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GST on Foreign Education Consultants

Supreme Court
and GST Council
Come to Rescue

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BACK GROUND

Foreign Education Consultants (FECs) are providing their services to foreign universities to get the Indian students for their various education programs. FECs receive their consideration from foreign university in Foreign Currency. Since service tax era, government is disputing their eligibility of service as "export of service" and demanding service tax and GST thereon even if they are earning in foreign currency. Long standing dispute is now finally settled by the Hon'ble Supreme Court recently. Similarly, recently, GST council has also recommended to amend the GST law in favour of FECs. This write up will help the FECs and their tax consultants to understand the recent changes and its impact and actions to be taken.



IMPACT OF THE JUDGMENT, GST IS NOT PAYABLE

- On 25/08/2025, Hon'ble Supreme Court have dismissed Petitions* filed by the government. This petition was filed against the judgement[@] of the Hon'ble Bombay High Court, Nagpur in which it was held that Foreign Education Consultants are not "intermediary" and hence not liable to pay GST, if consideration is received in foreign currency. Thus, view of Hon'ble High Court is now confirmed by Hon'ble Supreme Court and long fought dispute is finally settled by the highest court in favour of the FECs.
- In many cases, GST demands are raised on FECs if they have not paid GST. In all such cases, it will be a great relief to the FECs.
- Many of such consultants are paying GST on such services to avoid the risk of exorbitant penalties, interest and cost of litigation. As Foreign Universities don't pay them GST over and above agreed fees, FECs have to pay GST out of their own pocket. Now, after such judgment of the Hon'ble Supreme Court, they have sufficient reason to believe that GST is not payable and may decide to stop paying it further.

* SLA(C)Nos.21104-21105/2025 The UOI V/s KC Overseas Education Pvt. Ltd.
@ dated 03-03-2025 in WP No. 3914/2024 KC Overseas Education Pvt. Ltd. V/s.
UOI & Ors.



LODGE REFUND CLAIM OF TAXES IF ALREADY PAID

Lodge Refund Claim for Taxes Already Being Paid

Many of such consultants were paying GST. Now, FECs can claim the refund of taxes they have already paid. Many of them were paying IGST considering such services as export of services and claiming refunds of IGST, and such refunds were being denied by the department on the ground that there is no "export of service" and GST is payable.

Time Limit for Claiming Refund

GST law prescribes time limit of two years for claiming the refund. Department may dispute the refund beyond such a period and that can be another round of litigation for FECs, if taxpayers prefer to claim such refund beyond period of one year. It is worth noting that time limit of two years for claiming refund may not applicable if such tax is paid under protest.

No Cash Refund if Tax Paid Through ITC

Even if sanctioned, such refund will not be fully refunded in cash. Such refund will be re-credited to Electronic Credit Ledger to the extent it was paid by through Input Tax Credit (ITC) as provided under Rule 92(1A) of the CGST Rules, 2017. To encash such re-credited amount, FECs may opt to go for refund though paying IGST on export of services in future. Till the time, their funds will be blocked. However, GST Council has recently recommended 90% of refund immediately based on some risk assessment.



A SMALL AMOUNT OF RISK

Hon'ble Supreme Court has dismissed the department's petition based on their judgment in the case of Vodafone India Ltd. and confirmed the view of the Hon'ble Bombay High Court in KC Overseas Education Pvt. Ltd. Hon'ble Supreme Court has not found it worth going into the facts of FECs. It is possible that the Government may file a review petition before Hon'ble Supreme Court. If agreed by the Hon'ble Supreme Court, entire case may be again argued in detail and may be decided again.





GST COUNCIL ALSO RECOMMEND CHANGE IN LAW

What GST Council Recommend?

Recently, on 3rd September, 2025, GST Council has recommend removing the “intermediary services” from Section 13(8) of the IGST Act, 2017. After removal, Place of Supply for such services will fall under default provisions under Section 13(2) and Place of Supply will be location of recipient, i.e. location of the Foreign Universities. Hence, such services will be considered as “Export of Service” and so not subject to GST and dispute of paying GST will be solved

Amendments May Not be Helpful for Past Period

Even if implemented such amendments are not recommended to be implemented retrospectively meaning thereby, once implemented, it will be implemented prospectively only. Hence, such amendment may not be helpful for the past period and for past period, FECs may have to rely on the judgment by the Hon’ble Supreme Court.

Such Amendment May Not be Available in Recent Future

Such amendment can be done only through amendment in the IGST Act, 2017 which can be done by the passing law in the Parliament. Hence, such amendment can be expected only in the Budget 2026 and relief may be available for period once such amended provisions will be notified by the Government. Hence, till such amendment are made applicable, FECs have to rely on the judgment of Hon’ble Supreme Court if they decide not to pay GST.



SUB-CONSULTANTS ARE STILL SUBJECT TO GST

No relief to sub-consultants in India

It is worth noting that relief of not paying GST to FECs is available only if consideration is received in Foreign Exchange. If such transaction is between two Indian consultants (FECs & their sub-consultant), such relief is not available, and sub-consultants are required to charge GST on consideration received from Indian FECs in Indian Rupees. It will be so even if recommendations of the GST Council are accepted and law is amended.

ITC and Refund Available to FECs

However, now, FECs can claim refund of ITC of the tax charged by their sub-consultants to them and hence it may not be additional cost for FECs and FECs may agree to pay GST to sub-agents over and above agreed fees. FECs will require to bear burden of blockage of funds to that extent and pain and cost of claiming refunds regularly.

FECs in SEZ V/s. Not in SEZ

Some FECs has moved their operations to the SEZ so that sub-consultants may supply their services to them without payment of GST. If sub-consultants are doing their business through SEZ FECs, they are not required to charge GST and if they are doing their business through a non-SEZ FECs, GST is payable but such non-SEZ FECs can claim refund of GST paid to such sub-consultants. Thus, there will be level playing ground for both FECs i.e. located in SEZ and not located in SEZ.



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