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GST- FOB Vs. Invoice Value

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ABSTRACT

Export is one of the major components of international trade. India is amongst the world's top 20 nations with respect to the export of merchandise. With the increased liberalisation of trade by the Indian Government, there's an abundant opportunity for establishing a profitable export business. Exports facilitate international trade and stimulate domestic economic activity by creating employment, production, and revenues.

This article discusses the lack of clarity under GST laws on the issue whether Free on Board value (FOB) or Invoice value has to be adopted as the value of supply in case of Export of goods under GST regime. The article highlights on the effect of circulars and clarifications issued by the Government to clarify the ambiguity prevailed in the determination of the value of supply viz. whether FOB value or Invoice value has to be adopted as the value of supply in case of Export of goods.

I. INTRODUCTION

Exports are governed by Foreign Trade (Development & Regulation) Act, 1992 and Export-Import (EXIM) Policy. Directorate General of Foreign Trade (DGFT) is the primary governing body responsible for the export and import policies in the country. Since an export trade has to follow a specific set of procedures from receiving inquiries to completion of the transaction, exporters need to get themselves registered with these authorities for ensuring all the legal formalities as required by them are met and also for receiving incentives which are allowed under the export promotion schemes. The Reserve Bank of India (RBI) guidelines have to be met by the exporter. An exporter also requires an Import-Export Code Number from the concerned regional licensing authority.

Initially, it is of paramount importance to understand the practice being followed by the trade before getting into legal aspects. Export/ Import sales are done in the international market as per INCOTERMS, which lays down internationally accepted forms of transaction. Significant terms which govern this arena are FOB, Cost and Freight (C&F) and Cost, Insurance and Freight (CIF) etc. Free on Board means the value of goods at the time of Board, and CIF

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means Cost, Insurance & Freight, i.e. value of goods at the time of delivery to recipient's port which includes the cost of transportation and insurance.

As per the agreements entered with the customers, different exporters (suppliers) adopt different transactions and raise invoices for the amount of agreed transaction. In the case of CIF Contracts. Freight and insurance expenses are borne by the exporters (suppliers), and an invoice with single consideration is raised.

II. LAW ON THE DETERMINATION OF EXPORT VALUE

Prior to the introduction of GST, the value of goods and services were determined under the Central Excise Act, 1944 and the Finance Act, 1994. However, post-GST, Section 15 of CGST Act, 2017, which is even made applicable to IGST Act vide section 20 of IGST Act, 2017 deals with valuation. Relevant Section is extracted below:

“15(1) value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.”

From the above provision, it is evident that the value of the supply of goods or services is the transaction value which is defined under the statute itself. It is clear from the above that in case of export of goods under CIF contracts, the actual price paid by the recipient to the supplier (exporter) for the said supply is the transaction value which is nothing other than the value of the supply. In CIF contracts the recipient pays the price mentioned in the invoice including freight and insurance charges to his exporter for the supply of goods.

Since Section 7 of IGST Act 2017 treats exports and imports as inter-state supplies, the valuation should be strictly made as per the provisions of GST.

III. DEPARTMENTAL CLARIFICATIONS

Traders were confused as to under which law, the valuation for export of goods has to be done viz. whether under GST or under Customs Act. In this background, Circular No.37/11/2018-GST dated 15.03.2018 was issued by CBIC which clarified that valuation has to be made by strictly following the provisions under GST law. The relevant portion of the circular is extracted below:

“9. Discrepancy between values of GST invoice and shipping bill/bill of export: It has been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export.

9.1 During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.

The aforementioned circular reiterated that the export of goods or services, i.e. zero-rated supplies are to be effected under GST laws, and thereby the value of supply shall be the invoice value (transaction value). However, this circular is often misinterpreted as the “value in the corresponding shipping bill” refers to “FOB value”.

The above test is better understood if one pays close attention to the nature of contracts and shipping bills. In shipping bill, two values have to be declared by the exporter, i.e. FOB and invoice Value. The exporter needs to declare the value of goods at the time of export in FOB column and the actual transaction value (the amount which is actually going to be received from his customer) in “Invoice Value” column. In some instances, exporter raises invoices in advance and exports the goods at a later period. In such cases, the value declared in the invoice, and the invoice value mentioned in the shipping bill may vary due to change in exchange rates. In such cases, for the purpose of refund, lower of the value, i.e. value mentioned in the GST invoice and invoice value mentioned in the shipping bill shall be taken in to account. In any case, FOB value shall not be taken as the value of supply in respect of CIF contracts. The content of the circular is tabulated below to understand the value of exported goods under CIF contracts.

GST Invoice value	Invoice value in Shipping Bill	FOB value in Shipping Bill	Export value as clarified in the Circular	Reason
A	B	C	D	E
100	90	80	90	B is lower than A
90	100	80	90	A is lower than B
100	100	90	100	A or B as both are same

Since GST being a new levy, after its roll out w.e.f. 1st July 2017, the department has come out with many FAQs as a ready reference to help the trade to comply with GST laws. Though FAQs are not legally binding, normally it can be considered as a tool to interpret the law. The Department of Delhi Customs has issued a FAQ on refund of IGST on goods exported out of India. In answer to Question No. 16 of the said FAQ, the following reference has been made.

“After the implementation of GST, it was explained in the advisories that the details an exporter is required to enter in the “invoice” column while filing the SB pertains to the invoice issued by him compliant to GST Invoice Rules. The invoice number shall be matched with GSTN to validate exports and IGST payment. It was conveyed and reiterated that there

should not be any difference between commercial invoice and GST invoice after implementation of GST since as per the GST law, IGST is to be paid on the actual transaction value of the supply between the exporter and the consignee, which should be the same as the one declared in the commercial invoice.”

IV. CONCLUSION

To conclude, as far as GST law is concerned, valuation of supply, both DTA sales (supply within India) and Export of goods are governed under section 15 of the CGST Act, 2017 only. In other words, there is no separate legal provision for valuation with regard to export of goods. As per clause (c) of subsection (2) of Section 15 of CGST Act, 2017 incidental expenses before delivery of goods shall form part of the value of such supply. In cases of CIF contracts, under INCOTERMS, freight and insurance are incidental expenses in respect of the supply of goods before delivery. Therefore, the export of goods under CIF contracts, the value of supply is the transaction value which represents the value mentioned in the invoice, including freight & insurance.

Further, the intention of the Board is to clarify that the export value shall be the lower of the two values, viz., invoice value mentioned in GST invoice and the invoice value mentioned in Shipping Bills.
