

TAX FLASH NEWS

14 October 2021



SEZ allowed to claim refund of GST paid on inputs and input services

Hon'ble High Court of Judicature at Madras has allowed refund claim to SEZ unit on GST paid on procurement of inputs and input services and held that reference to a supplier of a SEZ in Rule 89 of CGST Rules, 2017 will not exclude other applicants.¹

Facts of the case

- 'Petitioner' is a Special Economic Unit (SEZ). Supplies to it are zero-rated. However, certain zero-rated supplies were made to it under the cover of an invoice that included components of CGST, SGST and IGST. Despite not being liable to pay the taxes, 'Petitioner' settled the invoices in full and paid GST on such zero-rated supplies.
- 'Petitioner' filed refund applications for refund of taxes erroneously remitted on various dates.
- 'Adjudicating Authority' denied the refund on the grounds that as per section 54 of the CGST Act, only a supplier is entitled to claim refund and not the SEZ (i.e. Petitioner). This decision was upheld by 'Appellate Authority'.

Appellant's contentions

- There is no restriction placed on who can claim refund of tax.
- Supplies are zero rated and hence in view of the admitted position that the 'Petitioner' has, in fact, remitted taxes thereupon, there is no embargo on the refund sought.
- Phrase 'any person' in section 54 include SEZ unit as well. In support of this argument, reference is made to clause (g) of the Explanation at the foot of

section 54, which provides clarity on what the relevant date for filing of an application for refund would be, in cases of refund applications being filed by an entity other than the supplier. If the position was that only a supplier could seek refund, there would have been no necessity for such an Explanation.

Revenue's contentions

- Second proviso to Rule 89 of the CGST Rules, 2017, states that in respect of supplies to a SEZ unit, only the supplier can file refund application.

High Court's decision

Hon'ble Madras High Court allowed the appeal in favour of the 'Petitioner' and held the following:

- Provisions of section 54 of the CGST Act apply to 'any person' who claim refund. Language of the provision is clear and does not contain or admit any restriction in its operation.
- Language of Rule 89 echoes that of section 54. Section 54 and Rule 89, both commence with the phrase 'any person'.
- No doubt second proviso refers to a supplier of an SEZ, which is only one kind of entity that may make an application under Rule 89, this does not exclude, by virtue of such reference, other applicants.

Our comments

This judgment will resolve the litigations faced by SEZ unit for denial of refund claims. However, we need to wait to see whether the same shall be challenged by Government in Supreme Court.

¹ Platinum Holdings Private Limited v. (1) Additional commissioner of GST & Central Excise (Appeals-II), Chennai (2) Assistant Commissioner of GST & Central Excise Tambaram Division, Chennai [2021-VIL-719-MAD]

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