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Whether all supplies to SEZ Unit/ Developer are zero rated supply?

## **Supplies to SEZ unit/ Developer are Zero-rated Supply:**

In terms of Section 16 of the IGST Act, 2017, the following supplies of goods or services are considered as zero-rated supply. (Relevant provision of Section 16 is reproduced here in below):

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
- (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.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (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 unutilized input tax credit; or
- (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,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act, 2017 or the rules made thereunder.

## **Supplies to SEZ unit/ Developer are termed as Inter-state supply:**

As per provisions of Section 7(5) of the IGST Act, 2017, the following supplies of goods or services or both are considered as inter-state supply. (Relevant provision of Section 7 is reproduced in here below):

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7. (5) Supply of goods or services or both,—

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

## **Contrary Judgment by the Advance Ruling:**

Recently an advance ruling was given by Karnataka bench of Advance ruling authority (“the AR”) in the case of M/s GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED; KAR ADRG 02/2018 dated March 21, 2018, pertaining to the following question:

**“Whether the Hotel Accommodation & Restaurant services provided by them, within the premises of the Hotel, to the employees & guests of SEZ units, be treated as supply of goods & services to SEZ units in Karnataka or not?”**

## **Facts of the case:**

The authorized representative during the personal hearing proceedings pleaded that applicant is a public limited company; they are into hotel business providing hotel accommodation & restaurant services in Belgaum; that the hotel is situated outside the SEZ and also independent of SEZ; the billing is done on SEZ company for employees of SEZ; while they have not entered into any contract with either SEZ or any unit in the SEZ; and they are not giving any concessional rate to the billings of SEZ at present; that SEZ units contended for concession; that SEZ units gave letter to the hotel to provide billing in their name whenever any of their guest / employee uses the services/ facilities and hence they filed the instant application.

## **Held by AR:**

**The Hotel Accommodation & Restaurant services being provided by the Applicant, within the premises of the Hotel, to the employees & guests of SEZ units, cannot be treated as supply of goods & services to SEZ units in Karnataka & hence the intra state supply and are taxable accordingly.**

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## Findings & Discussion by AR:

Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are treated as „Zero Rated Supply“ in terms of Section 16(1)(b) of IGST Act“ 2017.

Rule 46 of CGST Rules 2017 stipulates that the invoice shall carry an endorsement “Supply meant for export / Supply to SEZ unit or SEZ Developer for authorized operations on payment of Integrated Tax” or “Supply meant for Export / Supply to SEZ unit or SEZ Developer for authorized operations under Bond or Letter of Undertaking without payment of Integrated Tax” as the case may be.

It is clearly evident that the supplies of goods or services or both towards the authorized operations only shall be treated as Supplies to SEZ Developer / SEZ Unit.

The place of supply of the services by way of lodging accommodation by a hotel, shall be the location at which the immovable property (hotel) is located or intended to be located, as per Section 12 (3)(b) of the Integrated Goods and Services Tax Act, 2017.

The place of supply of restaurant and catering services shall be the location where the services are actually performed, as per Section 12 (4) of the Integrated Goods and Services Tax Act, 2017.

**In the instant case, admittedly, the applicant is located outside the SEZ. Therefore, the services rendered by the applicant are neither the part of authorized operations nor consumed inside the SEZ.**

**Since place of provision of services in case of Hotel has been prescribed under the Act 'location of the Hotel' the rendition of services of restaurant, short term accommodation and Banqueting/conferencing cannot be said to have been 'imported or procured' into SEZ Unit/Developer.**

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## Recent Clarification Issued by the CBIC:

The Central Board of Indirect Taxes & Customs (CBIC) vide its recent **circular No. 48/22/2018 – GST dated June 14, 2018 (“the Circular 48”)** has thrown light on this contentious issue and affirmed that:

Section 16(1) of the IGST Act defines “zero rated supplies” as supplies of goods or services or both to a SEZ developer or a SEZ unit.

Section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies.

Per the second proviso to Rule 89(1) of the CGST Rules 2017, the application for refund shall be filed by :

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorized operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidences regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone.

A conjoint reading of the stated provisions reveals that supplies to SEZ developer or SEZ unit shall be zero rated & supplier shall be eligible for refund of unutilized ITC or IGST paid, as case may be, only if such supplies have been received by SEZ developer/unit for “authorized operations”.

As per SEZ Act 2005, “authorized operations” means operations which may be authorized under sub-section (2) of section 4 and sub-section (9) of section 15 of SEZ Act 2005 respectively.

The Circular 48 has also affirmed that –

Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organizing any functions shall be the location at which the immovable property is located. In such cases, if the location of the

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supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

However, it is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

## **Conclusion:**

- All supplies of goods or services or both to SEZ Unit/ Developer are zero rated supply
- All supplies of goods or services to SEZ unit or developer are inter-state supply.

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