

TAX INFO

Dated: 30.08.2020

Latest update on GST Law: Information regarding **Important Ruling that Circular cannot run contrary to Statutory Provisions to deny IGST Refund based on the Judgement given by Gujarat High Court.**

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Circular cannot run contrary to Statutory Provisions to deny IGST Refund

Name of Petitioner	M/s. Amit Cotton Industries
Name of Respondent	Principal Commissioner of Customs
Court	Gujarat High Court
Date of Judgement	27.06.2019
Order No.	Special Civil Application No. 20126 of 2018

Facts of the Case:

The writ-applicant had exported goods in July 2017. He is eligible to seek refund of the IGST in accordance with the provisions of the IGST Act, 2017. However, according to him, without any valid reason the refund to the tune of Rs. 19,05,121.00 has been withheld. Since the goods were exported from the Mundra Port, it is Jurisdictional Head of the Mundra Customs House who is responsible for the refund in question. Despite many representations addressed to the Deputy Commissioner of Customs, no cognizance has been taken so far as regards the claim for the lawful refund of the requisite amount.

Contention of Applicant:

The learned counsel appearing for the writ-applicant, vehemently submitted that there is no legal embargo on availing the drawback at the rate of 1% higher rate on one hand and availing refund of the IGST paid in regard to the 'Zero Rated Supply', i.e. the goods exported out of India, on the other. The refund ought to have been sanctioned immediately irrespective of the fact, whether the drawback was claimed at the rate of 1% (higher rate) or at the rate of 0.15% (lower rate).

He submitted that it is not in dispute that the goods were exported to Bangladesh. He pointed out that the Export Invoices, Shipping Bills, Export General Manifest and Bill of Lading were generated as regards the export. He would submit that in such circumstances the said export supplies are 'zero rated supplies' in accordance with Section 16 of the IGST Act. He submitted that as provided in Section 16(3)(b) of the IGST

Act, 2017, the writ-applicant had the option to first pay the integrated tax in regard to the said supplies and then claim the refund of such tax in accordance with the provisions of Section 54 of the CGST Act, 2017.

Reply of Respondent:

He submitted that the writ-applicant is not entitled to claim the refund of the IGST paid as the writ-applicant had availed higher duty drawback. The writ-applicant having availed the higher drawback the provisions of Section 16 of the IGST Act, 2017, as well as the provisions of Section 54 of the CGST Act, 2017, will have no application. The argument is that the writ-applicant might have returned the differential drawback amount, but that was a unilateral act on the part of the writ-applicant not recognized in law. According to him, the IGST refund mechanism is system based and processed electronically in accordance with the declaration which the exporter may give in the shipping bill and the GST return. As the writ-applicant had availed the higher drawback, the system declined the IGST refund. He invited the attention of this Court to the Circular No. 37/2018-Customs dated 9th October 2018 issued by the Government of India, Ministry of Finance, Department of Revenue, as regards the IGST refunds.

Observations:

It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

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 respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

Judgement:

This writ-application succeeds and is hereby allowed. The respondents are 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.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>