

SEZ unit entitled to claim refund under GST – Madras HC

18 October 2021



Summary

The Madras High Court (HC) observed that though zero-rated supplies are not subject to the levy of taxes, the petitioner, in this case has remitted the same as raised in the invoice, albeit erroneously. Further, the refund provisions under the GST law, providing for a refund, apply to any person who claims such refund and who makes an application for the grant of the same. The language of the provision is clear and does not contain or admit of any restriction in its operation. The statutory scheme for refund admits applications to be filed by any entity that believes that it is so entitled including the petitioner SEZ. Thus, it held that the restriction which has been read into the provision by the Revenue that only supplier is eligible to claim refund is misplaced. Therefore, the HC allowed the writ and held that the petitioner SEZ unit is entitled to claim refund of tax paid on purchases.

Facts of the case

- The petitioner¹ is a Special Economic Zone (SEZ) and has effected purchases from several suppliers/vendors for the development of the SEZ.
- Despite the petitioner not being liable to pay taxes, the invoices have been settled in full and tax has been paid on all the zero-rated supplies².
- Therefore, the petitioner had filed applications for refund of the taxes erroneously remitted on various dates.
- However, the same were rejected on the ground that that the petitioner was not entitled to the refund on the ground that only a supplier of services would be entitled to claim refund and not the SEZ itself³.

¹ M/s Platinum Holdings Pvt. Ltd.

² Section 16 of the IGST Act, 2017

³ as per Section 54 of the CGST Act, 2017

- Aggrieved the petitioner filed present writ⁴ before the Madras HC.

Madras HC observations and ruling⁵:

- **Petitioner paid tax despite being a zero-rated entity:** In this case there is no dispute on the position that the supplies effected to the petitioner SEZ, are indeed zero rated. Though zero-rated supplies are not subject to the levy of taxes, the petitioner, in this case has remitted the same as raised in the invoice, albeit erroneously.
- **No restrictions under refund provisions:** The refund provisions⁶ providing for a refund, apply to any person who claims such refund and who makes an application for the grant of the same. The language of the provision is clear and does not contain or admit of any restriction in its operation.
- **Any person can claim refund:** The statutory scheme for refund permits any entity to seek a refund of taxes or other amounts paid under the

provisions of the Act, subject to satisfaction that is it so entitled, and that there is no double claim as against the same amount. Thus, the statutory scheme for refund admits applications to be filed by any entity that believes that it is so entitled, including the petitioner SEZ.

- **Restriction misplaced by revenue:** According to the revenue an application for refund can be only by a supplier⁷. However, the court did not find any reason to agree as the said provision does not envisage any such restriction. Though the provision refers to a supplier of an SEZ, which is only one kind of entity that may make an application this is not to say that the reference to a supplier, will exclude, by virtue of such reference, other applicants.
- **SEZ entitled to claim refund:** It is a settled position that there can be no insertion of a word or phrase in a statutory provision or in a Rule which must be read and applied, as framed.

⁴ WP No. 13284, 13286, 13287, 13289, 13291 & 13292 of 2020

⁵ Order dated 11 August 2021

⁶ Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017

⁷ Rule 89(1) of the CGST Rules, 2017

No restrictions or amplifications of the Rule are permissible by interpretation. Therefore, the HC allowed the writ and held that petitioner SEZ is entitled to claim refund.

Our comments

This is a welcome judgment and is likely to set precedence in similar matters as also help clear pendency of refund claims for other businesses. It will be interesting to observe the stance of the revenue on the same.

It is imperative to note that earlier the Appellate Authority (GST) Andhra Pradesh in case of M/s Vaachi International India Private Limited, had denied the refund claim filed by the SEZ unit on the ground that only supplier can claim refund of tax on supply to SEZ units/developer.

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