

TAX INFO

Dated 15/12/2021

Latest update on GST Law: Information regarding ITC Cannot Be Blocked Beyond One Year Even If The Taxpayer Is Not Co-Operating in ITC verification proceeding, as given in Judgement by Bombay High Court.

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Name of Petitioner	Advent India PE Advisors Private Limited
Name of Respondent	Union of India
Court	BombayHigh Court
Date of Judgement	03/12/2021
Appeal No.	Writ Petition No.2320 OF 2021

Facts of the Case:

The ITC of the petitioner to the extent of INR 1.17 Cr was blocked on 26.01.2020 on the basis of the information received from the office of the Chief Commissioner of CGST to ensure that the ITC availed is eligible and not availed fraudulently. The Department has consistently asked the taxpayer for submissions required for due verification of the Credit availed. However, the first submission which was incomplete was received from the taxpayer on 17.03.2020. The Department was in communication with the taxpayer seeking reconciliation statements for the difference in their GST returns namely GSTR-2A and GSTR-3B from FY 2017-18 to 2020-21. The last letter from the department addressed to taxpayer was sent on 31.05.2021 asking for reconciliation between ITC stated in monthly returns and annual returns. However, the reply from the taxpayer is still awaited. Instead of furnishing the documents the taxpayer has filed a writ petition.

Contention of the Department:

After completion of the due verification, if any mismatch in the Credit availment is noticed a Show Cause Notice (SCN) will be issued to the taxpayer and the Input Tax Credit will be unblocked immediately.

Contention of the Petitioner:

Having regard to the statutory mandate in sub-rule (3) of rule 86A, the ITC ought to have been unblocked immediately after one year of the restriction being imposed under sub-rule (1) thereof. If indeed there has been non-co-operation with the department, they ought to have proceeded against the petitioner in a manner known in law. However, to say that reply is awaited and hence lifting of the restriction has not been resorted to is clearly illegal.

Decision of the Court:

Having regard to the decision of this Court in Writ Petition (L) No. 128 of 2021 (M/s. Aegis Polymers vs. Union of India and Ors.) and referring to the statutory mandate in sub-rule (3) of rule 86A, the Court directed the Department to unblock the input tax credit of INR 1.17 Cr availed by the petitioner in its electronic credit ledger.

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