

EY Tax Alert

HC holds GST Compensation Cess is not exempt on import of goods by SEZ

Executive summary

This tax alert summarizes a recent decision of the Andhra Pradesh High Court (HC)¹. The issue involved was whether exemption from payment of Compensation cess under Goods and Services Tax (GST) is available on import of goods by Special Economic Zone (SEZ) units.

HC observed that Section 7, 26 and 50 of the SEZ Act, 2005 are the three main provisions which allow the SEZ units to claim the exemptions of duties, tax, cess and certain drawbacks and concessions.

SEZ Act is a self-contained law that provides exemptions from various taxes and duties, including those on goods imported and exported by developers and units in SEZs. Therefore, the exemptions have to be looked into from the provisions of the said Act and not from elsewhere.

The key requirement for Section 7 to apply is that the law which imposes the tax, duty, or cess must be referenced in the First Schedule of SEZ Act. Goods and Services Tax (Compensation to States) Act, 2017 is not mentioned in the First Schedule.

HC noted that there is difference between the terms "tax/duty" and "cess". On considering Section 26(1)(a) and 2(zd) of SEZ Act along with Section 2(15) of the Customs Act, it becomes clear that "duty of customs" used in Section 26(1)(a) pertains only to duty of customs and not any cess much-less the GST Compensation cess.

Further, there is no exemption provided for compensation cess either under Customs Act or GST Act.

Accordingly, HC held that GST Compensation cess is not exempt on import of goods by SEZ.

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¹ TS-677-HC(AP)-2023-GST

Background

- ▶ Taxpayer sought clarification on exemption from cess payable under the Goods and Services Tax (Compensation to States) Act, 2017 (Cess Act) on import of coal into Special Economic Zone (SEZ).
- ▶ Director (SEZ) clarified that no exemption was available as there is no notification exempting the said cess.
- ▶ Accordingly, Director (SEZ) demanded to submit bond along with bank guarantee equal to the amount of compensation cess as a condition to allow goods to be brought into the SEZ area.
- ▶ Aggrieved, the taxpayer filed the writ petition.

Taxpayer's contentions

- ▶ Section 26 of SEZ Act provides exemption from any duty, tax or cess under the Customs Act, 1962 or Customs Tariff Act, 1975.
- ▶ Section 11(2) of the Cess Act provides that provisions of the CGST Act and rules apply in relation to the levy and collection of cess on intra-state and inter-state supply of goods and services.

Further, Circular No. 1/1/20217 dated 26 July 2017 clarifies the applicability of section 16 of the IGST Act pertaining to zero rated supply for the purpose of Cess. It exempts levy of compensation cess.

Revenue's contentions

- ▶ The cess on coal under Cess Act cannot be exempted unless a notification exempting the said cess is issued or the First Schedule r.w. section 7 of SEZ Act is amended.
- ▶ Circular No. 1/1/2017 is applicable only for supplies from DTA to SEZ. It is not applicable to the import of goods by SEZ.
- ▶ Section 26(1)(a) provides exemption from any duty of customs under the Customs Act or Customs Tariff Act. Compensation cess is a cess and not a duty/levy imposed under the Customs Act or Customs Tariff Act.

HC ruling

- ▶ Sections 7, 26 and 50 of SEZ Act are the three main provisions which allow SEZ units to claim exemptions of duties, tax, cess and certain drawbacks and concessions.
- ▶ SEZ Act is a self-contained law that provides exemptions from various taxes and duties, including those on goods imported and exported by developers and units in SEZs. Therefore, the

exemptions etc., have to be looked into from the provisions of the said Act and not from elsewhere.

- ▶ SC in case of Hind Energy and Coal Benefication India Ltd.² had drawn subtle distinction between tax/duty and cess.

Tax is generally levied to raise the revenue for the State and the same can be used for any public purpose. Duty is a tax levied on goods and services produced within or imported into a country.

However, a cess is a special kind of tax levied for some special purpose which will be levied as an increment to the existing tax. Cess is utilized for a specific purposes like education, health etc.,

- ▶ In Section 26 the word "duty" has been used and not the word "cess".

On considering Section 26(1)(a) and 2(zd) of SEZ Act along with Section 2(15) of the Customs Act, it becomes clear that "duty of customs" used in Section 26(1)(a) pertains only to duty of customs and not any cess much-less the GST Compensation cess.

- ▶ In Section 7 of the SEZ Act, the terms "tax, duty and cess" are specified distinctly. The key requirement for Section 7 to apply is that the law which imposes the tax, duty, or cess must be referenced in the First Schedule of SEZ Act.

Goods and Services Tax (Compensation to States) Act, 2017 is not mentioned in the First Schedule.

- ▶ As per Notification No. 64/2017-Cus, SEZ units are exempted from IGST leviable u/s 3(7) of Customs Tariff Act on all goods imported into India by SEZ unit for authorized operation.

However, no such exemption for compensation cess is provided either under Customs Act or GST Act.

- ▶ Accordingly, HC held that GST Compensation cess is not exempt on import of goods by SEZ.

Comments

- a. The ruling is likely to have an adverse impact on imports by SEZ and act as a trigger point for Department to raise demand.
- b. The industry may represent to the Government for a retrospective exemption from payment of GST Compensation Cess in case of import of goods by SEZ. This may align Cess with other custom duties including IGST from SEZ perspective.

² AIR 2018 SC 5318

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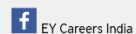
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