

Merchant Exports under GST

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Introduction

1. Merchant export is a popular term under EXIM policy and is equally important to the manufacturer-exporter. Merchant exports generates the foreign exchange for the Country like normal exports and is mainly engaged in export of goods and not services. The person who is engaged in the merchant export is called as 'Merchant exporter'. Merchant exporters do not have their own manufacturing facilities, instead they buy goods from the manufacturer-exporter in Domestic Tariff Area (DTA) to execute exports to overseas customers. Merchant-exporters are instrumental in a boosting of country's exports, especially exports from MSME and small manufacturers.

Definition of Merchant Exporter

2. As per Foreign Trade policy (2015-20), Para 9.33 "Merchant Exporter" means a person engaged in trading activity and exporting or intending to export goods.

Merchant Exporters buy goods from the Indian manufacturers and export them abroad. They may not have their own manufacturing unit or processing facility but sell and buy on their own account. They usually have a system of gathering market information and keep a close watch on market trends. The nature of their business makes it possible for them to assess the marketability of products and the prospects of their success.

This method of exportation through Merchant Exporters is useful when the company is small and lacks expertise in exporting and its related nitty-gritties, therefore, not in a position to start exports on its own.

Merchant Exports in Pre-GST regime

3. In the pre-GST regime, the Merchant exporters were permitted to carry out the business of exports of goods after executing B-1 bond with Surety/security, before the Deputy/Assistant Commissioner (DC/AC) of Central Excise, having jurisdiction over the factory or warehouse or before the Maritime Commissioner at Mumbai, Chennai, Kolkata, Paradeep, Kandla, Tuticorn, Visakhapatnam and Cochin.

After execution of bond, the Merchant exporter was required to obtain Form C.T-1 certificate from the said DC/AC for procuring the goods from a factory or warehouse without payment of tax for export. Form C.T-1 certificate contained the details of goods such as its price/value, quantity, specification, etc. Further, such certificate was supported by the purchase order.

Merchant exporters were required to submit such Certificate to the Manufacturer-Supplier as well as the jurisdictional Central Excise officer, with duly signed ARE-1 Form. The Superintendent of Central Excise, after due verification of export documents with such certificate, examined the export packages. Thereafter, they used to allow such goods for stuffing into container, then sealed the container for onward dispatch to port of

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shipment. Merchant exporter may opt for self-sealing of goods and examination at place of dispatch or at port of exportation.

With regard to waiver of Central Sales Tax, the Merchant exporters were required to collect H-Form from the Sales Tax department and provide it to the Manufacturer Supplier for onward submission to the Sales tax authority.

4. Merchant Exports under GST

4.1 Requirement of obtaining registration under GST - In accordance with Section 2(108) of the CGST Act, 2017, "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act.

Further, Section 7(5) of the IGST Act, 2017 states that the supply of goods or services or both shall be treated as an inter-State supply, where the supplier is located in India and the place of supply is outside India.

Therefore, on analysis of both the provisions, it can be concluded that the supply of goods outside India (*i.e.*, export of goods) shall be treated as inter-State supply.

The person making an inter-State supply shall be required to take compulsory registration under GST as per Section 24(i) of the CGST Act, 2017.

Hence, a merchant exporter, supplying goods outside India (making an Inter-State supply) is required to take compulsory registration under GST.

4.2 Procedure to be followed in case of merchant exports - The earlier requirements of C.T-1 Bond, and ARE-1 form have been done away with in the GST regime.

The exports may be made by the merchant-exporter, under bond/LUT and the unutilized credit can be availed as refund. Alternatively, merchant exporter can export the goods on payment of integrated tax (IGST) and claim refund of integrated tax (only when the exporter is not opting for special relief of procuring goods at 0.1% GST).

The procedures relating to export have been simplified so as to do away with the paper work. In case of exports of goods, the shipping bill is the only document required to be filed with the Customs for making exports. The supplies made for export are to be made under self-sealing and self-certification without any intervention of the departmental officer.

The shipping bill filed with the Customs is treated as an application for refund of IGST and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR- 3B by the applicant.

4.3 Special Relief in case of Merchant Exporter - In case of the merchant exporter, the Government has provided relief by providing reduced GST rate of 0.1% for procuring goods from domestic suppliers in accordance with the Notification No. 41/2017 of Integrated Tax (rate), dated 23-10-2017

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The merchant exporter shall be eligible to furnish LUT at the time of making exports.

4.3-1 *The conditions that need to be fulfilled for availing of such relief :*

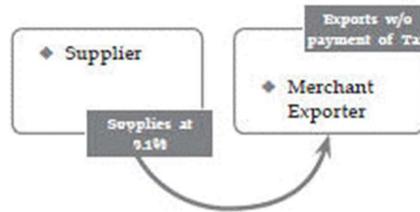
- ◆ Goods need to be supplied on a tax invoice charging GST @ 0.10%
- ◆ Such goods shall be exported within 90 days from the date of issue of tax invoice
- ◆ GSTIN of the supplier and the tax invoice number are to be indicated on shipping bill/bill of export
- ◆ Such Merchant exporter shall be registered with an Export Promotion Council or a Commodity Board
- ◆ A copy of the order placed at concessional rate shall be provided to the jurisdictional tax officer of the registered supplier
- ◆ Such goods shall be directly moved to the port, Inland Container Depot (ICD), Airport or Land custom Station (LCS) or to the registered warehouse from where it shall be moved to the port/ICD/Airport/LCS
- ◆ In case the goods are bought from multiple registered suppliers, the goods from each registered supplier shall move to a registered warehouse which shall be further moved to the Port/ ICD/Airport/LCS for export. Also, the merchant exporter shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator where the endorsed tax invoice and the acknowledgement shall be provided to the registered supplier as well as jurisdictional tax officer.
- ◆ After the goods are exported, a copy of shipping bill/bill of export with proof of EGM and export report shall be filed to the registered supplier as well as its jurisdictional tax officer.

The registered supplier shall not be eligible for the above reduced rate if the merchant exporter fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

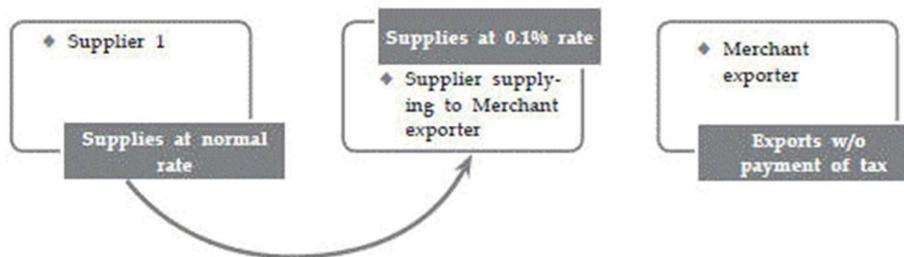
In this regard it has been clarified that the benefit of the concessional rate is optional, *i.e.*, the option may or may not be availed by the supplier and/or the recipient and the goods may be procured at the normal applicable tax rate. It has also been clarified *vide* Circular No. 37/11/2018-GST, dated 15.03.2018 that the exporter will be eligible to take ITC of the tax @0.1% paid by him. Further, the supplier who supplies the goods at the concessional rate is also eligible for refund of the unutilised ITC on account of inverted tax structure. The exporter of such goods can export the goods only under LUT /bond and cannot export on payment of IGST as per Rule [96\(10\)](#) of the CGST Rules.

4.4 Various scenarios involving Merchant Exporters - Taking in view the above notification, following are some of the scenarios that can be framed in case of transactions involving merchant exports.

4.4-1 Scenario -1 - Where merchant exporter exports w/o payment of tax (procures goods at 0.1%) - Claims refund of 0.1% GST paid for the goods exported :



- ◆ In the present scenario, the supplier shall supply goods to the merchant-exporter and issue the invoice charging GST @ 0.1%, as per Notification No. 41/2017-Integrated Tax (Rate), dated 23.10.2017.
- ◆ As the merchant exporter is exporting the goods without payment of tax, it shall be eligible to claim refund of ITC in respect of the goods procured at 0.1% GST.
- ◆ As per Section 54(3) of the CGST Act, a registered person may claim refund of unutilised ITC at the end of any tax period. Such claim of refund is allowed only in the two cases, *i.e.*, in case of Zero-Rated goods and goods involving Inverted duty rate structure.

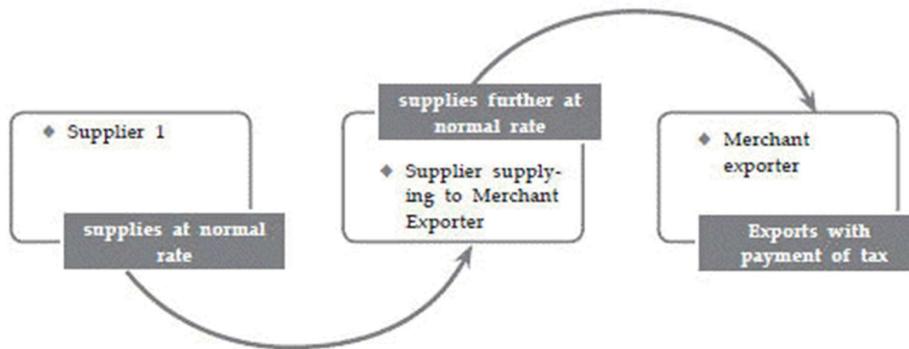


- ◆ A tax period is the period for which return is required to be furnished. Thus, a taxpayer can claim refund of unutilised ITC on monthly basis, where the return is furnished monthly.

4.4-2 Scenario -2 - Where supplier is supplying to a merchant exporter and exports are further done w/o payment of tax-refund claim by the supplier supplying to merchant exporter.

- ◆ In this scenario, the first supplier supplies the goods to another supplier at normal rate of GST and the second supplier is further supplying the goods to the merchant exporter at concessional rate of 0.1% GST.
- ◆ The second supplier is not exporting the goods directly, in such case it shall be eligible for refund of ITC under Inverted Duty rate structure where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.
- ◆ As per Section [54\(3\)](#) of the CGST Act, 2017, a registered person may claim refund of unutilised input tax credit at the end of any tax period under such case of inverted duty rate structure.

4.4-3 Scenario -3 - Where supplier is supplying to merchant exporter at normal rate and exports are done with payment of tax - IGST paid.



- ◆ In the present scenario, the supplier supplies goods to the merchant exporter at Normal rate of Tax (and not @ 0.1% GST).
- ◆ In such scenario, in case of manufacture supplier, no refund claim can be filed by the supplier supplying to merchant exporter. In present case, normal tax regime will be followed where ITC shall be used for payment of Output tax and balance output liability will be paid in cash by the supplier.
- ◆ Merchant exporter will be eligible claim the refund of unutilized ITC and the IGST paid in respect of such "Zero-rated supply" made, *i.e.*, exports of such goods.

Conclusion

5. To sum up, merchant exports are similar to normal exports and, thus, merchant exporter enjoys the benefit of Zero rated supply. Zero rated supply is a supply of goods or services which are (a) exported and, (b) supplied to SEZ. Under Zero-rated supply, no tax is payable but the credit of input tax related to that supply is admissible, when the supply is made under bond/LUT (mechanism to be followed by merchant exporter while availing the special relief). The Government has provided the facility to merchant exporter for procuring the goods @ 0.1% GST w.e.f. 23.10.2017 instead of the normal rate of tax. This relief, in turn, helps merchant exporters to reduce their working capital requirements. Merchant exports play an important role in the economic development of the Country and, hence, are encouraged and supported, by the Government.

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