

# Industry specific work shop on GST

## Impact of GST on Zero Rated supplies and Import transactions

WIRC – ICAI

CA Ashit Shah




# Matters to be covered

- ❖ Exports
- ❖ Deemed Exports
- ❖ Merchant Exports
- ❖ Supply by EOU & SEZ
- ❖ Imports – High seas & Bond transfer



## Exports - Goods


❖ “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. [S. 2(5) – IGST Act] 

❖ “India” means -

- (i) the territory of India as referred to in article 1 of the Constitution;
- (ii) its territorial waters, seabed and sub-soil underlying such waters;
- (iii) continental shelf, exclusive economic zone or any other maritime zone, and
- (iv) the air space above its territory and territorial waters.

[S. 2 (56) – CGST Act]

## Exports – Intra or Inter State supply

- ❖ Supply of goods or services or both, when the **supplier is located in India** and the **place of supply is outside India**; shall be treated to be a supply of goods or services or both **in the course of inter-State trade or commerce**. [S. 7 (5) (a) – IGST Act]. **Place of supply of goods** exported from India shall be **location outside India**. [S. 11(b)-IGST Act] 
- ❖ Integrated goods and services tax (IGST) would be applicable on all inter-state supply of goods and services. [S. 5 – IGST Act]
- ❖ Exports of goods or services or both are considered as **“Zero rated supply” (ZRS)** and exporters can avail credit of eligible ITC for making ZRS irrespective that such **supply may be an exempt supply**. [S. 16 – IGST Act]

# Exports – Refund

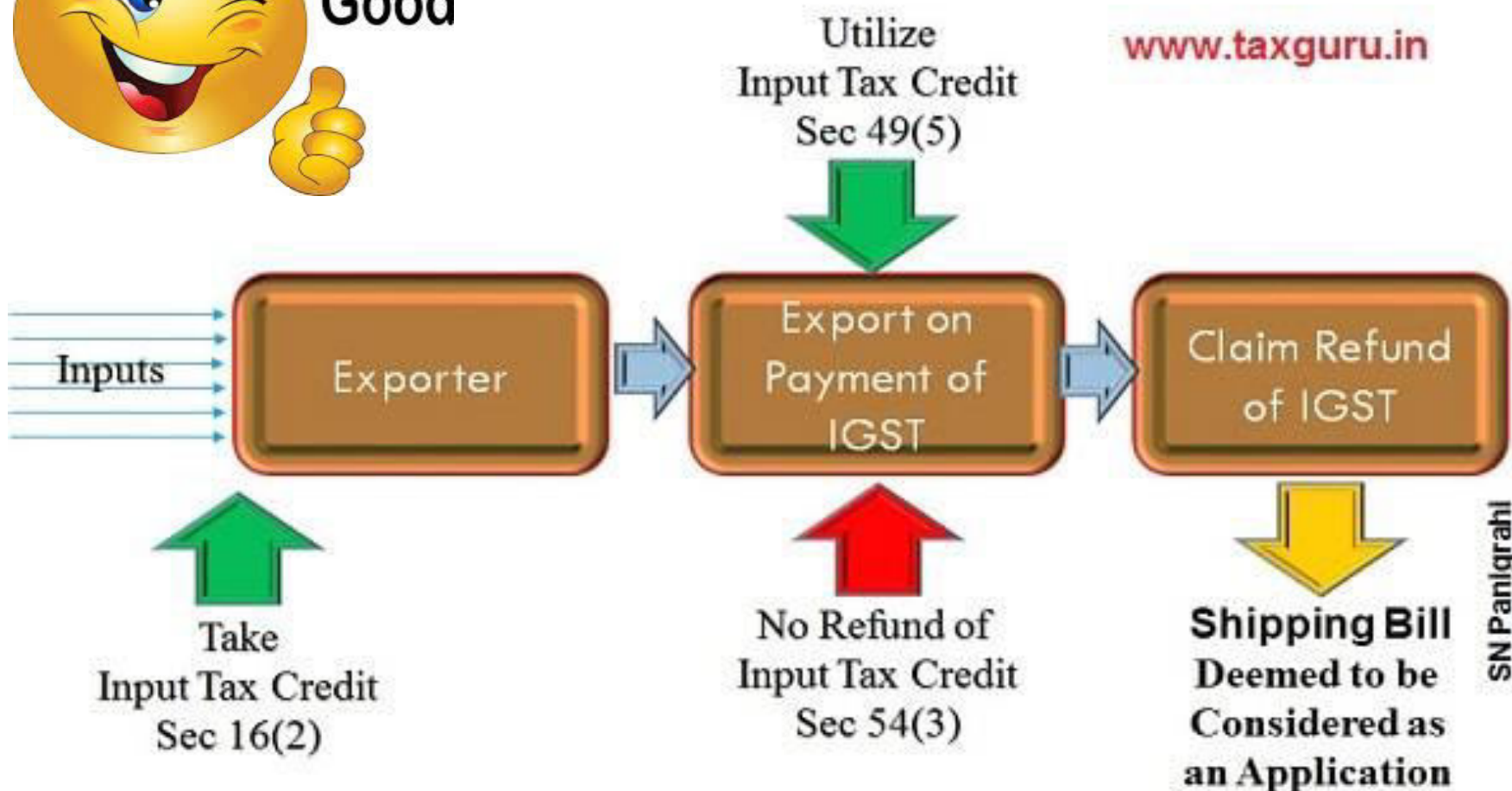
## Exports – Two Options



# Exports – Refund



Exporting by paying IGST  
Rule 96



Once the details provided

- (i) GSTR – 3B [Table 3(b) ]
- (ii) GSTR – 1 [Table 6A]
- (iii) Customs records

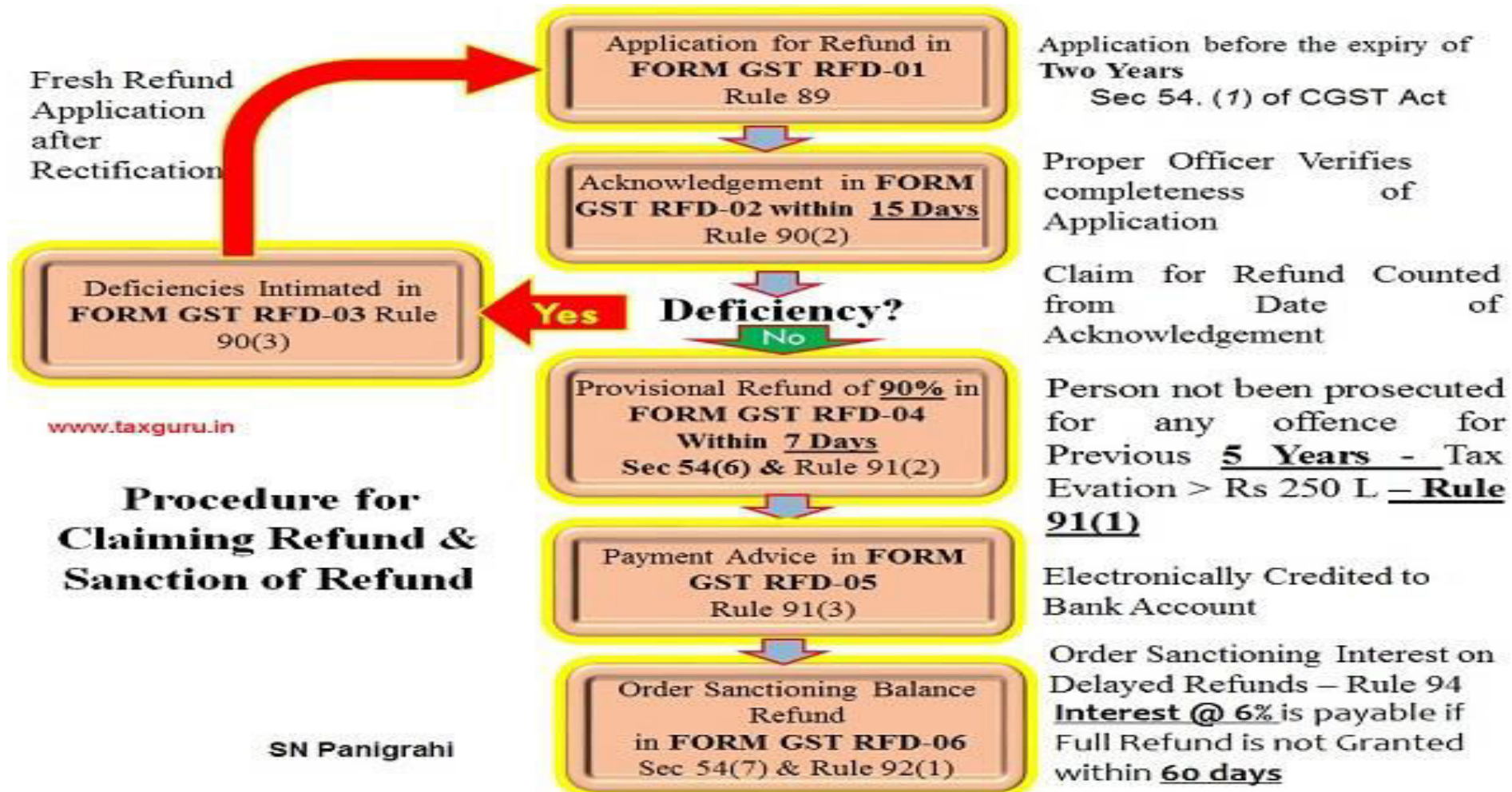
Amount would be credited to bank account, details available with GSTIN by Custom authority.

C. No. 15/2018 – Customs – 06-06-2018

C. No. 5/2018 & 8/2018 – Customs – 23-02-2018 & 23-03-2018

CA Ashit Shah

# Exports – Refund



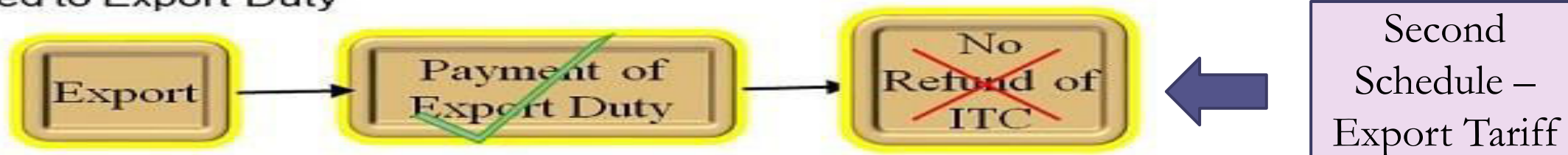
Officer has reasons to believe that whole or part of the amount of claimed is not admissible or not payable to applicant – Issues notice in Form GST RFD - 08

Applicant have to reply in Form GST RFD - 09

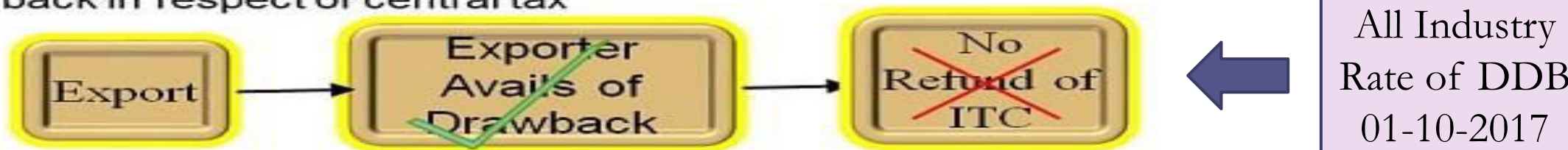
CA Ashit Shah

# Exports – Refund not eligible

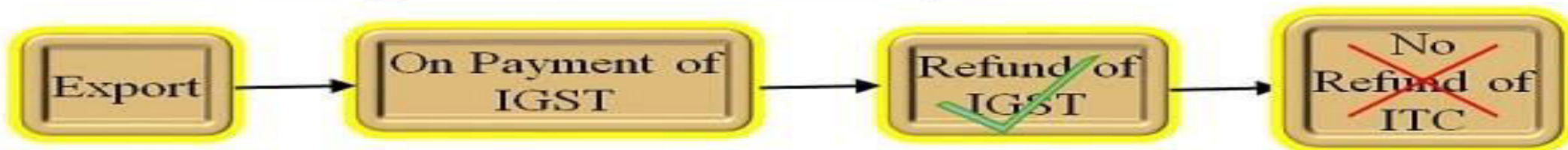
Case -1 : No Refund of Un-utilized Input Tax Credit when Exports are Subjected to Export Duty



Case – 2 : No Refund of Un-utilized Input Tax Credit when Exporter Avails of Drawback in respect of central tax



Case – 3 : No Refund of Un-utilized Input Tax Credit when Exporter Claims Refund of the Integrated Tax Paid on such Exports





## Poser

- ❖ ISPL is in to business of manufacturing of Machines and sells with in and out side India. They also have to provide after sales supports and warranty period, to their customer. One of their customer in South Africa had break down of their machine and hence ISPL sends their support team along with parts SA and carried out repairing work. (Not a composite supply). Management of the company wants such sale of part to be treated as export and claim IGST or ITC from Government. Advise.

If customers personnel collects the parts from India, whether is it tantamount to export?

## View – Goods sent with personnel

CA Ashit Shah

S. 2(5) – IGST Act



S. 7(5)(a) – IGST Act



The exporter of any goods shall make entry thereof by presenting [electronically] on the customs automated system] to the proper officer in the case of goods to be exported in a **vessel or aircraft**, a **shipping bill**, and in the case of goods to be **exported by land**, a **bill of export** [in such form and manner as maybe prescribed] [S. 50 – Customs Act]



Accordingly, on co-reading of S. 2(5) and S. 7(5)(a) it's a inter-state transaction and covers within the definition of exports.

However, refund claims under Rule 89 & 96 would be difficult as it will not match with Shipping Bill.

## View – Goods delivered to personnel

CA Ashit Shah

S. 8 (1) – IGST provides that when goods are supplied to a tourist, **it would not be considered as Intra-State supplies.**

Does it mean that such **supplies are Inter-State supplies ????**

S. 15 – IGST defines “**tourist**” and means a person not **normally resident in India**, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Further, it provides that **IGST paid by such tourist on any supply of goods taken out of India, would be refunded.**

Supreme Court in the matter of **Hotel Ashoka** had examined the issue of levy of VAT on the goods sold from **duty free shops**. It was observed that under the provisions of Article 286 of the Constitution of India and Section 5 of the CST Act, goods which were sold **beyond Customs frontiers of India, the transactions had taken place in the course of import** and the State Government was not permitted to levy VAT on such sale or purchase of goods.

## View – Goods delivered to personnel

CA Ashit Shah

### Under GST Era

S. 2(5) of the IGST Act, provides export of goods takes place only when goods are taken out to a place outside India.

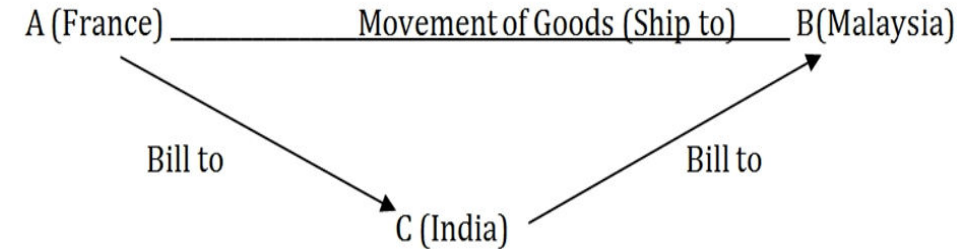
**India** means the territory of India including its territorial waters and the air space above its territory and territorial waters.

Hence, the goods can be said to be exported only when they cross the territorial waters of India and the goods cannot be called to be exported, merely on crossing the Customs Frontiers of India.

In the matter of **Rod Retail (P). Ltd. – Delhi AAR [2018] 92 taxmann.com 317 (AAR)** upheld that Supply of goods made to international outbound passengers holding international boarding pass from retail outlet, would not constitute such supply as “export” or “Zero rated supply”.

## Poser

- ❖ A 'person/ consignor' in India, without physically importing the goods into India, procures goods from a supplier outside India and supplies the same goods to another 'person/consignee' outside India. For instance, when goods are purchased by M/s C (Mumbai) from M/s A (France) but these goods are directly shipped to 'B' in Malaysia without the goods entering into the territory of India. Whether GST is payable in the said transaction?



There are two supplies involving three parties. In the first transaction, the "A" (France) is the supplier and "B" (Malaysia) is physically received the goods but "C" (India) is the recipient as being liable to pay the sale consideration to the supplier. In the second transaction, the supplier is "C" (India) and the recipient is "B" (Malaysia) as being liable to pay the sale consideration, even though there is no physical movement of goods in this transaction.

## View

CA Ashit Shah

Section 7(5)(a) of the IGST - where the supplier is located in India and the place of supply is outside India, such transaction shall be treated as interstate trade or commerce.

**supplier**” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.  
[S. 2(105) - CGST

The place of supply of goods for export from India, shall be as under, –

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient; [S. 10 (1) – IGST Act]

S. 1(1) of IGST Act provides GST is applicable to the whole of India except J & K.

It means not applicable to transactions that are completely takes out side India.

**Synthite Industries Ltd. Order No. CT/2275/18-C3 Dated 26-03-2018 – Kerala AAR**

## View

When two interpretations are possible and as per the settled position of interpretation of law, interpretation which is favourable to the assessee is to be adopted.

**Sun Export Corporation - 1997 (93) ELT 641 (S.C.)** it was observed

Interpretation of taxing statute – Classification of goods – Assuming that there are two views possible, it is well settled that one favourable to the assessee in matters of taxation has to be preferred.



CA Ashit Shah

Section 17(2) of the CGST Act, 2017 provides that where the goods or services are used partly for effecting taxable supplies (including zero rated) and partly for exempt / non-business use then the amount of credit as attributable to exempt supplies or non-business use shall be reversed as per Rule 42/43 of the CGST Rules, 2017.

Thus, the Indian company is required to reverse proportionate input credit of common services which are used for both taxable sale as well as non-taxable sale.

# Exports - Services

CA Ashit Shah

- ❖ **Export of Services: 2(6) of IGST**
  - (a) supplier of service is located in India;
  - (b) recipient of service is located outside India;
  - (c) **place of supply of service is outside India;**
  - (d) payment for such service has been received by the supplier of service in **convertible foreign exchange;**
  - (e) supplier of service and recipient of service **are not merely establishment of a distinct person.**
- ❖ **Distinct person** – Explanation 1 to Section 8 of IGST Act
  - (a) an establishment in India and any other establishment outside India;
  - (b) an establishment in State / UT and any other establishment outside State / UT;



## Supply to Nepal or Bhutan

CA Ashit Shah

### ❖ Supplies of services to Nepal or Bhutan ??

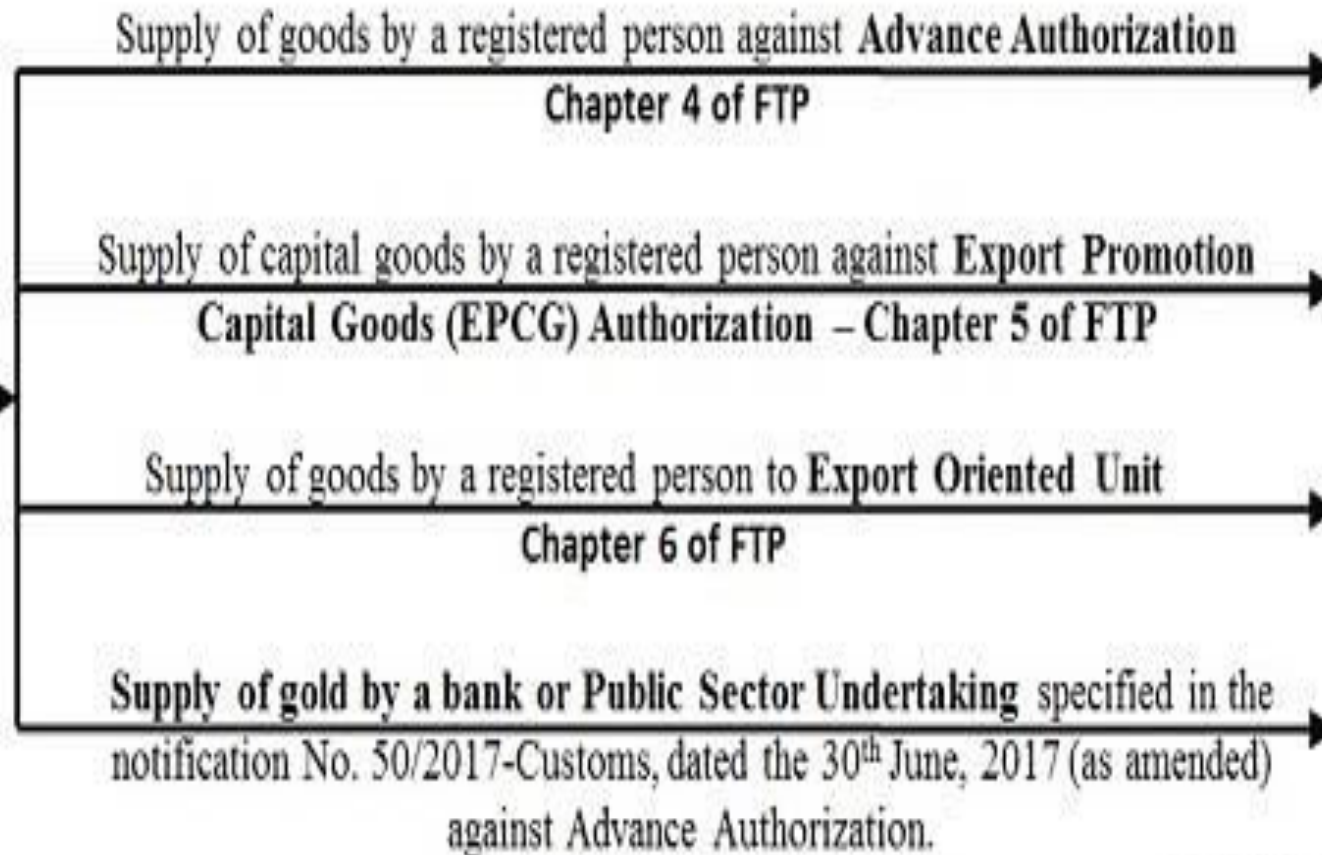
Inserted S. No. 10D in exemption N. No. 9/2017 IGST ® - Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees as vide para 2.52 of the FTP export proceeds from Nepal & Bhutan can be realized in Indian Rupees.– N. No. 42/2017 – IGST (Rate) Dated 27-10-2017.

### ❖ Section 17(2) read with Rule 42 - CGST provides when supplies are used for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supply.

### ❖ Finance Bill, 2018 IGST – amended the definition of export of services by providing exporter of services can receive the amount in FCE or Indian Rupees wherever permitted by RBI. Hence, not an exempt service & no need to do reversal of ITC.

# Deemed Exporter

Notification No. 48/2017-Central Tax, 18th October, 2017



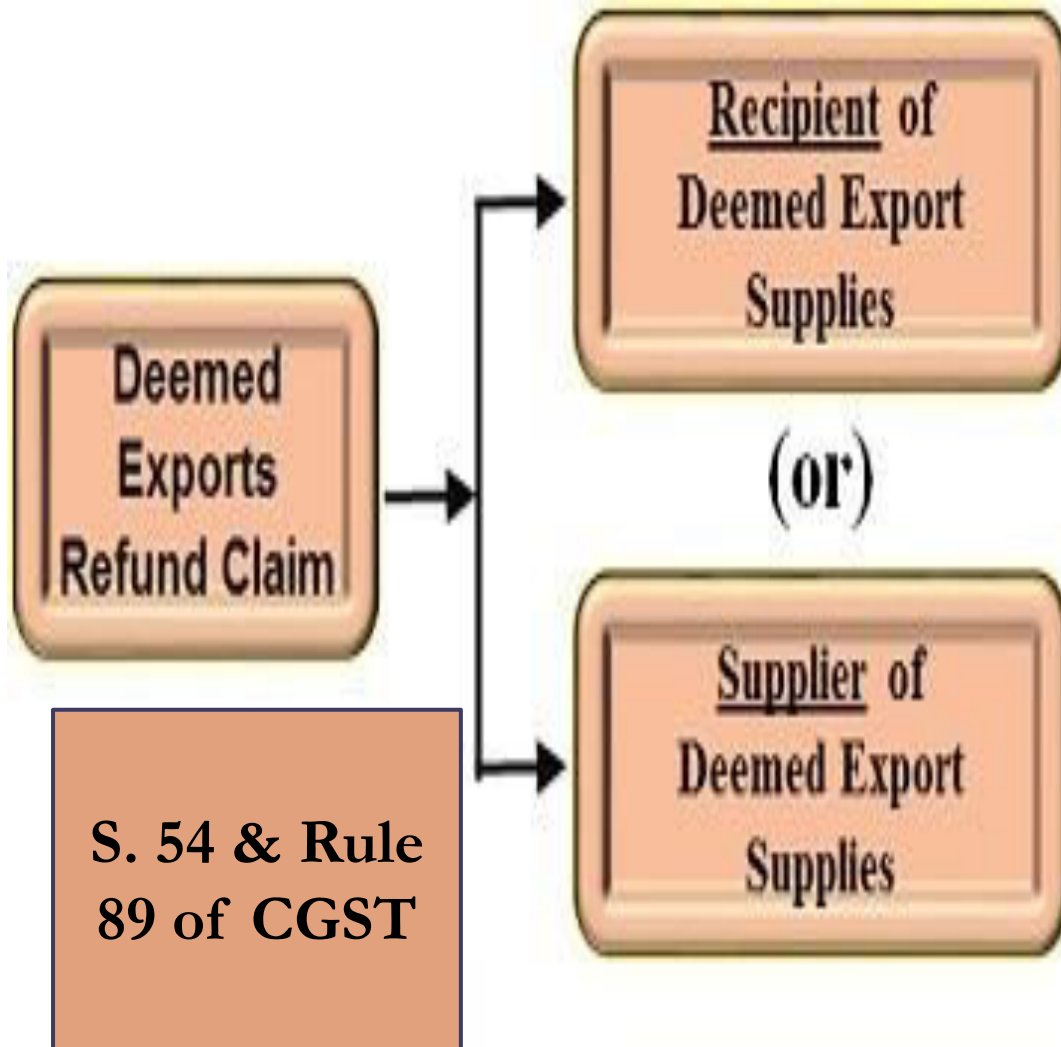
## Export Oriented Unit

- a. Units in EOU
- b. Units in EHTP
- c. Units in STP
- d. Units in BTP

Such units have to be approved in accordance with provisions of Chapter 6 of [FTP 2015-2020](#)

Explanation to N. No. 48/2017

# Deemed Exporter - Refund



Relevant date to be counted (two years) from the date on which return relating to such supply is furnished.

In cases where the Recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund

Supplier of goods have to be manufacturer of such goods. Payment for such supplies were to be either in INR or FCE [S. 147].

Suppliers to Deemed Exporters have to levy GST and supply goods. They can not supply the goods under LUT.

## Documents required for refund claim

CA Ashit Shah

N. No 49/2017 – Central Tax - 18-10-2017

- ❖ Acknowledgment by the -
  - a. jurisdictional Tax officer of the **Advance Authorisation holder** or **Export Promotion Capital Goods Authorisation holder**, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or
  - b. a **copy of the tax invoice** under which such supplies have been made by the supplier, **duly signed by the recipient Export Oriented Unit** that said deemed export supplies have been **received by it**.
- ❖ An undertaking by the **recipient of deemed export** supplies that no input tax credit on such supplies has been availed of by him.
- ❖ An undertaking by the **recipient of deemed export** supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

## Supply by Export Oriented Units - EOU

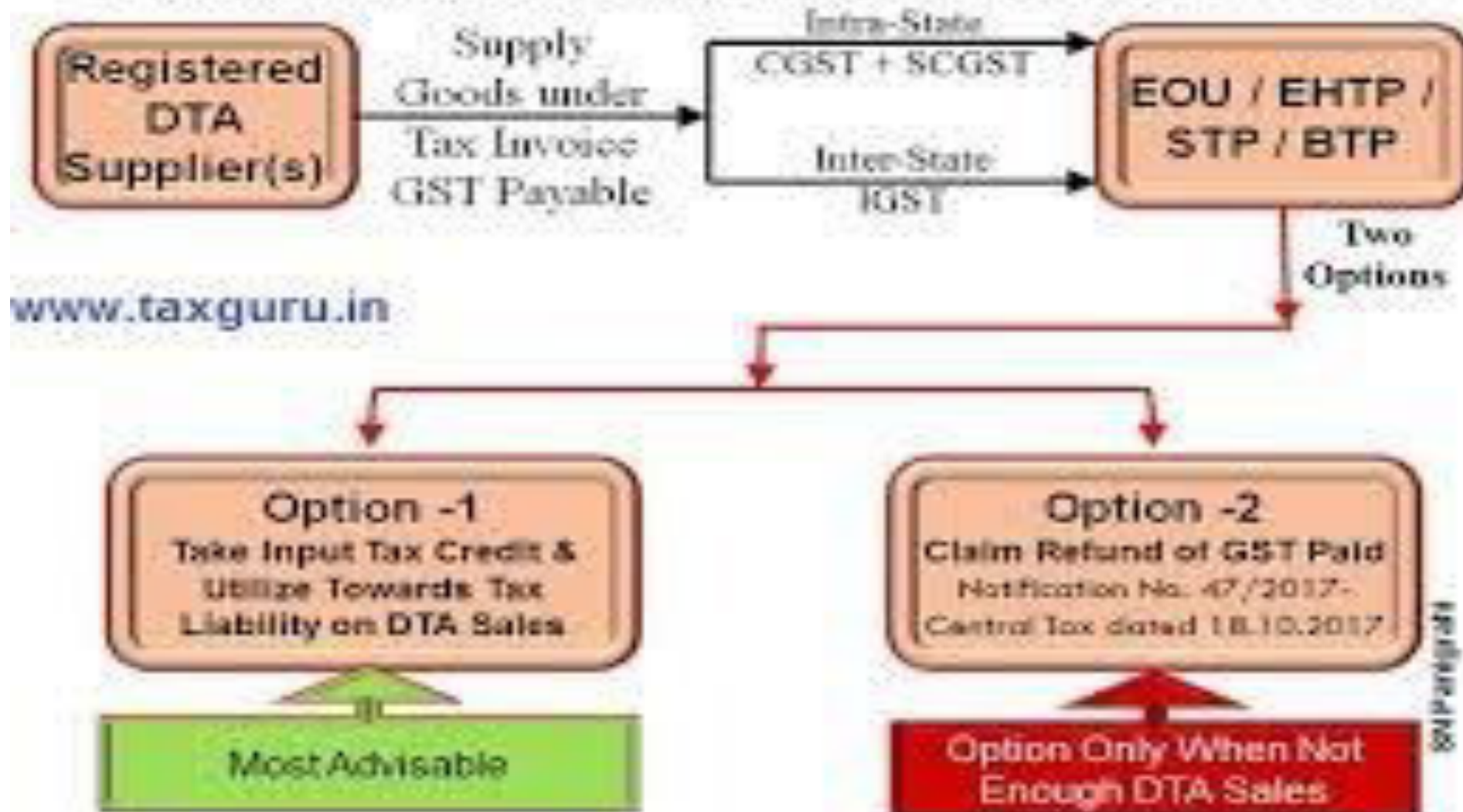
CA Ashit Shah

- ❖ All imports and domestic procurements are duty free for EOU's under pre-GST regime.
- ❖ Under GST regime also it has been clarified that EOUs are allowed to import goods for the authorized operations without paying BCD. But such goods would suffer IGST and applicable cesses. In respect of indigenous procurements, the taxes so paid will be available as input tax credit (ITC) to EOUs and refund of the same can be claimed after export.
- ❖ Furthermore, to create a level playing field for domestic players, if an EOU makes domestic clearances, they will have to pay amount of BCD exemption benefit availed on imported inputs which were used in such domestic clearances.

# Supply by Export Oriented Units - EOU

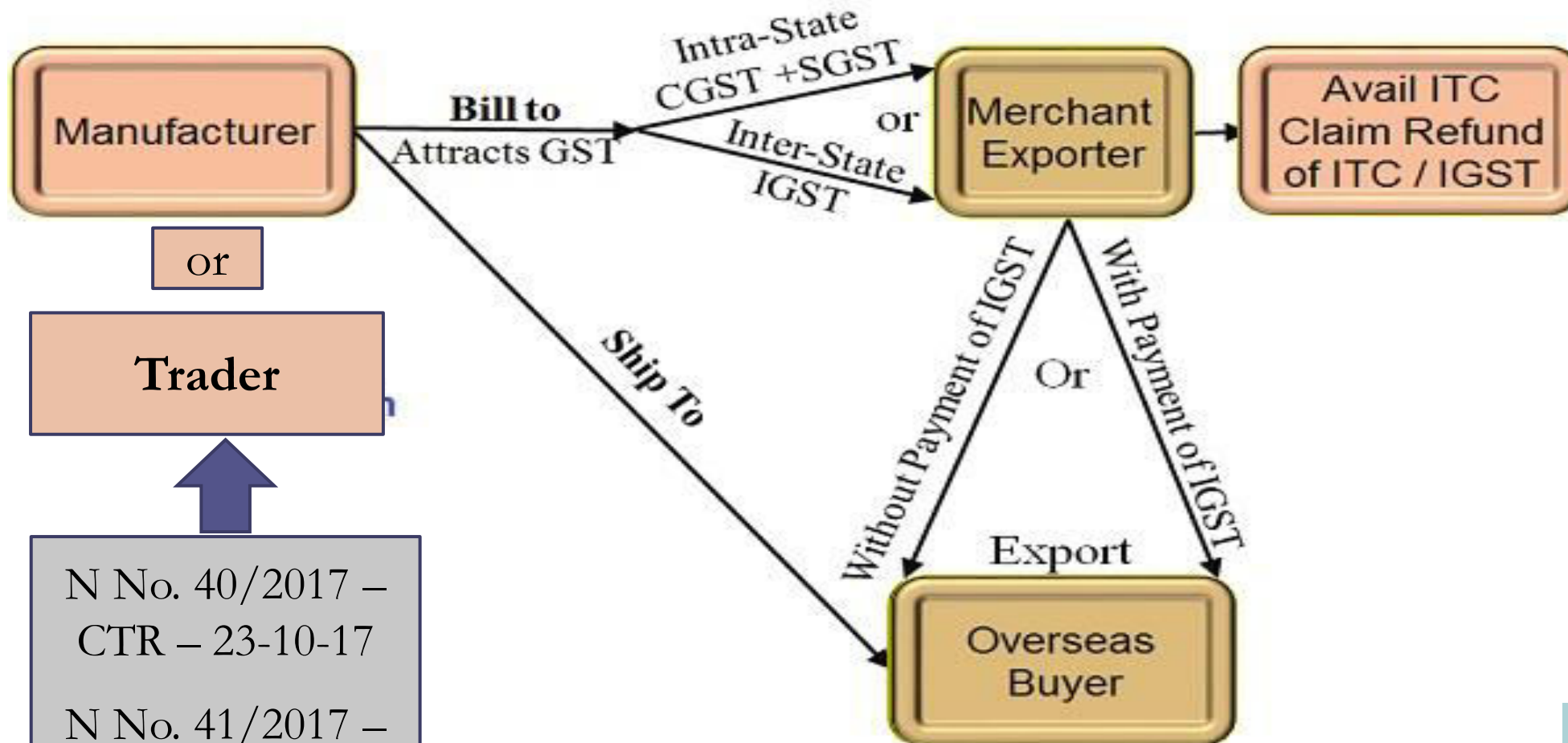
CA Ashit Shah

Two Options : Utilize Towards Tax Liability on DTA Sales or Claim Refund



# Merchant Exporter

Merchant Export : Export Directly from Manufacturer's Premises



or

Trader

N No. 40/2017 –  
CTR – 23-10-17

N No. 41/2017 –  
ITR – 23-10-17

## Important Conditions .....

CA Ashit Shah

- ❖ Registered recipient shall export the said goods within a period of **ninety days (90)** from the date of issue of a tax invoice by the registered supplier;
- ❖ Registered recipient shall be **registered with an Export Promotion Council or a Commodity Board** recognised by the Department of Commerce;
- ❖ Registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a **copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;**
- ❖ registered recipient shall provide **copy of shipping bill or bill of export** containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the **registered supplier along with proof of export general manifest or export report** having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.



## Taxation of High-Seas Transaction

CA Ashir Shah

- ❖ **'High Sea Sales'** is a common trade practice whereby the original importer sells the goods to a third person **before the goods are entered for customs clearance**. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is **filed by the person who buys the goods from the original importer during the said sale**.
- ❖ **All inter-state transactions are subject to IGST**. High sea sales of imported goods are akin to inter-state transactions. IGST on **goods imported in to India** shall be levied and collected in accordance with S. 3 of Custom Tariff Act, 1975 **at the point when duties of customs levied as per S. 12** of Customs Act, on value determined CT Act.

Whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under section 3(7) Customs Tariff Act, 1975 and also separately under Section 5 of IGST Act. ????

## Sale in the Course of Import

CA Ashif Shah

- ❖ S. 5 of the CST Act, 1956 defines when a sales or purchase of goods is said to be taken place in the course of import or export.
- ❖ S. 5(2) provides that sales or purchase of goods is taken place in the course of import of goods into the territory of India only if – (i) the sales or purchase either occasion such import; or (ii) is effected by a transfer of documents of title to the goods before the goods have crossed the Custom frontiers of India.

## Taxation of High-Seas Transaction

- ❖ CBEC vide Circular No. 33/2017 – Customs dated 01-08-2017 & Circular No. 3/1/2018 – IGST dated 25-05-2018 clarified that Taxes would be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.
- ❖ Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.
- ❖ The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc., to establish a link between the first contracted price of the goods and the last transaction.

## Taxation - High-Seas Transaction

CA Ashit Shah

- ❖ In the matter of BASF India Ltd. – Maharashtra Authority of Advance Ruling dated 21-05-2018, upheld that on the first leg of transaction of supply tax will not be leviable.
- ❖ Whether High Seas Transactions are covered under Exempt supply ?  
**Exempt supply is defined as under** – [S. 2(47) – CGST]
  - (a) supply of any goods or services or both which **attracts nil rate of tax**; or
  - (b) supply may be **wholly exempt from tax** under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and

© it also includes **non-taxable supply**;
- ❖ **Non-taxable supply mean** a supply of goods or services or both **which is not leviable to tax** under this Act or under the Integrated Goods and Services Tax Act; [S. 2(78)]

## Taxation - High-Seas Transaction

CA Ashit Shah

- ❖ In the matter of BASF India Ltd. – Maharashtra Authority of Advance Ruling dated 21-05-2018, upheld that High Seas Sales transactions are part of “Exempt supply”.

Section 7(2) of the IGST Act lays down that the supply of goods imported into India, **till they cross the customs frontier of India**, are considered to be supplied in the course of **inter-state trade or commerce**.

Section 5(1) of the IGST Act states that IGST shall be levied on all inter-state supplies of goods or services. Therefore, the leviability of IGST has been established in the IGST Act itself.

**Proviso to Section 5(1)** states that the IGST on goods imported into India shall be levied and collected **upon final clearance of goods**.

This means that the **High Seas sales are in fact being subjected to the levy of IGST**

This makes it clear that the High Seas sales transactions can not be classified as “not leviable to tax” as observed by the Authority. (AAR)

## Taxation of subsequent Transaction of High Seas – Bond Sale

Seller	Buyer	Place of Port	Levy of Tax	Eligibility of ITC
Maharashtra	Maharashtra	Maharashtra – JNPT	M - SGST + CGST	Yes
Maharashtra	Gujarat	Maharashtra – JNPT	M - SGST + CGST	No
Maharashtra	Gujarat	Gujarat – Mandvi	G – SGST + CGST	Yes
Maharashtra	Gujarat	Chennai – Chennai	C – SGST + CGST	No
Maharashtra	Maharashtra	Gujarat – Mandvi	G – SGST + CGST	No

Buyer will lift the goods from Port.

S. 10(1) (a) - IGST

For availing Input Tax Credit Seller or Buyer have to register in place where Port is located.

CA Ashit Shah

## Taxation of goods transferred while being in Custom Bond

- ❖ When the goods remain deposited in a customs bonded warehouse the **custom duty to be collected shall remain deferred**. It would be crystalized only when **such goods are ex-bonded / removed u/s 68 of Customs Act, duty have to be collected**.
- ❖ Such transactions are squarely covered **under IGST Act** and tax liability has to be discharged by the person **who releases goods**.
- ❖ when goods remain deposited in a customs bonded warehouse and are transferred by the importer to any other person be **at a price higher than the assessable value of such goods**, such transaction squarely falls within the definition of “supply” and covered under IGST Act and **tax liability has to be discharged by the person who supplies goods**. [Circular No. 46/2017 – Customs – Dated 24-11-2017]

## Bond Transfer

Goods imported by "A". Importer wants to deposit the goods in a bonded warehouse to defer duty.

Importer files an "into bond bill of entry" and the goods are deposited in a Bonded Warehouse. BCD and IGST are deferred.

- A. Value of goods ₹ 100
- B. BCD -10% = ₹ 10
- C. IGST – 12% = ₹ 13.2
- D. Duty Defer = ₹ 23.2

"A" sells the goods to "B" for Rs. 300 and charges IGST of Rs. 36 @12% IGST)

"B" files an Ex-bond Bill of entry and pays Rs. 23.20 (the deferred duty). (In addition to duty of Rs. 36 paid earlier as indicated in Box-C).

It is clarified supply of goods before their clearance from the warehouse would not be liable for IGST and the same would be levied and collected only when the warehoused goods are cleared from the customs bonded warehouse. **Moreover, this Circular would be applicable from 01-04-18** [Circular No. 3/1/2018 – IGST Dt. 25-05-18]



# Taxation – Supply by SEZ unit or Developer

CA Ashit Shah

Supply by unit located in SEZ area

SEZ Act, such supply are treated as Import

Import of Goods in to India –  
Domestic Clearance

A SEZ is a specified demarcated duty-free territory, which for the purpose of trade operations is deemed to be considered outside the customs territory of India.

Set up primarily to promote exports, even GST regime continues to incentivize SEZ units by extending due benefits for their authorized operations.

Customer files  
Bill of Entry  
(BoE)

Customer do not  
files Bill of Entry  
(BoE)

Basic Custom  
Duty + IGST

Outward Supply  
IGST

## Taxation of SEZ unit when Supply under S. 9(3) & (4) of CGST Act

The Government may, on the recommendations of the Council, by notification, **specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis** by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. S. 9(3)

The central tax in respect of the **supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis** as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. S. 9(4)

N. No. 18/2017 – IGST – Exempts services imported by SEZ for authorized operations. N. No. 64/2017 – Customs – 05-07-2017 – Exempts IGST on import of goods.

## Supply by SEZ unit

CA Ashit Shah

- ❖ Supply of services by Hotels (accommodations and banquet halls) to employees of SEZ units ???
- ❖ S. 7 (5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of **inter-State trade or commerce**.
- ❖ S. 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location **at which the immovable property is located**. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as **intra-state supply**.
- ❖ **[Circular No. 48/22/2018 – GST – Dated 14-06-2018]**

## Supply by SEZ unit

CA Ashit Shah

- ❖ Hon'ble Authority of Advance Ruling – Karnataka, in the matter of **Gogte Infrastructure Development Corporation Ltd.** upheld as under –
  - a. S. 16(l)(b) of IGST Act' 2017 & Rule 46 of CGST Rules 2017 together it is clearly evident that the supplies of goods or services or both towards the authorised operations only shall be treated as Supplies to SEZ Developer / SEZ Unit;
  - b. In the instant case, admittedly, the applicant is located outside the SEZ. Therefore the services rendered by the applicant are neither the part of authorised operations nor consumed inside the SEZ;
  - c. Place of supply for services provided by Hotels, Restaurants shall be the place where such services are located or actually performed. [S. 12 (3)(b) & 12(4) – IGST]
- ❖ Hence, such services are not zero rated supply and transactions are intra-state.

## Supply by SEZ unit to another unit in SEZ

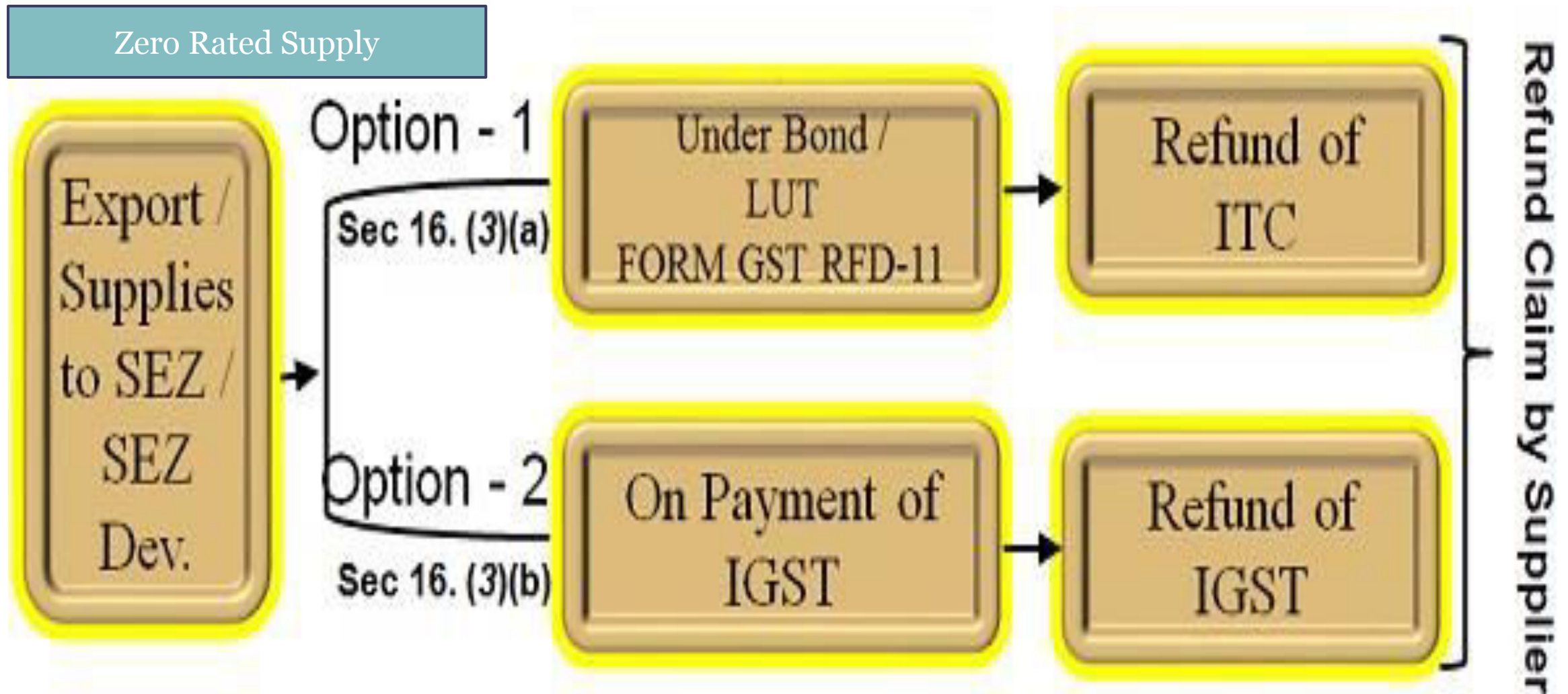
CA Ashit Shah

- ❖ Supply of goods or services or both by unit located in SEZ to another unit located in SEZ (inter-unit transfer)
- ❖ Such supply is considered to be Zero rated supplies and have to be supplied either under LUT or with payment of tax.
- ❖ [Circular F. No. SEEPZ-SEZ/GST Legislation/62/2017-18 –Dated 30-06-2017]

# Taxation – Supply to SEZ unit or Developer

CA Ashif Shah

Zero Rated Supply





**Thank you for your attention**

Any questions?

# Happy GST Learning



ENJOY  
**LIFE**