

**GOVERNMENT OF WEST BENGAL  
DIRECTORATE OF COMMERCIAL TAXES  
14, BELIAGHATA ROAD, KOLKATA-700015**

ADDENDUM TO TRADE CIRCULAR NO. 07/2017 DATED 19.07.2017

DATED: 28.08.2017

**Subject:** Clarification on issues related to furnishing of Bond/Letter of Undertaking for Exports

- Ref:** (a) West Bengal Goods and Services Tax Act, 2017;  
(b) The Integrated Goods and Services Tax Act, 2017;  
(c) West Bengal Goods and Services Tax Rules, 2017;  
(d) Notification No. 16/2017 dated 07.07.2017 of Department of Revenue (Central Board of Excise & Customs), Ministry of Finance, Government of India;  
(e) Circular No.4/4/2017-GST of Commissioner of GST (Central Board of Excise & Customs)  
(f) Circular No.5/5/2017-GST of Commissioner of GST (Central Board of Excise & Customs)  
(g) Trade Circular No. 07/2017 dated 19/07/2017 issued by the Commissioner of State Tax, West Bengal are relevant in this regard.

1. Reference may be drawn to the Trade Circular No. 07/2017 dated 19<sup>th</sup> July, 2017 issued by the Commissioner of State tax, West Bengal. A large number of communications have been received from the exporters and various stakeholders citing variation in the interpretation of above referred notification and circulars.

2. Therefore, in exercise of powers conferred under section 168 (1) of the West Bengal Goods and Services Tax Act, 2017, for the purpose of uniformity in the implementation of the Act, following issues are being clarified hereunder:

**a. Eligibility to export under LUT:** Trade Circular No. 07/2017 dated 19<sup>th</sup> July, 2017 issued by the Commissioner of State Tax, West Bengal specifies conditions to be fulfilled for export under Letter of Undertaking (LUT) in place of bond. In the extant Central Excise provisions, LUTs were limited to manufacturer exporters only. The intent of the said notification is to liberalize the facility of LUT and extend it to all kind of suppliers. It is hereby clarified that any registered person who has received a minimum foreign inward remittance of 10% of export turnover in the preceding financial year is eligible for availing the facility of LUT provided that the amount received as foreign inward remittance is not less than Rupees one crore. This means that only such exporters are eligible to LUT facilities who have received a remittance of Rupees one crore or 10% of export turnover, whichever is a higher amount, in the previous financial year. A few illustrations are as follows:

- i. An exporter had a turnover of Rs. 15 crore in the previous financial year. He would be eligible for LUT facility if remittance received against this export is Rs. 1.5 crore or more (10% of export turnover is more than Rs. 1 crore)
- ii. An exporter had a turnover of Rs. 5 crore in the previous financial year. He would be eligible for LUT facility if remittance received against this export is Rs. 1.0 crore or more (10% of export turnover is less than Rs. 1 crore)
- iii. An exporter has an export turnover of Rs. 2 crore. He has received Rs. 80 lakh as foreign inward remittances in FY 2016-17 which is 40% of the export turnover. He will not be eligible for LUT facility as remittance received is less than Rs. 1 crore.
- iv. An exporter has export turnover of Rs. 40 crore. He has received Rs. 2 crore as foreign inward remittances in FY 2016-17 which is 5% of the export turnover. He will not be eligible for LUT facility as remittance received is less than 10% of export turnover, even though it is in excess of Rs. 1 crore.
- v. An exporter has received Rs. 1 Crore 10 lakh as foreign inward remittances in FY 2016-17 which is 20% of the export turnover. In this scenario, he will be eligible for LUT facility.

It may however be noted that a status holder as specified in paragraphs 3.20 and 3.21 of the Foreign Trade Policy 2015-2020 is eligible for LUT facility regardless of whether he satisfies the above conditions.

**b. Form for LUT:** Bonds are furnished on non-judicial stamp paper, while LUTs are generally submitted on the letterhead containing signature and seal of the person or the person authorized in this behalf as provided in the said Notification.

**c. Time for acceptance of LUT/Bond:** As LUT/bond is *a priori* requirement for export, including supplies to a SEZ developer or a SEZ unit, the LUT/bond should be processed on top most priority and should be accepted within a period of three working days from the date of submission of LUT/bond along with complete documents by the exporter.

**d. Purchases from manufacturer and Form CT-1:** It is learnt that there is lack of clarity about treatment of CT-1 Form which was earlier used for purchase of goods by a merchant exporter from a manufacturer without payment of central excise duty. The scheme holds no relevance under GST since transaction between a manufacturer and a merchant exporter is in the nature of supply and the same has not been exempted under GST even on submission

of LUT/bond. Therefore, such supplies would be subject to GST. The zero rating of exports, including supplies to SEZ, is allowed only with respect to supply by the actual exporter under LUT/bond or payment of IGST.

**e. Transactions with EOUs:** Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them. Therefore, supplies to EOUs are taxable under GST just like any other taxable supplies. The EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

**f. Forward inward remittance in Indian Rupee:** Various representations have been received with respect to receipts of proceeds of supplies in Indian Rupee especially with respect to exports to Nepal, Bhutan and SEZ developer/SEZ unit. Attention is invited to Para A (v) Part-I of RBI Master Circular no. 14/2015-16 dated July 1, 2015 (updated as on November 5, 2015), which states *“there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan”*.

Accordingly, it is clarified that acceptance of LUT instead of a bond for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with applicable RBI guidelines. It may also be noted that supply of services to SEZ developer or SEZ unit will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

**g. Bank guarantee:** Trade Circular No. 07/2017 dated 19<sup>th</sup> July, 2017 issued by the Commissioner of State Tax, West Bengal provides that bank guarantee should normally not exceed 15% of the bond amount. However, the Commissioner may waive off the requirement to furnish bank guarantee taking into account the facts and circumstances of each case. It is expected that this provision would be implemented liberally. Some of the instances of liberal interpretation are as follows:

- i. an exporter registered with recognised Export Promotion Council can be allowed to submit bond without bank guarantee on submission of a self-attested copy of the proof of registration with a recognized Export Promotion Council;
- ii. In the GST regime, registration is State-wise which means that the expression 'registered person' used in the said notification may mean different registered persons (distinct persons in terms of sub-section (1) of section 25 of the Act) if a person having one Permanent Account Number is registered in more than one State. It may so happen that a registered person may not satisfy the condition regarding foreign inward remittances in respect of one particular registration, because of splitting and accountal of receipts and turnover across different registered person with the same PAN. But the total amount of inward foreign remittances received by all the registered persons, having one Permanent Account Number, may be Rs. 1 crore or more and it also may be 10% or more of total export turnover. In such cases, the registered person can be allowed to submit bond without bank guarantee.

**h. Jurisdictional officer:** It is clarified that Bond/LUT shall be accepted by the jurisdictional officer not below the rank of Assistant Commissioner of State Tax, West Bengal having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented.

**i. Documents for LUT:** Documents submitted as proof of fulfilling the conditions of LUT shall be accepted unless there is any evidence to the contrary. Self-declaration shall be accepted unless there is specific information otherwise. For example, a self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Trade Circular No. 07/2017 dated 19<sup>th</sup> July, 2017 issued by the Commissioner of State Tax, West Bengal. Verification, if any, may be done on *post facto* basis. Similarly, Status holder exporters have been given the facility of LUT under the said notification and a self-attested copy of the proof of Status should be sufficient.

**j. Applicability of circulars on Bond/LUTs:** It is learnt that some field officers have inferred that the instructions given by the said circulars are effective in respect of exports made only from the date of its issue despite the fact that it has been categorically clarified specifically in the said Trade Circular No. 07/2017 dated 19<sup>th</sup> July, 2017 issued by the Commissioner of State Tax, West Bengal that the instructions shall be applicable for exports on or after 1st

July, 2017. It is reiterated that the instructions issued vide the said circular and this circular are applicable to any export made on or after the 1st July 2017.

3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Commissioner.
4. This Circular is clarificatory in nature and is not meant for interpretation of provisions of relevant act and rules.

Sd/-28/08/2017  
(Smaraki Mahapatra)  
Commissioner,  
State Tax, W.B

Memo. No. 784CT/PRO  
3C/PRO/2015

Date: 28.08.2017

Copy forwarded to the Senior Joint Commissioner, Commercial Taxes/ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-28/08/2017  
(Adesh Kumar)  
Addl.CCT & PRO