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India: High Court Allows IGST Exemption on Goods Imported under EPCG Scheme from
1 July 2017 – October 2017

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This Tax Alert summarizes a recent ruling of the Gujarat High Court¹ which discussed the issue that whether a taxpayer is entitled to refund of the IGST paid on import of capital goods under Export Promotion Capital Goods ('EPCG') Scheme for the interim period between 1 July 2017 i.e. Goods & Services Tax ('GST') implementation date till the amendment in the Foreign Trade Policy 2015-2020 ('FTP') and the corresponding amendment in exemption notification ('Interim Period').

Except for the interim period, customs duty was completely exempt on import of capital goods under EPCG Scheme. The intent of the government was amply clear to exempt from payment of basic customs duty ('BCD') and additional duty of customs on imports under EPCG Scheme.

In this ruling, the exemption pertaining to additional duty of customs during the interim period has been discussed in detail and upheld its validity, enabling assesses to claim refund.

Background

- EPCG Scheme has been notified under Chapter 5 the FTP, wherein para 5.01 provides that import of capital goods for pre – production, production and

post- production is allowed at zero customs duty subject to specified conditions.

- Further, Notification No. 16/ 2015- Customs dated 1 April 2015 (Exemption Notification) provided for exemption from BCD and additional duty of customs as levied under Section 3 of Customs Tariff Act, 1975 ('CTA')
- GST came into effect on 1 July 2017, thereby introducing corresponding amendments in section 3(7) of the CTA, enabling levy of IGST on import of goods into India.
- Concurrently, the exemption notification was amended² w.e.f. 1 July 2017, wherein exemption from additional duty of customs was made applicable only for sub section 1, 3 and 5 of section 3 of CTA.
- Further, the DGFT vide its Trade Notice³ indicated importers with EPCG authorisation would need to pay IGST and avail Input Tax Credit ('ITC'). This implies that instead of availing exemption from IGST, assessee is required to pay IGST.
- In the instant case the petitioner filed Bill of Entry on 3 August 2017 to clear goods imported for home consumption, claiming BCD and IGST exemption on the basis of EPCG authorisation.
- However, petitioner was not allowed to clear capital goods without payment of IGST basis the Trade Notice.
- IGST was paid by petitioner to get capital goods cleared and was reflected as credit in the electronic credit ledger.
- Subsequently, amendments were introduced in FTP, wherein IGST and compensation cess levied under sub section 7 and 9 of Section 3 of CTA were made exempt. In addition, exemption notification as referred above was also amended⁴ under Customs.
- Hence, in light of the above exemptions, EPCG authorisation holders were entitled to claim IGST exemption on import of capital goods.
- Petitioner filed a refund application for the IGST paid claiming that import was on the ground that no import duty was payable on fulfilling export conditions as stipulated under FTP.
- On rejection of the refund application by the Revenue, a writ application was filed at the Gujarat High Court

High Court Rulings

- Exemption from payment of customs duty under the EPCG Scheme is not an exemption simpliciter but an incentive floated under FTP.
- The exemption is provided with the corresponding export obligation to be met by the authorisation holder.
- Hence the intent of the government is clear that the exemption was from payment of additional duty was to be granted under the EPCG Scheme.
- Therefore, the petitioner was of the view that basis the EPCG authorisation issued in his favour, entitled him not to discharge any liability with respect to customs duty.
- Thus, the exemption notification providing additional duty of customs exemption only under sub section 1, 3, and 5 of Section 3 of CTA is against the spirit to the benefit envisaged under FTP.

- It emerges that the authorities must have inadvertently skipped including sub section 7 and 9 of section 3 of CTA.
- Accordingly, amending notification No.79/2017 (supra) is to be read as clarificatory in nature.
- Trade Notice No. 11/ 2018 to the extent that states payment of IGST under chapter 5 of FTP has been quashed and set aside.
- As a result, petitioner would continue to avail IGST exemption benefit along with compensation cess even during the period 1 July 2017 – 13 October 2017
- Court allowed the writ application in favour of petitioner entitling him for grant of refund of IGST for the interim period.

Comments

- The ruling shall benefit importers not only under EPCG but also under other export scheme viz advance authorisation and Export Oriented Units ('EOU') as the amendments in FTP also cover these schemes other than EPCG.
- Taxpayers who have paid IGST during the interim period could explore filing of refunds in case input tax credit has not been availed.

Footnotes

1. 2020 TIOL -422-HC-AHM-CUS
2. Notification No. 26/ 2017 dated 29 June 2017
3. Trade Notice no 11/ 2018 dated 30 June 2017
4. Notification No. 79/ 2017 – Cus dated 13 October 2017

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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