'SEZ units need to be net foreign exchange earners'

CHATROOM

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Can the SEZ Customs demand payment of customs duty from SEZ units for 10 per cent write-off of non-realisation of export proceeds? Neither in the RBI master circular, nor under the FTP, nor under the SEZ Rules is it mentioned that customs duty should be refunded if 10 per cent write-off has been done by SEZ units for non-realisation of export proceeds. The SEZ concept is to achieve positive NFE. The rule is very clear that duty is liable only for unutilised goods. Please give your opinion.

I agree that SEZ units have to only achieve positive NFE and so the Customs need not demand refund of customs duty on the inputs. In fact, the first proviso to Rule 35 of the SEZ Rules, 2006 (relevant extracts), says that at no point of time will the unit be required to co-relate every import consignment with its export. In my opinion, the surrender of export incentives proportionate to the shortfall in export realisation should apply only in case of duty drawback, RoDTEP etc., where the incentives are granted as a percentage of the FOB value of exports. However, please do take note of Rule 96B of the CGST Rules, 2017, which requires you to surrender the refund obtained proportionate to the shortfall in realisation of export proceeds.

We have received inward remittances from a foreign party towards sampling, development and tooling charges. Can we treat the services as zero-rated?

The details given are too inadequate for me to opine, as many variations are possible. Given the scanty information, I can only suggest that you refer to Sections 2(102), 2(70) and 2(71) of the CGST Act, 2017; Sections 2(6), 13 and 16 of the IGST Act, 2017; and the terms of your contract, to arrive at a conclusion on whether the activities mentioned amount to export of services and can be zero-rated.

We had applied for refund of unutilised ITC on account of export of services without payment of IGST under LUT. For the relevant period, we had applied on the basis of invoice date instead of payment realisation date, because, by the time we made the refund application, the payments had come through for all the invoices. Now, the GST department says that the refund is admissible only on the basis of payment realisation during the relevant period. What is the correct position?

Rule 89(4)(D) of the CGST Rules, 2017, says that "zero-rated supply of services" is the aggregate of the payments received during the period for zero-rated supply of services and zero-rated supply of services where supply has been completed, for which payment had been received in advance in any period prior to the relevant period, reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period. Rule 49(D)(F) of the said Rules says "relevant period" means the period for which the claim has been filed. So, what the GST department says is correct.

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