

भारत सरकार
वित्त मंत्रालय, राजस्व विभाग
केंद्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
निर्यात संवर्धन महानिदेशालय
8वां तल, टॉवर-2, जीवन भारती बिल्डिंग
कनाट प्लेस, नई दिल्ली - 110001
दूरभाष: 011-23722430, फैक्स: 011-23722443
ईमेल: dgep.dor@gmail.com, dgep-dor@nic.in



Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Directorate General of Export Promotion
8th Floor, Tower-2, Jeevan Bharti Building
Connaught Place, New Delhi - 11000
Telephone: 011-23722430, Fax: 011-23722443
Email: dgep.dor@gmail.com, dgep-dor@nic.in

फा०सं०/F.No. DGE/SEZ/49/2019 / 815 to 817

दिनांक/Date August, 2019

OFFICE MEMORANDUM

Sub: Fraudulent Refund claim in Input Tax Credit by a CGST Unit for goods exported to an NSEZ unit (Deemed Export) against fake documents -reg.

Please refer to the enclosed OM issued vide F.No.GST/INV/NSEZ/19-20 dated 1st August, 2019 received from the Commissioner(GST-Inv.), GST Investigation Wing, New Delhi on the subject cited above.

2. Commissioner GST (Investigation) while explaining the modus operandi of the fraudulent refund claim vide the above referred OM has suggested for issuance of a Circular/Instruction to address and curb the kind of fraud detailed in his letter. He has made two suggestions in this regard in his reference. The first one is regarding the difference as far as the officer to endorse the specified documents that goods have been received in full in the SEZ in the GST laws vis-à-vis the SEZ laws. As per proviso to sub rule 1 of Rule 89 of CGST Rules, 2017, as amended, in respect of supplies to Special Economic Zone unit/developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in SEZ for authorized operations, as endorsed by the **Specified Officer** (Deputy Commissioner or Joint Commissioner) of the zone whereas under Rule 30 of SEZ Rules, 2006, the proper officer to endorse such documents is **Authorised Officer** (Inspector or Superintendent). Therefore, the issue of "Specified Officer" vs "Authorized Officer" needs to be resolved. The second recommendation is that the refund claim of ITC by a DTA unit for goods exported to an SEZ unit in bonafide cases may be done only against online Bill of Export and not merely issuance of invoice.

जारी करने की तिथि 27-8-19

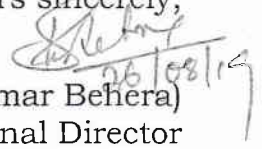
o/c

3. The matter has been examined. DGEP also agrees that the officer empowered to endorse invoices/documents for the purpose of refund claim should be the same in SEZ law as well as in the GST law. As far as the second suggestion of making the online Bill of Export as a relevant document and not merely the invoice is concerned, it is stated that the Bill of Export is filed either by the supplier or on his behalf by the unit/ developer, only in such cases where the supplies are made under claim of export entitlement like drawback. Such Bill of Export are generally filed by the unit/ developer in SEZ in the SEZ Online system, which is properly assessed/ examined by the Authorized Officer before arrival of such goods in the SEZ. Even in such cases, after the assessment, the Authorized Officer forwards the endorsed copy of invoices and the Bill of Export manually to the jurisdictional GST officer which establishes that the goods have been admitted in full in the SEZ. Therefore, even if Bill of Export is made as the document for supply to SEZ, the same does not seem to make the refund claim procedure foolproof as in the absence of electronic transfer of documents/ data, forging these manual documents can't be entirely ruled out as happened in the present case being brought out by Commissioner, GST (Investigation).

4. In view of the above, you are requested to provide your comments on both these recommendation made by Commissioner, GST (investigation).

Encl: As above,

Yours sincerely,


(Saroj Kumar Behera)
Additional Director

To

1. The Commissioner,
GST Policy Wing,
C.B.I.C., North Block,
New Delhi 110 001
2. The Under Secretary,
SEZ Section, Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhawan,
New Delhi-110 011

Copy to:

The Commissioner GST (investigation) Room No. 1, 10th floor,
Tower-2, Jeevan Bharti Building, Connaught Circus, New Delhi-110001

URGENT

F.No. GST/INV/NSEZ/19-20
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Investigation Wing

Dr. V. P. Sharma
Pr. Addl. Director General
Diary No. 25/3
7/8/19
7/8/19

विशेष निगरानी
SPECIAL WATCH

Room No. 1, 10th Floor,
Tower - 2, 124, Jeevan Bharti Building,
Connaught Circus, New Delhi - 110001
1st August, 2019

OFFICE MEMORANDUM

Subject: Fraudulent Refund Claim in Input Tax Credit by a CGST Unit for goods exported to an NSEZ unit (Deemed Export) against fake documents - reg.

This office has received a modus operandi on the above mentioned subject. The manner in which the fraud was detected has been summarized as below:

The Assistant Commissioner, Division - Jahangirpuri, CGST Commissionerate, Delhi (North) vide letter dated 18.06.2019 requested a verification report regarding genuineness of 9 (nine) tax invoices bearing Sl. No. SSR - 01 to SSR - 09 of M/s SSR Exports, Plot No. A8, Govind Market, Haiderpur, North West Delhi, a DTA unit purportedly supplying goods to an SEZ Unit by the name of M/s Naaz Exports, G- 80, SEZ Moradabad for processing their ITC Refund claim of Rs.9,88,43,052/-.

3. The said tax invoices bore the signature, Name, designation and the officer stamps of one Dr. V. P. Sharma, Assistant Development Commissioner, Moradabad Special Economic Zone. Moreover, endorsements in token of receipt of the items by the said SEZ unit i.e. M/s Naaz Exports were also found in all these tax invoices.

3. The verifications were carried out by specified officer Moradabad and it was revealed that name, designation and the office stamp of Dr. V. P. Sharma, Assistant Development Commissioner, Moradabad, were forged. Even the SEZ Unit, which was mentioned as recipient of goods, denied even knowing the supplier or receiving the goods.

4. It is clear that the whole case for refund was built on the basis of fake documents and signatures. Further, Development Commissioner or any of his officer or staff is not the authorized officer to sign on the export documents of an SEZ Unit.

5. It is further informed that as per second proviso to sub rule 1 of Rule 89 of CGST Rules, 2017, as amended, in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the **specified officer** of the Zone while as per amendment made by Notification dated 19th September, 2018 issued by Ministry of Commerce And Industry (Department of Commerce), a copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the

(Sw)
SEZ
Behera
6/8/19
H. H. (SEZ)
6/8/19

Addl. Dir.
R.
07/08/19

6/8/2019 R ADG

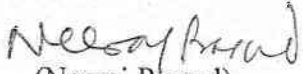
may be, with an endorsement by the **authorised officer** that goods have been admitted in full in the Special Economic Zone shall be treated as proof of export.....”

6. From the above, it is evident that the proper officer designated to endorse the documents/ Invoice/ Packing List/ Bill of Export is mentioned as the “**Specified Officer**” under the CGST Rules, 2017, as amended while as the “**Authorized Officer**” under the SEZ Rules, 2006, as amended. This may result in possible fallout that the Refund Claim of Input Tax Credit by a CGST Unit for goods exported to an SEZ unit may be held.

7. A Circular / Instruction, is required to be issued to address and curb the kind of fraud detailed in the Pre-Para(s). However, if the issue of “**Specified officer**” Vs. “**Authorized Officer**”, as mentioned in Para 6 above, remain unresolved, it may result in possible fallout that the Refund Claim of Input Tax Credit by a CGST Unit for goods exported to an SEZ unit in bonafide cases may be affected.

8. Another suggestion, which has flowed from the reporting formation, is that exports to SEZ units shall be done only against online Bills of Export and not merely issuance of Invoice.

9. Inputs of DGEP, are required for formulating an Instructions/ Guidelines to curb fraud as detailed above, in general, and in specific, inputs are required with respect to issue(s) mentioned in Para 6, 7 and 8 of this letter.


(Neeraj Prasad)
Commissioner (GST – Inv.), CBIC
011 -21400623

To
Director General (Export Promotion)
[Kind Attention: Shri Sanjay Bansal, ADG, Export Promotion]