

GST UPDATE

Gist of Hon'ble Gujarat High Court Judgment in the case of Cosmo Films Limited v. Union of India (SCA 15833/2018)



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Question for Consideration before the Hon'ble High Court:

Whether the sub-rule (10) of Rule 96 of the CGST Rules which debars certain categories of exporters (including advance license holders) to opt IGST refund route is intra-vires or ultra-vires to the provisions of Section 16 of IGST Act?

Ruling:

Section 16 of IGST Act provides for 'Zero Rated Supply' and sub clause (b) of subsection (3) of Section 16 provides that, a registered person making zero rated supply shall be eligible to claim refund, if he has supplied the goods or services or both, *subject to such conditions, safeguards and procedure as may be prescribed*, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

Further, Section 164 of the CGST Act provides that the government may on the recommendation of the Council make rules for carrying out the provisions of the Act. Government can make rules for all or any of the matters which by this Act are required to be prescribed or in respect of which provisions are to be or may be made by rules.

Thus, the sub-rule (10) of Rule 96 is intra-vires to the provisions of the CGST Act.

Alongside, the above ruling, following observation was made by the Hon'ble court:

Recently vide Notification No. 16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017).

“Explanation: For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters *who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under*

second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.

From the above observations of the Hon'ble Court it is clear that:

1. Exporters can claim basic customs duty exemption on imports against advance license alongside claiming refund of IGST on exports. However, IGST exemption on imports cannot be claimed;
2. Exporters who have already claimed IGST exemption on import of goods against advance license alongside IGST refund on exports can forego IGST exemption claimed on imports of goods along with interest and can claim Input Tax Credit of such IGST on imports.

For more details, Read the Judgement from the Link below:

<http://gujarathc-casestatus.nic.in/gujarathc/#>

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