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Indirect Tax Alert

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Dimensions – 59th Edition

Judgment under GST era

M/s Amazonite Steel Pvt Ltd and Ors. v. *Union of India & Ors.*[1]

Issues

I. Whether the Principal and Additional Director General, Directorate General of Goods & Services Tax Intelligence ('PDGGI' and 'ADGGI') are competent to pass orders under section 83 of the CGST Act, 2017 ('the Act')?

II. Whether an order passed for attachment of bank account under section 83 of the Act is valid even after the expiry of one year from the order date?

III. Whether the authorities can issue fresh order of provisional attachment / multiple orders under section 83 of the Act?

Discussion

- The Petitioner conducts its business operations through current account registered with Laxmi Vilas Bank ('the Bank').
- The ADGGI passed an order for provisional attachment of the bank account of the Petitioner under section 83 of the Act.
- After a year, the Petitioner filed a representation before the ADGGI and the Bank to de-freeze the bank account which was provisionally attached a year ago. However, there was no response to the representations by either of the parties. Aggrieved, the Petitioner filed a Writ Petition before the Hon'ble High Court at Calcutta.
- Thereafter, a fresh order for provisional attachment of the bank account was passed by the PDGGI. Consequently, a fresh Writ Petition was filed by the Petitioner.
- The Hon'ble High Court observed as follows:

Issue I

– On perusal of section 2(24), 3 and 5 of the Act, the Court stated that it is clear that section 3 equates the *Principal Commissioner of Central Tax* as the *Principal Additional Director of Central Tax* and the *Commissioner of Central Tax* as the *Additional Director General of Central Tax*. Further, the fresh attachment order was passed by Principal Additional Director of Central Tax who is the superior officer and therefore, as per section 5(2) of the Act

[1] 2020-VIL-158-CAL – the Hon'ble High Court of Calcutta

possesses the power to pass the provisional attachment orders.

Issue II

– On perusal of section 83(2) of the Act, the Court stated that the order of provisional attachment shall cease upon the expiry of one year and hence it is incumbent for the Respondents to either release the attachment or issue a fresh order of provisional attachment in light of the GST law;
– The continuance of provisional attachment for the period starting from the date of expiry of the first order till the date of issue of the fresh order of attachment was illegal and blatant highhandedness on the part of the Respondents;
– The Court held that continued attachment was clearly in violation of the Article 19(1) and 300A of the Constitution of India wherein the petitioners have been denied of their property without authority of law.

Issue III

– The powers conferred under section 83 of the Act, being drastic and extraordinary in nature, should not be invoked routinely and must be exercised with due caution, circumspection and deliberation;
– Reliance placed by the Respondents on decisions in the case of *Shrimati Priti* v. *State of Gujarat*[2] and *Kaithal Timber Pvt. Ltd.* v. *State of Gujarat and Ors.*[3], wherein it was held that fresh order for provisional attachment can be issued after expiry of time prescribed, has been affirmed by the Court.
– On perusal of section 83 of the Act the Court stated that the said section does not provide for extension of a provisional attachment order. However, the section doesn't restrict issuance of fresh orders. Fresh order will require a fresh review and assessment of the situation. Fresh orders may be issued if the authorities are of an opinion that such attachment is further required for protection of interest of Revenue.
– The period of one year for validity of provisional attachment is provided to bring balance of rights of assessee and interest of Revenue. However, the Court without assessing the sufficiency of reasons highlighted that issue of fresh order will require fresh review and assessment of circumstances.

Judgment

- The PDGGI and the ADGGI have the powers to pass an order under section 83 of the Act, 2017.
- The extension of provisional attachment resulted in violation of Petitioner's right for carrying on business under article 19(1) and 300A of the Constitution of India being deprived of their property without authority of law. The Hon'ble High Court also directed the Respondents to pay INR 5 lakhs each to the Petitioners.
- The fresh order for provisional attachment may be issued after expiry of one year from date of previous order if it is appropriate in the new circumstances and necessary to protect the interest of the Revenue.

Dhruva Comments

The judgment critically examines the scope and powers conferred upon the authorities under section 83 of the Act to safeguard the interest of the revenue. The judgement would certainly provide necessary aid when such powers are summarily invoked by the GST authorities.

Rulings under GST era

M/s Kardex India Storage Solutions Pvt Ltd – Karnataka[4]

Issues

- In case of direct supply from the port of import, whether GST registration is required to be obtained in such State? Can the importer issue an invoice charging GST from its registered place of business?

[2] 2011 SCC Online Guj 1869
[3] Special Civil Application No. 14039 of 2017
[4] Order No KAR ADRG 13/2020 dated March 18, 2020.

- Whether input tax credit (ITC) of IGST can be claimed on import of goods?

Discussion

- The Applicant, having its registered place of business in Karnataka, imports goods from outside India, which are then further distributed to customers in India.
- However, due to logistical problems, the importer proposes to import the goods to the port nearest to the customer location and make the supply directly from such port.
- The Applicant approached the Authority in respect of the above-mentioned issues and contended as follows:
  - As per section 11(a) of the IGST Act, place of supply (POS) in the case of imports is the location of importer. Further, as per IEC, the location at which the bill of entry is filed and where the importer is registered under GST is to be treated as the location of importer;
  - Therefore, the location of importer should be the place of business and not the State in which port of import is located, unless the importer has a permanent establishment or business place in the State of port of import;
  - Where the imported goods are cleared from the port of the State where the customer's place of business is located, it shall be deemed that the goods are first supplied to the registered place of importer and importer has further supplied to the customer's place. Further, no separate registration is required if the port of import is situated outside the registered place of business;
  - Reliance was placed on rulings passed in the case of *M/s Aarel Import Export Pvt Ltd*[5] and *M/s Sonkamal Enterprises Pvt Ltd*[6].
- The Authority observed as follows:
  - The Applicant is liable to pay IGST on the goods imported into India in terms of section 5(1) read with section 7(2) of IGST Act;
  - IGST paid on import of goods can be used as ITC, as the goods are used in the course of business for further supplies to customers;
  - The Applicant has permanent business establishment only in the State of Karnataka and the GST registration number (Karnataka) is used for making the payment of IGST on import of goods. The POS in respect of import of goods, as per section 11(a) of the IGST Act is location of importer, which in the present case is Karnataka;
  - Therefore, though the goods are imported at the port nearest to the customer, it is deemed to have been supplied from location of importer i.e. Karnataka. Thus, if the customer is outside Karnataka then IGST should be charged, and if customer is in Karnataka then CGST and SGST;
  - There is no provision in the GST law which requires the importer to obtain registration in the State where the goods are cleared from customs. Hence, no separate registration is required if he does not have establishment in the State of port of clearance.

Ruling

- The Applicant is eligible to claim credit of IGST paid on import of goods.
- The Applicant can issue a tax invoice with IGST to the customer (located outside Karnataka) when the goods are directly supplied from the port of import to the customer.
- The Applicant is not required to obtain GST registration in the State where port of clearance is located, if the Applicant is not making any supply from the State in which the port is located.

Dhruva Comments

A similar ruling was also pronounced in the case of *M/s Gandhar Oil Refinery (India) Ltd*[7].

[5] Order No. GST-ARA-114/2018-19/B-42 dated April 24, 2019
[6] Order No. GST-ARA-48/2018-19/B-123, dated September 27, 2018
[7] Order No GST ARA 112/2018-19/B-40 dated April 15, 2019.

These rulings are welcome relief for the assessees as there is no prescribed parameters under the GST law to determine 'location of supplier of goods.'

M/s Vaachi International Pvt Ltd – Andhra Pradesh Appellate Authority[8]

Issue

Whether Special Economic Zone (SEZ) unit is eligible to claim refund of unutilised input tax credit (ITC) arising from supplies made by vendors charging GST?

Discussion

- The Appellant is a SEZ unit primarily involved in export of goods. The said supplies fall under the definition of zero-rated supplies as per section 16(1)(a) of the IGST Act. The Appellant had received certain supplies from domestic tariff area (DTA) vendors on which GST had been charged and Appellant had made the payment to them along with GST.
- The Appellant had filed the refund claim for such accumulated input tax credit (ITC) on which tax was paid to the vendor for the period July 2017 to March 2018. However, the claim was rejected by the Authority for Advance Ruling (Authority) by stating that only the DTA vendors who make supplies to SEZ are eligible to claim the refund.
- Aggrieved by the rejection order, the Appellant preferred an appeal before the Appellate Authority and disputed the refund rejection order on the following grounds:
  - Conjoined reading of section 54(3) of the CGST Act, 2017 and section 16 and section 2(5) of the IGST Act, provides that any person doing exports is eligible to claim refund of ITC. Accordingly, SEZ unit is very well placed to claimed refund of unutilised ITC;
  - GSTN portal allows SEZ unit to seamlessly file online refund application of unutilised ITC;
  - Rule 89(2) of the CGST Rules requires a person claiming refund to obtain a declaration from a SEZ unit for non-availment of ITC. The intent of such declaration is obtained to avoid duplicity of refund claim. The Authority has erroneously interpreted the above provision stating that SEZ unit is not eligible to claim ITC;
  - In respect of deemed exports, the facility to claim refund has been given to both the recipient and supplier. If the supplier claims refund, then a declaration needs to be given by the recipient that no input tax credit has been availed by the recipient of such supplies.
- Appellate Authority observed as follows:
  - Second proviso to rule 89(1) of CGST Rules, 2017 unambiguously stipulates that refund 'SHALL' be claimed only by the suppliers of goods to the SEZ unit and not by SEZ unit. Further, rule 89 (2)(f) of CGST Rules, states that SEZ units shall not avail ITC on the supplies received by them from non SEZ suppliers.
  - A conjoint reading of the aforesaid provisions concludes that SEZ units / developers shall not claim refund of unutilised ITC in respect of supplies received by them from non-SEZ suppliers. The GST law facilitates the eligibility of refund claim to the suppliers who made supplies to SEZ units / developers with payment of tax.

Judgment

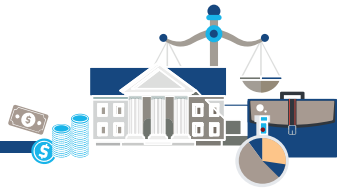
The refund claimed by the Appellant is not in accordance with the provisions of the GST law and the Authority has rightly rejected the refund claim.

Dhruva Comments

There is no provision under the GST law which restricts a SEZ unit / developer to claim refund of the ITC on the GST paid to the vendors.

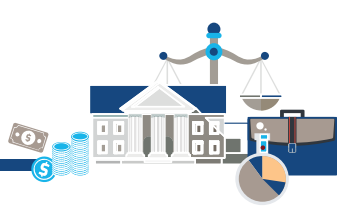
Interestingly, it needs to be seen as to what would happen to input tax credit received by SEZ unit under input service distributor mechanism / tax discharged on reverse charge basis as per CBIC FAQ. Also, on a practical front, we understand that refunds are being granted to SEZ unit / developer. The entire objective of

[8] Order no. 4990 dated February 10, 2020 [2020-VIL-15-GSTAA]



treating SEZ supplies as a different category is to promote exports and reduce the tax cost. By allowing the supplier to claim refund and not the SEZ unit, the objective is not met and increases the tax cost for SEZ unit.

Thus, Government should issue suitable clarifications on these issues to avoid any dispute and loss to the industry.



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