

## Export of Goods Under GST Laws - An Analysis of The Beneficial Option

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It is every nation's endeavour to increase its exports and in order to make its products competitive in the international market, no country wants to export the taxes along with products. In this spirit of avoiding export of taxes, the GST laws of India also categorise exports as "zero rated supplies", giving two options to an exporter - (i) export without payment of taxes and claim refund of unutilised input tax credits, or (ii) export with payment of tax and claim refund of the tax paid. While the refund of unutilised input tax credit under the former option is guided under Rule 89 of the CGST Rules, 2017, the refund of tax paid under the latter option is prescribed under Rule 96 of CGST Rules, 2017.

On a strict interpretation of the statute, one can easily decipher that the exporter is free to choose any of the two option as these should give neutral results to the exporter as well as the tax authorities. However, the intent of the rule making administrative body does not seem to be in line with the statute as there are various differences in refunds given under both the options. For example, non-availability of refund of credits pertaining to capital goods under Rule 89.

Recent amendments brought under Rule 89(4) of CGST Rules, 2017 which restrict the value of exported goods to a maximum of 1.5 times the value of like goods domestically supplied for the purposes of determining turnover of exported goods, adds to the complexity of obtaining the refund under the first option. While the amendment is clearly susceptible to challenge on catena of interpretational and constitutional issues, however dehors the issues that this amendment brings in, it appears that gradually the option to export goods on payment of tax and later on claiming refund of the tax paid may become beneficial to the exporters on consideration of various grounds as discussed below:

- **Automatic refund** - Under the first option, once the goods are exported, the exporter is required to file an application for refund under form RFD-01 within a prescribed time period. However, under the second option, the shipping bill filed at the time of export of goods is deemed as application for refund. Therefore, the compliance burden of filing separate application is reduced under the second option. Also, there is no need to file any bond or LUT prior to export which also reduces the compliance burden.
- **Restriction in amount of refund** - As highlighted above, the latest amendment in Rule 89(4) restricts the value of export goods to a maximum of 1.5 times the value of like goods domestically supplied for the purpose of calculating refund and as a consequence the amount of refund is restricted in a case where say the exporter has stroked a better bargain in international market. However, there is no such restriction envisaged under second option as of now.
- **Credit of capital goods** - The formula for calculation of refund under the first option prescribed under Rule 89(4) excludes the credit pertaining to "capital goods". Even though this has been challenged in a few High Courts by way of Writ Petitions, the outcome is still awaited. On the other side, there is no such bar under the second option where credit pertaining to capital goods can be set off while making payment of tax. This payment of tax is subsequently refunded.
- **Bureaucracy issues** - The exporters availing the first option will have to first pass the test of valuation prescribed under the Customs laws at the time of filing shipping bill for export before the customs authorities. Thereafter, the exporter may be called upon again by the GST authorities for satisfaction apropos the value of goods once he has filed the application for refund under RFD-01, as the condition of value of goods inserted in Rule 89(4) is not dependent on value declared under the customs laws or even the valuation under GST laws. The amendment gives a lot of room to the GST authorities for seeking additional information from the exporters on the pretext of determining the value of like goods domestically supplied. No such issues arise while claiming refund under the second option.

Basis above, it appears that the export of goods under the second option of payment of tax and thereafter claiming refund of the tax paid might be beneficial to exporters in light of various issues highlighted above.

Indeed, the same might appear to be impracticable to a few from a cash flow standpoint, but the exporters need to re-evaluate both the options considering the latest amendments and issues involved.