

Circular cannot stand in the way of a benefit offered under statutory provisions

The Hon'ble Madras High Court in *M/S. Chaizup Beverages LLP v. the Assistant Commissioner & Ors. [W.P. Nos. 10969, 10972 and 10978 of 2020 and WMP. Nos. 13335, 13339 and 13343 of 2020, dated March 26, 2021]* set aside orders of Appellate Authority rejecting the refund claim of the assessee, on the ground of claim of excess duty drawback as per *Circular No.37/2018-Customs dated October 9, 2018* ("**Circular No. 37/2018-Customs**") and directed the Authorities to refund the sanctioned amount. Held that, circular cannot stand in way of a benefit under a statutory scheme and is contrary to the statutory provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**").

Facts:

M/S. Chaizup Beverages LLP ("**the Petitioner**") is an exporter of tea and had engaged in export transactions without payment of Integrated Goods and Service Tax ("**IGST**") and accordingly claimed drawback under Customs Act, 1962. Further, despite the transactions being categorized as zero-rated supplies, the Petitioner remitted IGST, Central Goods and Services Tax ("**CGST**") and State Goods and Service Tax ("**SGST**") on the purchase of tea and such tax was credited in its electronic credit ledger.

Subsequently, the Petitioner filed an application for refund claim under Section 54 of the CGST Act for the period July, August and September, 2017, vide which 90% of the claim was sanctioned on a provisional basis but was followed by a Show Cause Notice dated April 2, 2018, since the Assistant Commissioner ("**Respondent No. 1**") was of the view that the refund was liable to be rejected in entirety invoking third proviso to Section 54(3) of the CGST Act and on the basis that the Petitioner had availed drawback at a higher rate than applicable. Thus, the claim was proposed to be rejected in full and the amount provisionally sanctioned was proposed to be recovered as well.

The Petitioner submitted the reply to the SCN however, refund rejection order was passed by the Respondent No. 1 and subsequently confirmed by the Additional Commissioner (Appeals) ("**Respondent No. 2**"), vide order dated May 12, 2020.

In the meanwhile, the Petitioner took an alternate plea for sanction of refund before Respondent No. 2 after setting off the drawback already claimed for the months of August and September, 2017, which was also rejected, taking note of paragraph 2.5 of Circular No. 37/2018- Customs, on the ground that there has been an excess claim of duty drawback by the Petitioner, as per which, they have renounced their claim for Input Tax Credit ("**ITC**").

Being aggrieved, this petition has been filed by the Petitioner. However, the refund claim for July, 2017 was not pursued by the Petitioner.

Issue:

Whether refund claim of ITC for the months of August and September, 2017 can be denied to the Petitioner on the basis of Circular No. 37/2018- Customs?

Held:

The Hon'ble Madras High Court in ***W.P. Nos. 10969, 10972 and 10978 of 2020 and WMP. Nos. 13335, 13339 and 13343 of 2020, dated March 26, 2021***, held as under:

- Analysed the provision of Section 54(3) of the CGST Act and observed that, the Petitioner is entitled to one or the other of two benefits i.e., duty drawback or ITC. Thus, an option has been extended to an assessee engaged in zero rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC.
- Noted that, the Petitioner, for the month of July, 2017 has opted to stick with the claim of duty drawback seeing as the amount of drawback is higher than the ITC for the months of August and September, 2017.
- Held that, the claim of refund by Petitioner is in order as per of Section 54(3) of the CGST Act and the contents of paragraph 2.5 of the Circular No. 37/2018- Customs will not stand in the way since a circular cannot stand in the way of a benefit offered under a statutory scheme. Hence, contrary to the statutory provisions of Section 54(3) of the CGST Act and bad in law.
- Relied on the judgments of the Hon'ble Gujarat High Court in ***Real Prince Spintex Pvt. Ltd. [R/Special Civil Application No. 14974 of 2019, dated March 4, 2020]*** and the Hon'ble Madras High Court in ***Precot Meridian Ltd. [W.P.(MD) No. 20504 of 2019, dated November 19, 2019]***, wherein, it was held that the refund of the IGST paid on the exports cannot be denied on the ground that the higher rate of duty drawback is claimed and circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision.
- Set aside the orders passed by the Respondent No. 2 and the directed to refund the sanctioned amount to the Petitioner within a period of 6 weeks.

Relevant Provisions:

Section 54(3) of the CGST Act:

“Refund of tax-

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than–

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.”

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