

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 petitioner¹ 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 circular² 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 writ³ 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 ruling⁴:

- **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 laws⁵. 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

¹ Abi Technologies

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

³ W.P(MD).No.4562 of 2022

⁴ vide order dated 28 April 2022

⁵ 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 rules⁶ 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 Commerce⁷, 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.

⁶ Rule 96 of CGST Rules,2017

⁷ Commissioner of Sales

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

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 79 6900 2600

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



Follow us @GrantThorntonIN

© 2022 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.