

Supplies to IT/ITeS parent firms eligible for refunds, clarifies CBIC

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In what will address the concerns of services exporters, especially information technology and information technology-enabled services (IT/ITeS) entities, the Central Board of Indirect Taxes and Customs (CBIC) clarified on Monday that supplies to parent or subsidiary companies abroad would be eligible for refunds and not qualify as exports.

The move comes as a major relief to several entities that were denied refunds when they were exporting services to their parent or subsidiary companies abroad. It was based on the recommendations of the 45th Goods and Services Tax (GST) Council meet that took place in Lucknow on Friday.

The government has now clarified that these companies will be treated as separate legal entities since they are incorporated separately in their respective countries. Experts suggest that the clarification will largely address concerns of the exporter community and help them get their refund claims cleared.

In another clarification, the CBIC has said where e-invoice has been generated, a physical copy of the invoice is not required to be carried for movement of goods. The move is aimed at facilitating ease of doing business.

“Various representations have been received, citing ambiguity caused in interpretation in relation to export of services. The matter has been examined. In view of the difficulties faced by trade and industry and to ensure uniformity in the implementation of provisions of the law across field formations, the board has clarified the issue,” it said.

“It is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under the Companies Act, are separate persons under the CGST Act, and thus are separate legal entities. Accordingly, these two separate persons will not be considered merely establishments of a distinct person,” it added.

RELIEF

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Pratik Jain, partner, Price Waterhouse & Co. LLP, said the clarification on services provided by Indian companies to their group or affiliates abroad as an important one as in some cases, refunds were being denied on the grounds that they are merely establishments of distinct persons (like branch offices of the same legal entity).

"This will help in resolving the unnecessary dispute which got started in the last year or so. While the major beneficiary would be the IT/ITES sector, a similar issue might have been faced by other sectors as well," said Jain.

Aditya Singhanian, partner, Singhanian's GST Consultancy, said, "Clarification by the CBIC largely addresses the concerns of the exporter community and will serve as an impetus in getting their refund claims sanctioned, which are currently pending before the adjudicating/appellate authorities."

"While the clarification on the distinct entity is a welcome move, there was no ambiguity on this issue and certain refunds were rejected unnecessarily when the intention of Parliament is clearly to give export benefits to these transactions," said Abhishek Rastogi, partner, Khaitan & Co., who is arguing writ on such issue in the Gujarat High Court.

"This clarification should ideally make some pending writs redundant and will give relief to Indian exporters by claiming the refunds faster," he added.

The CBIC also clarified that where e-invoice has been generated, a physical copy of the invoice is not required to be carried for movement of goods.

Abhishek Jain, partner, EY, said the effective implementation of this relief will support in easing invoicing procedures of businesses.