ACUPRO CONSULTING

WEEK 3, JULY, 2023

# The GST PULSE

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# *Recent Judgements and Rulings*

## *ITC CAN'T BE CLAIMED ON CONSTRUCTION OF WAREHOUSE WHICH IS CAPITALISED IN THE BOOKS OF ACCOUNT.*

## *ADVANCE AUTHORITY RULING WEST BENGAL*

M/S Mindrill Systems and Solutions Pvt. Ltd. ("the Applicant") built a warehouse for which it has received inward supplies of goods and services like work contract services. Additionally, the Applicant has been paying tax on renting services for renting out the warehouse under GST.

**The Applicant approached the AAR, to seek whether the ITC of the inward supplies pertaining to construction of warehouse will be available to the Applicant.**
On the ground that, the Applicant has let out the warehouse to another person for rent, thus it can't be said that the Applicant has received the inward supplies for construction on his own account and secondly, the warehouse constructed by the Applicant can't be regarded as immovable property since the warehouse is constructed by use of pre-engineered steel structures which can be detached and dismantled without any damage.

The **AAR, West Bengal in TS-287-AAR(WB)-2023-GST** held as under: Observed that, the Applicant has constructed the warehouse and capitalised the same in books of accounts and retains the ownership/ title of the said warehouse, thus it is clear that the warehouse has been constructed in the Applicant's own account and the contention of the Applicant in this regard is not acceptable. Further observed that, the warehouse can't be exempted from the definition of immovable property, this view is supported by the fact that the warehouse, despite being constructed of removable parts, is not meant to be relocated and has not really been moved after construction. Held that, the Applicant is not eligible for ITC charged on inward supply of goods and services related to construction of warehouse which is capitalised in the books of account.



# *NO ADDITIONAL DEPOSIT REQUIRED IN CASE DISPUTED TAX IS FULLY PAID*

## *HON'BLE CALCUTTA HIGH COURT*

Liakhat Ali Mallick ("the Petitioner") aggrieved by the demand order of Adjudicating Authority filed an appeal under Section 107(7) of the CGST Act, 2017 and the Petitioner **deposited 10% of the disputed tax as pre-deposit.** The Petitioner filed an appeal before the Appellate Authority argued that the garnishee notice was issued by the Adjudicating Authority in case where they have already paid the demanded tax in full. The Appellate Authority rejected the appeal.

Aggrieved by which the **Petitioner filed writ** before **The Hon'ble Calcutta High Court** in W.P.A. no.7454 of 2023 dated April 27, 2023 granted the stay on the condition that Petitioner has to pay additionally pay **20% of the interest liability**. Aggrieved by the Order of the Single bench the Petitioner **filed an intra- court appeal**.

**Whether the Petitioner is required to pay additional 20% of interest liability as deposit for availing stay order?**

The Hon'ble Calcutta High Court in M.A.T. NO.823 of 2023 held as under: Observed that, single Bench has granted stay of the garnishee notice but has imposed a condition that the Petitioner has to deposit 20% of the interest liability which was originally quantified as **Rs.31,58,936, subsequently rectified as Rs.29,85,527**.

Held that, the condition need **not be imposed** by directing the Petitioner to pay 20% of the interest.

Allowed the appeal and set aside the order and directed the Appellate Authority to consider the appeal on merits in accordance with law after affording an opportunity of personal hearing.



# *REFUND OF IGST CANNOT BE WITHHELD ON MERE SUSPICION THAT ASSESSEE HAS AVAILED DUTY DRAWBACK*

## *HON'BLE BOMBAY HIGH COURT*

M/s. Sunlight Cable Industries ("**the Petitioner**") exported insulated cables and has inadvertently made error in filling GSTR-1. However, on realising the mistake the Petitioner filed an amended return in GSTR-1 amending particulars namely invoice number and the Port Code with respect to the said tax invoice. Thereafter, the Petitioner submitted an annexure in the prescribed format establishing concordance between the tax invoice and shipping bill to the Revenue Department.
After such compliances the Petitioner made an application to the Respondent requesting to release the refund of IGST amount. But, there was no response from the Respondent. The Petitioner on such backdrop lodged a grievance in regard to the IGST refund with the **CPGRAMS**.
Thereafter, the Petitioner received an e-mail from CPGRAMS that the grievance has been disposed on the ground that the Petitioner had availed higher duty drawback on its exports under the export invoice and corresponding shipping bill.

Aggrieved by which the Petitioner submitted a fresh grievance justifying and clarifying that it had not realized any higher amount of drawback against the said Shipping Bill. However, the Petitioner again received a communication that the grievance of the Petitioner has been closed.
In light of the closure of the refund application without any valid reason, the Petitioner **filed a writ before the Hon'ble Bombay High Court** praying to quash and set aside the decision to close case of the Petitioner and also issue instruction to the **Respondent to grant IGST refund**.

**Whether the Revenue Department can withheld the refund of IGST on the mere suspicion that assessee has tries to avail duty drawback and IGST refund both?**

The Hon'ble Bombay High Court in **Writ Petition No.284** of 2021 held as under:
•Noted that, there was no evidence presented by the Revenue Department to establish that the Petitioner had availed a double benefit.
•Allowed, refund of IGST paid on exported goods.
•Directed the Respondent to refund the IGST paid by the Petitioner in respect of the goods exported under shipping bills with simple interest at 7% p.a. with effect from February 22, 2018.

# Thank You!


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