

THE ORACLE

MANGALURU BRANCH (SIRC) E-NEWSLETTER

VOLUME 01 | ISSUE 12 | JANUARY - FEBRUARY 2025 | MANGALURU



From the desk of the Chairman

CA. Gautham Pai D.
Chairman – ICAI Mangaluru



As we step into the year 2025, January brings with it a fresh breath of air, energizing us with new possibilities and opportunities. For the Mangaluru Branch of the Institute of Chartered Accountants of India, this month has been particularly special. We had the privilege of hosting yet another highly successful Residential Refresher Course (RRC) at the Centre of Excellence (CoE) in Hyderabad. This event, organized by the Digital Accounting & Assurance Board (DAAB) of ICAI, was an enriching experience for all delegates and provided a platform to delve into the evolving world of technology in our profession.

It was an honor to have CA. Dayaniwas Sharma, Vice Chairman of the DAAB Committee, with us. His insights into how technology can be optimally integrated into our daily practice were truly inspiring. We were also joined by esteemed speakers such as CA. Vijay Srinivas, CA. Karthikeya Shenoy, and CA. Siva Prasad Annavarapu, who shared their vast knowledge on digital advancements. The 32 delegates had the opportunity to not only learn from these experts but also explore the rich heritage of Hyderabad, making the event both professionally and personally fulfilling.

We must also acknowledge the vision of ICAI for establishing the CoE way back in 2009. The state-of-the-art facilities have played an instrumental role in supporting events like the RRC and continue to serve the needs of the ICAI community, offering a conducive environment for both learning and growth.

January also marked the celebration of Republic Day, during which we had the pleasure of felicitating our newly qualified members, officially welcoming them into the profession. Additionally, an informative Outreach programme on the GST Amnesty Scheme was held in association with the State GST Department, with key insights shared by the Joint Commissioners of the Mangaluru GST Division.

Looking ahead, the month of February holds great anticipation with the Union Budget on the horizon, and we eagerly await the implications it may have on our profession. It also brings a change of leadership across the Institute, the Regional Councils, and Branches. It has been a truly fulfilling year for me as Chairman of the Mangaluru Branch. We have hosted numerous impactful events, and I am proud of the collective efforts of our team in delivering them.

As I bid farewell to my term, I am confident that the incoming team, led by CA. Prashanth Pai, CA. Daniel Pereira, CA. Mamta Rao, CA. Balasubramanya N., CA. Nithin Baliga, CA. Gaurav Hedge, and CA. Krishnanand Pai, will continue to build upon our achievements and take the Branch to even greater heights. I extend my heartfelt best wishes to them for a successful tenure.

I would also like to express my sincere gratitude to CA. Pavan Sharma, CA. Ankush Shetty, CA. Akshay Hiregange, CA. Nitesh Nayak, CS. Gaurav Pingle, and Mr. Prabhakar Kudva for their invaluable contributions through monthly articles, which have enriched our readers and brought immense value to the Branch.

Thank you to each one of you for your continued support and participation in our Branch activities. It is your engagement that keeps us motivated to strive for excellence in all that we do.

GST applicability on SEZ Transactions



CA. Akshay Hiregange

Applicability of CGST Act 2017 and IGST Act 2017:

- Section 1 of CGST Act 2017 states that CGST Act 2017 extends to whole of India.
- Section 2(22) of IGST Act- “taxable territory” – “Taxable territory” means the territory to which the provisions of this Act apply i.e., whole of India.

Definition of India as per CGST Act 2017:

- In terms of section 2(56) of CGST Act 2017, "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters(12 nautical miles), seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone (200 nautical miles) and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters.
- Article 1 of constitution:(1) India, that is Bharat, shall be a Union of States. 1 [(2) The States and the territories thereof shall be as specified in the First Schedule.] (3) The territory of India shall comprise— (a) the territories of the States; 2 [(b) the Union territories specified in the First Schedule; and] (c) such other territories as may be acquired.

Whether CGST Act and IGST Act applicable to SEZ?

Provisions:

- Section 53 of SEZ Act 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.
- The Hon'ble HC of Calcutta in the case of Kamyab Overseas Private Limited & Anr.. vs. Union of India & Ors. [WP no.16800 (W) of 2009] held that there is a difference between customs territory of India and territory of India. A Special Economic Zone is very much within India.
- Essar Steel Ltd vs. UOI [2010 (249) E.L.T. 3 (Guj.)] – The High Court of Gujarat held that the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified.

The same was upheld by Supreme Court of India by dismissing Appeal (Appeal (Civil) No. 5698 of 2010) against the above-mentioned order of the Hight Court of Gujarat.

Based on the above, we can conclude that SEZ forms a part of India but is only deemed to be a territory outside India under Customs law for the purposes of undertaking authorized operations. Therefore, GST Acts and Rules are applicable to SEZs.

GST Registration for a SEZ Unit/SEZ Developer:

Provisions:

- In terms of section 24(i) of the CGST Act 2017, a person is liable to take registration if such person makes any inter-State supply.
- In terms of Section 7(5) of IGST Act,2017, the supply of goods or services or both from or to an SEZ shall be treated as inter-State supply of goods or services.
- In terms of section 23(2) any person making inter-State supply of taxable services up to the limit of INR 20 lakh of aggregate annual turnover or INR 10 lakh in case of special category States are exempt to obtain registration in a year (NN 10/2017-IT).
- In terms of First Proviso to Section 25 of CGST Act,2017, a SEZ Unit / SEZ Developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.

Therefore, SEZ Unit / SEZ Developer is mandated to obtain a separate registration irrespective of the annual aggregate turnover as per Section 2(6) of CGST Act 2017.

However, the SEZ Unit / SEZ Developer is exempted from Registration under GST Act:

- If the annual aggregate turnover on a PAN level basis (SEZ Unit / SEZ Developer along with its distinct persons) is less than 20L/10L in a year.

&

- The SEZ Unit/ SEZ Developer and its distinct persons are into supply of services only.

Treatment of Various Transactions of goods/services under GST and disclosures in GST Returns:

1. Supply of goods from SEZ Unit / Developer to any unit in DTA:

From Recipient's POV:

- In terms of Section 30 of the SEZ Act, goods removed from an SEZ to a DTA would be liable to Customs duties (including anti-dumping, countervailing, and safeguard duties) as if the goods have been imported.
- In terms of Section 5(1) of the IGST Act 2017, integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 i.e., collected by Customs Authorities during Customs clearance.
- In terms of Section 16 r/w rule 36(d) of CGST Act 2017, a registered person shall be eligible to claim credit based on a bill of entry ("T" type or "M" type) or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports.

Therefore, the goods received by the unit in DTA shall be treated as "Import of Goods".

- Disclosure of availment of ITC in GSTR 3B by DTA Unit: Table 4A(1) - Import of goods

From Supplier's POV:

- In terms of Section 2(i) of SEZ Act 2005, 'Export' means taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise.

- In terms of Sec 2(5) of IGST Act 2017, 'Export of goods' means taking goods out of India to a place outside India.

Therefore, supply of goods from a unit/developer in SEZ to a unit in DTA would not be considered as Export of goods.

- Disclosure by SEZ Unit:

a) Books: Income recognized in books of accounts without GST.

b) GSTR 1: NA since GST is collected by Customs.

c) GSTR 3B: NA since GST is collected by Customs.

d) GSTR 9: NA since GST is collected by Customs.

e) GSTR 9C: Table 5(k) - Adjustments on account of supply of goods by SEZ units to DTA Units.

2. Supply of Services by SEZ Unit / SEZ Developer to a unit in DTA:

- Section 7(5) of IGST supply of goods or service to or by SEZ will be considered as inter-State supply.

Therefore, the above transaction shall be treated as a domestic supply of services and GST would be collected and discharged by the SEZ Unit / SEZ Developer i.e., under Forward Charge Mechanism.

• Disclosure by SEZ Unit / SEZ Developer:

a) GSTR 1:

- Table 4A(B2B) – If DTA Unit is registered.
- Table 5A (B2CL) – If DTA Unit is unregistered and Invoice value is greater than 1 lakh.
- Table 7 (B2CS) – If DTA Unit is unregistered and Invoice value is less than or equal to 1 lakh.

b) GSTR 3B: Table 3.1(a) - Outward taxable supplies (other than zero rated, nil rated and exempted) (Figures are auto populated from GSTR 1)

c) GSTR 9:

- a. Table 4A – If DTA Unit is unregistered.
- b. Table 4B – If DTA Unit is registered.

3. Import of goods by SEZ Unit / SEZ Developer:

- In terms of Section 26 of SEZ Act, 2005 a SEZ Unit / SEZ Developer is exempt from Duty under Customs Act, 1962 and Customs Tariff Act, 1975.
- However, the SEZ Unit / SEZ Developer must apply for Bill of Entry (“Z” Type) & follow the procedure mentioned in Rule 29 of SEZ Rules, 2006.
- No disclosure required in GST returns as IGST would not be paid on such imports into SEZ.
- One can refer to the user manual available on the SEZ website or ICEGATE preferably to apply for Bill of Entry.

Link to user manual on SEZ website- <https://www.sezonline-ndml.com/downloads.htm>

4. Import of services by SEZ Unit / SEZ Developer:

- In terms of NN 18/2017-IT(R) dt. 5th July 2017 services imported by a SEZ Unit or a SEZ Developer for authorised operations is exempt from GST.
- SEZ Unit or SEZ Developer need not pay GST under RCM for any service availed from a person outside India for authorized operations.
- No disclosure required in GST returns as IGST would not be paid on such imports into SEZ.

5. Export of goods/ services by SEZ Unit:

- Export of goods and services by SEZ Unit shall be considered as Zero-Rated Supply as per Section 16 of IGST Act, 2017.

• Disclosures by SEZ Unit / SEZ Developer:

a) GSTR 1: Table 6A - Exports (with/without payment)

b) GSTR 3B: Table 3.1(b) - Outward taxable supplies (zero rated) (Figures are auto populated from GSTR 1)

c) GSTR 9:

- a. Table 4C – EXPWP
- b. Table 5A – EXPWOP

- Disclosure by SEZ Unit / SEZ Developer (Supplier):

- a) GSTR 1: Table 6B - Supplies made to SEZ unit or SEZ developer - SEZWP/SEZWOP
- b) GSTR 3B: Table 3.1(b) - Outward taxable supplies (zero rated) (Figures are auto populated from GSTR 1)
- c) GSTR 9:
 - a. Table 4D – SEZWP
 - b. Table 5B – SEZWOP

- Special issue: However, the sale of warehoused goods in SEZ or FTWZ would be neither considered as sale of goods nor sale of services as per the recommendations in the 55th GST Council Meeting which is not yet notified.

Therefore, GST need not be discharged.

7. Supply of goods from any unit in DTA to SEZ Unit / SEZ Developer:

- In terms of Section 16 of IGST Act 2017, supply of goods or services or both from Domestic Tariff Area to SEZ Unit / Developer for authorized operations is considered as “Zero rated Supply”.

The supplier located in DTA has the following options with respect to the discharge of GST:

- o Supply goods or services or both without payment of GST under “Letter of Undertaking” and apply for refund of un-utilized ITC. (SEZ without Payment of Tax (SEZWOP))
- o Supply of goods or services or both with payment of GST and avail refund of taxes paid in 60 days from the date of filing GSTR 3B. (SEZ with Payment of Tax (SEZWP)).

Note: Prior to 1-10-2023, the benefit of zero-rate was available to all kinds of sale of goods or services to SEZ Unit / SEZ Developer whether or not such inputs were used for the purpose of authorized operations.

- The authorized operations of a SEZ unit / SEZ Developer are prescribed in the Letter of Approval issued by the SEZ authority to each SEZ Developer/ SEZ Unit. (Letter of Approval are issued in FORM-B/ FORM-C/FORM-B1 by Central Government as per Section 4(2) r/w Rule 6 of SEZ Rules,2006 to a SEZ Developer and by Development Commissioner in FORM G as per Section 9(4) r/w Rule 19 of SEZ Rules,2006 to a SEZ Unit).

- In case GST is liable under RCM for goods/services obtained from DTA Unit:

- o In terms of NN 37/2017-CT, for services supplied by DTA to an SEZ Unit or SEZ Developer, the DTA Unit can opt for without payment of GST by furnishing LUT.

- o TRU, CBIC, vide letter F. No. 334/335/2017-TRU dated 18.12.2017, has issued a clarification that a Unit or Developer in SEZ can procure such services where they are required to pay GST under the reverse charge mechanism without payment of IGST provided the unit or developer in SEZ furnishes a letter of undertaking. Here, a Unit in SEZ or SEZ Developer is deemed supplier of service, though is the actual recipient of service. There have been some AAR & AAAR supporting this view too.

- o SEZ Unit or SEZ Developer need not pay GST under RCM when such goods/services are obtained from a Unit in DTA provided the SEZ has a Letter of Undertaking for authorized operations.

- o If such services / goods availed were not for authorized operations: In this scenario, SEZ Unit / SEZ Developer should discharge GST under RCM.

- Disclosures in GST Returns by a Unit in DTA:

- o Transactions on which GST needs to be discharged under FCM by seller:

- a) GSTR 1: Table 6B - Supplies made to SEZ unit or SEZ developer - SEZWP/SEZWOP
- b) GSTR 3B: Table 3.1(b) - Outward taxable supplies (zero rated) (Figures are auto populated from GSTR 1)
- c) GSTR 9:
 - a. Table 4D – SEZWP
 - b. Table 5B – SEZWOP

o Transactions on which GST need to be discharged under RCM by the recipient:

GSTR 3B: Table 3.1(b) - Inward supplies (liable to reverse charge)

GSTR 1: Table 8 - Exempted outward supplies, practical difficulty as follows:

a. The practical difficulty faced in the GST Portal is that once the GSTIN of recipient (SEZ Unit / SEZ Developer) is entered while adding invoice details, the option to Select “Supply under Reverse Charge” and is blocked to the supplier.

b. CBIC should ideally incorporate a new line item in GSTR 1 for such transactions, possible entry could be -Table 6B (1) - Taxable outward supplies made to registered persons attracting tax on reverse charge - SEZ Reverse charge.

• Procedure to be followed to substantiate that goods are obtained by SEZ Unit / SEZ Developer:

o The SEZ Developer must apply for a Grant of Approval for authorized operations in Form C7 to the Development Commissioner, to avail the benefit of Zero-Rate in terms of Rule 9 of SEZ Rules,2006. (Only applicable to SEZ Developer)

o The Development Commissioner shall provide their recommendations in the same form and forward the same to the Approval Committee and the Approval Committee shall permit the goods in SEZ in terms of Rule 10 of SEZ Rules,2006. (Only applicable to SEZ Developer)

o Later, it is the duty of the SEZ Unit / SEZ Developer to provide the details of invoices, items, Bill of Export, email id of the DTA Unit, etc. in form DPF (Domestic Procurement Form) online on SEZ website to obtain an endorsement from the Authorized Officer in terms of Rule 30 of SEZ Rules 2006.

o In case of goods, the Authorized Officer shall examine the goods procured at the SEZ Gate and the goods shall be released to the SEZ Unit / SEZ Developer based on Invoice, DPF, Bill of Export and with reference to the Authorized Operations of the SEZ Unit / SEZ Developer mentioned in the Letter of Approval of each SEZ Unit / SEZ Developer or List of goods approved by Authorized Committee for SEZ Developer.

o The Authorized Officer shall later issue endorsement if satisfied with the above-mentioned documents.

o The copy of the Bill of Export, Invoice and endorsement will act as proof of Export.

o The SEZ Unit / SEZ Developer should provide a copy of Endorsement to the GST Officer having jurisdiction over the DTA Unit within 45 days, failing which the GST Officer shall have the right to recover GST from the DTA Unit.

o One can refer to the user manual available on the SEZ website to understand the procedure of filling DPF form and for obtaining Endorsement.

Link to user manual - <https://www.sezonline-ndml.com/downloads.htm>

8. Supply of services from any unit in DTA to SEZ Unit / SEZ Developer:

• The first four pointers of “Supply of goods from any unit in DTA to SEZ Unit / SEZ Developer” would apply mutatis mutandis.

• Procedure to be followed to substantiate that services are obtained by SEZ Unit / SEZ Developer:

o The Ministry of Commerce & Industry have issued a list of 67 input services in Instruction F.No. D12/19/2013 which are deemed to be used by SEZ Unit / SEZ Developer for their authorized operations.

The list can be accessed through this link - <https://www.nsez.gov.in/Resources/Default%20list%20of%20input%20services%20for%20SEZ%20developers%20and%20units.pdf>

o However, it is necessary to obtain endorsement as well for the above services by following the procedure below.

o Rule 30 of SEZ Rules,2006 provides the procedure for procurement from DTA units wherein, it is the duty of the SEZ Unit / SEZ Developer to provide the details of invoices, items, email id of the DTA Unit, etc. in form DSPF (Domestic Services Procurement Form) online on SEZ website to obtain an endorsement from the Authorized Officer.

o The Authorized Officer may approve or reject the DSPF keeping in mind the Authorized Operations of the SEZ Unit / SEZ Developer mentioned in the Letter of Approval of each SEZ Unit / SEZ Developer.

o The copy of Invoice and endorsement will act as proof of Export.

o The SEZ Unit / SEZ Developer should provide a copy of Endorsement to the GST Officer having jurisdiction over the DTA Unit within 45 days, failing which the GST Officer shall have the right to recover GST from the DTA Unit.

o One can refer to the user manual available on the SEZ website to understand the procedure of filling DPSF form and for obtaining Endorsement.

Link to user manual - <https://www.sezonline-ndml.com/downloads.htm>

GST impact in a few special scenarios:

As per Instruction No. 95 B 17/2/2018-SEZ-Part (1): SEZ is eligible to create facilities such as canteen, gym, creche and similar facilities. The bone of contention was whether the SEZ entities could obtain zero-rated benefits on such procurements to set up the above facilities?

- In exercise of section 4(2) of the SEZ Act, read with Notification No. S.O. 1846 (E). dtd 27-10-2006 – SEZ, the Central Government notifies a list of authorized operations to be used by the Board of Approval while approving authorized operations in the Special Economic Zones.

- CIR No. K-43013(13)/1/2022 SEZ, addressed that SEZ Units could avail the zero-rated benefits on the lease rentals collected by the developers for the space utilised for employee welfare.

It needs to be understood whether such facilities, which do not directly result in export supplies bringing in forex, would be considered as authorized supply?

The inclusivity of such facilities in processing/non-processing areas also would need to be understood, along with the fact whether the facility will be termed as authorized operations. If not, there could arise a situation where IGST is payable and all procurements by such facilities also remain taxable.

Other common scenarios:

- **Group Health Insurance:**

o In terms of Section 2(93) of CGST Act,2017, “recipient” means the person liable to pay consideration is the recipient of goods/services, where consideration is payable.

o As per IRDA guidelines, the recipient of group health insurance services is employer when the employer is liable to pay premium.

o General insurance policy is covered under the list of “Services deemed to be used for authorised operations”.

o Therefore, the SEZ Unit / SEZ Developer can avail the benefit of Zero Rate on the same.

o However, if the employee obtains insurance separately and the same is reimbursed by the SEZ Unit / SEZ Developer then they can’t avail said benefit.

- **Canteen services:**

o Outdoor Catering services is covered under the list of “Services deemed to be used for authorised operations”.

o The definition of Outdoor catering services and restaurant services under GST law have been amended, by which the possibility of canteen services to be covered under outdoor catering services may be disputed. [OCS - are event based and occasional in nature]

o If we assume that restaurant services are included in the broad meaning of Outdoor Catering (considering such terminology germinated well before the GST regime] and if the entire consideration is paid by the SEZ Unit / SEZ Developer, then they may be able to avail the benefit of zero-rated supplies.

- o Where canteen services are provided directly to employees, and a partial amount is reimbursed to the employees by the SEZ, entire value is liable to tax in the hands of the caterer.
- o If canteen is required to be set up mandatorily by any Act/Law in force then, SEZ Unit / SEZ Developer can avail the benefit of zero-rated supply.
- o Event Management:
 - o Event management and accommodation services are covered under the list of “Services deemed to be used for authorised operations”. Nexus to operations must be established. Circular 48/22/2018-GST may be referred.
 - o Therefore, the SEZ Unit / SEZ Developer can avail the benefit of zero-rated supply by ensuring it is now covered under authorised operations.
 - o Any other activity not authorised and not having direct nexus to operations (ex: festival celebration/dinner arranged by SEZ for employees) would be liable to tax and not eligible to the benefit.

Refunds relating to SEZ unit/developer:

Generally, the suppliers to the SEZ entities would be applying for the refund as SEZWOP/SEZWP. There would be only a few situations which may warrant refund claim by an SEZ entity where taxes are paid by the SEZ entity which may be for the following:

- o Authorised operations but taxes paid
- o Non-authorised operations albeit being business expenses
- o Non-business/personal expenses (refund not eligible here)

- In terms of Section 54 r/w Rule 89, only the supplier of goods or services to SEZ Unit / SEZ Developer for authorized operations can file an application for refund of GST in FORM RFD – 01 manually irrespective of whether it is SEZWP or SEZWOP.
- In terms of Section 16 of the IGST Act, entities involved in export of goods or services are eligible for zero-rated benefits and refunds. SEZ entities predominantly deal with such activities and therefore, inherently are entitled to refund where their suppliers have not claimed refunds/have collected and discharged taxes.
- The Gujrat HC in case of M/S Britannia Industries Limited vs Union Of India dt.11-03-2020 allowed the SEZ Unit to apply for refund of un-utilised Electronic Credit Ledger Balance which was accumulated due to ITC apportioned to SEZ Unit from an ISD registration.

The reason for allowing the same is as follows:

- o Supplier sold services to ISD registration under FCM with payment of GST therefore the supplier is not eligible for refund under Section 54 of CGST Act,2017 &
- o Procurement of services in this case is for authorised operations and such supplies fall under the ambit of Zero Rate supplies under Section 16 of IGST Act,2017.
- Similarly refunds allowed in SE Forge Limited v. Union of India (Gujarat High Court, 2023) where the refund claim was rejected on the grounds that only suppliers are eligible to claim such refunds.

Whether SEZ Units / SEZ Developers must comply with e-invoice provisions?

Only SEZ Units are exempt from raising e-invoices by NN 61/2020- CT. However, the SEZ Developer is liable to raise e-invoices if the aggregate annual turnover in any year has exceeded 5 crores in any FY.

Whether SEZ Units / SEZ Developers must comply with e-way bill provisions?

SEZ Units / SEZ Developers need to raise e-way bills in compliance with Section 68 r/w Rule 138.

Whether IMS functionality would apply to SEZ units/developers?

- For authorised operations – zero-rated supply - SEZWOP: Should not be applicable
- For authorised operations – zero-rated supply - SEZWP:
 - o where supplier is going for refund – should not be applicable as no tax paid by SEZ.
 - o Where SEZ is going for refund – should be applicable as taxes paid to supplier.
- For non-authorised operations – taxable transactions: should be applicable.

Although, it seems like IMS module is enabled for all GSTINs. Representations must be made by the industry to highlight these issues to the GSTN team, CBIC, Finance ministry & Commerce ministry.

Transactions between FTWZ, SEZ & Customs warehouses (before clearance for home consumption)

In terms of Entry 8. (a) to Schedule III of CGST Act provides that Supply of warehoused goods (Covered under Customs Law) to any person before clearance for home consumption would be treated neither as supply of goods nor as supply of services.

However, there was a dilemma whether transactions from Free Trade Warehouse Zone (FTWZ) [covered under SEZ Act] to any person before clearance for home consumption would be taxable or classified as a schedule III item?

The same has been clarified in the recent 55th Council Meeting as mentioned below:

Recommendation of 55th Council meeting: 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 is a welcoming insertion as it provides relief to the SEZ Units and SEZ Developers from the ambit of GST compliance. Any entities who have paid tax in the past for such transactions and borne the tax incidence may look at refund possibilities (irrespective of the 2 year timeline).

Conclusion

This article delves into various transactions related to an SEZ entity. The article has been prepared keeping in mind GST compliances w.r.t SEZ entities. This would serve as an introductory document to gain an understanding of GST compliances for SEZ entities and various related compliances linked to the same.

Industry practices for certain transactions may differ compared to technical deliberations above. Recent changes w.r.t FTWZ & IMS also are briefly covered.

Disclaimer:

The views expressed in this article are personal to the authors and are an attempt to interpret the nascent GST law. We recommend professional assistance where required.

Queries or Feedback on this informative article can be shared to akshay@hnaindia.com.

Acknowledge Mr. Shashank T A(Article Assistant) for providing his valuable inputs in drafting the article.

The article was first published in Taxguru.


ASHOKA
BUSINESS CENTER

AIRPORT ROAD, KAPIKAD,
MANGALORE

The next big thing in IT.

Invest Smart, Invest in Mangaluru.



Premium
Workspace



Technology &
Global Connect



Invest in
Future



PROMISED

8%

RENTAL YIELD

PRM/KA/RERA/1257/333/PR/011024/007107



+91 96117 30555

Appointment of Managing Director & Executive Director under Companies Act, 2013



CS. Gaurav Pingle

The provisions relating to appointment of Managing Director ('MD'), Manager and Whole-time Director ('WTD') / Executive Director ('ED') are of importance for any company – private company or public company. With respect to the appointment and remuneration of such Managerial personnel, there are many compliances and disclosures under the Companies Act, 2013 ('Companies Act'), Income Tax Act, Accounting Standards, etc. However, this article focuses on the appointment of Managerial Personnel i.e. MD, WTD, ED under the Companies Act. It covers the basic concepts, procedure for appointment, tenure of appointment, age – limit, disqualifications, etc. The article decodes the provisions of Section 196 of Companies Act and other related provisions.

Basic provisions

Managing Director: The Companies Act defines Managing Director ('MD') as a director who is entrusted with substantial powers of management of company affairs. The power to do administrative acts of a routine nature when so authorised by the Board of directors shall not be deemed to be included within the substantial powers of management. Under the Companies Act, following powers shall not be deemed to be substantial powers of management: (i) Power to affix company's common seal to any document, (ii) Power to draw and endorse any cheque on company's account in any bank, (iii) Power to draw and endorse any negotiable instrument, (iv) Power to sign share certificates, (v) Power to direct registration of share transfer. MD may be appointed by virtue of the Articles of Association or an agreement with the company or a resolution passed in its general meeting or a resolution passed in meeting of Board of Directors. MD also includes a director occupying the position of MD, by whatever name called.

Whole-time director: Whole-time director ('WTD') includes a director in the whole-time employment of the company. Such director may include Director (Finance), Director (Marketing), Director (Sales), Director (HR), etc. Where a Vice President (Legal) is promoted to the position of director, such person would be WTD of the company. The concept of WTD was not defined in Companies Act, 1956, it was interpreted by the Court w.r.t. his roles, powers and duties of the director.

Manager: Manager means an individual who has the management of whole, or substantially the whole, of the affairs of a company. Manager's role and powers is subject to the superintendence, control and direction of the Board of Directors. Manager may also include a director or any other person occupying the position of a manager, by whatever name called. It is interesting to note that Manager may be appointed either under a contract of service or not.

Appointment of MD, WTD & Manager

Pursuant to the provisions of the Companies Act, a company (private company or public company) shall not appoint or employ at the same time MD and Manager. However, there is no restriction on the appointment of MD and WTD at the same time or WTD and Manager at the same time. A company can appoint MD for the period FY 2024 – 2028 and Manager for the period FY 2028 – 2031. There is prohibition on simultaneous appointments, but no prohibition subsequent appointments.

Tenure for appointment of MD, WTD & Manager

The Companies Act prescribes that the company (private company or public company) shall appoint or re-appoint any person as its MD, WTD or Manager for a term of 5 years at a time. It is further clarified that the re-appointment shall not be made earlier than 1 year before the expiry of his term. i.e. If the tenure of MD (or WTD or Manager) is from September 1, 2024 to October 1, 2028, the company can propose a resolution for re-appointment of the said MD (or WTD or Manager) during October 1, 2027 to September 30, 2028.

Age Limit:

The Companies Act places restriction on the age of MD, WTD or Manager of the company. A company cannot appoint or continue employment of such managerial personnel who is below the age of 21 – years or has attained the age of 70 years. However, a company may appoint of a person as managerial personnel (MD, WTD) who has attained the age of 70 years by passing a special resolution. The company is also required to give justification in the Explanatory Statement for appointing such person as managerial personnel of the company. However, such exemption w.r.t. the age of managerial personnel is not applicable if the age below 21 years.

Other disqualifications w.r.t. MD, WTD or Manager:

A company (private company or public company) shall not appoint or continue the employment of any person as MD, WTD or Manager if:

- (i) Such person is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (ii) Such person has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (iii) Such person has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

In addition to the above provisions, the provisions of section 164 of the Companies Act is applicable for the said appointment.

Procedure for appointment of MD, WTD or Manager:

Pursuant to the provisions of Section 197 of the Companies Act and Schedule V, MD, WTD or Manager shall be appointed and terms and conditions of their appointment shall be approved by the Board of Directors of the company. Such approval shall be at a board meeting i.e. not by way of Circular Resolution. The appointment of MD, WTD or Manager shall be subject to approval by a resolution at the next general meeting of the company i.e. Annual General Meeting or Extra-Ordinary General Meeting. The approval of the Central Government is required if there is any variance to the conditions specified in that Schedule V (Part I) to the Companies Act.

Appointment of MD, WTD & Manager

Pursuant to the provisions of the Companies Act, a company (private company or public company) shall not appoint or employ at the same time MD and Manager. However, there is no restriction on the appointment of MD and WTD at the same time or WTD and Manager at the same time. A company can appoint MD for the period FY 2024 – 2028 and Manager for the period FY 2028 – 2031. There is prohibition on simultaneous appointments, but no prohibition subsequent appointments.

Tenure for appointment of MD, WTD & Manager

The Companies Act prescribes that the company (private company or public company) shall appoint or re-appoint any person as its MD, WTD or Manager for a term of 5 years at a time. It is further clarified that the re-appointment shall not be made earlier than 1 year before the expiry of his term. i.e. If the tenure of MD (or WTD or Manager) is from September 1, 2024 to October 1, 2028, the company can propose a resolution for re-appointment of the said MD (or WTD or Manager) during October 1, 2027 to September 30, 2028.

Age Limit:

The Companies Act places restriction on the age of MD, WTD or Manager of the company. A company cannot appoint or continue employment of such managerial personnel who is below the age of 21 – years or has attained the age of 70 years. However, a company may appoint of a person as managerial personnel (MD, WTD) who has attained the age of 70 years by passing a special resolution. The company is also required to give justification in the Explanatory Statement for appointing such person as managerial personnel of the company. However, such exemption w.r.t. the age of managerial personnel is not applicable if the age below 21 years.

Other disqualifications w.r.t. MD, WTD or Manager:

A company (private company or public company) shall not appoint or continue the employment of any person as MD, WTD or Manager if:

- (i) Such person is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (ii) Such person has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (iii) Such person has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

In addition to the above provisions, the provisions of section 164 of the Companies Act is applicable for the said appointment.

Procedure for appointment of MD, WTD or Manager:

Pursuant to the provisions of Section 197 of the Companies Act and Schedule V, MD, WTD or Manager shall be appointed and terms and conditions of their appointment shall be approved by the Board of Directors of the company. Such approval shall be at a board meeting i.e. not by way of Circular Resolution. The appointment of MD, WTD or Manager shall be subject to approval by a resolution at the next general meeting of the company i.e. Annual General Meeting or Extra-Ordinary General Meeting. The approval of the Central Government is required if there is any variance to the conditions specified in that Schedule V (Part I) to the Companies Act.

The notice convening Board or general meeting for considering the appointment of MD, WTD and Manager shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any. The company is required to file a return within 60 days of such appointment with the Registrar of the Companies. Here the date of appointment means the date of appointment as decided by the Board of directors in its meeting.

If the shareholders, in its general meeting, do not approve the appointment of MD, WTD or Manager, then any act done by such MD, WTD or Manager shall be deemed to be valid during the said tenure.

The above discussion relates to the 'procedure for appointment of MD, WTD or Manager' which falls under the provisions of Section 196(4) and 196(5) of the Companies Act. The MCA had issued Notification whereby the said provisions are not applicable to private company. The MCA had issued Notification whereby the said provisions are not applicable to specified IFSC Public Companies.

Schedule V to the Companies Act is divided into 2 parts – Part I relates to 'Conditions to be fulfilled for the appointment of Managing Director or Whole-time Director or Manager without the approval of the central government Appointments' and Part II relates to 'Remuneration'. The conditions mentioned in Schedule V w.r.t. the appointment and remuneration are applicable only for public companies and not applicable to private companies.

Conclusion:

As the entire Section 196 of the Companies Act is applicable to public company and certain sub-sections are applicable to private company, it is essential to understand the implications at the time of appointment of managerial personnel. The professionals shall be aware of the approval process disclosures to the board of directors, shareholders (in the Explanatory Statement, Director's Report, etc.).

Understanding Market Corrections



Mr. Prabhakar Kudva, Director, Samvitti Capital

- A Computer Science Engineer and a Business Management Graduate

- Astute active Investor and Trader since 15 years.

- One among 40 under 40 Investment managers by AIWMI

(Association of International Wealth Management of India).

- Principal Officer and Fund Manager of the PMS Schemes that Samvitti manages.

Markets are inherently dynamic and cyclical, oscillating between periods of exuberance and pessimism. A market correction—a decline of 10-20% in the value of a stock market index from its recent peak—is a natural and inevitable aspect of this cycle. While corrections often cause temporary discomfort for investors, they play a critical role in maintaining the market's long-term health. In the Indian context, understanding the inevitability and impact of corrections becomes even more pertinent, given the nation's rapid economic growth, evolving capital markets, and increasing retail investor participation.

What is a Market Correction?

A market correction is a phase where overheated markets pull back to adjust to underlying fundamentals. These corrections can occur due to various factors such as:

1. **Macro-economic factors:** Rising inflation, changes in interest rates, or global economic slowdowns.
2. **Geopolitical uncertainties:** Tensions between nations, changes in trade policies, or political instability.
3. **Market valuations:** Corrections often follow periods of overvaluation, where stock prices have risen too high relative to earnings or growth prospects.
4. **Sectoral dynamics:** Issues in specific sectors, such as banking crises or tech sector slowdowns, can trigger broader market corrections.

Corrections typically last for weeks to a few months, but they are not as severe or prolonged as bear markets, which are characterized by declines of 20% or more and often signal deeper economic problems.

Why Market Corrections are Inevitable

1. Human Behaviour and Market Psychology

Investor sentiment is a key driver of market movements. In bull markets, optimism and greed often push valuations to unsustainable levels. Conversely, fear during corrections can lead to panic selling. The Indian markets are no exception, where a significant portion of retail investors are driven by emotions rather than fundamentals. Herd mentality amplifies both market rallies and corrections, making them an unavoidable part of the market cycle.

. Economic Cycles

Markets mirror the broader economic environment. Economic growth leads to higher corporate earnings and rising stock prices, but these growth phases are followed by slowdowns or recessions. In India, the cyclicity of sectors like real estate, infrastructure, and banking amplifies the market's susceptibility to corrections during economic downturns.

3. Global Interconnections

The Indian economy is increasingly interconnected with the global economy. Events like the U.S. Federal Reserve's interest rate hikes, crude oil price volatility, or geopolitical tensions often trigger corrections in Indian markets, irrespective of domestic fundamentals. For instance, the COVID-19 pandemic led to sharp corrections globally, including in India, despite the long-term growth prospects of the Indian economy.

4. Corrections Ensure Healthy Markets

Corrections help markets shed speculative excess and recalibrate to realistic valuations. Without periodic corrections, markets would risk forming unsustainable bubbles, which can lead to catastrophic crashes. In this sense, corrections act as a necessary "cooling-off" mechanism.

India's Unique Market Dynamics

India's stock market corrections are influenced by a mix of global and domestic factors. However, the nation's economic and market-specific characteristics give these corrections a unique flavour.

1. Retail Investor Participation

The rise of retail investors in India, driven by technological advancements, digital trading platforms, and increased financial literacy, has amplified market volatility. Platforms like Zerodha and Groww have made stock trading accessible to millions of first-time investors, many of whom lack the experience to weather market downturns. Their tendency to buy high during euphoric phases and sell low during corrections exacerbates market swings.

2. FII and DII Activity

Foreign Institutional Investors (FIIs) and Domestic Institutional Investors (DIIs) play a significant role in Indian markets. FII inflows often drive rallies, while their outflows—triggered by global events or profit-booking—can lead to sharp corrections. DIIs, such as mutual funds and insurance companies, act as counterbalances but cannot always mitigate the impact of large FII sell-offs.

3. Sector-Specific Concentration

India's stock indices, such as the Nifty 50 and Sensex, are heavily weighted towards certain sectors like banking, IT, and energy. This concentration means that sectoral headwinds, such as an IT slowdown or banking crisis, can disproportionately impact the broader market.

4. Policy and Reforms

Government policies and reforms significantly influence Indian markets. Events like demonetization, the introduction of GST, or changes in taxation policies have historically caused short-term market disruptions and corrections. However, these corrections often pave the way for long-term gains by strengthening the economic framework.

Historical Corrections in Indian Markets

India has witnessed several market corrections in the past two decades, each triggered by different factors:

1. **Dot-com Bubble (2000):** The tech sector boom led to a sharp rally in IT stocks, followed by a major correction when the bubble burst globally.
2. **Global Financial Crisis (2008):** The collapse of Lehman Brothers and the ensuing global credit crisis led to a nearly 60% decline in Indian indices.
3. **Taper Tantrum (2013):** Fears of the U.S. Federal Reserve tapering its quantitative easing program caused significant outflows from emerging markets, including India.
4. **COVID-19 Pandemic (2020):** The uncertainty caused by the pandemic led to a swift correction of over 30% in Indian markets in March 2020, although the recovery was equally swift.

Lessons for Indian Investors

While corrections are inevitable, they are not necessarily negative. Instead, they offer opportunities for disciplined investors to build long-term wealth. Here are some key lessons:

1. Focus on Fundamentals

During corrections, quality stocks often trade at attractive valuations. Investors should focus on fundamentally strong companies with robust balance sheets and consistent earnings growth, rather than chasing speculative plays.

2. Avoid Panic Selling

Corrections can be unsettling, but panic selling often leads to missed opportunities. Historical data shows that Indian markets have always recovered from corrections, often reaching new highs.

3. Systematic Investment Plans (SIPs)

SIPs in mutual funds allow investors to navigate corrections effectively by averaging costs over time. This approach is particularly beneficial in volatile markets like India's.

4. Diversification

A well-diversified portfolio across sectors and asset classes can mitigate the impact of corrections. For instance, gold and bonds often perform well during equity market downturns.

5. Stay Informed but Detached

Staying updated on market trends is essential, but investors should avoid getting swayed by short-term noise. Long-term wealth creation requires patience and discipline.

Outlook for Indian Markets

India's economic growth, demographic advantage, and structural reforms position it as one of the most promising investment destinations globally. While corrections will continue to occur, they are unlikely to derail the long-term growth trajectory of Indian markets. Key factors supporting this outlook include:

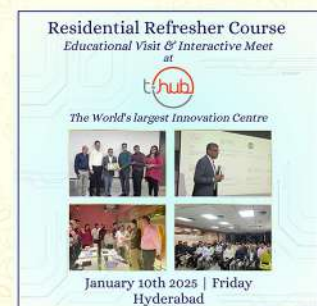
1. **Strong GDP Growth:** India is expected to maintain high growth rates, driven by consumption, urbanization, and infrastructure development.
2. **Digital Revolution:** The rapid adoption of digital technologies is transforming industries and creating new investment opportunities.
3. **Policy Support:** Government initiatives like Make in India, Atmanirbhar Bharat, and PLI schemes are boosting manufacturing and exports.
4. **Global Integration:** India's increasing integration into global supply chains and its status as an emerging market leader make it attractive to foreign investors.

Conclusion

Market corrections are not just inevitable; they are essential for maintaining the health and sustainability of financial markets. In India, where the stock market is a reflection of both global influences and domestic dynamics, corrections offer opportunities for investors to reassess and reposition their portfolios. By focusing on long-term goals, maintaining discipline, and leveraging corrections to accumulate quality assets, investors can navigate these temporary phases of volatility and emerge stronger. As India continues its journey toward becoming a global economic powerhouse, embracing corrections as a natural part of the market cycle will be key to unlocking sustained wealth creation.

The month gone by – January 2024

RRC at CoE Hyderabad



Republic Day Celebrations



Outreach Programme on GST Amnesty Scheme in association with Mangaluru State GST Department

