Circular No. 8/8/2017-GST

F. No. 349/74/2017-GST (Pt.) Vol.-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
GST Policy Wing

New Delhi, Dated the 4th October, 2017

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Director Generals/Director Generals (All)

Madam/Sir,

Subject: Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports

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In view of the difficulties being faced by the exporters in submission of bonds/Letter of Undertaking (LUT for short) for exporting goods or services or both without payment of integrated tax, Notification No. 37/2017 – Central Tax dated 4th October, 2017 has been issued which extends the facility of LUT to all exporters under rule 96A of the Central Goods and Services Tax Rules, 2017 (hereafter referred to as "the CGST Rules") subject to certain conditions and safeguards. This notification has been issued in supersession of Notification No. 16/2017 – Central Tax dated 7th July, 2017 except as respects things done or omitted to be done before such supersession.

2. In the light of the new notification, three circulars in this matter, namely Circular No. 2/2/2017 – GST dated 5th July, 2017, Circular No. 4/4/2017 – GST dated 7th July, 2017 and Circular No. 5/5/2017 – GST dated 11th August, 2017, which were issued for providing clarity on the procedure to be followed for export under bond/LUT, now require revision and a consolidated circular on this matter is warranted. Accordingly, to ensure uniformity in the

procedure in this regard, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 clarifies the following issues:

a) **Eligibility to export under LUT:** The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds two hundred and fifty lakh rupees unlike Notification No. 16/2017-Central Tax dated 7th July, 2017 which extended the facility of export under LUT to status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020 and to persons receiving a minimum foreign inward remittance of 10% of the export turnover in the preceding financial year which was not less than Rs. one crore.

b) **Validity of LUT:** The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

c) **Form for bond/LUT:** Till the time **FORM GST RFD-11** is available on the common portal, the registered person (exporters) may download the **FORM GST RFD-11** from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

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d) **Documents for LUT:** Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017- Central Tax dated 4th October, 2017. Verification, if any, may be done on post-facto basis.

e) **Time for acceptance of LUT/Bond:** As LUT/Bond is *a priori* requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/bond should be processed on top most priority. It is clarified that LUT/bond should be accepted within a period of three working days of its receipt along with the self-declaration as stated in para 2(d) above by the exporter. If the LUT / bond is not accepted within a period of three working days from the date of submission, it shall deemed to be accepted.

f) **Bank guarantee:** Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

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g) **Clarification regarding running bond:** The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

h) **Sealing by officers:** Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

i) **Purchases from manufacturer and Form CT-1**: It is clarified that there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

j) **Transactions with EOUs:** Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

k) **Realization of export proceeds in Indian Rupee:** Attention is invited to para A (v) Part-I of RBI Master Circular No. 14/2015-16 dated 01st July, 2015 (updated as on 05th November, 2015), which states that "*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".*

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Accordingly, it is clarified that the acceptance of LUT 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 the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT 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.

l) **Jurisdictional officer:** In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond 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 LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

3. Circular No. 2/2/2017 – GST dated 5th July, 2017, Circular No. 4/4/2017 – GST dated 7th July, 2017 and Circular No. 5/5/2017 – GST dated 11th August, 2017 are hereby rescinded except as respects things already done or omitted to be done.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

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(Upender Gupta)
Commissioner (GST)