

TAX INFO

Dated 17.10.2022

Latest update on GST Law: **Refund of IGST allowed on exports after deduction of drawback duty** as given in judgement by **Delhi High Court**.

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Name of Petitioner	M/s. Kishan Lal Kuria Mal International & Overseas Commitment
Name of Respondent	Union Of India
Court	DelhiHigh Court
Date of Judgement	06.10.2022
Appeal No.	W.P.(C) 10822/2022 & W.P.(C) 10406/2021

Brief Facts of the Case Law:

The refund of IGST during the Transitional Period (July-September, 2017) on account of exports was rejected by the Department keeping in view circular dated 9th October 2018 that higher duty drawback was claimed and hence now IGST cannot be refunded.

Contention of the Petitioner:

Even though drawback rates prescribed in respect of goods exported by the Petitioners were higher in column A (1%) than the rates prescribed in column B (0.15%), yet the rate at which IGST (18%) was paid on the goods exported was even much higher than the said rate in column A. Therefore, Petitioners did not have any benefit in claiming drawback under Column A at the cost of forgoing their IGST refund and the drawback was claimed under Column A because of the confusion and lack of technical knowledge prevalent during the transitional phase about working of the new indirect tax laws.

Findings and Decision of the Court:

This matter is covered by the judgment of **Gujarat High Court in M/s Amit Cotton Industries v. W.P.(C) 10822/2022 & W.P.(C) 10406/2021** wherein it was held that *“Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the Department. In view of the same, the writ-applicant was entitled to claim the refund of the IGST. The Department was directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. ‘zero-rated supplies’, with 7% simple interest from the date of the shipping bills till the date of actual refund.”*

Even a Special Leave Petition filed against the said judgment titled **Principal Commissioner of Customs & Ors. v. M/s Amit Cotton Industries, SLP (C) Diary No. 5502/2021** has already been dismissed by the Supreme Court of India on 22nd March, 2021. Since the facts in the present cases were similar to the case in **M/s Amit Cotton Industries (supra)**, the present writ petitions were allowed directing the authorities to grant refund of IGST paid on the goods exported by the Petitioners during the transitional period, after deducting the differential amount of duty drawback, if the said differential amount has not already been returned by the petitioner, within twelve weeks along with appropriate interest at the rate of 7% p.a. on such refund from the date of the shipping bill till the date of actual refund. However, the Jurisdictional Commissionerate shall be entitled to verify the extent of duty drawback availed by the Petitioners and also whether they have availed duty drawback/CENVAT Credit of Central Excise & Service Tax component in respect of the exports made by them. If any adjustment is to be made, the same shall be done by the Jurisdictional Commissionerate.

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