

**IGST refund allowed even if CG imported under EPCG Scheme for the period of July 1, 2017 to October 12, 2017**

The Hon'ble HC, Gujarat in the matter of **M/S Prince Spintex Pvt Ltd v. Union of India [R/Special Civil Application No. 20756 of 2018 dated February 3, 2020]** allowed refund of IGST paid on imports of capital goods under Export Promotion Capital Goods Scheme ("**EPCG Scheme**" or "**Scheme**") for the period of July 1, 2017 to October 12, 2017.

**Facts:**

M/S Prince Spintex Pvt Ltd ("**the Petitioner**") is engaged in the business of manufacturing of cotton yarn by way of spinning process. The finished goods are being supplied by the Petitioner within India and are also exported outside India.

The Central Government has notified Foreign Trade Policy 2015-20 ("**the FTP**") vide Notification No.1/2015-20 which came into effect from April 1, 2015. The EPCG Scheme is covered under Chapter 5 of the FTP. Under paragraph 5.01 of the EPCG Scheme, import of capital goods for pre-production, production and post-production is allowed at zero customs duty subject to specified conditions.

Subsequently, Notification No.16/2015-Customs dated April 1, 2015 ("**NN. 16**") was issued which exempted capital goods from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 ("**Customs Tariff Act**") and the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, when specifically claimed by the importer. The said notification came into effect from April 1, 2015. The Petitioner, therefore, applied for EPCG authorisation to claim exemption of customs duty and additional customs duty under NN. 16 with respect to such capital goods. The Directorate General of Foreign Trade ("**DGFT**") granted EPCG authorisation dated March 31, 2017 to the Petitioner, whereby it got entitlement to save duty value of ₹ 2,95,74,408/- against import of capital goods in view of the FTP read with NN. 16. Since the Petitioner holds EPCG authorisation, it was not required to pay any customs duty, including additional duty of customs on import of such goods into India in view of the NN. 16. The exporter M/s. Itema had issued commercial invoice dated May 16, 2017 to the Petitioner with respect to the above referred proforma invoice.

With effect from July 1, 2017 GST came into force and accordingly, Section 3 of the Customs Tariff Act was also amended with effect from July 1, 2017 and in terms of Section 7(2) of the Integrated Goods and Service Tax Act, 2017 ("**IGST Act**"), import of goods is deemed to be inter-State supply of goods. Under Section 5(1) the IGST Act, IGST is payable on import of goods into India. Accordingly, Section 3 of the Custom Tariff Act was amended and IGST became payable under Section 3(7) of the Customs Tariff Act on import of goods into India. Simultaneously, NN. 16 also amended with effect from July 1, 2017 by Notification

No.26/2017-Cus dated June 29, 2017. Due to such amendment, IGST payable under Section 3(7) of the Customs Tariff Act was left out from exemption.

Subsequently, vide Notification No.79/2017-Cus dated October 13, 2017, the original NN. 16 was amended which allowed to claim exemption from the whole of IGST payable under Section 3(7) of the Customs Tariff Act on the import of capital goods. Thus, the importers who cleared the capital goods during the period July 1, 2017 to October 12, 2017 were not granted exemption from additional duty of customs though they were holding valid EPCG authorisation.

**Issue:**

The Petitioner challenged Notification No.26/2017-Cus dated June 29, 2017 to the extent it amends NN. 16 and Trade Notice No.11/2018 dated June 30, 2017 issued by the DGFT to the extent it is stated therein under Chapter 5 of the FTP, that importers would need to pay IGST.

**Held:**

The Hon'ble HC, Gujarat in ***R/Special Civil Application No. 20756 of 2018 dated February 3, 2020*** held as under:

- The Court observed that objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness. Towards that end, authorisations are issued to importers permitting them to import capital goods at zero customs duty. An authorisation is valid for import for eighteen months from the date of issue of authorisation, and under the authorisation, the importer is allowed to import capital goods at zero customs duty. The Scheme also casts an obligation on the importer who imports capital goods under the Scheme at zero customs duty to fulfil export obligation at six times of the duty saved. Thus, while granting exemption from payment of customs duty, a corresponding obligation has been cast on the importer to fulfil export obligation as provided under the EPCG Scheme. Thus, exemption from payment of customs duty under the EPCG Scheme is not an exemption simpliciter but is an exemption with a corresponding obligation on the authorisation holder to export goods equivalent to six times the duty saved on import of such capital goods.
- On conjoint reading of the Chapter 5 of the FTP and NN. 16, it is evident that though the notification is a statutory notification issued in exercise of powers under Section 25 of the Customs Act, it is not an exemption notification simpliciter, but an exemption notification issued to give effect to the EPCG Scheme floated under the FTP which is an incentive scheme. Thus, in the opinion of this Court, Notification NN. 16 and the amending notifications cannot be equated with statutory notifications ordinarily

issued under Section 25 of the Customs Act, granting exemption from payment of customs duty. Considering the nature of the EPCG Scheme, it is evident that it is an incentive scheme whereby a promise has been held out that the importer would be charged zero customs duty on the capital goods imported by it, provided it exports goods equivalent to six times the duty saved on capital goods. The petitioner applied for and was issued an authorisation on March 31, 2017, and hence, was not required to pay any customs duty as well as additional duty of customs on such import in view of NN. 16.

- In the facts of the present case, though the NN. 16 has been issued under Section 25 of the Customs Act, it has been issued for the purpose of implementing the EPCG Scheme which holds out a promise that import of capital goods under the Scheme would be exempt from payment of additional duty under Section 3 of the Customs Tariff Act. Therefore, the notification has to be read in the context of the EPCG policy keeping in mind the object envisaged by the policy and not in the strict sense as in the case of a general exemption under Section 25 of the Customs Act.
- It is held that the amendment of NN. 16 vide Notification No.79/2017 dated October 13, 2017, would also apply to imports made during the period July 1, 2017 to October 12, 2017. Trade Notice 11/2018 dated June 30, 2017 to the extent it is stated therein that under Chapter 5 of the FTP, importers would need to pay IGST is hereby quashed and set aside. Allowed refund of IGST along with interest to the Petitioner.

**Relevant statute:**

**Section 3 (7) and (9) of the Customs Tariff Act:**

*“(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A) as the case may be.”*

*“(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A) as the case may be.”*

**Section 5(1) of the IGST Act:**

*“Levy and collection.*

*5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person*

*Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. (52 of 1962.)”*

**Section 7(2) of the IGST Act:**

*“Inter-State supply*

*(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.”*

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