

IGST refund claim cannot be withheld when ITC towards purchase from risky supplier had already been reversed

The Hon'ble Gujarat High Court in *M/s Choksi Exports v. Union of India [R/Special Civil Application No. 23798 of 2022 dated February 03, 2023]* has held that, the Revenue Department cannot withhold the refund on the grounds that the assessee had been marked as "risky exporters", when the assessee has not been prosecuted under the Central Goods and Service Tax Act, 2017 ("**the CGST Act**") and has also reversed the Input Tax Credit ("**ITC**") towards the goods purchased from a risky supplier. Directed the Revenue Department to grant the Integrated Goods and Service Tax ("**IGST**") refund to the assessee within 3 weeks.

Facts:

M/s Choksi Exports ("**the Petitioner**") is a partnership firm engaged in the business of manufacturing and exporting of Organic pigments. The Petitioner has been marked as 'Risky Exporters' by the Revenue Department ("**the Respondent**") for which the Petitioner's refund of IGST amounting to INR 14,80,27,927.67/- was withheld on marking the Petitioner as risky exporter, whereby, the Petitioner also submitted all the relevant information as prescribed under *Circular No.131/1/2020-GST dated January 23, 2020*, vide email dated January 17, 2022 and other compliance was also made. Thereafter, the grievance of the Petitioner was moved by way of grievance application dated June 16, 2022.

The Petitioner has contended that the refund of IGST has been illegally withheld which is violating the provisions of the Section 54(6) of the CGST Act read with Rule 91(1) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**"), as the Respondent is bound to issue the refund of 90% of the amount claimed by the registered person within 7 days from the date of refund application. Further, earlier, the Petitioner has exported various goods and had duly received the refund of IGST on those exports.

However, due to the pendency of the fund, the Petitioner has been suffering the financial loss of INR 11,00,000/- and is on the verge of shutting down its operations.

Issue:

Whether the withholding of IGST refund claim of the Petitioner is violating Section 54(6) of the CGST Act read with Rule 91(1) of the CGST Rules?

Held:

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 23798 of 2022*** held as under:

- Noted that, none of the provisions of the CGST Act mandate the Petitioner to verify the genuineness of the suppliers of the supplier, even though safeguards are provided to recover the taxes, if not paid or wrongly availed by the Petitioner's supplier or supplier's supplier.
- Further noted that, the Petitioner's supplier's supplier is placed in the list of 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.
- Observed that, the Respondent 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 Respondent failed to do so.
- Further observed that, the Petitioner had filed shipping bills for all the exports and the Petitioner is not prosecuted for any offence under the CGST Act or under the existing law and has also reversed the ITC, therefore, there is no point for the Respondent to withheld the refund.
- Relied on the judgment of the Hon'ble Telangana High Court in ***Bhagyanagar Copper Private Limited v. The Central Board of Indirect Tax & Customs & Ors. [W.P.No.15804 of 2021, dated September 28, 2021]*** wherein, it was held that, 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 effected.

- Directed the Respondent to grant the amount of IGST refund to the Petitioner as claimed and credit such amount within a period of 3 weeks.

Relevant Provisions:

Section 54(6) of the CGST Act:

“Refund of tax

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.”

Section 91(1) of the CGST Act:

“Grant of provisional refund-

(1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.”

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