

## **SEZ unit/developers ineligible to claim refund of ITC involved in supplies received from non-SEZ suppliers**

The Hon'ble Appellate Authority, GST, Andhra Pradesh, in Re: ***Vaachi International Pvt. Ltd. [Order No. 4990 of 2020 dated February 10, 2020]*** held that the SEZ unit/developers shall not claim any refund against input tax credit (“ITC”) involved in supplies received by them from non-SEZ suppliers and GST Law facilitates eligibility for refund claim to suppliers who made supplies to SEZ unit/developers with payment of tax as zero rated supply under Section 16(1) of the Integrated Goods and Services Tax Act, 2017 (“IGST Act”)

### **Facts:-**

M/s. Vaachi International Pvt. Ltd. (“**the Appellant**”), is engaged in the business export of Dried Ornamental Plant materials. This appeal has been filed against the tax orders passed by the Assistant Commissioner/ Assessing Authority, for the tax periods from July, 2017 to March, 2018 under **Central Goods and Services Tax Act, 2017 (“CGST Act”) / Andhra Pradesh Goods and Services Tax Act, 2017 (“APGST Act”)** vide orders dated May 2, 2019, disputing the rejection of refund of ₹ 20,97,104/-.

The Assessing Authority identified that the Appellant is not eligible for refund of ITC, because such eligibility is available to the taxpayers who made zero rated supplies to SEZ units/Developers with payment of tax. The Assessing Authority further stated that the facility of getting refund of tax paid is statutorily made available to those taxpayers who made supplies to SEZ only, with payment of tax. Therefore, the contention that the SEZ unit can also go for refund claim against the zero rated supplies made without payment of tax, is not tenable.

### **Issue:-**

Whether the rejection of refund claim by the Assessing Authority, is in tune with the provisions of CGST Act/ APGST Act or not?

### **Held:-**

The Hon'ble Appellate Authority, GST, Andhra Pradesh, in ***Order No. 4990/2020 dated February 10, 2020*** held as under:

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- Observed that the Rule 89(1) of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”), the second proviso unambiguously stipulates that in respect of supplies to SEZ units/developers, the refund “SHALL” be claimed by suppliers of goods to the SEZ unit or developer only. Further, Rule 89(2)(f) prescribes that SEZ unit/developers shall not avail input tax credit ITC on the supplies received by them from non SEZ suppliers and refund would be claimed by supplier to SEZ unit/developer only. Thus, a conjoint reading of all the above provisions undoubtedly point towards a conclusion that SEZ unit/developers shall not claim any refund against the ITC involved in supplies received by them from non SEZ suppliers. And that the Appellant’s contentions of their eligibility regarding refund against the zero-rated supplies received by them, is found to be not tenable.
- Upheld the order of Assessing Authority for rejection of refund. Further held that, the refund eligibility claim is not in tune with the provisions of the CGST Act/ APGST Act and the Assessing Authority has precisely rejected such refund claim duly observing these provisions, it need not be interfered with.

### **Relevant Provisions:-**

#### **Rule 89(1) of the CGST Rules:**

*“Application for refund of tax, interest, penalty, fees or any other amount. - (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7 as the case may be:*

*Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -*

*(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;*

*(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone :*

*Provided also that in respect of supplies regarded as deemed exports, the application may be filed by,-*

*(a) the recipient of deemed export supplies; or*

*(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund] :*

*Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.”*

**Rule 89(2)(f) of the CGST Rules:**

*“89. Application for refund of tax, interest, penalty, fees or any other amount.-*

*(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure-1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-*

*(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer.”*

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