in the refund claim;
4. Copies of FORM GSTR-2A for the period covered in the refund claim; and
5. Copies of the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2A

S.O.P (5): An acknowledgement shall be issued manually by the proper officer within 15 days of the receipt of application in FORM GST RFD-02. In case of any deficiencies or any additional information is required, the same shall be communicated to the retail outlets by issuing a deficiency memo manually in FORM GST RFD-03 by the proper officer within 15 days of the receipt of the refund application.

S.O.P (6): The proper officer shall issue the refund order manually in FORM GST RFD-06 along with the manual payment advice in FORM GST RFD-05 for each head i.e., Central tax/State tax/Union territory tax/Integrated tax/Compensation Cess. The amount of sanctioned refund along with the bank account details of the retail outlets shall be manually submitted in the PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to the PAO for disbursement of the said amount.

Annexure-A

Form to be maintained by a Retail Outlet

(As per Circular No. 106/25/2019- GST dated 29.06.2019)

Airport:

GSTIN Number:

Inward Supplies								
Na me of the	GSTIN of supplier	Invoice No.	Date	HSN	Qty.	Taxable value	IGST	CC

Supplier				Cod e				

Annexure-B

Declaration for purchase of Tax free Goods by a eligible passenger

I (Name), holder of the passport No: issued in (country name) declare that I am presently resident of, (City / Country) and arrived in India on Flight on (date). I further declare that I have purchased tax free goods from M/s (Name of Retail outlet) vide Invoice No. _____ dated.

(Signature)

(Name)

(E-Mail)

Place:

Date:

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The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. Professional advice recommended to be sought before any action or refrainment.

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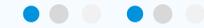
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