TAX INFO

Dated 28/05/2022

Latest update on GST Law: **Refund cannot be denied on petty mistakes in GSTR-3B** as given by **Madras High Court.**

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Name of Petitioner	M/s. ABI Technologies
Name of Respondent	Assistant Commissioner
Court	Madras High Court
Date of Judgement	28.04.2022
Appeal No.	W.P(MD).No.4562 of 2022

Brief Facts of the Case Law:

The petitioner had filed a refund application for Rs.24,72,018/- as refund on the exports made during July 2017, September2017 and October 2017 which was rejected by the Department. The petitioner had correctly declared the details in the monthly returns in Form GSTR-1 regarding the exports made by the petitioner on payment of tax by debiting the input tax credit; but a mistake was committed by the petitioner in GSTR-3B.The outward supplies i.e., exports would have qualified as a zero rated supply and therefore, the petitioner should have filled the details in Form GSTR-3B in column 3.1 (b). Instead, the petitioner by mistake had given the details of the export as outward taxable supply (other than zero rated, nil rated and exempted)in column 3.1 (a) for all the three months, as a result of which though the petitioner has exported goods on payment of tax, the refund of integrated tax on exports had been denied to the petitioner.

Contention of the Petitioner:

The petitioner placed reliance on the circular issued by the CBIC vide **Circular No.45/19/2018-GST, dated 30.05.2018,** wherein it has been clarified that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1.Such registered persons were unable to file the refund application in FORM GST RFD-01A on the GST common portal because of an inbuilt validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of FORM GSTR-3B (zero rated supplies) filed for the corresponding tax period. It was clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

Contention of the Revenue:

The refund would be granted subject to the petitioner giving the correct information in the returns, namely GSTR-1 and GSTR-3B. It is only the information, which match and invoices, which were uploaded, the refund would be sanctioned. It was the responsibility of the petitioner to file a valid GSTR-1 and GSTR-3B returns. Upon filing of the valid returns, the GSTN portal will transmit the details of export invoices to the

system designated by the customs. Upon receipt of such details only, the designated system of the customs department or the proper officer of the customs would proceed to process the refund claims. The petitioner's refund claim could not be processed as the details itself have not been received from GSTN portal to the designated system of the customs. The refund of IGST can be processed by the designated system of customs or by the proper officer of the customs only on receiving the details from the GSTN portal and since no data was transmitted from the GST common portal, the question of sanctioning refund under Rule 96 of CGST Rules, 2017 was neither permissible nor practically possible.

Decision of the Court:

Most of the proceedings under GST are system driven. The export incentives have been given to encourage exports, so that there is inward remittance of foreign currency. The procedure prescribed under the aforesaid Rules is not intended to defeat such legitimate export incentives, if indeed on facts there is export on payment of integrated tax under the provisions of IGST Act, 2017.The procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives that are available to exporters.
The procedures are nothing but handmaids of justice and the procedures prescribed under the aforesaid Rules should not be applied strictly so as to defeat the legitimate export incentives, which an exporter otherwise would have been entitled to.

The Court directed the Department to get the data directly from the petitioner and from their counterparts in the customs department. If indeed there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers, the refund shall be granted. The petitioner is also directed to furnish the details to the Department within a period of 30 days from the date of receipt of a copy of this order. On receipt of the same, the Department shall consider, verify the same from the counterparts from the customs department and proceed to sanction the refund claim, if the petitioner is entitled to such refund. It is made clear that procedural infraction shall not come in the legitimate way of granting of refund under the IGST Act, 2017 and the Rules made there under.

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