

SEZ unit not entitled to exemption from payment of compensation cess on import of goods – Andhra Pradesh HC

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Summary

The Andhra Pradesh High Court (HC) has held that GST compensation cess is not exempt in the case of import of goods by Special Economic Zone (SEZ) units. The HC stated that exemptions from the payment of tax, duty or cess are specifically provided in Sections 7, 26 and 50 of the Special Economic Zones Act, 2005 (SEZ Act). Thus, exemption from the payment of such tax, duty or cess shall be available only when covered in terms of such sections and not otherwise. The key requirement for Section 7 to apply is that the law that imposes the tax, duty, or cess must be referenced in the first schedule of the SEZ Act. The Goods and Services Tax (Compensation to States) Act, 2017, is not mentioned in the first schedule. The HC also held that cess is different from tax, and consequently, when the word 'cess' is not specifically used, exemption from the payment of cess cannot be availed in terms of Section 26 of the SEZ Act.

Facts of the case

- Maithan Alloys Ltd (the petitioner) is a SEZ unit engaged in the business of manufacturing ferro alloys.
- In terms of Section 26 of the SEZ Act, the petitioner is exempt from the payment of duty, tax or cess leviable under the Customs Act, 1962 (Customs Act), or the Customs Tariff Act, 1975 (Customs Tariff Act).
- The petitioner had imported coal from outside India and sought clarification from the Director (SEZ) on exemption of cess payable under the Goods and Services Tax (Compensation to States) Act, 2017 (GST Compensation Act).
- The Director (SEZ) clarified that in terms of Section 26(1)(a) of the SEZ Act, only the customs duty leviable under the Customs Act or Customs Tariff Act are exempt. Further, in terms of Notification No. 64/2017-Customs, only the IGST leviable under the Customs Tariff Act is exempt and no such exemption has been provided to compensation cess. Therefore, the petitioner was directed to submit a bond, along with a bank guarantee.
- Aggrieved by such order, the present writ petition was filed by the petitioner before the Andhra HC.

Issue before the HC:

Whether exemption from the payment of compensation cess under GST is available on the import of goods by SEZ units?

Andhra Pradesh High Court's observations and judgement [W.P.No.1009 of 2019 and W.P.Nos.2631 & 6216 of 2021 dated 21 November 2023]

- **Sections 7, 26 and 50 of the SEZ Act are the three main provisions that provide exemption to SEZ units:** The HC relied on the judgement of GMR Aerospace Engineering Limited V. Union of India and held that the SEZ Act is a self-contained act wherein different exemptions are provided on the import and export of goods. Therefore, such exemptions shall be looked from the provisions of such act only and not from elsewhere.
- **Cess is different from tax or duty:** The HC relied on the judgement of the apex court in the case of Union of India V.

Hind Energy and Coal Benefication (India) Ltd, wherein distinction was made between tax/duty and cess. It was held that tax is generally levied to raise the revenue of state and can be used for any public purpose. On the other hand, cess is a special kind of tax levied for a specific purpose. On the basis of the said distinction, it was held by the HC that under Section 26 of the SEZ Act, only the word 'Duty' has been used and not the word 'Cess'. Therefore, only the duties levied under the Customs Act or the Customs Tariff Act are exempt and not compensation cess.

- **Tax, duty or cess shall be specifically mentioned in the first schedule to avail exemption in terms of Section 7 of the SEZ Act:** The HC held that compensation cess is not mentioned in the first schedule and the words 'tax, duty or cess' are mentioned differently. Therefore, compensation cess needs to be specifically mentioned in the first schedule to avail the exemption in terms of Section 7. Therefore, the HC held that the petitioner is not entitled to exemption from the payment of compensation cess, and dismissed the writ.

Our comments

Section 7 of the SEZ Act provides exemption to SEZ units from any tax, duty or cess payable on the import of goods by specifying the same in the first schedule. Exemption from the payment of the customs duty leviable under the Customs Act or Customs Tariff Act is also provided by way of Section 26(1)(a). Further, in terms of Section 50, power is granted to state governments (SG) to exempt any state tax, levy, or duty. Based on the said provisions, the HC held that compensation cess is neither covered in the first schedule nor exempted by way of Section 26, as the word 'cess' has not been used in the said provision or by way of notification. Therefore, compensation cess is not exempted on the import of goods by SEZ units.

The decision is likely to have a significant impact on the import of goods by SEZ units. The taxpayers may consider filing a representation to the government for seeking a retrospective exemption from the payment of GST compensation cess in the case of import of goods by SEZ to align cess with other custom duties, including IGST.

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