

TAX INFO

Dated 27/01/2023

Latest update on GST Law: **Exporter cannot be tagged as RISKY for indefinite period of time** as given in judgement by **Calcutta High Court**.

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Name of Petitioner	M/s. Global Seamless Tubes & Pipes Private Limited
Name of Respondent	Assistant Commissioner of CGST & CX
Authority	Calcutta High Court
Date of Judgement	29.11.2022
Appeal No.	M.A.T. 1334 of 2022 with I.A. No. CAN 1 of 2022

Brief Facts of the Case Law:

The appellant prays for a direction to be given to the Department to complete the investigation, which has been caused against the appellant. The appellant is primarily aggrieved by terming the appellant as a risky exporter and a tag being fixed and accordingly, thereby export consignments of the appellant are either not being allowed to be exported or there is inordinate delay on the alleged ground of verification. Department contends that the investigation appears to have been complete and it is in the final stage and the show-cause notice is to be issued shortly. It is the submission of the appellant that the alleged amount of illegal availment of ITC has been paid by the appellant without prejudice to its rights and nothing remains further for the department to brand the appellant as a risky exporter. What is to be borne in mind is that terming the appellant as a risky exporter and issuing a show-cause notice by the adjudicating authority are two different matters. Pending investigation, the department exercised its powers in terms of the various circulars and directions issued by the Central Board to affix the tag on the exporter as a risky exporter to enable the department to verify the export consignments etc. However, the risky exporter tag cannot be indefinitely put on valid and precisely for this reason, the Central Board has issued Circular No. 131/1/2020-GST dated 23rd January, 2020 by which strict timelines have been fixed for the authorities to take action. The circular affords an opportunity to such a risky exporter to escalate the matter. If the concerned officer does not take a decision within 14 days, a petition before the Principal Chief Commissioner or Chief Commissioner of Central Tax shall be filed and if such petition is filed, a decision should be taken within 7 working days. All these timelines have been totally ignored and were not being adhered to by the department. The representation given by the appellant to the Chief Commissioner is dated 10th March, 3 2022 and going by the timelines prescribed in the circular, a decision ought to have been taken within 7 days. This has not been adhered to by the department.

Findings and Decision of the Court:

The process of adjudication is quite distinct and different from terming a person a risky exporter, which tag cannot be perpetually affixed to an exporter as it would tantamount to interfering with his right to carry on exports based on suspicion. Therefore, the representation dated 10th March, 2022 should be considered after giving an opportunity of personal hearing to the authorised representative of the appellant and an order be passed on merits and in accordance with law and communicate the same to the appellant within 15 days from the date of receipt of a copy of this judgment and order. So far as the adjudication proceedings are concerned, it would be well open for the Department to proceed to issue show-cause notice and proceed in accordance with law.

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