

TAX INFO

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Latest update on GST Law: **IGST Refund allowed when duty drawback was claimed against wrong code as given by Delhi High Court.**

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Name of Petitioner	Phoenix Contact India Private Limited
Name of Respondent	Commissioner Of Customs (Exports), New Delhi
Court	Delhi High Court
Date of Judgement	04.05.2022
Appeal No.	W.P.(C) 13152/2019

Brief Facts of the Case Law:

The petitioner is a manufacturer and exporter of electrical connectors having its factory located at Haryana. The petitioner claims refund of IGST against two shipping bills bearing nos. 7837037, dated 05.08.2017 and 8697421, dated 16.09.2017. The petitioner had paid IGST i.e., local tax @ 28% of the export value. The total refund amount claimed against the two shipping bills is Rs. 16,25,970/-. The petitioner by oversight had claimed duty drawback by referring to the code no. 853699“A” instead of 853699“B”. Resultantly, the Revenue granted duty drawback @ 2% of the FOB value of exports amounting to Rs. 1,17,162/-, and not the IGST paid on the goods exported. The petitioner having realised the mistake applied for correction upon payment of fee and penalty amounting to Rs.4,000/- each for the two shipping bills. This correction was made on 25.10.2018. The petitioner was allowed to correct the duty drawback code; the correct code being 853699“B”. Despite the correction, the refund of IGST was not granted to the petitioner. The petitioner has remained engaged with the revenue in this regard since October, 2018. Because there was no movement in the matter, the petitioner filed the instant petition.

Contention of the Revenue:

Revenue placed reliance on the paragraph no. 3 of the CBIC Circular dated 09.10.2018 wherein it was stated that such exporters who had availed the option to take drawback at higher rate in place of IGST refund out of their own volition shall not be allowed to avail IGST refund after initially claiming the benefit of higher drawback.

Decision of the Court:

There is no dispute that the petitioner has paid the IGST. The petitioner in terms of Section 16 of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017 is clearly entitled to refund of IGST. Rule 96 of the CGST Rules also clearly provides for refund of IGST in respect of zero-rated supplies. The paragraph no.3 of the circular dated 09.10.2018 will have no application in the instant case as the code no. 853699“A” and 853699“B” both bears the same rate of duty drawback @ 2%. The petitioner had sought amendment of the duty drawback code, which was permitted upon payment of Rs. 4,000/- as fee and penalty in respect of each of the subject shipping bills. This amendment was permitted in October, 2018. Despite this correction having been permitted, the refund of IGST was not ordered.

Therefore, the Court directed the revenue to refund IGST against the aforementioned shipping bills. Also, having regard to the fact that the necessary fee and penalty was paid as far back as on 24.10.2018, interest will be paid at the rate of 7% (simple) per annum from 25.10.2018, when correction was effected by the Revenue.

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