

TAX FLASH NEWS

13 February 2023

None of the provisions of the CGST Act and the IGST Act mandates the Petitioner to verify the genuineness of the suppliers of the supplier

Gujarat High Court¹, on a petition by an exporter who is tagged as a 'risky exporter' due to procuring goods from a supplier whose supplier is tagged as a 'risky exporter', has held that none of the provisions of the CGST Act and the IGST Act mandates the Petitioner to verify the genuineness of the suppliers of the supplier. Considering the timelines mentioned in Circular No. 131/1/2020-GST dated 23 January 2020, this Court has directed the Department to grant a provisional refund to the Petitioner since Department has violated the norms of the timelines.

Facts of the case

- Petitioner a partnership firm is engaged in the business of manufacturing and exporting organic pigments.
- Petitioner is tagged as a 'risky exporter', due to which the IGST refund amounting to INR 14,80,27,927/- is withheld. It provided all the required information to the Department post the inquiry.
- Due to the pendency of the refund, the Petitioner is facing a financial crisis. Hence, it approached Gujarat High Court seeking a direction to the Department to disburse the IGST refund along with interest and remove the tag of 'risky exporter'.

Petitioner's contentions

- Withholding of refund is in violation of section 54(6) of the GST Act read with rule 91(1) of GST Rules. As per these provisions, the proper officer is bound to issue the refund of ninety per cent of the amount claimed within seven days from the date of acknowledgement of refund application except in cases where the person

claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds 2.5 crore rupees. In the instant case, the Petitioner has filed shipping bills and has not been prosecuted.

- In terms of rule 96(4), the refund can be withheld only if a request has been received from the jurisdictional Commissioner of central tax and export of goods or services due to the person claiming a refund in accordance with the provisions of section 54(10) or 54(11) of the CGST Act or if the proper officer of the customs determine that the goods were exported by the registered person violating the provisions of the Customs Act, 1961. In the instant case, Petitioner has not violated any of these provisions.
- Circular No. 131/1/2020-GST dated 23 January 2020, prescribes the procedure and timelines for verification in case of risky exporters. In the present case, Department has violated the norms of this Circular by not abiding by the timelines.

Revenue's contentions

- The Petitioner purchased goods from a supplier who, in turn, purchased them from another supplier. This other supplier has been placed on the list of 'risky supplier', and therefore, the IGST refund of the Petitioner was withheld on the grounds of availing wrong ITC.
- After detailed verification, the Petitioner has voluntarily reversed the ITC of INR 11,55,726/- along with interest and penalty.
- Since the Petitioner has availed wrong ITC, the refunds are withheld, and therefore the writ petition ought to be dismissed.

¹ Choksi Exports v. Union of India [TS-30-HC(GUJ)-2023-GST]

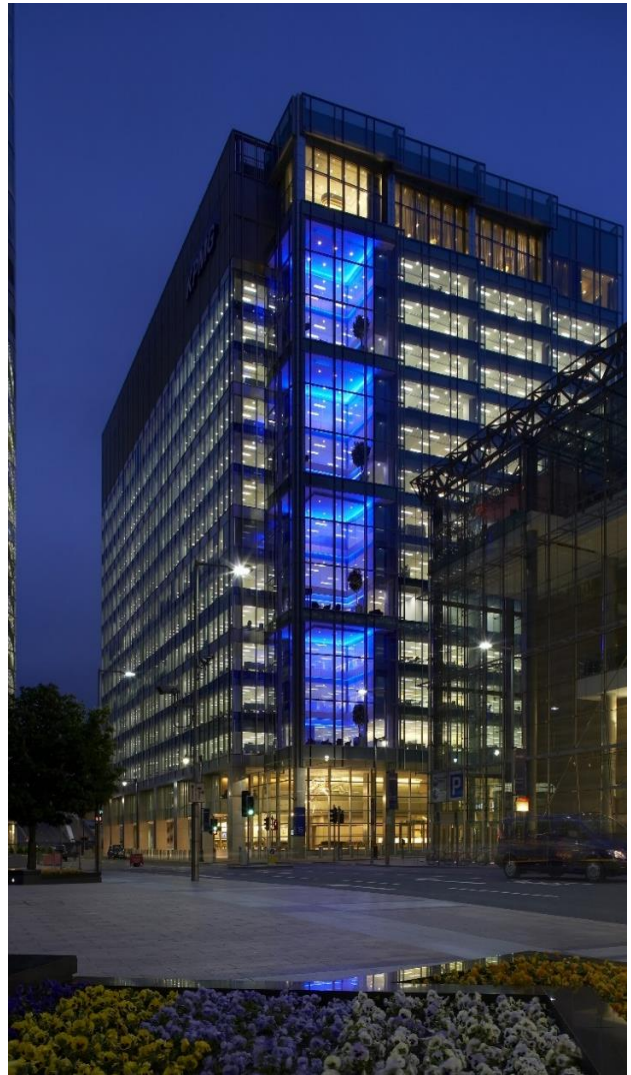
High Court's decision

Gujarat High Court allowed the writ petition partly in favour of the Petitioner by directing the Department to grant the refund of ninety per cent of the amount claimed in terms of section 54(6) read with rule 91. The other inferences by the Court are as follows :

- None of the provisions of the CGST Act and the IGST Act mandates the Petitioner to verify the genuineness of the suppliers of the supplier. In this case, the supplier's supplier is placed on the list of risky supplier, and even then, with a hope of getting the IGST refund, the Petitioner has paid the ITC.
- Department ought to have granted the provisional refund to the extent of ninety per cent as provided under section 54(6) of the CGST Act read with rule 91 of the CGST Rules, which the Department failed to do so even when there is a positive verification report.

Our comments

This is a good judgement as it will help assessee where a refund is not sanctioned/rejected by the proper officer without assigning proper reason, even when the applicant has furnished all the documents.



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