

SEZ units may claim refund of ISD credit received

*M/s Britannia Industries Limited v. Union of India*¹

The question for determination before the division bench of the Hon'ble Gujarat High Court in this case was whether a Special Economic Zone ('SEZ') unit can claim refund of the Input Tax Credit ('ITC') received from an Input Service Distributor ('ISD') registration.

- Supplies to the SEZ by the Domestic Tariff Area ('DTA') under the Goods and Services Tax ('GST') law are zero rated. Where the DTA suppliers make supplies to the SEZ unit with payment of duty, they are eligible to claim a refund under section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act').
- No specific mention is made in the relevant provisions of the Central Goods and Services Act, 2017 ('CGST Act') and the Central Goods and Services Rules, 2017 ('CGST Rules'), on the eligibility of a SEZ unit to claim a refund for taxes paid, where the supplier fails to or is unable to claim the refund of taxes paid.
- The Petitioner (i.e., a SEZ unit) makes zero-rated supplies under GST. The Petitioner was unable to utilise the ITC distributed by the ISD registration and

accordingly, filed a claim for the refund of IGST credit, under section 54 of the Central Goods and Services Act, 2017 ('CGST Act').

- The refund claim filed by the Petitioner was rejected by the Department on the basis that 1) they are not entitled to avail ITC being a zero-rate supplier, 2) they are not entitled to a refund under section 54 of the CGST Act, 3) they don't qualify for manual refund processing and 4) are otherwise not entitled to the refund on any other basis.

The Hon'ble Gujarat High Court held that the Petitioner is entitled to refund of the credit distributed by the ISD registration on the following grounds:

- Reliance was placed on the judgment in the case of **Amit Cotton Industries**² issued by a coordinate bench, wherein the petitioner was declared to be entitled to refund of the unutilised IGST lying in the electronic credit ledger as there is no other specific supplier who can claim the refund under the provisions of the CGST Act and Rules, as the ITC was distributed by the ISD as in the present case.
- It was held that unlike in the case of **Amit Cotton Industries** [*supra*], wherein rule 96 of the CGST

¹ TS-728-HC-2020 (Guj) NT- Britannia

² 2019-VIL-315-GUJ



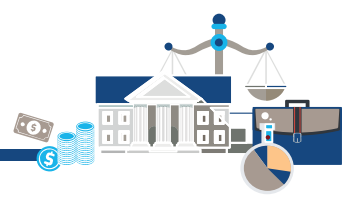
Rules was applicable for refund of IGST for goods and services exported out of India, rule 89 of the CGST Rules for refund of ITC would be applicable in this case.

- An ISD is the supplier in the present case, who is required by law to distribute the ITC in the manner prescribed. Since it is not possible for the supplier ISD to file for a refund of the ITC distributed, the SEZ in turn becomes entitled to file such a refund claim.

Dhruva Comments:

The judgment reads the law constructively and liberally, to extend the benefit of the refund to the SEZ units for ITC distributed by an ISD. Though the law is silent on the aspect of whether the SEZ unit can claim a refund of unutilized ITC where the supplier fails to do so, the introduction of statement 4A (which needs to be completed by the SEZ unit while claiming the refund) to the refund application form for refund by SEZ on account of supplies received from DTA, indicates that the intention of the law makers is to permit SEZ units and developers to claim such refunds. The tax department however, has been taking a very conservative view and has been consistently denying these refunds. Amending Rule 89 of the CGST Rules and introducing provisions akin to 'Deemed Exports' would bring clarity to this position.

Also, the judgment allows the provisions to be interpreted in an enabling manner, thereby entitling the SEZ to claim refund, in absence of any bar in law restricting the filing of such refund claims.





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