

Genuine and bonafide cases should not be denied the benefit of concessional duty – Madras HC

10 June 2021



Summary

The Hon'ble Madras High Court, in a recent case, has held that any benefit of concessional rate of duty accruing to the petitioner cannot be denied through a non-speaking order that has not adverted to the justification put forth by the petitioner. Further, the opportunity must be provided to the petitioner for proving the factum of export.

Facts of the case

- The petitioner¹ is engaged in supply of components of cars/automobiles. The petitioner had obtained licenses under the EPCG Scheme². The said authorisation entitled the petitioner to import the goods at a concessional rate of duty with a condition and obligation to export eight times of the duty saved under each licence.
- The export obligation was not complied with, and the petitioner sought an extension against which an extension of two years was granted.
- Since, the FTP provisions allow petitioner to export either on his own or through third-party exports, petitioner mentioned that it effected the supplies to the third party³ who in turn made the required exports.
- The EPCG authorisation number⁴ and date shall be endorsed on shipping bills, which are proposed to be presented towards discharge of export obligation. However, EPCG authorisation number of the petitioner was not mentioned by the third party in the shipping bills. In this regard, the petitioner mentioned that it was not viable for the third party, who was making export of supplies received from multiple vendors under the same consignment, to mention the

¹ M/s YSI Automotive India Pvt. Ltd. Vs Commissioner of Customs & others

² in terms of Foreign Trade Policy 2009-14 (FTP)

³ M/s.Glovis India Ltd.

⁴ As per para 5.7.1 of EPCG Scheme

EPCG authorisation numbers of all the vendors in the same shipping bill.

- Therefore, the petitioner filed an application before the Commissioner of Customs to seek amendment in the shipping bill with a further justification that the licences have been obtained on the basis of anticipated order from automobile dealers and the petitioner effected supply through third-party dealer who assembles the component as Completely Knocked Down (CKD) and export the goods.
- Assessing authority rejected the request of petitioner for concessional duty. Aggrieved by the order of the authority, petitioner filed writ petition before Hon'ble Madras High Court to seek relief.

Madras HC observations and ruling⁵

- **Opportunity must be granted:** Though, the requirement of stating EPCG licence number on the shipping bill is mandatory but if the requirements are capable of being

satisfied constructively, non-mentioning of the same is not fatal to the claim of concessional rate of duty. Hence, an opportunity must be granted to the petitioner to prove the factum of export through the third party by way of contemporaneous records.

- **Benefit not to be denied to genuine cases:** The Hon'ble High court further stated that genuine and bonafide cases should not be denied the benefit of concessional duty. The HC mentioned that the impugned order passed by the Commissioner of Customs denying the benefit of concessional rate of duty is a non-speaking order and has not adverted to the justification put forth by the petitioner and is therefore set aside.
- **Matter remanded back:** The HC remanded back the matter and the petitioner was further directed to appear before the Commissioner of Customs who shall, after hearing the petitioner and considering any material furnished by the petitioner in

⁵ 2021-TIOL-1043-HC-MAD-CUS

support of its stand, pass a speaking order on the application filed within four weeks. Also, it has been ordered that the bank guarantee should not be invoked till the time decision is taken by the Commissioner of Customs.

Our comments

This is a welcome judgement, which may provide relief in similar other cases wherein benefit of concessional duty may have not been granted to the importers on account of bonafide practical errors/lapses. The judgement laid down the burden on supporting manufacturer to prove the transaction however, it specifically mentioned that even the mandatory requirements are capable of being satisfied constructively by any number of methods, including confirmations, correspondences, and other documents/records.

Contact us

To know more, please visit www.granthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi - 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad - 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru - 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II One International Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector - 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309- 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2021 Grant Thornton Bharat LLP. All rights reserved.

"Grant Thornton Bharat" means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.