

## GST authorities are empowered to initiate search and seizure operation against assessee operating as SEZ unit – Gujarat HC

19 June 2023



## Summary

The Gujarat High Court (HC) dismissed writ petitions challenging the jurisdiction of GST authorities to initiate search and seizure proceedings against an assessee operating in a special economic zone (SEZ) unit. According to Section 22 of the SEZ Act, 2005 (SEZ Act), any officer or agency authorised by the central government (CG) has the authority to conduct search, seizure, investigation, or inspection within any SEZ unit without any prior intimation or approval from the development officer. Further, the HC cited that the supply of goods and/or services to and from the SEZ unit shall be treated as inter-state supply under GST. The HC emphasised that the Development Commissioner, SEZ, had already been informed before the search and seizure by the departmental officer while initiating proceedings, and therefore, the assessee's contention is unacceptable. The HC further ruled that the present case was not fit to exercise extraordinary equitable jurisdiction and, therefore, dismissed the petition.

## Facts of the case

- RHC Global Exports Private Limited (the petitioner) is a SEZ unit in SURSEZ, administered under the control of the development commissioner.
- The petitioner's unit is to be treated as foreign territory for its business operations, and as such, is a 'tax neutral' or 'revenue neutral' entity in terms of levy and collection of customs duties, GST, and other indirect taxes.
- The petitioner also obtained GST registration, indicating the tax entity as a 'SEZ unit'. Further, the petitioner is filing NIL returns and only declares the value of imports and exports from its SEZ unit.
- The state GST authorities conducted a search operation at the petitioner's premises. During the search operation, it was found that the petitioner had availed bogus ITC from fictitious firms.

## Petitioner's contentions

- The petitioner contended that the state tax officers do not have the jurisdiction to initiate search and seizure, or investigation or inspection proceedings, in a SEZ unit.
- According to the petitioner, the supplies made to a SEZ unit are zero-rated

supplies and are not subject to GST provisions. Therefore, proceedings initiated by the Revenue lack authority and jurisdiction.

- The proceedings initiated against the petitioners lack any 'due process' doctrine; therefore, an inquiry without jurisdiction deserves to be dismissed.

## Revenue's contentions

- The Revenue argued that Section 22 of the SEZ Act allows authorised officers or agencies to conduct search, seizure, and investigation in SEZs without the development officer's prior intimation or approval.
- Further, Section 6 of the Gujarat GST (GGST) Act, 2017, authorises officers of central tax as proper officers in certain circumstances. Accordingly, the Revenue asserted that the authorities have the power to carry out proceedings in SEZs, as the CG has authorised them through a notification dated 5 August 2016. Therefore, the petitioner's argument that there is no jurisdiction with the Revenue authorities is unfounded.
- The Revenue argued that the functions of proper officers under the CGST Act also apply to officers under the GGST Act through cross-empowerment, as stated in the circular dated 5 July 2017.

## Gujarat HC observations and ruling [Civil Application No. 5980 of 2023, order dated 06 June 2023]

- **Powers of authorised officers under SEZ Act:** The HC noted that as per Section 22 of the SEZ Act, 2005, any officer or agency authorised by the CG has the authority to carry out search, seizure, investigation, or inspection within any SEZ unit, without any prior intimation or approval from the development officer.
- **Powers of authorised officer under GST Act:** The HC stated that as per Section 6 of the GGST Act, the officers authorised by the CG are empowered to carry out proceedings in a SEZ. Accordingly, it cannot be said that the officers were acting without the authority of law or jurisdiction.
- **SEZ units are not exempt from investigation:** The HC stated that as per Section 7 of the Integrated Goods and Services Tax (IGST) Act, 2017, the supply of goods and/or services to and from a SEZ unit should be treated as inter-state supply under GST. Therefore, the petitioner believes incorrectly that once a business is conducted through and within a SEZ, it is outside the jurisdiction of the authority of officers. According to the HC, accepting the assessee's contention would defeat the

purpose of the Act, and apart from this, there appears to be no visible inconsistency in the SEZ Act or GST Act. Hence, SEZ units are not exempted from any investigation or inspection under GST.

- **Extraordinary equitable jurisdiction cannot be exercised:** The HC did not find the present case relevant to allow the petitioner to invoke extraordinary jurisdiction. In this regard, the HC referred to the Essar Steel Limited judgement, wherein the provisions of the SEZ Act are analysed to some extent. Accordingly, the HC held that the petition deserves to be dismissed.
- **Disadvantage by petitioner leads to imposing cost:** The HC noted that by filing a writ petition, the petitioner intended to impede and delay the legal proceedings, which appears to be an abuse of the legal process. The HC further stated that following the issuance of the notice, the petitioner did not cooperate with the officers, which is unacceptable. As a result, the HC decided to impose costs on the petitioner.

### Our comments

This is a significant judgement that will have far-reaching consequences for taxpayers registered in the SEZ area, as more assessees are anticipated to come under the Revenue's scanner.

Further, this ruling confirms the power of GST authorities to probe SEZ units. It would aid the Revenue officers in enforcing the GST law to ensure that tax evasion is minimised in the SEZ area. It will be interesting to watch out for further developments in this regard.

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