

## Customs officer is empowered to assess IGST exemption on import of goods: Kerala HC

17 November 2023



## Summary

The Kerala High Court (HC) has held that the Customs officer is empowered to assess exemption from Integrated Tax (IGST) claimed on import of goods. The HC observed that the customs law defines duty to not only mean basic customs duty but covers all duties which may be applicable on imported item/goods. Furthermore, the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act with reference to exemption or concession consequent upon issuance of any notification. Therefore, the HC held that the competent authority is empowered to make assessment regarding claim of exemption from the IGST u/s 28 of the Act and dismissed the writ.

### Facts of the case:

- M/s Ajwa Dry Fruit Impex ('the petitioner') had imported items declared as 'Wet Dates' (Processed dates) and classified them under CTH 08041020 and paid 20% Basic Custom Duty (BCD) plus 10% Social Welfare Surcharge (SWS). The petitioner also claimed exemption from IGST under Sr. No. 51 of the Notification No.02/2017-Integrated tax (Rate) dated 28 June 2017.
- On post clearance audit of the bills of entry (BoE) by Customs Receipt Audit (CRA), it was observed that the IGST exemption claimed was applicable to "fresh dates" under Chapter 0804 and wet/processed dates attracted 12% IGST against Sr. No.16 of Schedule II of Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017.
- Therefore, a show cause notice (SCN) was issued to the petitioner asking to show cause as to why duty short levied due to exemption should not be demanded u/s 28(1) of the Customs Act alongwith interest u/s 28AA of the Customs Act.
- Thereafter, the demand was confirmed alongwith interest.
- Aggrieved, the petitioner filed writ before the Kerala HC.

### Petitioner's contentions:

- The petitioner contended that when he did not claim wrong exemption from payment of the IGST, the assessing authority u/s 28 of the Customs Act is not empowered to assess the IGST and it is the authority under the IGST Act, which could have proceeded with the matter.
- Therefore, the impugned order is without jurisdiction in as much as it has been passed by an authority, which is not empowered to assess the tax/duty under the provisions of IGST Act.
- Under the definition u/s 15(2), duty means the custom duty and it does not include the IGST tax/duty.

### Revenue's contentions:

- If the definition of assessment order is considered u/s 2(2) of the Customs Act, it is not confined only to the Customs duty but, it is in respect of every duty, cess or tax which is applicable on imported goods.
- Therefore, the contentions raised by the petitioner that assessment order passed u/s 28 of the Customs Act is without jurisdiction has no substance.

- The revenue also placed reliance on the case of Canon India Private Limited in support of its contention to say that the assessing authority under the provisions of Section 28 is empowered to assess evasion/non payment of not only Customs duty but, any other tax, cess levied or duty on which imported goods attract.
- This was a question of classification of the goods and therefore, instead of filing the writ petition, the petitioner ought to have been approached the appellate authority against the said order.

time being in force, with reference to exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued.

- **Competent authority empowered to make assessment:** The petitioner has claimed exemption from payment of IGST under the Notification No.02/2017-Integrated tax (Rate) dated 28.06.2017. Therefore, the competent authority is empowered to make assessment regarding claim of exemption from the IGST u/s 28 of the Act. Therefore, the writ was dismissed.

### **Issue before the Kerala HC:**

Whether the assessing officer under Customs Act is empowered to make assessment regarding claim of exemption of IGST on import of goods u/s 28 of the Customs Act?

### **HC observations and ruling [CIVIL APPEAL NO(S). 5822-5823 OF 2023, Order dated 6 November 2023]:**

- **Duty means all duties applicable on imported goods:** Section 2(15) defines duty to mean customs duty. Section 28 empowers the assessing authority to assess and recover the duties not levied, not paid, short levied or short paid or erroneously refunded. Section 28 therefore, is not only in respect of duty which means customs duty but, it is in respect of duties which may be applicable on imported item/goods.
- **Powers of assessing authority:** The assessment order defined u/s 2(2) of the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act or Customs Tariff Act, 1975 (CTA) or under any other law for the

## Our comments

Earlier the Delhi Tribunal, in the case of Interglobe Aviation Limited, had observed that the word “duty”, mentioned in Customs notification, refers only to basic customs duty and does not include IGST on import of goods. Presently, this case is pending before the Supreme Court (SC).

Even the SC, in the case of Prestige Engineering (India) Limited, observed that the expression “duty of customs” appearing in the exemption notification means “duty” leviable under the Customs Act and any other duty or tax which is not levied under the Customs Act, but levied under other enactments cannot be treated as a “duty of customs” for the purpose of customs notification.

It is relevant to note that the Bombay HC has issued notice in writ petition challenging levy of IGST on import of goods under provisions of Section 3(7) of CTA and Section 5 & 7(2) of IGST Act in the case of Sanathan Textile Private Limited. The petitioner has contended that in the absence of charging provision under Customs Act or under the CTA specifically referring to a charge of duty of customs, the charge for levying IGST is likely to fail.

However, the present ruling by the Kerala HC is contrary to the above precedence and is likely to be challenged further.

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