

EY Tax Alert

CBIC amends Rule 96(10) of CGST Rules and allows exporters procuring capital goods under EPCG scheme to claim refund of IGST paid on exports

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

Central Board of Indirect Taxes and Customs (CBIC) has issued two notifications^[1] amending Rule 89(4B) and Rule 96(10) of the Central Goods and Services Tax (CGST) Rules, 2017.

Notification No. 53/2018 restores Rule 96(10), as it originally stood at the time of its insertion in CGST Rules, with retrospective effect from 23 October 2017.

Notification No. 54/2018 amends Rule 96(10) with prospective effect to provide that a person cannot claim refund of Integrated GST paid on exports if it has received supplies on which the benefit of Notification nos. 48/2017-Central Tax dated 18 October 2017 or 40/2017-Central Tax (Rate) or 41/2017-Integrated Tax (Rate) both dated 23 October 2017 was availed, or the person itself has availed the benefit under 78/2017-Customs or 79/2017-Customs both dated 13 October 2017.

Notification No. 54/2018 however excludes persons who have received capital goods under EPCG scheme and allows such exporters to claim the refund of IGST paid on exports.

Notification No. 54/2018 also amends Rule 89(4B) to align the same with the amended Rule 96(10).

^[1] Notification Nos. 53 and 54/2018 - Central Tax both dated 9 October 2018

Background

- ▶ Provision granting refund of IGST paid on exports has undergone multiple changes since introduction of GST.
- ▶ Rule 96(10) of CGST Rules was first introduced in January 2018 (vide Notification no. 3/2018 dated 23 January 2018) with retrospective effect from 23 October 2017.
- ▶ As per Rule 96(10) of the CGST Rules, a person cannot claim refund of Integrated GST (IGST) paid on exports if it has received supplies from a supplier who has availed the benefit (supply of goods without payment of tax or at reduced rate of tax) of the following notifications:
 - ▶ Notification No. 48/2017 - Central Tax - supplies to Export Oriented Unit (EOU)², Advance Authorization or Export Promotion Capital Goods (EPCG) license holders
 - ▶ Notification 40/2017 - Central Tax (Rate) and 41/2017 - Integrated Tax (Rate) - Supplies to merchant exporter @ 0.05% Central GST+0.05% State GST or 0.1% IGST
 - ▶ Notification No. 78/2017 - Customs - Exemption of IGST and cess on imports by EOU
 - ▶ Notification No. 79/2017 - Customs -Exemption of IGST and cess on imports by Advance Authorization or EPCG license holder
- ▶ Circular No. 45/19/2018-GST dated 30 May 2018, *inter alia*, clarified that such restriction is to ensure that the exporter does not utilize the input tax credit (ITC) availed on other domestic supplies while exporting goods on payment of IGST.
- ▶ Subsequently, Notification No. 39/2018 - Central Tax dated 4 September 2018 amended Rule 96(10) with retrospective effect from 23 October 2017, providing that restriction of refund of IGST paid on export of goods or services, under Rule 96(10), is applicable if the exporter has:
 - ▶ **received supplies on which the benefit** of the notification nos. 48/2017-Central Tax or 40/2017-Central Tax (Rate) or 41/2017-Integrated Tax (Rate) **was availed or**
 - ▶ **availed the benefit** under notification no. 78/2017-Customs or 79/2017-Customs.

Amendments to CGST Rules

Rule 96(10)

Notification 53/2018 - Central tax dated 9 October 2018

- ▶ The notification restores Rule 96(10) as it originally stood at the time of its insertion in CGST Rules in January 2018 and prior to notification no. 39/2018 issued on 4 September 2018.

- ▶ It is retrospective with effect from 23 October 2017 i.e., the date on which the said sub-rule first was incorporated in CGST Rules.
- ▶ As per amended Rule 96(10), a person cannot claim refund of IGST paid on exports of goods or services **if he has received supplies on which the supplier has availed the benefit** of the concessional rate/exemptions vide following notifications:
 - ▶ Notification No. 48/2017-Central Tax or
 - ▶ Notification No. 40/2017-Central Tax (Rate) or
 - ▶ Notification No. 41/2017-Integrated Tax (Rate) or
 - ▶ Notification No. 78/2017-Customs or
 - ▶ Notification No. 79/2017-Customs

Notification 54/2018 -Central tax dated 9 October 2018

- ▶ The notification amends Rule 96(10) prospectively from the date of its publication in the official gazette.
- ▶ As per the amendment, a person cannot claim refund of IGST paid on exports if he has either:
 - ▶ **received supplies** on which the benefit of the notification nos. 48/2017-Central Tax, **except so far it relates to receipt of capital goods by such person against EPCG Scheme**, or 40/2017-Central Tax (Rate) or 41/2017-Integrated Tax (Rate) **was availed or**
 - ▶ **availed the benefit** under notification nos. 78/2017-Customs or 79/2017-Customs, **except so far it relates to receipt of capital goods by such person against EPCG Scheme**.
- ▶ Thus, post amendment, an EPCG license holder can import or domestically procure capital goods without payment of tax and can claim refund of the IGST paid on exports.

Rule 89(4B)

- ▶ Notification No. 54/2018 - Central Tax dated 9 October, 2018 also amends Rule 89(4B) to align the same with the amended Rule 96(10).
- ▶ Rule 89(4B) is amended to provide that where the person claiming refund of unutilized ITC on account of zero-rated supplies without payment of tax has:
 - ▶ received supplies on which the supplier has availed the benefit of notification nos. 40/2017-Central Tax (Rate) or 41/2017-Integrated Tax (Rate)
 - ▶ availed the benefit of notification nos. 78/2017-Customs or 79/2017-Customs

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

² EOU includes Software Technology Park, Electronic Hardware Technology Park and Biotechnology Park

Comments

The amendment may provide relief to the exporters claiming refund of IGST paid as the benefit of EPCG scheme, invariably claimed by the exporters while procuring capital goods. However, retrospective effect to such eligibility might have been more beneficial.

The ambiguity whether the restriction of Rule 96(10) would be applicable to EOUs, AA and EPCG license holders who are directly importing inputs and capital goods and claiming benefits of the specified notifications may still arise for the period prior to the amendment.

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