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CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **Queriest :**

M/s. Jacobi Carbons India Pvt. Ltd.,
SF No.580-581, Mettubavi Village,
Vadasithur Post,
Kinathukadavu Taluk,
Coimbatore – 641 202.

2. **Facts :**

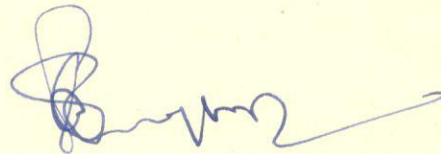
Queriest is registered as 100% EOU, under MEPZ, Tambram, Chennai since the date of incorporation of the company. EOU units have not been considered under special categories with implementation of GST Act. Queriest is exporting coconut shell activated carbons (HSN : 3802 1000) to their AE's and it covered under 18% GST slab. In order to meet their export requirement, queriest is procuring huge amount of semi-finished goods (18% GST), Consumable and Capital goods with average GST @ 18% from the local markets. All of their ITC being accumulated in credit ledger to claim refund from the GST department. Initially queriest had lodged their refund claim before the GST department under form RFD-01 upto March 2019 and opted for online refund claim by exporting their cargo with payment of IGST. Online claim was more convenient to realise their ITC with the following reasons.

1. No differentiation between Capital Good and Consumables ITC. Queriest is eligible to claim refund of ITC on consumable and semi-finished goods under form RFD-01. ITC on capital goods was lying in the credit ledger as the queriest don't have any local sales to set off ITC on capital goods.
2. No need to visit GST office and required to meet the demands from the concerned officer.

3. **Query :**

In the above background, it appears that some department officials have informed the queriest that as an export oriented unit, the queriest does not have the option of paying IGST and claiming refund. In this context, the queriest has asked for clarifications on the following:

1. Proper procedure to be followed to claim refund of their eligible ITC as applicable to EOU?



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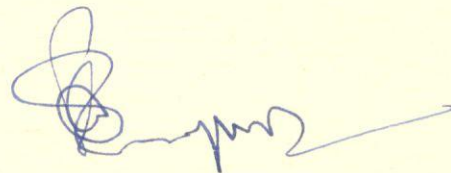
2. Possibilities of legal action by the department on their online refund claim. Querist is of the opinion that customs officers have accepted their claim by approving their shipping bills with payment of IGST. Therefore department's claim will not be viable.
3. How to utilise their ITC on procurement of capital goods as they don't have any possibilities of set off against payables (No local sales).
4. GST refund process as restricted on Finance Budget-21.

4. Opinion :

- 4.1 Rule 96(10) of CGST Rules 2017 regulate refund of IGST paid on goods or services at the time of their export. This rule has undergone numerous changes in the past few years and there are certain restrictions in terms of which certain categories of assesseees / exporters are not entitled to claim refund. In terms of sub-rule (b) of Rule 96(10), any person who avails the benefit of Notification 78/2017-Customs dated 13.10.2017 is not eligible to claim refund of IGST by paying IGST at the time of export of goods. However, they are entitled for claiming refund of accumulated ITC credit, if any, available on account of exports without payment of duty Notification 78/2017 amends Notification 52/2003 and relates to duty exemptions for 100% EOUs. A copy of this Notification is attached as Annexure-A.
- 4.2 It may be noted that in terms of this notification EOUs can avail duty exemption as well as IGST exemption along with compensation cess. As per the parent Notification 52/2003-Customs dated 31.3.2003 IGST exemption which was available initially upto 31.3.2018 has been extended for further periods till now.
- 4.3 In other words, an EOU can procure all goods without payment of customs duty as well as IGST. But in such a case, it will not be eligible to pay IGST at the time of export of the goods and claim refund of it later. However, it had the option of exporting the goods without payment of IGST and whatever credit is accumulated, that can be claimed as refund.
- 4.4 It is also to be noted that the following explanation is available in Rule 96(10)(b).

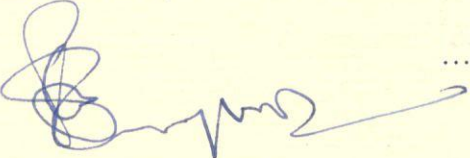
“Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

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Thus, if the unit/queriest decides to pay IGST and avail only basic customs duty exemption, then it is deemed that benefit of notification applicable to EOU has not been availed for the limited purpose of Rule 96(10). In other words, in such a situation, the queriest will be eligible to export the goods on payment of IGST and then claim refund of the IGST paid through customs authorities.

- 4.5 With regard to the past cases, it may be noted that it is quite possible for the departmental officers to initiate action. However, if any notices are issued at a future date, queriest can defend the same. It is reported that there are no local sales and therefore the ITC credit available on the capital goods procured could not be utilised. The accumulated credit can be claimed as refund, subject to the conditions stipulated in terms of Section 54 of CGST Act. Alternatively, for all procurements, IGST exemption need not be availed by the queriest and then, in such a situation, claim for refund of IGST paid at the time of exports will be available in terms of Rule 96(10).
- 4.6 With regard to the procedure to be adopted for claiming refund, it may be noted that with effect from 26.9.2019, all refund applications are to be filed online. The unutilised input tax credit on account of exports without payment of tax can be claimed in terms of Section 54(3) of CGST Act. It is to be noted that no refund will be given in a case where the unit avails drawback in respect of central tax or claims refund of IGST paid in respect of such exports.
- 4.7 The claims are to be filed within a period of two years from the relevant date and the relevant date as far as the queriest is concerned, will be computed as follows:
- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;


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Following will be the requirements and details of the documents for claiming such refund.

Declaration / Statement / Undertaking / Certificates to be filled online	Supporting documents to be additionally uploaded
Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period.
Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods



S. MURUGAPPAN

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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.