

## LUT Saga under GST

In recent times, exporters across the country have witnessed a disturbing trend under GST administration. Show Cause Notices (SCNs) are being issued proposing demand of tax, interest, and penalty under **Section 74 of the CGST Act, 2017**, solely on the ground that a **Letter of Undertaking (LUT)** was not furnished while exporting goods or services without payment of IGST, as required under **Rule 96A(1)** read with **Section 16 of the IGST Act, 2017** and **Notification No. 16/2017–Central Tax dated 07.07.2017**.

What makes these notices alarming is not merely the demand of tax, but the serious allegation of **fraud, wilful misstatement, or suppression of facts**, which attracts extended limitation and mandatory penalty under Section 74—despite the fact that exports are admittedly tax-free supplies.

This article examines why such proceedings are legally unsustainable, contrary to settled judicial principles, and fundamentally inconsistent with the policy of zero-rated exports.

### Exports Are Admitted, Yet Benefits Are Denied

In a majority of cases, the SCN itself acknowledges that the taxpayer is an exporter of goods or services. The department does not dispute:

- issuance of export invoices,
- receipt of foreign exchange, or
- satisfaction of conditions of “export of services” under Section 2(6) of the IGST Act.

Once exports are admitted as a matter of record, the question arises: **Can a substantive export benefit be denied merely due to non-filing or delayed filing of LUT?**

The answer, both in law and equity, is a clear **no**.

### LUT: A Procedural Requirement, Not a Substantive Condition

The LUT mechanism under Rule 96A is intended to ensure that exporters:

- realise export proceeds within the prescribed time, and
- are not persons prosecuted for serious tax offences.

In genuine export cases where:

- export proceeds are realised within one year, and
- no prosecution exceeding ₹2.5 crore exists,

the substantive conditions of Rule 96A stand fulfilled.

Filing of LUT is therefore **procedural**, and not determinative of whether a supply qualifies as an export.

## **Mechanical Invocation of Section 74 – A Jurisdictional Error**

Section 74 can be invoked only when any or all of **three elements** are present:

1. Fraud, or
2. Wilful misstatement, or
3. Suppression of facts **with intent to evade tax**.

In LUT-related cases:

- All exports are disclosed in **GSTR-1, GSTR-3B, and GSTR-9**.
- Transactions are transparently recorded on the GST portal.
- No tax is collected from customers.
- No revenue loss is caused to the Government.

In such circumstances, alleging intent to evade tax is legally untenable.

**Honourable Allahabad High Court in *Varanasi Sangam Expressway (P) Ltd. v. Commissioner of State Tax, (2025) 37 Centax 20 (All.)***, held that:

Mechanical invocation of Section 74 without specific allegations or material indicating fraud or suppression renders the assumption of jurisdiction invalid.

The Court categorically ruled that **Section 74 is a jurisdictional provision**, and unless the SCN itself discloses foundational facts, proceedings cannot survive.

**Honourable Gujarat High Court** has consistently taken a strict view against converting technical lapses into allegations of fraud.

In ***Bhavani Tractor v. Union of India, (2025) 33 Centax 5 (Guj.)***, the Court held that:

A mere procedural or technical lapse, absent mens rea, cannot justify proceedings under Section 74 and must be treated, if at all, under Section 73.

Similarly, in ***Zodiac Energy Ltd. v. Assistant Commissioner of State Tax, (2025) 34 Centax 48 (Guj.)***, it was held that:

Section 74 cannot be used as a tool to overcome limitation prescribed under Section 73 unless fraud or suppression is specifically pleaded and established.

***Kuehne Plus Nagel P. Ltd. v. Union of India, (2025) 32 Centax 176 (Guj.)***

The Court emphasized that technical or procedural defects cannot defeat substantive benefits available to exporters under the GST regime, which treats exports as zero-rated supplies.

***Bharath Ready Mix Concrete v. State Tax Officer, (2025) 36 Centax 312 (Mad.)***, suppression inferred merely from estimates was rejected.

In ***S.A. Iron & Alloys Pvt. Ltd. v. State of U.P., (2025) 36 Centax 318 (All.)***, proceedings were quashed due to absence of a clear finding of fraud.

### **Government Policy: Taxes Are Not to Be Exported**

It is a settled principle of indirect taxation that **exports are zero-rated** to ensure global competitiveness of Indian businesses.

Alleging tax evasion in export transactions—where no tax is collected and where refunds are otherwise admissible—runs contrary to:

- statutory design,
- economic policy, and
- legislative intent.

### **Circular Allowing Ex Post Facto LUT**

Circular No. **37/11/2018-GST** dated **15.03.2018** clarifies that:

- Substantive export benefits shall not be denied if exports have actually taken place.
- Delay in furnishing LUT may be condoned.
- LUT can be accepted on an **ex post facto basis**.

### **Revenue Neutrality: No Loss to the Exchequer**

Even assuming IGST were payable (without admitting), the exporter would be entitled to claim refund of such tax. The transaction thus becomes **revenue-neutral**, causing no loss to the Government and rendering extended limitation and penalty wholly unjustified.

### **Delegated Legislation Cannot Override the Act**

The requirement of LUT arises from **Rule 96A**, not from **Section 54 of the CGST Act**. Delegated legislation cannot curtail or override substantive rights granted by the parent statute.

Denial of export benefits or refunds solely due to non-filing of LUT is therefore **ultra vires** and legally unsustainable.

### **Practical Resolution: Compliance Without Prejudice**

To counter the SCN, taxpayers must submit:

- a **manual LUT** for the relevant period, and
- an **application for condonation of delay**,

without prejudice to their legal rights.

### **Conclusion**

The ongoing “LUT saga” reflects a troubling shift towards form-over-substance enforcement. Mere a non-filing of undertaking cannot deny export benefits where all the export conditions has been satisfied.

Also, Courts across the country have repeatedly held that **procedural lapses cannot be equated with fraud**, and **Section 74 cannot be invoked mechanically**.

Exporters facing such notices for payment of taxes on exports for non furnishing of Letter of Undertaking are well within their rights to challenge these proceedings and seek relief based on settled law.

**Disclaimer:**

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