



ARTICLE ON INTERPLAY OF CUSTOMS AND GST

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Before 2017, in India, there used to be many indirect taxes that were levied on goods or services or both. But with the introduction of GST, many indirect taxes like VAT, CST, and Service Tax got subsumed. But GST has not subsumed the Customs Law. Post GST, The Quantum of the Customs Duties is still as per the Customs Act, 1962 and The Customs Tariff Act, 1975, and related Customs Rules, Notifications, Circulars, case Laws and Annual Union Finance Acts. Moreover, the Customs Tariff Act, 1975 contains two Schedules. Schedule 1 gives classification and rates of duties for imports of goods into India. Schedule 2 gives classification and rates of duties for export of goods from India.

Before proceeding further, we should first deeply understand the nature of GST and Customs Law. As GST is a tax levied on the supply of goods and services, while Customs is a duty/tax levied on the import and export of goods. In GST Regime, CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) is levied on the intra-state supplies of goods and services, whereas IGST (integrated Goods and Service Tax) is levied on inter-state supplies of goods and services and sometimes cess is also being levied on supply of goods and services under GST. But, on the other hand, in Customs Regime, there are duties such as Basic Custom Duty, Social Welfare Cess leviable as per the Customs Act, 1962 and the Customs Tariff Act, 1975. Additionally, there are other duties in Customs which may be leviable on the import or export of goods such as Anti-Dumping Duty, Safeguard Duty, Countervailing Duty, Road and Infrastructure Cess, Health Cess, Agriculture Development Cess etc.

Similarly, one may observe that there are many changes made in Customs law with the introduction of GST. Various sections of the Customs Act, 1962 and the Customs Tariff Act, 1975 are amended and lots of interaction between Customs and GST is being observed. There are some of the key areas where the provisions of both the Acts are simultaneously attracted or not attracted, and such areas are none other than the areas of interplay between Customs and GST. Some of the areas of the interplay of GST and Customs are given as under:

- 1. Import of Goods** – When the goods are imported into India, then the importer is required to pay both Customs Duty and GST. One can understand the implications of GST and Customs from the example given below:

The assessable value of imports is Rs 2,22,000. Assuming, BCD (basic custom duty) is @ 10%, IGST @ 18% and SWS @ 10%. Following would be an example of calculation:

| Particulars | Amount (Rs.) | Amount (Rs.) |
|---|--------------|--------------|
| Assessable Value of Imports | | 2,22,000 |
| (+) Basic Custom Duty (10%) | 22,200 | |
| (+) Social Welfare Surcharge (10% of Basic Custom Duty) | 2,200 | 24,400 |
| Total Value for levy of IGST | | 2,46,400 |
| (+) IGST @ 18% | | 44,356 |
| Total Cost of Imports | | 2,90,776 |

From the above example, we can conclude that the Custom Duty is levied on the value of goods, while the GST is levied on the value of goods and customs duty. Also, one can easily observe that GST has a cascading effect on the customs duty.

2. **Export of Goods** – When the goods are exported from India, then the exporter is exempt from paying Customs Duty on most of the exported products. Sometimes, the export duty is leviable on the Exports of certain goods by the Government like Indian Govt. imposed high export duty on export of onions during August 2023 to cut down the inflation which have occurred due to shortage of supply in domestic market or other factors. Moreover, as per Section 16 of the IGST Act, 2017, the export of goods and services would be termed as Zero-rated Supply. And a registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods and services, without payment of IGST, under a bond or Letter of Undertaking (LUT) subject to certain conditions as per section 54 of CGST Act, 2017. Also, a registered person has the option to pay IGST and claim refund of such IGST paid as per the Section 54 of CGST Act, 2017 and the relevant rules made thereunder.
3. **Import of Services** – Section 2(11) of the CGST Act, 2017 defines the term 'import of services'. The import of services from the foreign supplier to the Indian recipient and the place of supply is India, this would be fit into the definition of import of services in India. The importer of services would be required to pay IGST on reverse charge basis. On the other hand, Customs are not applicable to services as Customs are only applicable to goods.
4. **Import of Goods with Ancillary Services** – If the goods are imported into India with ancillary services attached to such goods, then GST would be levied on both goods or services whereas Custom Duty will be leviable on the supply of goods and not on services. For example, Mr. Ashwin imports 5 laptops for Rs. 2,00,000 (inclusive of Insurance charges of 5 laptops of Rs. 50,000), then the total cost of imports of laptops with insurance charges are as follows:

| Particulars | Cost of Laptops (A) (Rs.) | Cost of Insurance (B) (Rs.) | Total Cost of Imports (C)=(A)+(B) (Rs.) |
|--|------------------------------|--------------------------------|--|
| Assessable value of Imports (Given) | 150000 | 50000 | 200000 |
| (+) Basic Custom Duty (10%) | 15000 | - | 15000 |
| (+) Social Welfare Surcharge (10% of BCD) | 1500 | - | 1500 |
| Total Value for levy of GST | 166500 | 50000 | 216500 |
| (+) IGST @ 18% of 216500 | | | 38970 |
| Total Cost of Imports | | | 255470 |

From the above example and calculation, we can see that custom duties are only being levied on the value of goods (laptop) whereas GST is being levied on both goods and services at the rate of principal supply (in our example, laptop) as in our case, laptop and insurance services is a composite supply as per the Section 8 of CGST Act, 2017.

5. **Transactions with people registered under the various schemes in Foreign Trade Policy (FTP), 2023** - As per Foreign Trade Policy 2023, there are various schemes introduced for businesses to boost foreign trade in India such as Advance Authorization, Export Promotion Capital Goods (EPCG) etc.

- i. As per the Advance Authorization Scheme, the exporters can import inputs without paying customs duty subject to certain conditions. But GST is levied on such imports as it would be considered as deemed exports for the supplier as per Notification No. 48/2017-Central Tax dated 18.10.2017. The refund of such IGST can be claimed by the supplier or the recipient as per the Section 54 of CGST Act, 2017.
- ii. Transactions with EOU – The Foreign Trade Policy has defined the term Export Oriented Unit (EOU). EOU are those units undertaking to export their entire production of goods and services (except permissible sales in domestic tariff area).

| Transactions | GST Leviable or Not | Customs Leviable or Not |
|-----------------------------------|--|--|
| EOU to EOU | Any supply of goods by EOU to another EOU is termed as 'Deemed Export' as per Notification No.48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and relevant rules made thereunder. | As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty. |
| EOU to DTA (Domestic Tariff Area) | EOU is allowed to do only permissible sales and on such sales IGST is levied. | Custom Duty is levied on supply of goods from EOU to DTA. |
| EOU to SEZ | Supply of goods or services or both to SEZ for authorized operations are termed as Zero-rated Supply as per Section 16 of IGST Act, 2017. | As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty. |
| EOU Exporting Goods | Export of goods is also termed as Zero-rated Supply as per Section 16 of IGST Act, 2017. | No Customs Duty is leviable at large (except in such cases where export duty is applicable to notified goods.) |

The Customs tax and GST implications on the supply of goods by EOU are as follows:

| Transactions | GST Leviable or Not | Customs Leviable or Not |
|-----------------------------------|---|--|
| DTA (Domestic Tariff Area) to EOU | Any supply of goods by DTA/SEZ to EOU is termed as 'Deemed Export' as per Notification No.48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and Rule 89 of CGST Rules. | No Custom Duty is Applicable when goods are supplied by DTA to EOU. |
| SEZ to EOU | | As per Rule 46(13) of SEZ Rules, 2006, SEZ can transfer/supply goods to EOU without payment of duty. |
| EOU Importing Goods | IGST is exempted as per the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003 and Foreign Trade Policy, 2003. | Import by EOU is exempt from Customs duty as per the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003. |

- iii. As per EPCG (Export Promotion of Capital Goods) Scheme, the exporters can import capital goods (except those specified in Negative List in Appendix 5F of FTP, 2023) for preproduction, production, or postproduction at zero rate of custom duty. Capital goods imported under EPCG scheme for physical exports are exempt from IGST and Compensation Cess. Moreover, one may need to comply with the provisions of FTP for import of capital goods under EPCG Scheme.
6. **Transactions with Special Economic Zone (SEZ)** – As per SEZ Act, 2005, SEZ Units are the special business areas which are being designated in the country that have different business and trade regulations (it also includes Free Trade and Warehousing Zone – which is also defined in Section 2(n) of SEZ Act, 2005). They are being set up as per the provisions of the SEZ Act, 2005 and SEZ rules, 2006.

The Customs tax and GST implications on the supply of goods to SEZ are as follows:

| Transactions | GST Leviable or Not | Customs Leviable or Not |
|---------------------|---|--|
| DTA to SEZ | Supply of goods or services or both to SEZ for authorized operations are termed as Zero-rated Supply as per Section 16 of IGST Act, 2017. | No Custom Duty is leviable subject to certain conditions on supply of goods from DTA to SEZ. |
| EOU to SEZ | | As per Para 1(4b) of the Notification No. 52/2003 – Customs (Tariff) dated 31.03.2003, any supply of goods to EOU is exempt from Customs Duty. |
| SEZ Importing Goods | | No Customs Duty is leviable as per Section 26 of SEZ Act, 2005. |
| SEZ to SEZ | | As per Section 53 of the SEZ Act, 2005, No Custom Duty is leviable |

The Customs tax and GST implications on the supply of goods by SEZ are as follows:

| Transactions | GST Leviable or Not | Customs Leviable or Not |
|---------------------|---|--|
| SEZ to EOU | Any supply of goods by SEZ to EOU is termed as 'Deemed Export' as per Notification No. 48/2017-CT dated 18.10.2017 and refund of such IGST can be claimed as per Section 54 of CGST Act, 2017 and relevant rules made thereunder. | As per Rule 46(13) of SEZ Rules, 2006, SEZ can transfer/supply goods to EOU without payment of duty. |
| SEZ to DTA | IGST is levied on supply of goods from SEZ to DTA. | As per Section 30 of the SEZ Act, 2005, Custom Duty is levied on supply of goods from SEZ to DTA. |
| SEZ Exporting Goods | Export of goods is also termed as Zero-rated Supply as per Section 16 of IGST Act, 2017. | No Customs Duty is leviable at large (except in such cases where export duty is applicable to notified goods.) |

Tax implications on the Supply of Services by/to SEZ – Supply of Services is outside the purview of Customs Law. Whereas, in the GST regime, any supply of goods or services or both to a SEZ unit for authorized operations is termed as zero-rated supply as per Section 16 of IGST Act, 2017. Moreover, any supply of service by SEZ to EOU or DTA would be subject to GST as per the provisions of the GST Law.

Overall, the interplay of GST and Customs is a very complex but interesting topic. As a tax professional, one needs to be aware of both Customs Law and GST Law. The proper knowledge of these Acts and the areas of interplay rendered by the tax professionals would help the businesses (Clients) to boost the foreign trade in India.
