

Refund of GST cannot be denied on exports even if duty drawback is availed – Bombay HC

13 July 2023



Summary

The Bombay High Court (HC) has held that the refund of GST paid on exports cannot be denied merely because the petitioner has claimed duty drawback under the provisions of the Customs and Central Excise Duties and Service Tax Drawback Rules, 2017. The HC observed that such conclusion was unsubstantiated, as well as contrary to the records. The HC also observed that the petitioner was entitled to duty drawback at 2% irrespective of the fact that whether the petitioner has availed ITC under the GST laws.

Facts of the case

- Sunlight Cable Industries ('the petitioner') had exported insulated cables in Myanmar.
 - The petitioner contended that it had filed Form GSTR-1 for August 2017, inadvertently mentioning the wrong tax invoice number and port code in respect of the export transaction and the corresponding shipping bill.
 - Upon discovering the inadvertence, the petitioner filed an amended return for January 2018 with correct particulars. Additionally, requisite information in the prescribed format was duly submitted in compliance with the department's circulars.
 - The department denied the refund claim of the IGST paid on the aforesaid zero-rated supply.
 - The petitioner contended that despite all complaints, there was no response from the department. Therefore, the petitioner filed a grievance with the Central Grievance Redressal and Monitoring Systems (CPGRAMS) and was intimated that the refund had been rejected because the petitioner had received a higher duty drawback on exports, which would lead to double benefit.
 - Therefore, the petitioner has approached the HC, requesting for grant of refund.
- **Unsubstantiated claim for duty drawback at higher rate than refund:** The department had rejected the legitimate claim of refund on the grounds that the duty drawback at the higher rate of the IGST refund was claimed by the petitioner. The HC observed that such conclusion not only lacks factual foundation but is contrary to the record. The HC relied upon the notification dated 31 October 2016, wherein a common duty at the rate of 2% has been prescribed.
 - **Petitioner is entitled to refund when double benefit has not been availed:** The HC relied on the judgement of the Gujarat HC in the case of Awadkrupa Plastomech, wherein it was stated that refund should be disallowed only in cases where the exporters had availed a duty drawback at a higher rate as against the IGST refund, on their own volition. However, where the option has not been exercised, refund cannot be denied. In view of the above, the HC allowed the refund of IGST, along with 7% simple interest, from the date of filing the amended return.

Bombay HC observations and ruling [Writ Petitioner No. 284/2021, order dated 27 June 2023]

- **Exports are zero-rated supply and eligible for refund:** The HC observed that it is undisputed that the petitioner's case is of zero-rated supply under Section 16(3) of the IGST Act. Further, Rule 96 of the Central Goods and Services Tax Rules, 2017 (CGST Rules), which provides refund of IGST on goods or services exported out of India, had become applicable in this case.

Our comments

On a similar issue recently, the Madras HC, in the case of Numinous Impex (I) Pvt. Ltd., held that the refund of ITC cannot be denied even if the taxpayer has claimed a duty drawback. Even the Gujarat HC, in the case of Awadkrupa Plastomech Pvt. Ltd., had held that duty drawback rates are applied only to the customs element. The HC affirmed that such claim does not result in a 'double benefit', and therefore, IGST refund could not be denied.

In the case of Amit Cotton Industries, the Gujarat HC has held that claiming a higher rate of duty drawback cannot be a valid reason to withhold refund. Even the Kerala HC, in the case of G NXT Power Corp, allowed the refund of the differential amount of IGST adjusted against the higher rate of duty drawback.

Further, the CBIC, in its own Circular No. 37/2018-Cus, clarified that exporters availing higher duty drawback - at their own volition - are not eligible for refund of IGST on exports.

This is a welcome ruling and should help exporters facing similar issues. However, considering that in spite of favourable rulings by various courts, the authorities are causing unnecessary litigation at the lower level, the government should issue a suitable clarification on the matter.

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