

TAX INFO

S. No. 021 Dated 22/02/2023

Latest update on GST Law: **IGST refund claim cannot be withheld when ITC towards purchase from risky supplier had already been reversed** as given in judgement by **Gujarat High Court**.

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Name of Petitioner	M/s. Choksi Exports
Name of Respondent	Union Of India
Authority	Gujarat High Court
Date of Judgement	03.02.2023
Appeal No.	R/Special Civil Application No. 23798 of 2022

Brief Facts of the Case Law:

Petitioner is engaged in the business of manufacturing and exporting of Organic pigments. The refund of IGST of Rs.14,80,27,927/-, is allegedly withheld illegally violating the provisions of section 54(6) of the GST Act, 2017. The petitioner had been marked as "risky exporters". On 10.12.2021, physical verification of the premises was done. The inquiry was initiated after the exporter had been suspended on 25.10.2021 as per the RMCC instruction. The petitioner has submitted all information as prescribed under Circular No.131/1/2020-GST dated 23.01.2020, vide email dated 17.01.2022. Other compliance has already been done and eventually the grievance of the petitioner was moved by way of a Grievance Application dated 15.06.2022. Due to the pendency of the refund, the petitioner is facing huge financial crises and, hence, is before this Court.

Contention of the Petitioner:

In spite of various letters and reversing ITC along with interest and penalty, neither the Department has replied back to the petitioner nor the name of the petitioner was removed from the list of risky exporters. Because of the inaction on behalf of the Department, the working capital of the business is blocked and therefore the business is on the verge of shutting down its operations. The refund of IGST amounting to Rs.14,80,27,927/- which is withheld is in violation of provisions of Section 54(6) of the CGST Act and GGST Act read with Rule 91(1) of the CGST Rules and the GGST Rules as the Department is bound to issue the refund of 90% of the amount claimed by the registered person within 7 days from the date of acknowledgment of refund application. The petitioner has filed shipping bills for all the exports and the petitioner is not prosecuted for any offence under the Act and therefore, the concerned officer has to issue 90% of refund within 7 days from the date of shipping bill, however, the same has not been done and more than one year has elapsed in some exports. Circular No.131/1/2020-GST dated 23.1.2020 prescribes the procedure to be followed by the exporters as Risky exporters and as per the Circular, the petitioner already submitted few details and documents on 17.1.2022 and the report should have been furnished to the Chief Commissioner of Central Tax within 30 days who will forward the same to RMCC within five days i.e., the report should have been furnished on or before 17.2.2022. However, in the present case, report has been forwarded on 12.4.2022. The Department should have refunded the IGST withheld on receipt of the report. However, the Department has not refunded the same and violated the norms of the circular as well.

Contention of the Department:

The petitioner being identified as 'risky exporter' for grant of IGST refund, the same has been kept in abeyance.

Findings and Decision of the Court:

The petitioner purchased the goods from Sayan Greemochem Private Limited who had purchased goods from Prince Chemicals, who is placed in the list of L2 risky supplier and therefore the IGST refund of the petitioner was withheld on the ground of availing of wrong ITC by the petitioner. It is, however, found from the record that the petitioner has reversed the ITC of Rs.11,55,726/- along with penalty and interest towards the said goods purchased. In this case, the supplier's supplier is placed in the list of L2 risky supplier and even then, with a hope to get the IGST refund, the petitioner has paid the ITC, but still the refund is not processed and given to the petitioner. Further, the Department ought to have granted the provisional refund to the extent of 90% as provided under Section 54(6) of the CGST Act read with Rule 91 of the CGST Rules, which the Department failed to do so. Even after submission of the positive verification report to the Department, the Department has not issued the NOC for issuing the refund. In this case, the petitioner has filed shipping bills for all the exports and the petitioner is not prosecuted for any offence under the Act and has also reversed the ITC. Further, it is also to be seen that in the verification report submitted with regard to L1 suppliers submitted by the jurisdictional authorities, none of the L1 suppliers of the petitioner, from whom it had purchased goods by paying applicable taxes under the GST law, are found to be suspicious. If the suppliers of the petitioner are found to be genuine, the petitioner is entitled to claim credit of the taxes paid on such purchases affected. Thus, the authorities are directed to grant the amount of IGST refund to the petitioner, as claimed by the petitioner and credit such amount to the petitioner's account within a period of three weeks from the date of receipt of copy of this order.

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