



Analysis of GST Council's Decision on GST on supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance & ancillary issues

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1. Amendment in Schedule III of CGST Act, 2017

- To insert clause (aa) in paragraph 8 of Schedule III of the CGST Act, 2017 w.e.f. 01.07.2017, to explicitly provide that supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to the Domestic Tariff Area, shall be treated neither as supply of goods nor as supply of services.
- This brings transactions relating to supply of goods warehoused in SEZ/FTWZ at par with the existing provision in GST for transactions in Customs bonded warehouse.

Our Comments:

Entry 8. (a) to Sch II of CGST Act provides that *Supply of **warehoused goods** to any person before clearance for home consumption*; would be considered as an ACTIVITY OR TRANSACTION WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES.

As per S 2(44). 2(43) of The Customs Act and related provisions of SEZ Act, FTWZ and SEZ are not 'warehouses' (Public or private or special)

Hence a relief similar to that of Entry 8(a) is being given for supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to the Domestic Tariff Area. They would be treated neither as supply of goods nor as supply of services vide new clause 8(aa)

A question often asked is whether the goods in SEZ/ FTWZ would be required to be disclosed as an APOB or not. The Analysis is as follows -

The SEZ link to Customs Act, is established under Section 53 of the SEZ Act, which runs as below,

“53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc”, in certain cases.- “A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act 1962 (52 of 1962).”

From the above, it becomes clear that Special Economic Zones are deemed to be considered as ports, airports, inland container depots, land stations, outside the Customs territory of India, under Section 7 of the Customs Act, 1962, which deals with the appointment of ports, airports, etc. Hence, it is a deemed territory outside the Customs territory of India.

Further, as per Section 51 of the SEZ Act, the provisions of this Act, shall have an overriding effect over any other law, which is reproduced below

“51. Act to have overriding effect,-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

A combined reading of the above provisions shows that Free Trade Warehousing Zone (FTWZ) is part of SEZ scheme. SEZ is a specifically delineated duty free enclave which is deemed to be a foreign territory for the purposes of trade operations and duties and tariffs.

Now, as per Section 2(85) of CGST Act "place of business" includes--

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

As per Para 4 of Circular Circular No. 61/35/2018-GST - “... An additional place of business is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business.”

However, as per **Section 1 of The CGST Act**, It extends to the whole of India only.

Hence, it may be concluded that since the goods are not lying in any state of India, but in a deemed foreign territory, just like a Customs bonded WH, there is no requirement of disclosing the FTWZ WH where your stock is lying as APOB.

BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant, M.B.A (International Trade) & a qualified L. LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – EAC(ER). He is the Chairperson of The National Fiscal Affairs & Taxation Committee of The Bengal Chamber of Commerce and Industry. He is a Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

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He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

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- **Union Budget 2024 Edition**
- **GST APPELLATE TRIBUNAL (GSTAT)**
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- **GST PLEADING & PRACTICE – SEPTEMBER 2023**
- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
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- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY

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