

Bombay HC grants refund of IGST paid on capital goods imported under EPCG scheme for July 2017 to October 2017

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Summary

The Bombay High Court (HC) has granted a refund of the Integrated Goods and Services Tax (IGST) paid on capital goods imported under the Export Promotion Capital Goods (EPCG) scheme, along with interest, for the period 1 July 2017 to 12 October 2017. The HC noted that the intention of the central government, while framing the EPCG scheme under the Foreign Trade Policy 2015-20 (FTP), was to permit import at zero customs duty. However, with the introduction of GST in July 2017, amendments were made in the exemption notification, which did not include exemption from additional duty of customs in respect of goods imported under the EPCG scheme. Upon realisation of such an error, the initial notification was amended to exempt the imports under the EPCG scheme effective from October 2017. In this regard, the HC opined that the exclusion of exemption was on account of a lack of attention. Therefore, the HC held that the amendment shall be treated as clarificatory or corrective in nature to provide benefit to importers who had imported capital goods during the period July 2017 to October 2017.

Facts of the case

- Sanathan Textile Private Limited (hereinafter referred to as the petitioner) had imported capital goods under the EPCG scheme under the FTP whereby such import is exempted from payment of additional duty under Section 3 of the Customs Tariff Act.
- When the GST regime came into force, Section 3 of the Customs Tariff Act came to be amended by the insertion of Sub Section (7) and Sub Section (9) that provided for the levy of IGST and compensation cess. Corresponding amendment was made in Notification No. 16/2015-Customs vide Notification No. 26/2017-Customs dated 29 June 2017. In Notification No.26/2017, the import under the EPCG scheme, which was exempted from additional duty under Sub Section (7) and Sub Section (9) of Section 3 of the Customs Tariff Act, was not included. However, within a short time thereafter, Notification dated 13 October 2017 was issued to amend Notification No.16/2015-Cus to include exemption for imports under the EPCG scheme.
- During this period, i.e., from 1 July 2017 when Notification No. 16/2015-Cus came into effect and the fresh amendment dated 13 October 2017 came into effect, the petitioner had paid IGST on the capital goods imported.
- Therefore, the petitioner filed the present writ before the Bombay HC praying to direct the revenue to re-assess the impugned bills of entry by considering the exemption to IGST inserted vide Notification No.79/2017-Customs dated 13

October 2017 to have a retrospective effect and grant the refund of duties/taxes paid by the petitioner.

Bombay HC observations and ruling (Writ Petition No. 157 of 2019 dated 14 November 2022):

- **Import of capital goods at zero customs duty under EPCG scheme:** The intention of the central government while framing the EPCG scheme was to permit import at zero customs duty. Accordingly, by Notification No. 16/2015-Cus dated 1 April 2015, goods covered by valid authorisation issued under the EPCG scheme in terms of Chapter 5 of the Foreign Trade Policy were exempted from the whole of the additional duty leviable under Section 3 of the Customs Tariff Act.
- **GST council's decision to provide relief to exporters:** Considering the working capital blockage issue and difficulties being faced by the exporters post-GST, the GST council decided to grant exemption from IGST, cess, etc., under Section 6 of the IGST Act, 2017, read with Section 25 of the Customs Act, 1962, to the import of goods for exporters availing the scheme of advance authorisation/export promotion capital goods/100% export oriented units up to 31 March 2018 and to continue the existing monitoring scheme for exports.

- **Amendment is clarificatory in nature:** The HC viewed that the exclusion of exemption was on account of inadvertence. However, upon realisation of such an error, the initial notification was amended to exempt the imports under the EPCG scheme. Therefore, the HC observed that the amendment shall be treated as clarificatory or curative in nature, otherwise the importers who had imported capital goods during the period July 2017 to October 2017 would be excluded from the benefit of exemption.
- **Entitlement to refund of IGST paid:** The HC held that since the amendment is clarificatory in nature, the petitioner will be consequently entitled to the refund of the IGST paid on the import of such capital goods during the period July 2017 to October 2017. Accordingly, the HC has directed the authorities to process the refund, along with interest if any.

Our comments

The Supreme Court (SC), in the case of Tata Cummins Ltd., had held that an exemption from payment of tax under an enactment is an exemption from tax liability. Therefore, the exemption notifications have to be read liberally, keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.

Drawing an analogy from the SC's ruling, the Gujarat HC, in the case of Prince Spintex Pvt. Ltd., had held that the exemption notification has to be read in the context of the EPCG policy, keeping in mind the object envisaged by the policy. Therefore, the HC held that the petitioner would continue to enjoy exemption from the payment of additional duty of customs even during the period 1 July 2017 to 13 October 2017 and granted the refund of IGST paid, along with interest.

The above ruling was also followed by the Gujarat HC in the case of Radhyesham Spinning Pvt. Ltd.

The present ruling by the Bombay HC is in line with the above rulings and should provide relief to taxpayers on similar issues.



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