

## **SEZ UNITS ELIGIBLE FOR REFUND OF UNUTILISED ITC DISTRIBUTED BY ISD: GUJARAT HC**

In a recent pronouncement in the case of *M/s. Britannia Industries Ltd. v. Union of India* [R/SCA 15473/2019], the Gujarat High Court set aside the order of the jurisdictional tax officer denying the Petitioner's claim for refund of input tax credit (ITC) under section 54 of the Central Goods and Services Tax Act, 2017 (**CGST Act**). In the instant matter, the Petitioner unit was located in a Special Economic Zone (**SEZ**) and was in receipt of ITC distributed by the input service distributor (**ISD**) registration availed by the Petitioner company, which remained unutilised in the hands of the SEZ unit.

### **1. Petitioner's Submissions**

- Section 16 of the Integrated Goods and Services Tax Act, 2017 (**IGST Act**) sets out the definition of 'zero-rated supplies', which includes supplies made to SEZ units. Since the concept of 'zero-rated supplies' is to avoid cascading effect of taxation on incentivised supplies intended to be tax-free, the denial of the unutilised ITC in the hands of the SEZ unit would defeat this purpose.
- Furthermore, it was submitted that the ISD scheme does not restrict distribution to SEZ units and section 54 of the CGST Act does not contain any specific provision for rejection of claims such as that of the Petitioner.

### **2. Department's Submissions**

- The Department has relied upon rule 89(1) of the Central Goods and Services Tax Rules, 2017 (**CGST Rules**), which provides for the manner of filing a refund claim. Under the second proviso to the said sub-rule read along with section 16 of the IGST Act and section 54 of the CGST Act, any claim for refund in respect of supplies to SEZ units can be filed only by the supplier. Since the Petitioner is not a supplier in respect of the supplies for which refund is claimed, there exists no statutory provision for a claim to be filed by the Petitioner unit.
- Since SEZ units are not required under statute to pay any tax against supplies received from the Domestic Tariff Area (**DTA**), there can be no question of refund arising on this count.

### **3. Findings of the Court**

- Extensive reliance was placed upon the decision of the Gujarat High Court in *M/s. Amit Cotton Industries v. Principal Commissioner of Customs* [SCA No.20126/2018]. The Court presently observed that in cases where the ITC is distributed by the ISD, it is not possible for the supplier of such goods or services to take advantage of zero-rating and be able to claim refund of such ITC.
- In any case, it was noted that there is no specific supplier who would be eligible to file a refund claim in respect of such unutilised ITC in the hands of the Petitioner unit.
- In light of the above hinderances, the Court allowed the Petitioner unit's claim for refund of unutilised ITC and directed the Department to process the same within three weeks of receipt of the present order.

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## **VA Comments**

- The grant of refund in the present case is highly beneficial to large-scale assesseees having pan-India DTA operations alongside SEZ verticals. Upon a reading of the scheme of zero-rating, it would appear that ITC distributed by ISD registrations may be stuck in a procedural limbo, particularly vis-à-vis refund provisions as in the present case. The denial of the same would arguably prove discriminatory, inasmuch as the benefit of zero-rating would be available to an identical supplier raising invoices for supplies directly upon the SEZ unit, rather than it being routed through the ISD registration.
- However, it may be of note that the judgment does not examine the above in depth, instead deferring to the observations in *Amit Cotton Industries* (*supra*). Since the said decision deals with denial of refund on export of goods in line with a departmental circular, the ratio therein may be distinguishable on facts.
- It is expected that any subsequent judicial analyses may take this precedent into account and shed further clarity on the subject matter.

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