**SOME FREQUENTLY ASKED QUESTIONS ON GST – PART II**

By: G. Srikanth. FCA and R. Vignesh, ACMA

M/s. GSV Associates, Chartered Accountants, Chennai

This is the second part of the FAQs on Goods and Services Tax. The questions have been compiled taking into account the queries raised by members during the GST workshops as well as specific areas in the GST that would require understanding.

**TRANSITIONAL PROVISIONS:**

1. **I have supplied some goods on approval basis before 1 July 2017. What is the fate of this transaction, if the goods are returned? Is there any tax implications?**

*Where the goods were supplied on or after 1 Jan 2017 and goods are returned on or before 31 Dec 2017, the return of goods by the customer shall not be considered as supply and hence not liable to GST. However, where the goods were returned after 31 Dec 2017and they are taxable goods under GST, the customer shall be liable for GST. Further, if the goods are not returned on or before 31 Dec 2017, the Supplier shall be liable to GST. Goods sent on approval basis and outstanding as of 30 June 2017 shall be disclosed in GST TRANS 1 within 90 days of the appointed date.*

1. **I have sold some goods to a customerwhich has suffered duty/taxes before 1 July 2017. However, the customer has started complaining about the quality of goods and is likely to return the goods during the GST regime. Is there any tax implications for me?**

*Where the customer returning the goods is a registered person, the return of goods shall be considered as supply and taxable under GST. Where the customer returning the goods is unregistered and the goods were originally supplied not earlier than 1 Jan 2017 and returned back not later than 31 Dec 2017, you can take refund of the taxes/duties paid originally under the old law. Such goods should be capable of being clearly identifiable by the GST Officer. If the supply or return does not fall within the aforesaid timelines, then GST on reverse charge would be payable by you if the goods are returned by an unregistered dealer.*

1. **I have received an order before 1 July 2017 from a customer for supply of goods. However, I can execute the supply only on or after 1 July 2017. Should I collect GST?**

*Yes, where the supply is made in the GST regime, you have to collect GST although the contract was entered into earlier. The Purchase Order may have to be amended if necessary.*

1. **I am an exporter and have not been filing any CENVAT returns, but only State VAT Returns. I have balance of VAT as of 30 June 2017. Can I carry it over to the GST regime?**

*You can carry the balance of VAT as of 30 June 2017 to the SGST electronic credit ledger provided:*

* *You have filed all your returns under the old law for the last 6 months;*
* *The said input credit is admissible as input tax credit in GST regime;*
* *You have collected declaration forms such as Form C, Form H in respect of sales done, failing which the appropriate proportion of input tax credit cannot be carried forward ( As and when you are able to collect the same, you may apply for refund of VAT under old law); and*
* *You electronically file GST TRANS 1 within 90 days of the appointed date.*
1. **What if I have Cenvat Invoice/Bill of Entry (duty-paid documents)?**

*Where you possess duty paid documents, but have not filed CENVAT returns either because you were manufacturing exempt goods, or you were a dealer, you can take credit of the duties from the duty paid documents and transfer the same to your CGST electronic credit ledger provided:*

* *The inputs in stock and input in semi-finished or finished goods are not more than 12 months old;*
* *The input credit is admissible as input tax credit under GST regime;*
* *The inputs are used to make taxable GST supplies;*
* *GST TRANS 1 is electronically filed within 90 days of the appointed date.*

*The credit shall include Excise Duty, Additional duty of customs (CVD), Special Additional Duty(SAD) and National Calamity Contingency Duty.* ***Educational Cess is not included****.*

1. **I am a manufacturer. I do not have duty paid documents, but my closing stock has suffered duties at prior stages. Can I get any relief by way of carry forward of such embedded duties?**

*No, you cannot carry over such embedded duties if you are a manufacturer. However you may be eligible if you are a dealer. As a dealer you can get credit of 60% of the CGST/SGST/IGST collected on supply in the GST regime ( if the GST rate is 18% or higher, else only 40%) provided you pass on this benefit to the customer in the GST regime and you electronically file GST TRANS 1 and 2. Please note that this scheme is a available only for 6 months ending 31 Dec 2017 and you need to file GST TRANS 2 declaration every month showing the amount of benefit passed on to customers. However, this scheme is not admissible if you were dealing in exempted goods or nil-ratedgoods under the old regime.*

1. **I have purchased Capital Goods prior to 1 July 2017. Can I take the input credit in respect thereof?**

*Depending on whether you are a CENVAT/VAT filer, you may have already availed a portion of the duty/taxes in your returns. The balance can be availed in the GST regime by carrying over such balance as on 1 July 2017 into your CGST/SGST electronic credit ledger as the case may be. GST TRANS 1 has to be electronically be filed.*

1. **I have some materials lying in stock with my Job worker. Is there any declarations required in this regard?**

*Where you have materials lying as on 30 June 2017 with your Job Worker, make sure that both of you file declarations in GST TRANS 1 within 90 days to ensure that when the goods are returned back by the Job Worker, it does not suffer GST. Further, please ensure that the return of goods happens within 6 months of the appointed date or else the input credit taken on the materials has to be reversed by the Principal Manufacturer.*

**JOB WORK:**

1. **In case of exports, many of the activities are carried out by the job workers. The basic materials are supplied by the exporter to job workers and finished goods are produced by the job worker and given to exporter for export purpose.  In many of the cases, the job work charges consists of substantial portion of materials component supplied by the Jobworker himself.**
	1. **Whether the Job Worker Will Be Considered as Supporting Manufacturer and required to charge GST or as an Independent Manufacturer?**
	2. **Further does he require registration under GST as Job Worker or Manufacturer of Goods?**
	3. **If no GST Is charged, how the Job Work Charges will be reflected in GSTR -2.**
2. *Job work is defined as a process or treatment done on materials belonging to a third party. As such, in our view, even if material cost constitutes 50-60% of job work charges, the transaction will be one of job work for 2 reasons – (1) The activity satisfies the definition of job work in Schedule II to CGST (2) Alternatively, the activity can be considered a ‘composite supply’ where goods and services are bundled naturally. In such cases of composite supply, the GST applicable would be the rate applicable for the principal supply of goods/services-in this case, the principal or predominant supply is one of job work and hence the entire transaction will be taxed as Job work at 5% or 18%, as the case may be.*

*Job worker will be considered as an independent manufacturer only when all materials are supplied by himself and not by the principal manufacturer.*

1. *Registration itself is mandatory only if the turnover of the Job worker exceeds Rs. 20 lacs in the financial year.*
2. *There is no question of not charging GST on job work. GST has to be charged.*
3. **As per section 22 of the CGST Act 2017, any person whose aggregate turnover does not exceed Rs 20 lakhs in a financial year is not required to take registration under GST. Explanation (ii) to the section provides that the supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.From the above we can understand that if unregistered job worker returns us the goods after job work than for the purpose of calculating the limit of aggregate turnover of Rs 20 lakhs, the value of materials as sent by us as well as job charges charged by him, both will be included to calculate in his turnover. Kindly clarify.**

*It may be noted that the phrase ‘supply of goods’ in explanation (ii) to Sec 22 is in the context of supply of goods by the Principal from the place of the job worker to his customer directly. In this regard, proviso to Sec 143(1) clarifies that supply of goods from a Job worker’s place directly to the customer is possible only if the Job worker is registered, or the Principal declares the place of business of the job worker as his additional place of business. Therefore, there is no question of supply of goods from the place of unregistered job worker directly to the customer. Hence including the value of supplies in the turnover of the Unregistered Jobworker does not arise.*

1. **We have our office in Gurgaon and another one in Delhi; daily our vehicle runs between Gurgaon to Delhi – it carries material for job work for our fabricator having factory in Delhi. Although challan is issued by both offices, please clarify if there any tax liability arising out of the transaction?**

*There is no GST liability on supply of goods to Job work – whether intrastate or interstate. GST is only on the Job work charges levied by the Job worker.*

1. **The notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 has been issued which specifies GST Rate for manufacturing services on physical inputs owned by others (Heading 9988). It specifies 5% GST rate on services by way of job work in relation to processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act 1975. It is still not clear from this notification that what will be the rate of GST on cutting of leather, fabrication (stitching) of gloves etc. Whether these job charges will be taxed at 5% or 18% rate.**

*To our understanding, the 5% GST rate for job work is applicable only for processing of hides, skins and leathers and not for other job work activities, including cutting of leather, fabrication (stitching) of gloves.*

1. **If our job-worker not registered under GST, then what is the procedure to send goods to job-worker for the job-work purpose.**

*You may follow the same procedure that you follow when you send to Registered Job worker.*

|  |
| --- |
| 1. **Can we get job work done from unregistered person? If so, can this unregistered job worker be in a different state than mine? For example my GST is in U.P. So can I get job work done from an unregistered job worker in Delhi?**

*You can get job work done by an unregistered person. However any person who supplies goods or services interstate ( like in your case, where your unregistered job worker is in Delhi and he supplies services to UP) will have to compulsorily get registered. Therefore, without registration your Job worker in Delhi cannot extend Job Work services to you in UP*. |
| 1. **Do I have to deduct GST on reverse charge basis in this case?**

*Where you have engaged an unregistered Job worker, you have to pay GST on reverse charge. However, you cannot deduct this from your payment, but can claim ITC next month.* |
| 1. **Will I get refund of the GST deposited on account of this Job work transaction**?

*Please remember that if you opt for full rate of DBK, you will get refund only for the SGST portion. If you opt for low rate of DBK, you will get full refund of all GST*.  |
| 1. **Suppose we have issued leather cutting to our cutting fabricator. After this cutting fabricator issue this to our stitcher directly on our instruction. Please confirm if this is correct or we have to change something?**

*You can clear materials from one job worker to another job worker without having to bring it to your place. Use Delivery Challans ( as per Annexure 1) for his purpose.* 1. **What are the implications of the Job Worker having to be registered?**

*Job worker should get himself registered if his total turnover is more than 20 lacs and he does any taxable supply, such as job work. Further, he should get registered if he does job work to a Principal in another State. Furthermore, if you want to supply the final product from the job worker premises directly to your customer ( in India or abroad), you can do it only if he is a registered job worker.*1. **When the goods are returned after job work, will way bill be required, and implications based on response to question no. 1 above**

*No, the Job worker has to return it under his Delivery Challan. As and when E-way bill rules are prescribed, this matter should be revisited.* |

**EXPORTS AND REFUNDS ON EXPORTS:**

1. **As per the Guidance Notes for Importer and Exporters, if we claim higher rate of duty drawback, then we cannot claim refund of input credit of CGST and IGST. Now we have to pay IGST @ 5% on import of leather. We want to understand if we can claim refund of IGST paid either at time of imports or on interstate purchase when we claim higher rate of duty drawback.**

*The CGST/IGST refund cannot be claimed for those inputs which are used in your products exported during July - Sept. 2017 for which full drawback is claimed.*

1. **As per the guidelines issued for claiming duty drawback under transition period from 01.07.2017 to 30.09.2017, we can claim duty drawback either at full existing rate (around 8%) if we do not claim refund of input credit of CGST and IGST. Another option available to us is that we opt for duty drawback claim @1.80% and seek refund of input credit of CGST and IGST along with SGST. Both of the option is available to us if we make export without paying export duty/GST under Letter of undertaking**. **Is our understanding correct?**

*Yes. However please check the conditions necessary to execute a LUT instead of Bond. Please refer elsewhere in the FAQ for the conditions.*

1. **We make export under Rebate method, i.e. we pay GST at time of export and thereafter claim refund of the GST paid at time of export. Is this GST paid at time of export, fully refundable? Please also advise can we use input credit of CGST, SGST and IGST for paying off GST output liability on Exports. Please also advise at what will be the rate for claiming duty drawback under the rebate method.Please also suggest which will be better from above scenarios for claiming duty drawback**.

*The IGST on exports can be paid out of the available input credits of IGST, CGST and SGST.  The IGST thus paid is fully refundable.  Since you are claiming refund of IGST paid through the GST Input credits, you will be entitled only to lower rate of duty drawback covering the basic customs duty.  It may not be possible to suggest the best option without knowing the factual matrix in your case.  However, IGST payment route is generally preferred if you cannot get refund of your input tax credits under the Bond/LUT route because it consists substantially of capital goods ITC; or when you have carried over duties and taxes from previous regime which is not eligible for refund under GST regime; or when the bonding procedures are too cumbersome and involves financial outlays for opening bank guarantee. The provisional refund under IGST paid route is also a tad faster as per law.*

1. **Suppose we have purchased five lakh of material on VAT, out of which only three lakh and two lakh of material left in closing stock. How we get the VAT refund on utilized stock and non utilized stock as on 30.06.2017?**

*In respect of ITC taken in the VAT regime, irrespective of whether exports takes place before or after GST regime, you can take refund only under VAT regime. You may however carry over the VAT credit into your SGST ledger and pay IGST on exports if you opt for that route.*

1. **As per GSTR-1, for Export Sales there is a column for Shipping Bill / Bill Of Export. Please confirm the documents in support of Bill of Export.**

*IN GSTR 1, for exports there are no documents to be attached. However, for applying refund on RFD 01, you need to fill up statement-3 of the Annexure to RFD 01,showing the details of shipping bills and invoices.*

1. **What will be the implication of GST on samples sent for testing or to Overseas Buyers as free samples before placing confirmed Order? Will I get refund of Input Tax in case of Export?**

*Free samples can be supplied, but the input tax credit in relation to free samples have to be reversed – whether the sample is exported or supplied locally. In other words, free samples exported will not be eligible for any refund*

1. **Will the present duty draw back scheme and rates continue?**

*The present Duty Drawback scheme will continue up to 30 Sept 2017 in terms of Notification No. 59/2017-Cus(NT). Post 30 Sept 2017, Duty Drawback will be restricted only to the Basic Customs Duty portion.*

1. **Will the present other export incentives schemes and rates continue?**

*The export incentives in the form of MEIS, Advance Authorisation etc will continue. However, such incentives/scrips cannot be used to pay GST on imports or local procurements from 1 July 2017 in terms of Notification No. 26/2017-Cus (Tariff).*

1. **What is the time frame for grant of refund under GST?**

*Provisional refunds for exports will be issued within 7 days of acknowledgement issued after filing of claim under GST RFD 01. The remaining 10% will be issued by the 60th day.*

1. **Where can I find the format for Bond/LUT and should I give Bank Guarantee along with Bond?**
* *The format of Bond / LUT is as per GST RFD 11 which is available in* [*www.cbec.gov.in*](http://www.cbec.gov.in) *under Notification 15/2017-CT.*
* *Notification 16/2017-CT explains the eligibility of exporters to issue LUT instead of Bond. Accordingly, an exporter may issue LUT instead of Bond if he satisfies the following two conditions:*
	+ *The Exporter should have received inward remittances against exports in the previous year to the extent of ateleast 10% of exports, but not less than Rs. 1 crores; orThe Exporter is a Status Holder in terms of Para 5 of FTP; and*
	+ *The Exporter has not been prosecuted under the CGST/SGAT or other existing laws for contravention of an amount in excess of Rs. 2.50 lacs*

*Those exporters who do not satisfy the above conditions have to issue Bond in Non-Judicial Stamp Paper of the concerned State. The amount for which Bond should be given is based on the exporter’s own estimation of his exports. Jurisdictional GST commissioners have been granted powers to fix the value of Bank Guarantee based on the exporter’s track record. However, in any case, the value of Bank Guarantee – it has been advised- shall not to exceed 15% of the Bond Value.*

1. **Should the Bond or LUT be opened for each consignment?**

*The Board has clarified vide Circular 4/2017 that the Bond may be opened based on the estimation of exports by the Exporter. The LUT may be opened for a period of 12 months. Where the Bond or LUT is exhausted, fresh Bond/LUT may be opened. If your old LUT/Bond is still available you may use it upto 31 July 2017 only. You may supply the LUT/Bond to the Asst/Dy Commissioner of GST of your jurisdiction till such time the electronic filing of GST RFD 11 is made possible..*

1. **Should I follow the same Shipping Bill and Bill of Entry format of the old regime?**

*New formats have been notified vide 60/2017-Cus (NT) and 65/2017-Cus( NT) respectively which should be followed.*

1. **What are the modes of refund available to Exporters during the period 1.7.17 to 30.9.17?**

*As Composite rate of Duty Drawback has been extended till 30 Sept 2017, an Exporter may export under any of the following three routes:*

* + *Export under Full rate of Drawback*
	+ *Export under Bond/LUT and claim refund of GST input credits and lower DBK.*
	+ *Export on payment of IGST and claim refund of IGST and lower DBK.*
1. **How does an Exporter choose one of the above methods?**

*That would really depend on the factual matrix in each exporter’s case. The objective should be to maximize the refund of taxes and in this regard, exporters have to evaluate the quantum of GST credits available, the rate of Duty Drawback, the type of GST credit available, the quantum of input credits transitioned from the old regime, the amount of capital goods input credits available, the feasibility of complying with bank guarantees etc.*

1. **Can I get refund of VAT / CENVAT carried over from the old regime?**

*In terms of Sec 142(4) of CGST Act, no refund of VAT/CENVAT credit carried over from the old regime is possible in respect of exports made before or during GST regime. As such, the credits may be used only to pay domestic tax liability, or to pay IGST on exports, if so opted for. Alternatively, you may take a refund under the old regime itself and not carry over any credits into the GST regime.*

1. **Can I carry forward input credits as of 30 Sept 2017 when I am an exporter?**

*If you have availed full rate of DBK or exported under Bond/LUT routethen you cannot take input tax credits on materials already used in the export of finished products into the opening balance of 1.10.17. The principle is that you cannot get double relief. Therefore, if you have input credits on materials still lying in stock as on 30 Sept 2017, the onus is on you to establish that the materials were in stock and not consumed for exports.*

1. **What are the conditions if I opt for full Drawback route upto 30 Sept 2017:**

*When you export under Full Drawback route ( valid only upto 30.9.17), you cannot claim refund of CGST and IGST taxes. However you can claim refund of SGST as drawback does not relieve you of state taxes. Full drawback is* ***not eligible*** *if the product is :*

* *exported availing input tax credit of the central goods and services tax or of the integrated goods and services tax on the export product or on the inputs or input services used in the manufacture of the export product;*
* *exported claiming refund of the integrated goods and services tax paid on such exports;*
* *exported by an exporter who has carried forward the amount of Cenvat credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act.*
1. **What are the conditions to go for Refund under Bond/LUT route?**

*If you go for refund under Bond/LUT route, please observe the following:*

* + *You can claim only lower rate of DBK ( only BCD) as applicable.*
	+ *You have to execute a Bond/LUT in form GSTRFD 11. This is to be given to your jurisdictional Asst/Dy GST Commissioner till such time the electronic transmission facility is activated.*
	+ *Please check eligibility to executed LUT instead of Bond as per answer to another question in this Part of FAQ.*
	+ *Declare in the Invoice “* ***Supply meant for Bond / LUT without payment of IGST****” and indicate in Shipping Bill that you have not claimed refund of IGST paid and have not claimed full rate of DBK.*
	+ *You may claim refund of taxes by filing GST RFD 01 containing details of your Shipping Bill and Export Invoices.*
	+ *Please also read Rule 96A of CGST Rules 2017.*
1. **What are the conditions for Refund under Rebate route:**

*If you go for refund of IGST paid, please observe the following:*

* *You pay IGST on the exports using the Input tax credits available.*
* *There is no need for Bond/LUT.*
* *You cannot go for full rate of duty drawback.*
* *Declare in the Shipping Bill and Invoice that you have not claimed refund of Input tax credit nor claimed full rate of DBK.*
* *You may claim refund of taxes by filing GST RFD 01 containing details of your Shipping Bill and Export Invoices.*
* *Please also read Rule 96 of CGST Rules 2017.*
1. **What is the procedure for applying for Refund?**
	* *File refund claim in GST RFD 01 along with details of SB and Export Invoices for* ***refund under Bond/LUT route.***
	* *File Shipping Bill with Export General Manifest and GSTR-2 to constitute a valid application for* ***refund under ‘IGST paid” route****.*
	* *Within 3 working days, if you have applied for refund of IGST paid, you will receive an Acknowledgement from the GST department in Form GST RFD 02. Under Bond/LUT route, you get the acknowledgement in in 14 days. All this is electronic.*
	* *Your refund application form will be mapped on your monthly return GSTR 3 to validate the Shipping Bill, Invoice details etc.*
	* *Within 7 days of receiving the acknowledgement you should get 90% of your claim credited into your bank account. This is provisional.*
	* *Within 60 days of your application, the final refund will be credit to your bank account.*
	* *Realisation of foreign exchange is not a precondition for refund.*

*It may be noted that both under the Bond/LUT route as well as under the IGST refund route, the matching of GSTR 1 and 3 with the Customs Portal is an essential step in the processing of refund. Therefore, it appears that the applications of refund will be processed only after the monthly returns are filed and therefore, the count of days should start only from the date of filing monthly returns which is 20th of the succeeding month.*

1. What are the various circulars and notifications relevant to refund for exports?

Some important pronouncements are:

* Rules 96 and 96A of CGST Rules 2017;
* Circular 2/2017 and 4/2017-CT:
* Notification 16/2017-CT;
* Notification 26/2017, 50/2017-Customs (Tariff) and
* Notification 59,60 and 65/2017-Cus(NT)

**HSN CODES, RATES, OTHERS:**

1. **Please let us know what will be the HSN code on Gloving (Crust) Finished Leather used for manufacturing Leather Safety Products.**

*There does not appear a separate HSN code for Crust Finished Leather. Either it is crust or finished leather.  So, it is 5% or 12% as the case may be.*

1. **Kindly clarify what will be the GST rates for different leather processing stage such as cutting of leather in gloves, stitching of leather cuttings.**

*To our understanding, these jobs would not come under leather processing.  These are done after the finished leather is received.  As such the job work charges would be at 18% GST.  The lower rate of 5% is only for processing of leather.*

1. **Footwear - The applicable taxes are to be paid based on invoice value or MRP?**

*The taxes are based on your price. The RSP is only to identify the tax rates applicable.*

1. **As a leather garment exporter our main items is Leather. At present we are importing wet blue which aisre duty free. Now after implementation of GST there is IGST. What is the rate and as an exporter will GST result in huge amount of tax against what we shall be claiming refund?**

*IGST on import of finished leather is 12% while that of Crust ( semi finished) is 5%. Yes, there will be payment of taxes in advance which is not relieved except through the refund route. Please note that upto 30.9.17, the government has extended DBK.*

*Note:*

*The above FAQ is intended purely to familiarize the reader with certain aspect of GST and do not constitute legal advice of the Council or the contributors. Readers are advised to take expert legal advice before taking any decision.*

**ANNEXURE -1**

**Requirements in Delivery Challan**

* date and number of the delivery challan;
* name, address and Goods and Services Tax Identification Number of the consigner, if registered;
* name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;
* Harmonised System of Nomenclature code and description of goods;
* quantity (provisional, where the exact quantity being supplied is not known);
* taxable value;
* tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
* place of supply, in case of inter-State movement; and
* signature.