

# **BHUJ BRANCH OF WIRC OF ICAI**

**E-NEWSLETTER FOR THE MONTH OF SEPTEMBER-2018**

**(FOR PRIVATE CIRCULATION ONLY)**

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## **CHAIRMAN'S COMMUNICATION**

Respected Colleagues,

I am glad to meet you all on this page after a relatively short period of time. As we are in the busiest quarter of the year, Newsletters for previous two months were a little behind the schedule. I am glad that we are back to normal schedule now. To come out with this edition on time was also necessary as this edition contains two articles of Tax Audit and any delay in publication would have made them that much less relevant. With this edition, our Branch's writer family gets richer as two more members join this club, CA Krupa Thacker and Falguni Katarmal (who is awaiting her membership). I congratulate and welcome them.

As you must be aware by now, the process of election to the Central and Regional Councils have begun. In order to comply with the Code of Conduct, we are not going to have "PHOTO GALLERY" for a few months. You will also notice few other changes here which are adopted so as to make sure that we do not end up violating that sacred code of conduct inadvertently.

Tax Audit season is now in its final leg and all of us are hard pressed for time. Eagerly awaited Annual return under GST Act has been notified but we are yet to hear anything on GST Audit.

After a reasonably hectic June, July and August, and because of the tight schedules of members, Branch activities are taking a little breather. However, we shall soon start moving on with our in house structured as well as unstructured educational activities. You are welcome to come out with your suggestions for any such educational activities which you think may help the members, be it Tax Audit, GST or any other area of professional interest. Students are also welcome to suggest if the Branch can, subject to the intellectual resources of its members, help the students in any way while they prepare for their exams. Please suggest us if anything can be done, and we shall try our best to carry it out.

Thank you

CA DARSHAN KHANDOL

Chairman, Bhuj Branch of WIRC of ICAI

## INTERPRETATION OF EXEMPTION NOTIFICATION A SUPREME COURE JUDGMENT

CA Jagrutkumar Avinash Anjaria  
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*Recently, the Hon'ble Supreme Court has come out with an interesting and elaborate judgment dealing with the Interpretation of Statute, specifically focusing on interpretation of exemption notification in a taxing statute.*

*The background of the case is equally interesting and informative of the hierarchy of judicial decisions. The facts are set around a notification which conferred a concessional rate of tax to item of prescribed description. The assessee relied on a particular decision (Sun Export) of the Supreme Court. The claim for exemption was denied by the department. On first appeal, Assistant Commissioner also denied the claim of the assessee, distinguishing the Sun Export decision. On further appeal, the Commissioner reversed the decision of the Asstt Comm and held the judgment cited as applicable. Tribunal also went on to affirm the order of the Commissioner. In due course, the matter reached to the Hon'ble Supreme Court and was placed before a two judge bench. The two judge bench was not comfortable with the principle laid down by Sun Export judgment. It also observed that there were various subsequent decisions of the Supreme Court which were not in exact conformity with the ratio laid down by the Sun Export judgment on which the case under consideration was totally dependent. The Bench noted its doubts down and put the matter before the Chief Justice to constitute an appropriate bench to resolve the issue. The matter then was placed before a three judge bench. The three member bench also was of the view that the Sun Export judgment needs to be reconsidered. Now that Sun Export judgment also was delivered by a three member bench, hence, the current three member bench thought it proper not to pass any opinion and once again approached the CJI to constitute an appropriate bench. Thereafter, a five member bench was constituted and the matter was "referred" to that bench. This five member bench was required to reconsider the view expressed in Sun Export case with regard to "interpretation of exemption notification."*

*There are two things that make this proceeding a special for beginners like us; One, the procedural hierarchy that the judiciary follows. The second is that this bench was to give an opinion on a particular aspect. Hence, there were no*

*“facts” involved here in the way they are in most of the cases. Thus, the judgment caters to the technicalities all the way and while reading it and trying to understand it, we should also try and keep to technicalities only.*

*Though the actual task of the bench may be taken as quite “narrow” or “restricted,” because of its pure technical nature, the bench has occasion to discuss finest of nuances of interpretation related issues.*

### **WHY PRINCIPLES OF INTERPRETATION NEEDED**

*The judgment has addressed this question in its decision. It was observed that legislature tries to answer a question before it by enacting legislation, with a view to solve that problem. Information and past experience go into the making of that law. The uncertainty regarding the applicability of a legislation takes place mostly for two reasons;*

- 1. Legislature can not foresee all future situations and consequences.*
- 2. At times, language and phrases used in the statute are not perfect.*

*So, the courts come into picture and decide on two things;*

- 1. If the case falls within the broad principles of the legislation*
- 2. The court may need to interpret words and phrases.*

*This explains why rules or principles of interpretation are needed.*

### **WHAT ARE THOSE PRINCIPLES OF INTERPRETATION**

- Principles of interpretation may come from evolved law or they may come from specific enactment such as General Clauses Act.*
- For any undefined word in any legislation, recourse has to be made to General Clauses Act, if that word is defined in GC Act.*
- If there is a conflict between the GC Act and the provision that is being interpreted, either in subject or context, courts will need to look into the provisions of statute.*
- There are also some internal and external aids or tools for interpreting statutes.*
- Internal aids are; the long title, the preamble, the heading, the marginal note, , punctuation, illustrations, definition or a dictionary clause, a proviso to a section, explanation, examples, a schedule to an act etc.*

- *External aids are; parliamentary debate, history leading to a legislation, other statutes which have a bearing, dictionaries, thesaurus.*

#### WHAT THE INTERPRETATION WILL LEAD TO

*Interpretation will try to know the intention of the legislature, whether it intended to*

- *Apply the law in a given case*
- *Exclude operation of law in a given case*
- *Give discretion to enforcing or adjudicating authority*

*The accepted principle is that*

- *A statute must be construed according to the intention of the legislature*
- *While applying or interpreting a law, courts should act upon true intention of legislation.*
- *When provision is open to more than one meaning, choose the one that represents the intention of the legislature.*

*When the words in a statute are clear, plain and unambiguous;*

- *Courts are bound to give effect to that meaning, whatever the consequences may be.*
- *No other hypothetical construction is permissible on the ground that it is more consistent with the object and policy of the act.*
- *Hardship or inconvenience can not be the basis to alter the meaning to the language employed.*
- *Words are to be taken in their natural and ordinary sense.*
- *Because, the words used, declare the intention of the legislature.*
- *This is more true for fiscal and penal statutes.*

*When words in a statute are not clear, plain and unambiguous;*

- *When the plain language results in absurdity, court is entitled to determine the meaning of the word in the context in which it is used and keeping the purpose of legislature in mind.*
- *If plain reading results in anomaly or absurdity,*
  - *Court may take into account the hardship and consequences that flow from this anomalous or absurd provision*
  - *And can even explain the true intention of the legislature*

#### WHAT IS SPECIAL ABOUT TAXATION STATUTES

*In constructing penal and taxation statute, strict rule of interpretation has to be applied. State can not levy tax without specific authority. When legislature mandates taxing certain persons or certain objects in certain circumstances, it can not be given an extended meaning so as to cover those who were not intended by the legislature.*

*Equity has no place in interpretation of a taxation statute.*

*In a taxation statute, there is no room for any intendment; no presumptions can be drawn, context, purpose and other supporting material are not to be allowed, if the words used carry clear meaning.*

### **HOW TO HANDLE AMBIGUITY**

- *The bench concludes that every taxing statute should be interpreted strictly.*
- *Here, the expression statute is sought to include charging clause, computation clause and the exemption clause*
- *In case there is any ambiguity in charging provision, the benefit must necessarily go in favour of the assessee or subject*
- *Whereas, in the case of exemption notification, it should be strictly interpreted in favour of the revenue or state.*
- *Three components of taxing statute are identified in the judgment; 1, subject of the tax, 2, person liable to pay tax and 3, rate at which tax is levied. If there is any ambiguity in understanding any of these three components, no tax can be levied, till the ambiguity is removed by the legislature.*
- *There can not be any implied concept either in identifying subject of the tax or the person liable to pay tax, both of these need to be there in strict language of law.*
- *While deciding liability to tax, only the letter of the law is relevant and interpreter is not to be guided by the spirit of the law.*
- *Hardship and non equity are to be ignored.*
- *When tax exemption is to be interpreted, the benefit of doubt should go in favour of the revenue.*

*The judgment discharges its duty by concluding the on reference made to it on the following lines;*

- *While claiming under any exemption notification, burden of proving applicability would be on the assessee to show that his case falls within the parameters of exemption clause or notification.*
- *When there is ambiguity in exemption notification, the benefit must go to the revenue.*

*As the issue referred to the bench was restricted to examine the view on ambiguity with reference to a particular judgment (Sun Export), it may have restricted its final opinion on the lines narrated just above. However, while citing various previous cases, the bench has also referred to distinction between;*

- *stage of finding eligibility to seek exemption and*
- *the stage of applying the nature of exemption made.*

*The principle held at one of the cases referred to in the judgment is;*

- *Do not extend or widen the ambit at the stage of applicability of exemption,*
- *But, once that hurdle is crossed, that is eligibility to exemption is established, switch to liberal interpretation.*

*This judgment was pronounced on 30<sup>th</sup> July, 2018. It is a relatively lengthy judgment, running into 80 odd pages. Here, an effort at summarizing the same is made, trying to highlight interesting points and rearrange them in an order which may help the reader understand it in better context.*

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**Clause 22 of Form 3CD in relation to Section 22 & 23 of the Micro, Small and Medium Enterprise Development Act, 2006.**

*Falguni Haresh Katarmal*

*M.Com, Awaiting Membership*

➤ **Requirements of Clause 22 of Form 3CD :-**

Disclosure of amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprise Development Act, 2006.

➤ **Section 23 of the Micro, Small and Medium Enterprise Development Act, 2006 :-**

The said Section States that amount of interest that is paid or payable by any buyer shall not be allowed as deduction in computation of income under the Income Tax Act, 1961.

➤ **Determination of amount of interest :-**

To determine the amount of interest that is inadmissible as deduction, we need to have some background of the Micro, Small and Medium Enterprise Development Act, 2006 .

➤ **Section 15**

Where any **Supplier** supplies any goods or renders any services to any **Buyer**, buyer shall make payment on or before the date agreed upon in writing. In absence of such written agreement payment is to be made on or before the **Appointed Day**.

Here,

**Supplier means** a micro or small enterprise, which has filed a memorandum with the Specified authority and includes,

- (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956
- (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956
- (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or

small enterprises and rendering services which are provided by such enterprises

**Buyer means** whoever buys any goods or receives any services from supplier for consideration.

**Appointed Day means** a day following immediately after expiry of 15 days from day of acceptance or deemed acceptance of goods or service.

**Note:- Period for payment that has been agreed upon in writing between the buyer and supplier shall not exceed 45 days from day of acceptance or deemed acceptance.**

➤ **Section 16**

In case buyer fails to make payment within the period specified above, Buyer is liable to pay **compound interest with monthly rest** to the supplier on the amount outstanding at rate that is **3 times bank rate** notified by Reserve Bank.

➤ **Classification of an enterprise as a Micro, Small Or Medium Enterprise :-**

As per section 7,

Enterprise that is,	Engaged in production or manufacture of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act,1951	Engaged in providing or rendering services
If Investment in	Plant & Machinery	Equipment
Micro Enterprise	<or= 25 Lakhs	<or= 10 Lakhs
Small Enterprise	>25Lakhs but <or=5 Crore	>10Lakhs but <or=2 Crore
Medium Enterprise	>5 Crore but <or=10 Crore	>2 Crore but <or=5 Crore

➤ **Additional Disclosure requirements :-**

Section 22 of the Micro, Small and Medium Enterprise Development Act,2006 requires buyer to furnish following additional information in his annual statement of accounts if they are subject to audit under any law for time being in force,



- (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year.
- (ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year.
- (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act.
- (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year, and
- (v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

➤ **How to get details in books of accounts?**

- One should identify all the suppliers transactions with which are governed under the MSME Dev. Act, 2006.
- Determine whether payment to all such supplier has been made within the period as specified as per section 15 of the act.
- If not determine whether interest as per section 16 of the act has been paid along with the outstanding amount.
- Determine whether such interest paid or payable has not been debited to profit & loss account. If debited disclose such interest as inadmissible for the purpose of computation of Income.
- Make necessary disclosures in statement of accounts as per section 22 of the act to avoid penalty of Rs.10,000 or more (section 27).

**Tax Audit Report (Form 3CD) – Amendments and Analysis**

**CA Krupa Fenil Thacker**

**M.Com, FCA**

In order to get various amendments made to Income-tax Act, 1961 and other laws (indirect taxes) within the format of tax audit report (TAR), the Central Board of Direct Taxes (CBDT) issued [notification No. 33/2018](#) on 20 July 2018 amending the report format of tax audit. These amendments to TAR will come in force from **20 August 2018**, which implies that the tax audits filed with the Income-tax on or after 20 August 2018 will have to be in the amended TAR.

Some of the major changes in revised form 3CD in Clauses from 31 to 44.

In this article I choose below Clauses for reference and tried my best to cover most of topics in every Clauses and explain it in simple term.

**Clause no. 31 – Clause (ba), (bb), (bc) and (bd) introduced after clause (b) to serial no. 31 of TAR pertaining to section 269ST of the Act:**

Section 269ST is introduced by Finance Act, 2017 with effect from 01.04.2017 and put a limit on Cash Transaction to put a check on **Black Money** and Tax Theft. Section is much talked about section as it provides penalty for any cash transaction above the value of Rs. 2 Lakh, equal to the Transaction amount.

**1. What is the intent behind the insertion?**

The intent of the section is clearly to put restriction on the cash transaction and reduce the quantum of black money which affects the revenue of the government. Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in the form of cash. Therefore in a bid to control unaccounted money, the section has been proposed which will limit cash transactions and in essence the black money.

I made an attempt to Analyze the section in Tabular manner for easy understanding of Readers:-

<b>APPLICABLE FROM</b>	01/04/2017
<b>APPLICABLE TO</b>	Any Person – Individual, HUF, Firm, LLP, Company, Trust.

<b>PROVISION OF SECTION 269ST</b>	<u>No person</u> shall receive an amount of two lakh rupees or more— (a) in aggregate from a person in a day; or (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.
<b>TYPE OF RECEIPT</b>	Any Receipt – Whether Capital or Revenue
<b>MAXIMUM CASH RECEIPTS PERMISSIBLE</b>	Below Rs.2,00,000/-
<b>EXCEPTIONS</b>	(a) Government; (b) any banking company, post office savings bank or co-operative bank; (c) transactions of the nature referred to in section 269SS; (d) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.
<b>PENALTY FOR NON COMPLIANCE SECTION 271DA</b>	If a person receives any sum in contravention of the provisions of <b>section 269ST</b> , he shall be liable to pay, by way of penalty, <u>a sum equal to the amount of such receipt</u> Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

The transaction is applicable to all such cases where the amount is received in cash and exceeds the threshold limit of Rs. 2 lacs. Further the ambit of the section has been increased by adding certain circumstances. Let us look at the section leg by leg:

### **First leg: Receipt from a person in a day.**

It states that a person cannot receive any amount in cash from a single person in a day. This means that if a person is paying Rs. 1,50,000 in cash then the person receiving can receive. However if a person pays in cash in different tranches during the day, the aggregate amount of which is 2 lacs and more, the person receiving cannot receive. So an obvious question comes, if a person pays in cash on different days, then will he be covered. The answer to question lies in the second leg.

### **Second leg: In respect of single transaction**

It simply states that no single transaction should exceed Rs. 2 lacs or more. Thus if a person splits a invoice relating to a single transaction into different invoices of smaller values, then also the person receiving such amount cannot receive in cash. However what would happen if there are multiple cashflows i.e. typically in case of loan transactions whereby repayment is done in number of installments, the answer to this question lies in the third leg.

### **Third leg: In respect of the transaction relating to one event or occasion from the person**

**The term “Event” in section 269ST means an accounting event.**

That is to say, every such event which is required to be accounted for will be termed as an “Event”. each lease payment in a lease transaction may be called an “Event” as separate invoice is required to be raised. Similarly, each EMI for which a separate invoice is raised will be an “Event”.

### **Does the section cover loan repayment also?**

Section 269ST states that no person shall receive an amount of Rs. 2 lacs or more:

1. from a single person in a day in cash or
2. in respect of a single transaction or
3. in respect of multiple transactions relating to the same event from a single person.

So, if a company receives any amount in cash whether it is loan repayment or otherwise through a mode other than prescribed, the section will very well apply.

**Clause no. 42 – Whether assessee is required to furnish Statement in Form No.61, or Form No.61A or Form No.61B ? :**

Reporting Entity or Reporting Person is an entity which is required to furnish a Statement of Financial Transaction (in Form 61A) or Statement of Reportable Account (in Form 61B) with the Income tax Department as per the provisions of section 285BA of the Income-tax Act 1961. Also, Under Rule 114D of IT rules 1962, any entity/person receiving Form 60 is required to report details of Form 60 in Form 61.

What is Form No.60, 61, 61A or 61B?

**Form No.60**

In order to curb circulation of black money and widening of tax base, the Income-tax Rules require quoting of Permanent Account Number (PAN) where the Specified transactions exceeds specified limit. Persons who do not hold PAN are required to fill Form No. 60.

**Form No.61**

Every person who has received any declaration in Form No. 60 for the transactions specified shall furnish a statement in Form No. 61 electronically containing particulars of such declarations. Such Persons should retain Form No. 60 for a period of 6 years from the end of the financial year in which the transaction was undertaken.

**Form No.61A**

Statement of 'financial transactions' is required to be furnished by 'specified persons' like Banking Co., Co-Operative Bank, A Trustee of Mutual Fund in respect of 'specified transactions' like Deposits in one or more account above specified limit etc. registered or recorded by them during the financial year on or before 31<sup>st</sup> May immediately following the financial Year.

**Form No.61B**

Requirement of filing form 61B arises for implementation of Foreign Account Tax Compliance Act and Common Reporting Standards.

**In this Clause Auditor has to report following details:**

Income Tax Department Reporting Entity Identification Number	Type of Form	Due Date for Furnishing	Date of Furnishing if Furnished	Whether the Form Contains information about all details/transaction which are required to be reported. If not, please furnish list of the details/transactions which are not reported.
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**Auditor's Duty:**

In this Clause auditor will have to find out that assessee has duly filled form and form Contains all the details which are required to be reported. If he will find any discrepancy he will have to report in this Clause about all Transactions which assessee is required to be reported but has not report .

**Clause 34: Details with respect to transactions not disclosed in TDS Return/ TCS Return is to be reported.**

In previous Tax Audit Report , This Clause required reporting of the Fact that whether assessee is required to furnish the Statement of Tax deducted or Collected if Yes, he has to report more that whether the statement of Tax deducted or collected filed contains all the details/ transactions which are required to be reported.

In addition to the above now amended Tax Audit Report require one more thing that whether the assessee has report all the the details/ transactions which are required to be reported in the Statement of Tax deduction or Collection. If Not, furnish the list of the details/ transactions which are not reported.

**Auditors Duty :**

In this Clause Auditor have to find out all the Details/Transactions which are applicable to the assessee to report in the Statement of Tax deduction or Collection.

If auditor find any differences he should maintain proper reconciliations.

Here it would be ideal that assessee reports all the transactions in the eTDS Returns.

**Clause 36A: Dividend received under Section 2(22)(e) required to be reported.**

What is deemed dividend U/S 2(22)(e) ?

“dividend” includes -any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

**Auditors Duty :**

Deemed dividend has always been a very contentious issue. Now auditor’s responsibility is now even greater in terms of reporting violations of this section.

In this Clause auditor will have to report whether the assessee has received any sum by way of loan or advance termed as deemed dividend from the company in which he was beneficial owner of Shares holding not less than ten per cent of the voting power during the previous financial year.

For reporting in this Clause Auditor will have to find out following things :

1. Whether assessee was Shareholder of a company holding not less than ten percent of the Voting Power from a Company.
2. A Company must be Closely held Company.
3. Assessee has received during Financial Year Sum by way of Loan or Advance. Or
4. Any Concern has received sum in which assessee has substantial Interest on the date on which Loan/Advance is given.

## Additional Restrictions for Export under “With payment of IGST” option

- **Notification No.03/2018-Central Tax dated 23<sup>rd</sup> Jan 2018 [Retrospective Effect from 23<sup>rd</sup> Oct 2017]**
- **Notification No.39/2018-Central Tax dated 4<sup>th</sup> Sept 2018 [Retrospective Effect from 23<sup>rd</sup> Oct 2017]**

**By CA. Deep Koradia**  
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The government has issued **Notification No. 03/2018-Central Tax dated 23/01/2018** wherein rule 96 has been amended to insert sub-rule 10 which reads as follows:

*(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, **notification No. 48/2017-Central Tax** dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. **40/2017-Central Tax (Rate)** 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. **41/2017-Integrated Tax (Rate)** dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. **78/2017-Customs** dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. **79/2017-Customs** dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.”;*

However, the same has been amended via notification no. **39/2018 Central Tax Dated 04/09/2018** as below:

*“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -*



(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. **48/2017-Central Tax**, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. **40/2017-Central Tax (Rate)**, dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. **41/2017-Integrated Tax (Rate)**, dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. **78/2017-Customs**, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. **79/2017-Customs**, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017.”.

This clause has been given **retrospective effect** w.e.f. **23-10-2017**.

Thus the new clause intends to put in place certain restrictions on the registered persons claiming refund of IGST paid on exports. The refund is restricted when the registered person received supplies from the following category of suppliers:

1. The refund is restricted when a supplier availing benefit of notification no. 40/2017-Central Tax (Rate) 23rd October, 2017
2. The refund is restricted when a supplier availing benefit of notification no. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017
3. The refund is restricted when a supplier availing benefit of notification no. 48/2017-Central Tax dated the 18th October, 2017
4. The refund is restricted when ~~[a supplier availing benefit]~~ the person claiming the refund has taken the benefit of notification no. 78/2017-Customs dated the 13th October, 2017 **[Strikethrough Portion has been amended via 39/2018 04/09/2018]**
5. The refund is restricted when ~~[a supplier availing benefit]~~ the person claiming the refund has taken the benefit of notification no. 79/2017-Customs dated the 13th October, 2017 **[Strikethrough Portion has been amended via 39/2018 04/09/2018]**

Starting with the notification no. 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate), these notifications allow any registered person to supply goods at the rate of 0.10% IGST (or 0.05% CGST and SGST) to a merchant exporter for further exports. As a result of this amendment, now a registered person procuring goods at a concessional rate won't be allowed refund of IGST paid on exports. He will necessarily have to export goods under LUT to claim refund of accumulated balance of credit. The option lies with him to claim the refund of unutilized Input Tax Credit.

Next to discuss is notification no. 48/2017-Central tax. This notification states the category of supplies will be deemed to be exports. The list is as follows:

1. Supply of goods by a registered person against Advance Authorisation
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.

It is pertinent to note that as such no benefit of any kind is given in this notification. The literal interpretation in such a case would be that if an advance license or EPCG license is invalidated in favour of a local supplier and subsequently the supplier supplies goods against such license, the person receiving such goods will become ineligible to claim refund on goods exported. Similarly, if goods are procured by an EOU from local supplier where the local supplier avails benefit on supply made to EOU, refund will be denied to EOU of taxes paid on exports. It is clear from the amendment of Rule 96(10) by this notification that it is applicable only when person supplying the goods to exporter. It is not applicable when advance authorisation holder himself export the goods.

Coming next is notification no. 78/2017-Customs which exempts goods from the whole of the duty of customs leviable thereon under and also exempts the IGST if the same goods are used in the manufacture of export goods, as following:

"from –

*(A) the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act; and*

*(B) the integrated tax and compensation cess leviable thereon under subsections (7) and (9), respectively of section 3 of the said Customs Tariff Act:*

The effect of the notification 03/2018 dated 23-Jan-2018 would be that an EOU can procure the goods without payment of custom and IGST and use the same for manufacture of export goods. Now there is also proposition that if EOU procures such goods and uses the same for manufacture of goods which are ultimately sold in domestic market (DTA sale) then he has to reverse the benefit of BCD claimed and pay IGST on clearance in local market. Now, on combined reading of notification 78/2017 with Rule 96(10) introduced by notification number 3/2018 cited supra, it can be concluded that if an EOU imports goods availing the abovementioned notification and supplies the goods to a registered person who subsequently exports goods on payment of IGST, the refund will be denied to such exporter. But it looked to be very illogical. So the same has now been kept parvia notification number 39/2018 cited supra and the same restriction is now kept only for the EOU who procures the goods via notification 78/2018 and himself exports the goods.

The last notification to be discussed is 79/2017-Customs. This notification amends certain other notification in which exemption was provided to certain categories of suppliers Regarding EPCG Scheme and Various Advance Authorizations.

This notification seeks to provide exemption on IGST against various licenses like EPCG and Advance authorization. Thus where a person imports goods against these licenses without payment of duty and subsequently supplies such goods to a registered person, the person receiving such goods is not eligible for refund as per notification 03/2018. It is a very weird proposition as the very condition of advance authorization is that the material procured under it can't be sold or transferred. These are subject to actual user condition. Thus how can a registered person obtain the same goods from such a person who is not authorized to sale the same? Same is the case for EPCG licenses. An EPCG license holder can import machines without payment of custom duty. These

machines cannot be transferred. Thus the language of the clause in notification 03/2018 was highly ambiguous and unclear. Now, vid notification number 39/2018 dated 04-sept-2018 the same situation has been cleared. **Now the restriction has been kept only the person who has himself taken the benefit of 79-2017-customs** and not the person who has procured the goods from the person who has taken the benefit of the said notification.

It is very crucial to go through the above mentioned restrictions before opting for "With Payment of IGST" option while exporting otherwise the refund will get rejected and even if the same has been granted erroneously in automated system, then at the later stage the department may recover the amount with interest.

## The Best Way to Win is not the need to Win

Piyush Dabhi

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"कर्मण्येवाधिकारस्तेमाफलेषुकदाचन

"Do your karma, never get worry about fruits."

(ShrimadbhagwadGeeta , 2.47)

"Award goes to....."

"Let's congratulate the winner ...."

These words are so joyful to listen that each and every person admires it. Actually, everyone is mad about success, win and victory. No one needs to get through the process. Only success!

In shrimad bhagwad geeta lord Krishna says that one has not to worry about the fruits. He needs to do his work in non-greedy manner; giving fruit is upon the lord himself.

Doing everything without the need of success might not seem great but it actually works like a miracle. and even if the actual result is not successful, then also being in the phase of success manifest satisfaction of being winner.

Hard work always pays off!

When we look at the greatest people of all the times like swami vivekanand Gandhiji and lata mangeshkar, one thing which is similar is being in process. They had never admired success. They were busy in doing their karma. And miracle happened. They won everywhere! And what people see is the particular activity which they performed took them to success. They won because they did not admire it. Hard work is the key to success but it does not guarantee the success at first time, rather continuous efforts towards the karma leads to self satisfaction and thereafter win or lose becomes immaterial because win situation or lose situation just remains as mere outcome of the process.

Now days, winning everywhere and being successful have become so necessary that if one loses or is not successful then he is not accepted as a good kind. He is criticized. No one looks after his efforts and hard-works only final outcome has become parameter to success. It is so sinful to see that children at the kinder – garten are taught to win a bicycle race and to make their child win, he is offered a chocolate! So basically we are nurturing a fruit giving trees rather well grown trees when a child is taught to win and thus will be a well- coded machine, bound to win.

When people see what success and winning brings to the life, they admire it. In this way though they do everything right their intention remains of winning so, they never understand the process.

We can assume a situation where workers are producing goods to meet the orders as Rule of Thumb.

In the Bible there comes one story in Genesis 37. Joseph was hated by his brothers and got prisoned in fake case. In the prison his hard – work took him to be in- charge of the prison. Then-after, he interpreted the dreams of Egypt's pharaoh and became Pharaoh . It was his hardwork and state of being in process rather to win which took to him at this place.

The need is to get in the process. Only thing is to be a part of the process and not of the final outcome.