

TAX INFO

Dated 04/01/2023

Latest update on GST Law: **Dealer cannot be compelled to carry forward ITC to GST regime instead of claiming refund** as given in judgement by **Madras High Court**.

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Name of Petitioner	Easwaran Brothers India Private Limited
Name of Respondent	The Assistant Commissioner (ST)
Authority	Madras High Court
Date of Judgement	15.12.2022
Appeal No.	W.P.No.33593 of 2022

Brief Facts of the Case Law:

The petitioner company was a registered dealer under 'TNVAT Act'. The GST regime coming into force on and from 01.07.2017, erstwhile TNVAT Act stood subsumed; and those of dealers who had 'Input Tax Credit' ['ITC'] had the option of either seeking refund or carrying forward the ITC to GST regime. The petitioner opted for the former i.e., refund. The petitioner's request for refund was processed and the Department has made a provisional refund order dated 06.10.2022 bearing reference TIN No.33291026289/2017-1 and issued FORM-P making it clear that the writ petitioner is entitled to refund of Rs.13,36,741/- for assessment year 2017-18. The writ petitioner is yet to receive the refund.

A notice bearing reference No.33291026289/2022/A4 dated 25.11.2022 has been made by the Department requesting the writ petitioner to opt for latter of aforementioned two options i.e., carrying forward the ITC to GST regime.

Contention of the Petitioner:

The writ petitioner submits that there are two options i.e., carry forward and refund and when the writ petitioner has opted for refund, the impugned order ought not to have been issued particularly when a provisional refund order has been issued after processing the refund application.

Findings and Decision of the Court:

It is clear that the dealer has two options i.e., refund or carrying forward the ITC to GST regime, the dealer in the case on hand, has opted for the former not the latter. The common portal giving dealer the option for choosing former or latter also is now active till 2024. In such circumstances, the dealer cannot be compelled to opt for one of the two i.e., refund or carrying forward the ITC to GST regime. It is after all an option given to the dealer. In the case on hand, the provisional refund order had been issued by the Department and issue of 'FORM-P' clearly quantified the entitlement of writ petitioner of Rs.13,36,741/-. Therefore, this Court concludes that the impugned notice has been erroneously issued and the same deserves to be set aside.

Thus, the impugned notice was set aside as refund has already been opted for by the writ petitioner, the same has been processed by Revenue and a provisional refund order also has been passed besides issue of FORM-P which is a procedural facet of refund.

The Department shall ensure that the refund as quantified in 06.10.2022 [bearing reference TIN No.33291026289/2017-18] provisional refund order and FORM-P annexed to the same at Rs. Rs.13,36,741/- is made available to the writ petitioner as soon as possible.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>