

No relation between Section 8 of FEMA and Section 16 of IGST Act for realization of foreign exchange for export of goods

The Hon'ble Delhi High Court ("HC") in *Vandna Pharma Industries v. Commissioner of Goods and Service Tax ("GST") [W.P. (C) No. 5228/2021 decided on May 07, 2021]* noted that nothing has been shown to the Court by the Revenue Department which would connect the provisions of Section 8 of the Foreign Exchange Management Act, 1999 ("the FEMA") with Section 16 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act"). Further, held that the matter requires further examination and listed the matter on August 25, 2021.

Facts:

Vandna Pharma Industries ("the Petitioner") asserts that its application for refund of input tax credit in respect of tax paid on purchase of goods, which were utilized in turn for the manufacture of goods that were ultimately exported, has been wrongly rejected. The Petitioner also seeks a direction for payment of interest by the Revenue Department ("the Respondent"). The Petitioner's aim for refund is pivoted on the provisions of Section 16 of the IGST Act. The Respondent stated that the rejection of the Petitioner's refund-claim is in order as the bank realization certificates were not produced, the order of rejection ought not to be disturbed. In support of his plea, the Respondent relied upon Section 8 of the FEMA.

Issue:

Whether there is a connection between Section 16 of the IGST Act and Section 8 of the FEMA for realization of foreign exchange for export of goods?

Held:

The Hon'ble Delhi HC W.P. (C) No. 5228/2021 decided on May 07, 2021 held as under:

- Observed that, Section 8 of the FEMA calls upon the concerned person to take "reasonable steps" for realization and repatriation of foreign exchange proceeds. Consequently, the realization and repatriation of foreign exchange involve proceeds from goods exported by the Petitioner.
- Noted that, nothing has been shown to the Court by the Respondent which would connect the provisions of Section 8 of the FEMA with Section 16 of the IGST Act.
- Held that, the matter requires further examination.

- Directed that, the Petitioner can place the correspondence and other relevant material on record, which would show that reasonable steps have been taken by the Petitioner to realize the export proceeds. If any such material is sought to be placed on record, the same will be supported by an affidavit. A copy of the said affidavit along with the material appended thereto will be furnished to the Respondent.
- The matter is now listed on August 25, 2021.

Relevant provisions:

Section 8 of the FEMA:

“8. Realization and repatriation of foreign exchange

Save as otherwise provided in the FEMA Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

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Section 16 in the IGST Act:

“16. Zero rated supply

(1) “Zero rated supply” means any of the following supplies of goods or services or both, namely:

(a) Export of goods or services or both; or

(b) Supply of goods or services or both to a Special Economic Zone developer or a SEZ unit.

(2) Subject to the provisions of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making

zero-rated supplies; notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:

(a) He may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the CGST Act or the rules made thereunder.”

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