



प्रधान आयुक्त कार्यालय, केन्द्रीय कर, दक्षिणी दिल्ली

OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX, DELHI SOUTH
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C.No. IV(16)HQ/Tech/TN/06/CGST/2017/

Date: 14.08.2017

TRADE NOTICE No. 03/GST/2017

Subject: Letter of undertaking, Bond & Bank Guarantee – reg.

Attention of Exporters & Trade is invited to implementation of GST from 1st July, 2017. Reference is invited to the Notification No. 16/2017-Central Tax dated 07.07.2017, Circular No. 2/2/2017 dated 04.07.2017, Circular No. 4/4/2017 dated 07.07.2017, the Annexure of Board's Letter F. No. 354/173/2014-TRU (GST Cell) Pt. II dated 26.07.2017 and Circular No. 5/5/2017 dated 11.08.2017 in alignment of GST implementation:

2. Any registered person, GSTIN, availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 before the jurisdictional Deputy/Assistant Commissioner manually in the above said format till the module for furnishing of FORM RFD-11 is available on the common portal (www.gst.gov.in). (Circular no. 2/2/17 dated 04.07.2017).

2(A) LETTER OF UNDERTAKING:

2(A) (i) Notification No. 16/2017-Central Tax dated 07.07.2017 specify the eligibility of registered person for submission of Letter of Undertaking in place of a bond, as:-

- (a) a status holder as specified in paragraph 3.20 & 3.21 of the Foreign Trade Policy 2015- 2020; or
- (b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year,

AND

he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the existing laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

2(A) (ii) As regards LUT, it is clarified that it shall be valid for twelve months. If the exporter fails to comply with the conditions of the LUT he may be asked to furnish a bond. (referred to **Circular No. 4/4/2017 dated 07.07.2017**).

2(A) (iii) The intent of the above said notification is to liberalize the facility of LUT and extend this facility to all kind of suppliers. Any person who has earned minimum foreign inward remittance of 10% of export turnover in the preceding financial year is eligible for LUT. As the intent was to put a minimum threshold of foreign inward remittances to be eligible for this benefit, Rs. 1 crore has been fixed as minimum amount of foreign inward remittances. The effect is that even a big exporter who may have exported goods worth hundreds of crores may not be eligible if his receipts are less than 10% of export (of course, if he satisfies the other condition of status holder he is still eligible). (Referred to **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

2(A) (iv) In this matter a detailed clarification along with illustration was shown in Circular No. 5/5/2017 dated 11.08.2017. In this circular, it has been clarified that any registered person who has received a minimum foreign inward remittance of 10% of export turnover in the preceding financial year is eligible for availing the facility of LUT provided that the amount received as foreign inward remittance is not less than Rs. one crore. This means that only such exporters are eligible to LUT facilities who have received a remittance of Rs. one crore or 10% of export turnover, whichever is a higher amount, in the previous financial year. A few illustrations are as follows:

- a. An exporter had a turnover of Rs. 15 crore in the previous financial year. He would be eligible for LUT facility if remittance received against this export is Rs. 1.5 crore or more (10% of export turnover is more than Rs. 1 crore)
- b. An exporter had a turnover of Rs. 5 crore in the previous financial year. He would be eligible for LUT facility if remittance received against this export is Rs. 1.0 crore or more (10% of export turnover is less than Rs. 1 crore)
- c. An exporter has an export turnover of Rs. 2 crore. He has received Rs. 80 lacs as foreign inward remittances in FY 2016-17 which is 40% of the export turnover. He will not be eligible for LUT facility as remittance received is less than Rs. 1 crore.
- d. An exporter has export turnover of Rs. 40 crore. He has received Rs. 2 Crores as foreign inward remittances in FY 2016-17 which is 5% of the export turnover. He will not be eligible for LUT facility as remittance received is less than 10% of export turnover, even though it is in excess of Rs. 1 crore.
- e. An exporter has received Rs. 1 Crore 10 lacs as foreign inward remittances in FY 2016-17 which is 20% of the export turnover. In this scenario, he will be eligible for LUT facility.

2(A) (v) **Documents for LUT:** Documents submitted as proof of fulfilling the conditions of LUT shall be accepted unless there is any evidence to the contrary. Self-declaration shall be accepted unless there is specific information otherwise. For example, a self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of notification No. 16/2017 - Central tax dated 7th July, 2017. Verification, if any, may be done on post facto basis. Similarly,

Status holder exporters have been given the facility of LUT under the said notification and a self-attested copy of the proof of Status should be sufficient. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

2(A) (vi) LUTs should be submitted on the letterhead containing signature and seal of the person or the person authorized in this behalf as provided in said Notification. (Referred to **Circular No. 5/5/2017 dated 11.08.2017**)

2(A) (vii) **Time for acceptance of LUT/Bond:** As LUT/bond is a priori requirement for export, including supplies to a SEZ developer or a SEZ unit, the LUT/bond should be processed on top most priority and should be accepted within a period of three working days from the date of submission of LUT/bond along with complete documents by the exporter. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and also referred in **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

2(B) BOND AND BANK GUARANTEE:

2(B)(i) All exporters, not covered by the Notification No. 16/2017-Central Tax dated 07.07.2017, would submit bond. The bond shall be furnished on non judicial stamp paper of the value as applicable in the State in which bond is being furnished. (referred to **Circular No. 4/4/2017 dated 07.07.2017**).

2(B)(ii) A clarification has been sought as to whether bond to be furnished for exports is a running bond (with debit / credit facility) or a one-time bond (separate bond for each consignment / export). It is observed that consignment wise bond would be a significant compliance burden on the exporters. It is directed that the exporters shall furnish a running bond, in case he is required to furnish a bond, in FORM GST RFD -11. The bond would cover the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself. The exporter shall ensure that the outstanding tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the tax liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. (referred to **Circular No. 4/4/2017 dated 07.07.2017**).

2(B) (iii) FORM RFD -11 under rule 96A of the CGST Rules requires furnishing a bank guarantee with bond. Field formations have requested for clarity on the amount of bank guarantee as a security for the bond. In this regard it is directed that the jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporter. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount. (referred to **Circular No. 4/4/2017 dated 07.07.2017**).

2(B) (iv) The discretionary power has been given to the Commissioner so that he/she can use this power depending upon the individual cases of the exporter.

The intent is to allow use of this power liberally. Some of the instances of liberal interpretation are as follows:

a. An exporter registered with recognized Export Promotion Council can be allowed to submit bond without bank guarantee on submission of a self-attested copy of the proof of registration with a recognized Export Promotion Council.

b. In the GST regime, registration is State-wise which means that the expression 'registered person' used in the said notification may mean different registered persons (distinct persons in terms of sub-section (1) of section 25 of the Act) if a person having one Permanent Account Number is registered in more than one State. It may so happen that a registered person may not satisfy the condition regarding foreign inward remittances in respect of one particular registration, because of splitting and accountal of receipts and turnover across different registered person with the same PAN. But the total amount of inward foreign remittances received by all the registered persons, having one Permanent Account Number, maybe Rs. 1 crore or more and it also maybe 10% or more of total export turnover. In such cases, the registered person can be allowed to submit bond without bank guarantee. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and also referred in **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

MISCELLANEOUS

3. **SEALING OF EXPORT CONTAINER:** Attention is further invited to **Circular No. 26/2017 – Customs dated 1st July 2017**, vide which it has been clarified that the existing practice of sealing the container with a bottle seal under Central Excise supervision or otherwise would continue till 01st September, 2017. Such sealing shall be done under the supervision of the officer having physical jurisdiction over the place of business where the sealing is being done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business. (Referred to **Circular No. 4/4/2017 dated 07.07.2017**).

4. **Purchases from manufacturer and form CT-1:** It is learnt that field formations are not sure about treatment of CT-1 form which was earlier used for purchase of goods by a merchant exporter from a manufacturer without payment of central excise duty. The scheme has undergone automatic modification under GST. A transaction between a manufacturer and a merchant exporter is in the nature of supply and the same has not been exempted under GST. So, it is chargeable to GST. The zero rating of exports, including supplies to SEZ, is allowed only with respect to supply by the actual exporter under LUT/bond or payment of IGST. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and also referred in **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

5. **Transactions with EOUs:** EOUs have no special status vis-a-vis any normal supplier under GST and so there is no special dispensation for them. Supplies to EOUs are taxable under GST just like any other taxable supplies. EOUs, to the extent of

exports, are eligible for zero rating like any other exporter. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and also referred in **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

6. Forward inward remittance in Indian Rupee: Rule 96A (6) of CGST Rules, 2017 provides that the supplies to SEZ unit or developer shall have same treatment as given to exports. This sub-rule also provides that the provision of Rule 96A (l) shall be applicable, mutatis mutandis. It has been learnt that sale proceeds from supplies to Nepal, Bhutan and SEZ units or SEZ developer are not received in convertible currency so the eligibility condition for furnishing of LUT can never be satisfied in cases of such supplies. Attention is invited to Para A (v) Part-I of RBI Master Circular no. 14/2015-16 dated July 1, 2015 (updated as on November 5, 2015), which states *"there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan"*.

Accordingly, it is clarified that acceptance of LUT instead of a bond for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with applicable RBI guidelines. It may also be noted that supply of services to SEZ developer or SEZ unit will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange. (Referred to **Circular No. 5/5/2017 dated 11.08.2017** and also referred in **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

7. Applicability of circulars on Bond/LUTs: There appears to be confusion over the applicability of above mentioned circulars on bond and LUT. It is learnt that some field officers have inferred that the instructions given by the said circulars are effective only from the date of issue of these circulars. There is no scope for such interpretation as this issue has been categorically clarified in the circular dated 7th July, 2017 which provides that the instructions shall be applicable for exports on or after 1st July, 2017. (Referred to **Annexure to Letter F.No. 354/173/2014-TRU (GST Cell) Pt. II dated 26th July. 2017**).

8. It is further stated that the Bond/LUT shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, if in a State, the Commissioner of State Tax so directs, by general instruction, to exporter, the Bond/LUT

in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented. Central Tax officers are directed to take every step to facilitate the exporters whether or not the exporter was registered with the Central Government in the earlier regime. (Referred to Circular No. 2/2/2017 dated 04.07.2017, Circular No. 4/4/2017 dated 07.07.2017 and Circular No. 5/5/2017 dated 11.08/2017)

All Trade Associations/Chamber of Commerce & industry are requested to give wide publicity to the contents of this Trade Notice amongst all their members.

(Suchitra Sharma)
Principal Commissioner

Copy to: -

1. The Trade Associations (As per Mailing List).
2. The Member, GST, CBEC, North Block, New Delhi.
3. The Director General, Directorate General of Taxpayers Services, CR Building, IP Estate, New Delhi-110002.
4. The Commissioner, CGST, Delhi South Zone.
5. The Directorate General of System and Data Management, Hotel Samrat, Chanakyapuri, New Delhi-110021.
6. The Assistant/ Deputy Commissioner, GST, South Delhi, Divisions- Cannought Place, Naraina, Hauz Khas, Maiviya Nagar, Vasant Kunj, Chattarpur, Okhala, Dwarka, Palam.
7. System Branch for uploading on official Website Manager publication on Website.
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(Suchitra Sharma)
Principal Commissioner