

Interplay between FTP, Customs and GST

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Introduction

GST, Customs and FTP.

- **Classification Framework.**
- **Place of Supply.**
- **Exemptions**
- **Refunds and restrictions**
- **MOOWR Scheme**
- **SEZ Scheme**





**Basic Provisions
under GST which are
linked to Customs**

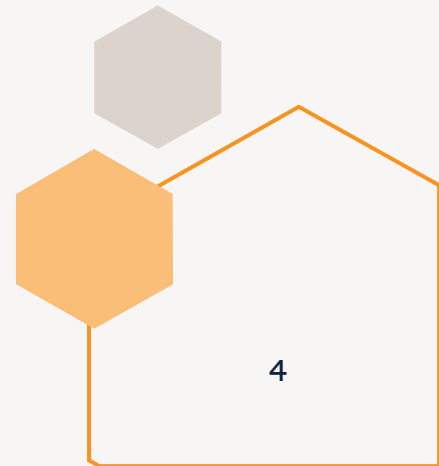
Basic Provisions under GST which are linked to Customs.

Places of supply of import/export goods

- For goods imported into India, the place of supply shall be the location of the importer;
- The place of supply for export goods shall be the location outside India.

Import/export is Inter-state supply

- Supply of goods imported into India, till they cross customs frontier, shall be treated as interstate supply;
- Goods being exported outside India would be treated as an inter-state supply, being treated as zero rated supply.



Basic Provisions under GST which are linked to Customs.

IGST will be applicable at the time of import as duty of customs

- IGST on imported goods would be levied and collected as per Section 3(7) of Customs Tariff Act, 1975 ('Tariff Act') on value determined under the Tariff Act, 1975 at the point when customs duties are levied under the provisions of customs law
- IGST would be payable on transaction value plus basic customs duty (and any other charge payable).

GST Compensation Cess applicable on imported goods as duty of customs

- GST Compensation Cess ('GST Cess') would be levied and collected under Section 3(9) of the Tariff Act.
- GST Cess would be payable on transaction value plus basic customs duty (and any other charge payable); IGST would not be included for computing cess amount.

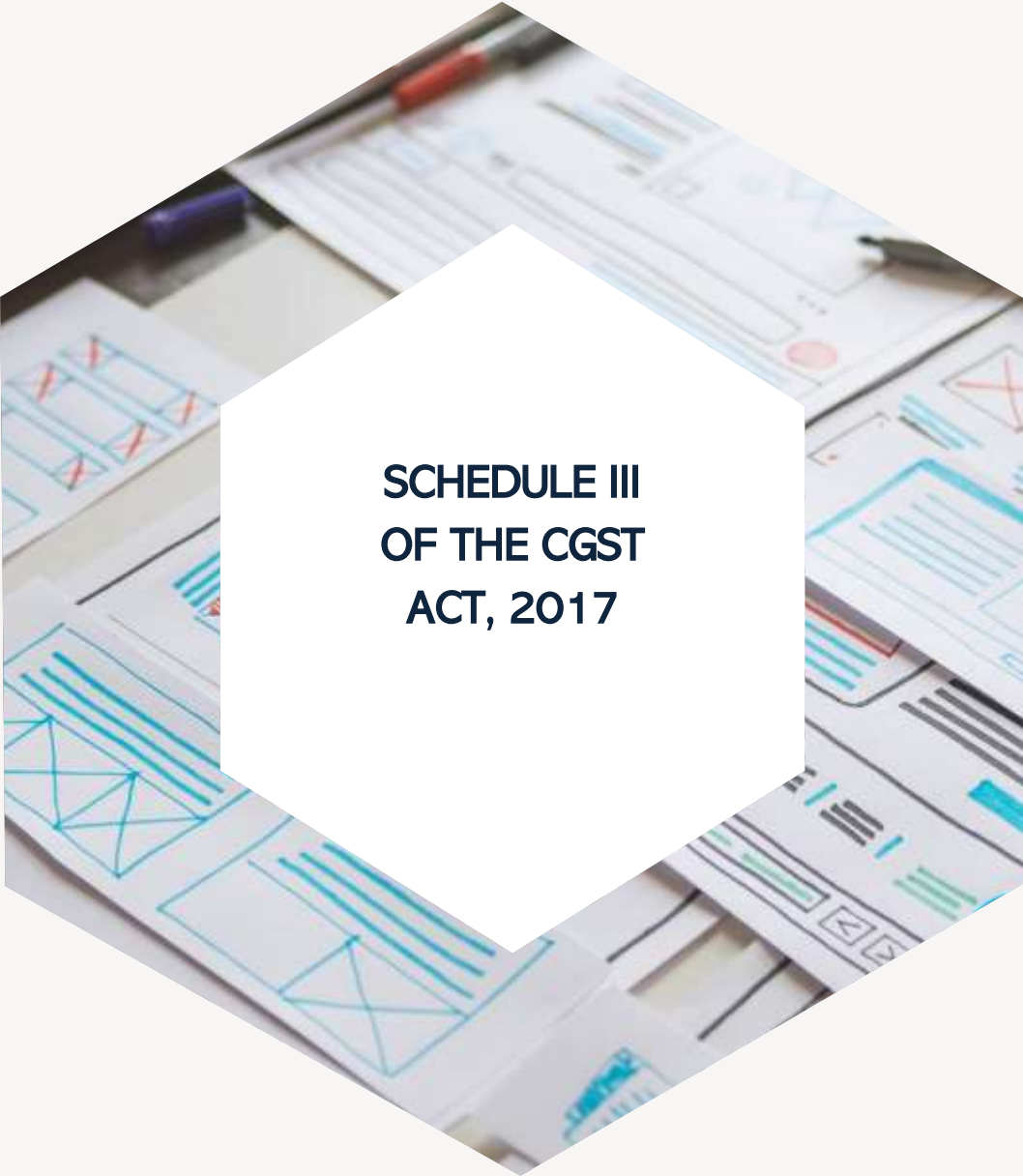
Basic Provisions under GST which are linked to Customs.

Classification of goods as per the Customs Tariff Act, 1975

As per Explanation appended to notification 1/2017 and 2/2017-central tax (rate) dated 28.06.2017

“(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”

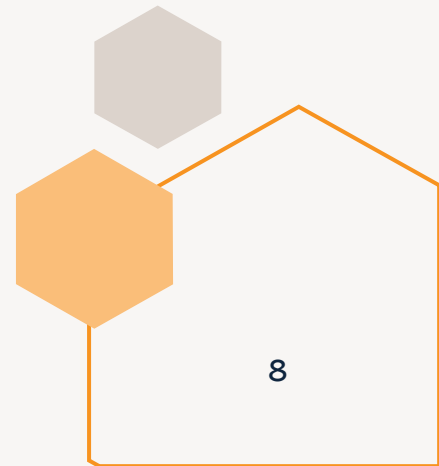


**SCHEDULE III
OF THE CGST
ACT, 2017**

**International Transactions,
Warehoused goods etc
are these transactions are
supply under GST??**

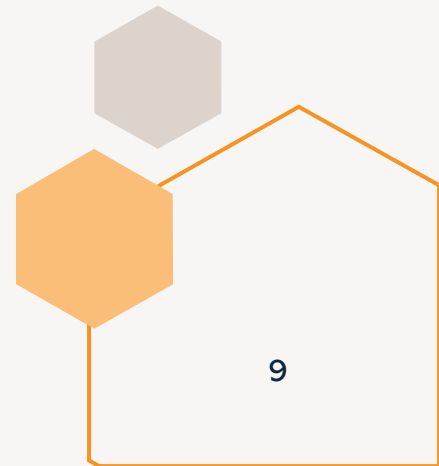
Supply from Custom Bonded warehouse

- Supply of warehoused goods to any person before clearance for home consumption is covered under Schedule III of the CGST Act, 2017.
- Input tax credit to be reversed for common and direct goods and services as per explanation to Section 17 (3) of the CGST Act, 2017 in case of supply of warehoused goods. Inserted w.e.f. 1st October 2023 [No.28/2023–Central Tax dated 31st July 2023 notified Section 139 of Finance Act 2023].



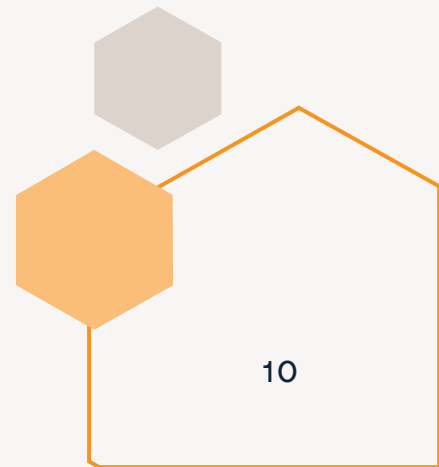
High Sea Sales

- Supply of goods by the consignee to any other person, by an endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
- Input tax credit not required to be reversed for as explanation to Section 17 (3) excludes supplies under Schedule III from the definition of exempted supplies.



Merchant Trade Transaction

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India
- Input tax credit not required to be reversed for as explanation to Section 17 (3) excludes supplies under Schedule III from the definition of exempted supplies.





**GST &
CUSTOMS
VALUATION**

Valuation under Customs and GST

Valuation Goods and Services

- Valuation under the Customs Act, 1962 is transaction value.
- As per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 certain value of the services also to be included in the value of imported of goods.
- Royalty, Technical Fees paid in relation to import of goods to be added in the value of imported goods for the purpose of payment customs duties.
- Royalty, Technical Fees are also subjected to the payment of GST under Reverse Charge Mechanism.

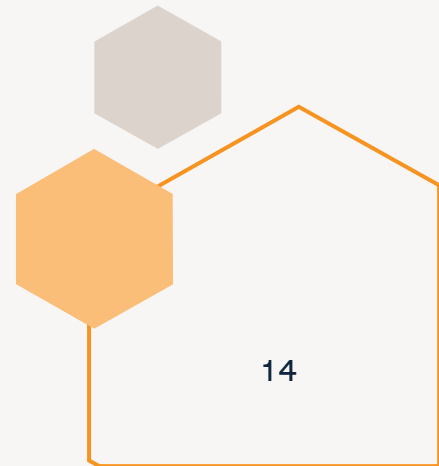


**MERCHANT
EXPORTS**

Concept of Merchant Exports

Merchant Exporter

- Where a merchant exporter exports goods without payment of tax.
- Procures goods at 0.1% and then claims refund of the same under Rule 89 (4).
- In this case, a supplier supplies goods to the merchant exporter charging GST at 0.1% and the merchant exporter exports the goods without payment of tax.
- Requirement of export of goods within 90 days from the date of supply.
- Declaration of the supplier on the shipping bill by the merchant exporter.
- In case of non compliances, the liability can be demanded on the “supplier”





**DEEMED
EXPORTS**

Concept of Deemed Exports

Deemed Export

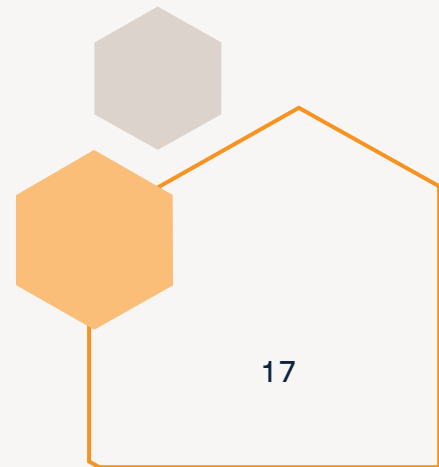
Categories of supply of goods notified (48/2017-CT) as Deemed Exports

Description of Supply

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.

Essential conditions to qualify as Deemed Exports

- Applicable only for the notified supply of goods (not applicable to services) under Section 147 of CGST Act, 2017.
- Goods are not required to be taken outside India.
- Goods must be manufactured or produced in India.
- Payment can be received in Indian Rupees or in convertible foreign exchange.
- Such supplies cannot be made under Bond / LUT.
- The tax must be paid at the time of supply.
- Refund of tax paid on such supplies can be claimed either by supplier or recipient.





EOU

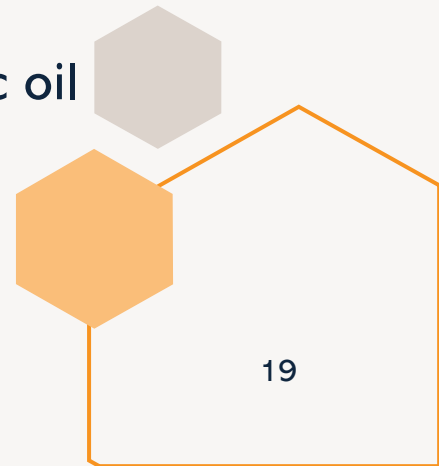
Concept of EOU

Export Oriented Units

➤ **Export Oriented Units (EOUs)** have been defined under Chapter 6 of Foreign Trade Policy (FTP) as those units undertaking to export their entire production of goods and services. Trading units are not covered under the EOU.

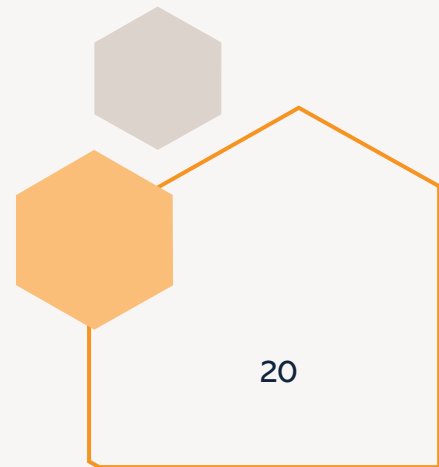
➤ **Benefits of Export Oriented Units :**

- Procurement of raw material or capital goods either through import or through domestic sources is duty free
- EOUs can claim Refund of GST paid.
- EOUs are eligible for reimbursement of duty paid on fuels procured from domestic oil companies.
- EOUs are eligible for claiming input tax credit on the goods and services.
- Fast track clearance facilities.



Export Oriented Unit

- Entitled for full custom duty exemption (including IGST) under notification 52/2003-Cus as amended by Notification 78/2017-Cus.
 - Capital goods.
 - Raw Material / consumables
- Option for payment of IGST on imports
- Local Procurement of goods – Deemed Exports / Input Tax credit
- Services – Input tax credit



Export Oriented Unit

- Refund
 - Local Procurement of CG / Inputs – Deemed Exports
 - Services – Refund under Rule 89 (4B)
 - Input & Input services – Refund under Rule 89 (4B)
- Restriction for refund by payment of tax on export – Restriction under Rule 96 (10).
- Option to opt for above subject to payment of IGST on imports.



ADVANCE
AUTHORISATION

Concept of Advance Authorisation

Advance Authorisation

- Entitled for full custom duty exemption (including IGST) under respective notification of Advance authorization.
 - Raw Material / consumables
- Option for payment of IGST on imports
- Restriction for refund by payment of tax on export – Restriction under Rule 96 (10).
- Option to opt for above subject to payment of IGST on imports.



GST REFUND

**GST Refund to EOUs,
Advance
authorization holders,
Merchant Exporters,
Deemed Exporter**

GST Refund procedure prior to 8th October 2024

- Restriction on Exports with payment of Tax in case inwards are,
 - Imported goods without payment of IGST under by EOUs.
 - Imported goods without payment of IGST under by Advance authorization holders.
 - Merchant Exporter receiving the goods with 0.1% of tax.
- Restriction on exports with payment of tax and refund thereof (Rule 96(10))
- Refund under Rule 89 (4B) -

refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

GST Refund procedure after to 8th October 2024

- The CGST Rule, 2017 has been amended vide notification No. 20/2024 – Central Tax dated 8th October 2024
- Restriction to exports with payment of GST has been removed. EOUs, Advance Authorisation Holders, Merchant Exporters can export the goods with payment of GST and claim refund of the same.
- Omission of Rule 89 (4A & 4B) – The exporters can claim refund in the ratio of exports to total aggregate turnover under Rule 89 (4).
- The EOUs / Advance authorization holder can continue to import the goods without payment of IGST.
- The merchant exporters can continue to procure the goods with payment of 0.1% GST.



**GST &
MOOWR**

MOOWR Units

MOOWR Scheme

- Entitled for full custom duty exemption (including IGST) under MOOWR
- Local Procurement of goods (including Capital goods) – Input Tax credit
- Services – Input Tax credit
- Refund
 - Local Procurement of CG – No provision for direct refund
 - Input & Input services – Refund under Rule 89 (4)
 - Refund by way of exports with payment of tax.

IGST & Compensation Cess benefit withdrawn: MOOWR SCHEME

- New provision, Section 65A, has been inserted in the Customs Act, which will be applicable once the said provision is notified by the Central Government.
- This provision inter alia seeks to withdraw IGST and GST Compensation Cess exemption currently made available to all imports made in a customs bonded warehouse undertaking manufacturing and other operations therein.
- Once this provision is notified, all customs bonded warehouses undertaking manufacturing and other operations therein including units registered under the MOOWRs Scheme will not be eligible to avail the exemption from IGST and GST Compensation Cess on its import into India.
- They will only be eligible to avail the benefit of exemption from payment of other types of customs duty and cess. Of this GST and Compensation payment, these units will, however, be eligible to avail input tax credit (ITC), if otherwise available, under the GST law.
- **But not yet Notified !!!**



SEZ & GST

SEZ and GST

Special Economic Zone

According to Section 16 of IGST Act 2017.

- Zero rated supply inter alia **Sec 16 (1) b** - supply of goods or services or both [**for authorised operations**] to a Special Economic Zone developer or a Special Economic Zone unit.
- Government of India has Accordingly SEZ unit or developer can undertake only those '**Authorized operations**' which are specified in the **Letter of Approval (LOA)**.
- Earlier all supplies to SEZ were covered under the definition of Zero rated supplies.
- What is authorized operations for SEZ?
 - ☐ List of goods and services mentioned in the letter of approval to the SEZ Unit.
 - ☐ Development of SEZ in case of SEZ Developer as per the application made by them

Special Economic Zone

- All goods and services required for Authorised operations are entitled for exemption.
- Exemption allowed for goods and services used for construction of building as well.
- Services
 - ❑ Default list of services (66 services notified by SEZ Department) are entitled for exemption.
 - ❑ Services other than default services needs prior approval of Unit Approval Committee of SEZ
- Entitled for input tax credit availment and refund under Rule 89 (4) in case of export of goods and services.
- Domestic Sale of goods – Payment of customs duties (including IGST) by filing Bill of Entry



**GST & ADVANCE
AUTHORISATION**

Pre-import Condition for Advance authorisation

Pre-import condition under advance authorisation scheme upheld by Supreme Court

- Notification No. 18/2015-Cus., dated 1 April 2015 governs import of inputs against Advance Authorization for physical exports. This notification granted complete exemption from payment of BCD, CVD and SAD.
- On introduction of GST, the said Notification was amended to limit the exemption to payment of BCD alone. Vide Notification No. 79/2017-Cus dated 13 October 2017, exemption from payment IGST as well as Compensation Cess was extended, however subject to fulfilment of 'pre-import condition' and 'physical exports'
- Hon'ble Gujarat High Court which held that 'pre-import condition', as contemplated in Notification No. 79/2017-Cus. for availing IGST exemption under Advance Authorisation Scheme, is ultra vires is also not in consonance with the scheme of Advance Authorization Scheme
- However, the said view of the Hon'ble Gujarat High Court has now been overturned by the Apex Court [UOI v. Cosmo films Limited - 2023- VIL-47-SC] holding that 'pre-import condition' is not ultra vires



Thank you

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