



 [Click to Print](#)

[Click to Close](#)

## IGST on Exports - Anomaly in Valuation

**JUNE 07, 2019**

**By Shweta Jain, Partner RSA Legal Solutions**



**THE** woes of the Indian Exporters are not coming to an end. In the GST law, the government provides two methods to export the goods under Section 16 of the IGST Act i.e. without payment of tax under LUT/Bond and the other one being the export of goods on payment of IGST. The Government's intent is clearly provided in Section 16 that all the export of goods shall be zero rated. It implies that only the goods have to be exported and not the taxes.

Therefore, if the goods are exported on payment of IGST, that necessarily is required to be refunded which is very clearly articulated in Section 54 of CGST Act also. As a result whatever IGST is paid on the export of goods should ideally be refunded.

As a matter of procedure, the GST portal and ICE Gate website are linked together to automate the processing of refund claims on such export of goods on which the IGST has been paid. Rule 96 of the CGST Rules mandates that the shipping bill filed with the ICE Gate shall be deemed to be an application for refund. Thus, there is no separate requirement to file any refund claim for such IGST paid.

The details given by the exporter in the monthly return in Form GSTR-3B is matched with the details of the shipping bill by the system and automatically the amount of IGST paid is sanctioned as a refund and credited to the exporter's banks account. In case of any discrepancy between the amount of IGST mentioned on the GST portal and ICE Gate, lower of the two amounts would be sanctioned.

This all seems very fancy and easy. The problem lies in the question as to on what value the IGST has to be paid on the GST invoice on export of goods and on what value the shipping bill is filed with the ICE Gate. On the shipping bill, mandatorily, the FOB value of the goods is mentioned. However, as per GST law, IGST is required to be paid on the transaction value of the goods. Transaction value can be any value that has been agreed between the parties and based on any INCO term like ex-works basis, FOB, CIF, C&F, Door Delivery etc. There is no provision in GST law which provides for separate valuation in case of export of goods. Therefore, if a person (exporter) has agreed to deliver the goods to another party which includes all freight expenses also, then that becomes the transaction value. In fact, in many places, the exporter quotes a single price for its product and undertakes to deliver the goods at his door step or at the port in his country. The other person (importer) in other country does not even know the quantum of the freight involved in such transactions. Thus, as per Section 15 of the CGST Act, the agreed price between the exporter and the buyer will be the transaction value on which GST has to be paid.

Moreover, even if the exporter bifurcates the value of the goods and the freight portion or other ancillary expense like insurance etc., on the invoice, still as per Section 15, all incidental expenses which are charged by the supplier from the buyer before the delivery of the goods are liable to be added in the transaction value. Thus, on this count also, the amount of freight or insurance is liable to be added in the transaction value.

Also, supply of goods on CIF basis where the freight and insurance are also arranged by the exporter supplier can be considered as a composite supply of goods and services. As per Section 2(30) of the CGST Act, "*composite supply*" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. For taxability of composite supplies, the tax is levied on the total value and at the rate at which tax is applicable on principal supply. Thus, going by this logic also, supply of goods is the principal supply and the freight and other expenses are ancillary supplies which are naturally bundled with the main supply.

Therefore, in terms of the provisions of GST Law, the value on which IGST should be paid on the export of goods should also include the freight and other incidental expenses if they are charged by the exporter from the buyer i.e. if the CIF price is the transaction value, then that should be the price at which the IGST should be paid.

However, the shipping bill is filed at the FOB price. It means that the exporter while raising the GST invoice will have to pay IGST on the total price charged by him from the buyer whereas while filling the shipping, he will declare the FOB price and accordingly the IGST value in the bill which will be uploaded on the ICE Gate website. In such a circumstance, the exporter will get the refund of the IGST only which is mentioned in the shipping bill (being lower) and not on the GST invoice (being higher). This will result in a very ambiguous situation where the exporter is paying the GST on the higher value but getting the refund on the lower value. There are many exporters facing this issue. Also, where the exporters are acting smart enough to pay IGST only on the FOB value after working out from the CIF value on the invoice and not charging the IGST on the freight and insurance portion, they are facing the wrath of the departmental authorities for paying less IGST into their coffers.

This does not seem to be the intention of the Government which has been articulated in Section 16 of the IGST Act that the export of goods should be zero rated because there is a portion of IGST which remains unpaid in the entire scenario if the terms on which the exporter and buyer have agreed is not the FOB price.

We could find various instructions given by various organizations like FIEO, EEPC etc., which state that the exporters should pay IGST on the FOB value but that is without any legal base. Moreover, there is a set of FAQs issued by the Delhi Customs, which in question 16 clarifies that there should not be any difference between commercial invoice and GST invoice after implementation of GST since as per the GST law, IGST is to be paid on the actual transaction value of the supply between the exporter and the consignee, which should be the same as the one declared in the commercial invoice. Thus, there are both schools of thoughts prevailing.

Going by the intent of the Government to zero rate the export of goods, the government should ideally bring some clarification on this aspect and lessen the problems of the exporters. Nonetheless, the exporters can decide to pay IGST on the FOB price considering the practical aspects since sooner or later, either this will be clarified by the Government or will be decided by the Judiciary in favor of the exporters.

**(The views expressed are strictly personal.)**

*(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)*

---

 [Click to Print](#)

[Click to Close](#)

