

Taxpayer entitled to refund under Inverted Duty Structure when tax on input erroneously charged by the Supplier at higher rate

The Hon'ble Madras High Court in *The Commercial Tax Officer v. M/s Suzlon Energy Limited and Others, [W.P. No. 10852 & 10855 of 2021 dated November 16, 2023]* dismissed the Writ Petition filed by the Department and reaffirmed the order of refund passed by the Assistant Commissioner (Appeals), thereby holding that, the Taxpayer is entitled to refund under Inverted Duty Structure when Input tax is erroneously charged by Supplier at higher rate.

Facts:

The Revenue Department ("**the Petitioner**") filed a writ petition before the Hon'ble Madras High Court for quashing of Appellate Orders dated July 28, 2022 ("**the Impugned Orders**") passed in favour of M/s. Suzlon Energy Private Ltd. ("**the Respondent**") contends that the Respondent paid Integrated Goods and Services Tax ("**IGST**") at the rate of 18 percent on input material procured and paid IGST at the rate of 5 percent on outward supply. The Petitioner asserts that the supplier should have paid 5 percent IGST on input products but erroneously paid 18 percent IGST. Further, it is stated that, as the supplier of the Respondent has paid IGST at the rate of 18 percent, therefore, the Respondent should have paid IGST at the rate of 18 percent on the final product. Also, it was stated that the Inverted Duty Structure would not be applicable in the present case.

Issue:

Whether the Taxpayer is entitled to refund under Inverted Duty Structure when Input tax is erroneously charged by Supplier at higher rate?

Held:

The Hon'ble Madras High Court in *W.P. No. 10852 & 10855 of 2021* held as under:

- Noted that, as per Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) states that if rate of tax of input is higher than the rate of tax of output, the refund application can be filed to refund the excess amount paid in Input Tax.
- Further Noted that, the Respondent is entitled to refund even when the duty on input is charged at the rate of 18 percent erroneously though it is chargeable at the rate of 5 percent.
- Opined that, there is no illegality in the Impugned order passed by the Assistant Commissioner (Appeals). Therefore, the Respondent, as per the Impugned Order is entitled to refund along with interest at the rate of 9 percent per annum.
- Held that, the writ petition is dismissed.
- Directed that, the Petitioner shall pass the refund order and deposit the refund amount along with interest within the period of 30 days from the date of receipt of copy of the order.

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