

# EY Tax Alert

Bombay HC allows refund of IGST paid on goods exported on consignment basis

## Executive summary

This Tax Alert summarizes a recent judgement of the Bombay High Court (HC)<sup>1</sup>. The question involved in the writ petition was regarding admissibility of refund of integrated tax (IGST) paid on goods exported on consignment basis, sale of which crystalized at a later date.

The key observations of the HC are:

- ▶ Rule 96 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) allows refund of IGST paid on export of goods and as per the said Rule, shipping bills itself would be deemed to be an application for refund of IGST.
- ▶ Where appropriate compliances were made, mere non-compatibility of the data between the two authorities, viz., customs and the GST department, cannot be a ground for denial of refund.
- ▶ The petitioner should not suffer where the GST common portal and ICEGATE portal did not make a provision to cater to the situation of exports on consignment / exhibit basis.
- ▶ Circular<sup>2</sup> denying refund of IGST paid on goods exported on consignment basis overrides the provisions of the substantive rules and hence, illegal.
- ▶ Refund of IGST paid on export of goods cannot be processed under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act), rather gets covered under Rule 96 of the CGST Rules. Thus, the authority to sanction such refund resides with the customs authorities and not with the GST authorities.

Basis above, HC held that petitioner is entitled to refund of IGST paid along with interest and allowed the writ petition.

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<sup>1</sup> 2024-VIL-326-BOM

<sup>2</sup> Circular No. 108/27/2019-GST dated 18 July 2019

## Background

- ▶ Petitioner is *inter alia* engaged in the business of trading and export of “rough diamonds” and “cut and polished diamonds”. Export of such goods are undertaken on consignment or exhibition basis along with issuance of a shipping bill.
- ▶ Once sale of such goods crystalizes, after the same being approved by the foreign consignee, a final invoice is generated and declared in Goods and Services Tax (GST) returns upon payment of integrated tax (IGST).
- ▶ The unsold portion of the goods are re-imported back to India without payment of any duties as per the relevant exemptions.
- ▶ For the sales made during the period July 2017 to December 2018, the petitioner approached custom authorities to carry out necessary amendments in the corresponding shipping bills so as to reflect the final quantum of confirmed goods on which IGST was paid.
- ▶ Custom authorities denied such amendments as the same was not permitted under the customs practices. For such reason, it refused to entertain petitioner’s refund claim under Rule 96 of the Central Goods and Services Tax Rules, 2017 (CGST Rules).
- ▶ Petitioner then approached GST authorities for the refund, however, it was told that since the shipping bill was not in consonance with the GST returns, the refund application could not be accepted.
- ▶ Aggrieved by the same, petitioner filed a writ petition before the Bombay High Court (HC).

## Petitioner’s contentions

- ▶ As per the provisions of the Integrated Goods and Services Tax Act, 2017 (IGST Act) read with Rule 96 and 96A of the CGST Rules, it was entitled to seek refund of the IGST paid on confirmed sale of goods exported.
- ▶ The entire process of refund of IGST is based on the coordination of data between the two systems i.e. GST Common Portal and the ICEGATE Portal maintained by the customs authorities. However, the common portal did not provide for or contemplated a situation in respect of export of goods on consignment basis.
- ▶ Neither the amount of IGST paid, nor the actual quantum of exports made are disputed by the Revenue. However, due to mere non-coordination of data between the two authorities, it was being

subjected to unnecessary ordeal in getting the refund.

- ▶ Reliance is placed on the decision of Bombay HC in case of *Star Rays*<sup>3</sup>, wherein it was held that where the petitioner was otherwise eligible for refund, the claim ought not to be denied on the ground of technical glitches and error on GST common portal.
  - ▶ A Circular<sup>4</sup> was issued by the Central board of Indirect Taxes and Customs (CBIC), wherein it was clarified that refund claim for goods exported on consignment basis cannot be preferred under Rule 96 as supply is taking place at a time after the goods have already been sent / taken out of India earlier.
- The above Circular is illegal as it limits the scope of Section 16 of the IGST Act since even the Act does not contemplate or provide any such limitations.
- ▶ Even under the previous indirect tax regime, it was an accepted practice that indirect taxes would be paid on such transactions and later refunded.
  - ▶ The transactions undertaken being “zero-rated supply” it was entitled for refund of IGST paid and merely because the final invoices were raised after the issuance of shipping bills, the same did not alter the characteristics of the transactions.

## Revenue’s contentions

- ▶ Section 54(3) of the CGST Act provides for refund of unutilized input tax credit (ITC) for zero rated supply without payment of tax and of credit accumulated on account of inverted duty structure.
- ▶ Petitioner having exported the goods on payment of tax, the refund cannot be processed under Section 54 of the CGST Act but would be covered under Rule 96A of the CGST Rules which has to be dealt with by customs authorities.
- ▶ So far as the customs authorities are concerned, the process of IGST refund is completely automatic and system based. Once the data is transmitted by Common Portal to ICEGATE Portal by the competent authority, the same is validated and on generation of scroll, the amount is sanctioned and credited to the exporter’s account.
- ▶ Initially, the IGST refund was pending due to technical errors and thereafter, on the basis of Circular dated 18 July 2019 (*supra*) a notice was issued to the petitioner. After considering the details of the case, an order was issued rejecting IGST refund on the ground that the refund claim was time barred.
- ▶ Reliance can be placed on the decision of the HC in the case of *Cummins Technologies India Private Limited*<sup>5</sup>, wherein, in similar situation, the court had

<sup>3</sup> 2018-VIL-846-BOM

<sup>4</sup> Circular No. 108/27/2019-GST dated 18 July 2019

<sup>5</sup> 2023-VIL-588-BOM-CU

not entertained the proceedings and held petition to be time barred by limitation.

- ▶ Further, the petitioner has an alternative remedy of appeal and thus, the present writ petition ought not to be entertained.

## HC Ruling

- ▶ In the present case, the export data along with the corresponding details of the consignees, shipping bills, final invoices, value of export sales and the IGST paid thereon was submitted to customs authorities from time to time.
- ▶ The presentation of shipping bills as required under Rules 96 itself entitled the petitioner to refund of the IGST amount based on the principles of zero-rated supplies as recognized under Section 16 of the IGST Act.
- ▶ When appropriate compliances were made, merely non-compatibility of the data between the two authorities cannot be a ground for the petitioner being denied the refund.
- ▶ Petitioner cannot be made to suffer where the common portal and ICEGATE portal did not make a provision to cater to the situation of exports on consignment / exhibition basis.
- ▶ Further, the impugned Circular was not in existence during the period of export. Even otherwise, it could not be the case that the Circular would override the provisions of the substantive rules.
- ▶ Revenue cannot refuse to recognize the supply as zero-rated supply and grant refund, as such approach would clearly render nugatory the provisions of law and lead to an absurdity.
- ▶ Refund cannot be processed under Section 54 of the CGST Act, rather gets covered under Rule 96 of the CGST Rules which is required to be dealt with by the customs authorities. GST authorities are not the refund sanctioning authority, as the export has been made with payment of duty.
- ▶ Considering the GST Law and constitutional principles as evolved in several decisions<sup>6</sup>, the petitioners were held to be entitled to refund along with appropriate interest where refund amount was retained without authority in law.
- ▶ Accordingly, petitioner is entitled to refund along with appropriate interest.
- ▶ Basis above, HC allowed the writ petition.

## Comments

- a. This ruling may help the taxpayers whose refunds were denied due to mismatch in data between GST and Customs (ICEGATE) portals.
- b. Earlier, Madras HC [2019-VIL-563-MAD] had directed Revenue to refund the additional IGST paid by the taxpayer due to change in the value of goods exported. HC commented that when the entire refund process is system managed, Revenue is supposed to visualize the complications and provide solutions to do away with the anomalies.
- c. This judgment aligns with the above Madras HC ruling on the principle that substantial benefit of refund should not be denied due to technical issues in GST and Customs portal.

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<sup>6</sup> 2023-VIL-410-BOM, 2019-VIL-315-GUJ and 2023-VIL-815-OM-ST

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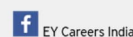
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