

## Procedural infraction shall not come in the way of granting legitimate refund – Madras High Court

30 May 2022



## Summary

The Madras High Court (HC) has held that procedures prescribed under the Good and Services (GST) rules shall not be applied strictly to deny any legitimate export incentives that are available to the exporters. The HC observed that the refund of tax paid on exports have been incorporated under the GST regime and certain export incentives have been given to encourage the inward remittance of foreign currency. Thus, such incentives entitled to the petitioner cannot be denied for the technicality involved in the system. Accordingly, the HC directed the Revenue to verify the data received from the petitioner with counterparts of customs department and proceed to sanction the refund claim, if the petitioner otherwise is entitled to such refund.

## Facts of the case

- The petitioner<sup>1</sup> is an exporter and had correctly declared the details regarding exports in its monthly return filed in Form GSTR-1 on payment of tax by debiting the input tax credit.
- The outward supplies, i.e., exports would have qualified as a zero-rated supply and therefore, the petitioner should have filled the details in Form GSTR-3B in column 3.1(b). Instead, the petitioner by mistake has given the details of the export as an outward taxable supply (other than zero rated, nil rated and exempted).
- As a result of such mistake, refund of integrated tax on exports has been denied to the petitioner.
- The petitioner has placed reliance on a circular<sup>2</sup> issued in context of supplies made to Special Economic Zone (SEZ). Accordingly, the petitioner has contended that the clarification made in the circular would even apply for direct exports by a unit in the domestic tariff area.

- The Revenue submitted that they could not process the refund claims since petitioner's information was not received from GSTN portal to the designated system of customs.
- Therefore, the petitioner filed present writ<sup>3</sup> raying to direct the Revenue to sanction their refund claims within a time frame as may be fixed by the court.

## Madras HC observations and ruling<sup>4</sup>:

- **Procedure does not intend to defeat legitimate export incentives:** The provisions related to the refund of tax/duty paid on exports have been recognised under erstwhile laws<sup>5</sup>. Further, these have been incorporated under GST, except that most of the proceedings are system driven. The intent of providing export incentives is to increase inward remittance of foreign currency. Thus, procedure prescribed is not intended to defeat legitimate export incentives.
- **Procedures should not be strictly applied:** The Apex Court, in a decision, has held that procedures are nothing but

<sup>1</sup> Abi Technologies

<sup>2</sup> Circular No.45/19/2018-GST dated 30 May 2018

<sup>3</sup> W.P(MD).No.4562 of 2022

<sup>4</sup> vide order dated 28 April 2022

<sup>5</sup> Central Excise Act, 1944 r/w Central Excise Rules, 1944 and later under the provisions of the Central Excise Rules, 2002

handmaids of justice and not mistress of law. Accordingly, the procedures prescribed under the rules<sup>6</sup> cannot be applied strictly to defeat legitimate incentives, which an exporter otherwise would have been entitled to but for the technicality involved in the system.

- **Writ disposed:** The HC directed the Revenue to take information directly from petitioner and verify the same from counterparts of customs department. If indeed there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers, the refund shall be granted.

#### Our comments:

The Hon'ble Supreme Court, in the case of Auriya Chamber of Commerce<sup>7</sup>, had held that procedures are nothing but handmaids of justice and not mistress of law.

In addition, it is pertinent to note that earlier, the Bombay HC in the case of SRC Chemicals Private Limited, had held that non transmission of the data from GSTN to ICEGATE cannot be petitioner's problem. It was the responsibility of the Revenue to ensure that petitioner received its refund on time.

The present ruling is in line with the well settled principle that the substantive benefit of refund claim cannot be denied on technical reasons. The ruling should provide relief to other taxpayers whose refunds have been rejected on similar grounds / issues.

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<sup>6</sup> Rule 96 of CGST Rules,2017

<sup>7</sup> Commissioner of Sales

Tax, U.P. Vs. Auriya Chamber of Commerce,  
Allahabad reported in  
1986(25) E.L.T.867 (S.C)

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