Circular No.1 /1/2017-Compensation Cess

F.No.354/136/2017-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
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New Delhi, Dated 26th July, 2017

To

Principal Chief Commissioners/Principal Directors General,
Chief Commissioners/Directors General,
Principal Commissioners/Commissioners,
All under CBEC.

Madam/Sir,

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Subject: Clarification regarding applicability of section 16 of the IGST Act, 2017, relating to zero rated supply for the purpose of Compensation Cess on exports – Regarding.

The issue of zero rating of exports with reference to Compensation Cess has been examined.

2. In this regard section 8 of the Goods and Services tax (Compensation to States) Act, 2017 hereinafter referred to as [GSTC Act, 2017] provides for levy and collection of Compensation Cess and reads as under:

> *"8. (1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:*
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> *(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify."*

3. Accordingly, based on the recommendation of GST Council, the effective rates of Compensation Cess leviable on various supplies, stand notified vide Notification No.1/2017-Compensation Cess (Rate).

4. Further, as per sub-section (5) of section 7 of IGST Act, 2017, supply of goods or services or both, when the supplier is located in India and place of supply is outside India, will be treated as inter-state supply. Therefore, exports being inter-sate supplies, they will be liable to Compensation Cess. This however will not be in line with the principle that no taxes be exported, and exports have to be zero rated.

5. Provisions relating to zero rating of exports are

> *"16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely: –*
>
> *(a) export of goods or services or both; or*
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> *(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*
>
> *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*
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> *(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —*
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> *(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*
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> *(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,*
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> *in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder".*

6. Moreover, the section 11 of the Goods and Services tax (Compensation to States) Act, 2017, provides that:

> *11. (1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.*
>
> *(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in*

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relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder:

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

7. Therefore, sub-section (2) of section 11 of the Goods and Services tax (Compensation to States) Act, 2017 provides that provisions of Integrated Goods and Services Tax Act, and the rules made thereunder, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder.

8. In view of the above, it is hereby clarified that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess (wherever applicable), that is to say that:

a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3) (b) of the IGST, 2017]; or
b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017].

9. All concerned are requested to acknowledge the receipt of this circular.

10. Trade Notice/Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,

(Devranjan Mishra)
Technical Officer (TRU)

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