

Refund can be claimed where tax is paid under the wrong head under GST- Andhra Pradesh HC

29 August 2022



Summary

In the present case, the petitioner paid Integrated Goods and Service Tax (IGST) on the transaction considering the location of the supplier and the place of supply in two different states. The authorities alleged such a transaction as intrastate supply of goods and concluded the assessment accordingly. In this respect, the petitioner admitted the nature of the transaction as intrastate supply and requested the authorities to adjust the amount paid as IGST towards the correct liability of Central GST (CGST) and State GST (SGST). However, as mentioned even in the assessment order, the officer cannot adjust the tax paid as IGST towards the tax liability as CGST and SGST. Thus, the Andhra Pradesh High Court (HC) directed the petitioner to pay correct taxes and, thereafter, claim refund of the wrong tax paid.

Facts of the case

- The petitioner¹, a works contractor, is engaged in the business of execution of contracts, manufacturing or sale of machinery and general goods and also manufactures industrial products. It is registered under GST in the state of Andhra Pradesh.
- It received a work order² for execution of aggregation work on defence vessels in line with the technical specifications given by the Department of Defence.
- The petitioner has executed the work /services at the work site, located in Vishakhapatnam and received the payments from the Ministry of Defence, New Delhi based on the stage wise completion of work. Further, the invoicing is to be done in name of Programme Director, Headquarters ATVP, New Delhi.
- In the present case, the location of supplier and the place of supply are in two different states. Therefore, the petitioner collected Integrated GST and paid it to the government.
- The petitioner received a show cause notice (SCN) alleging the transaction as intrastate transaction. The authorities ignored the submissions made by the petitioner and concluded the assessment considering the transaction as intra-state supply of goods. In this respect, the petitioner requested the authorities to adjust the amount paid under IGST towards the dues payable under both CGST and the SGST, however, the authorities had denied.
- The petitioner filed appeal in respect to the above order which was dismissed. Hence, the petitioner filed the present writ petition³.

Andhra Pradesh HC observations and ruling⁴:

- **Adjustment not tenable:** The officer cannot adjust the taxes paid as IGST towards the tax liability as CGST and SGST. The petitioner is allowed to claim

¹ Walchandnagar Industries Limited

² from Ministry of Defence (R&D), Government of India

³ Writ Petition No.6307 of 2022

⁴ Dated 21 July 2022

refund of wrong taxes paid after making payment of correct taxes. Therefore, the objections raised by the petitioner are not acceptable,

- **Court directed the petitioner to pay correct taxes:** The HC noted that the nature of transaction is not disputed and, therefore, it directed the petitioner to pay correct taxes. Further, the petitioner can claim refund of wrong taxes paid as IGST.

Our comments

Under the GST law, there is no provision to allow the taxpayer to adjust the tax amount paid under wrong head with the correct head. However, the provisions⁵ under GST law allow the taxpayer to claim refund of the tax paid under the wrong head.

The Central Board of Indirect Taxes and Customs (CBIC) has issued circular⁶ wherein it was clarified that the term 'subsequently held'⁷ covers both the cases i.e., mistake observed by taxpayer himself or by the tax officer in any proceeding. Accordingly, refund can be claimed by the taxpayer in both the abovementioned situations⁸.

In case of SBI Cards and Payment Services Limited⁹, the GST department had rejected the refund even after payment of tax made under the correct head, on the ground that the phrase 'subsequently held' could only apply in a case where an adjudicating authority had held whether a transaction was inter-state or intra-state. In this respect, the Punjab and Haryana HC considered the clarification¹⁰ provided in regard of 'subsequently held' and held the case in favour of the petitioner.

⁵ Section 19 of the IGST Act, 2017 and Section 77 of the CGST and SGST Act, 2017

⁶ Circular No. 162/18/2021-GST dated 25 September 2021

⁷ Referred in Section 19 of the IGST Act, 2017 and Section 77 of the CGST and SGST Act, 2017

⁸ provided the taxpayer pays the required amount of tax in the correct head

⁹ Appeal Number CWP-8108-2021 (O&M) and judgment dated 8 October 2021

¹⁰ by virtue of circular 162/18/2021-GST

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