GST refund to SEZ - from the lens of judiciary

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IT has been over 5 years since inception of GST law and the Government has left no stone unturned for ensuring seamless experience to taxpayers, yet there are certain hardships faced by GST registrants in claiming GST refunds. Specifically in case of ***"Special Economic Zone"*** units, as being independent interpretations and practices followed amongst taxpayers as well as jurisdictional authorities across nation.

Considering the tax benefits (zero rating for authorised operations) available to SEZ units/developers, eligibility of GST refund of unutilised ITC to SEZ units/developers has always been a grey area. Upon rejection of refund claims, taxpayers operating under SEZ policy have been knocking the door various Hon'ble courts to get the relief.

This article is attempting to highlight the ideology of various judicial outcomes on the issue of eligibility of refunds under GST to SEZ units/developers.

Gujrat HC: Allows SEZ's refund; Requires undertaking to return unutilized ITC if supplier files claim -

SE Forge Ltd vs UOI [TS-67-HC(GUJ)-2023-GST] 02 March 2023 - 2023-TIOL-243-HC-AHM-GST

> ***Hon'ble Gujrat High Court allows the refund application of SEZ unit under Form GST RFD-01 for unutilized ITC under the category of "Export of Goods/Services without payment of tax" where supplier levied IGST and same was paid by SEZ unit. However,***
> ***SEZ unit requires to furnish a specific undertaking/bond to the effect that if supplier at any point of time takes refund which comes to Department's notice, same shall be recovered with interest. Hence, discarding Revenue's contentions, Court directs Revenue to refund the amount while taking a proper undertaking/bond from assessee.***

Madras HC: allowed the writ and held that the petitioner SEZ unit is entitled to claim refund of tax paid on purchases -

M/s Platinum Holdings Pvt. Ltd. vs UOI [W.P.No.13284 of 2020] 11 August 2021 - 2021-TIOL-2016-HC-MAD-GST

> ***Though zero-rated supplies to SEZs are not subject to levy of taxes, the petitioner, in this case has remitted the same as raised in invoice. Further, the refund provisions under GST law, providing for a refund, apply to any person who claims***
> ***such refund and who makes an application for the grant of same. The language of provision is clear and does not contain or admit of any restriction in its operation. The statutory scheme for refund admits applications to be filed by any entity that believes that it is so entitled including the petitioner SEZ. Therefore, the HC allowed the writ and held that the petitioner SEZ unit is entitled to claim refund of tax paid on purchases.***

Madras HC: allowed the writ and held that the petitioner SEZ unit is entitled to claim refund of tax paid on purchases -

M/s ATC Tires Private Limited vs Joint Commissioner of GST [W.P(MD) No.949 of 2022] 8 March 2022

> ***A very purpose of granting this refund is only to give incentive for exports and to reduce the burden of tax to make the exports more competitive in the international markets. Rule is not intended to deny the legitimate benefit available to an exported effecting zero rated supplies. The impugned order passed by the GST authorities denying the benefit of refund of unutilized input tax credit of zero-rated supplies was set aside.***

In all above disputes, a common contention by revenue authorities was rejecting the refund application basis the proviso of Rule 89 of CGST Rules 2017. The relevant extract of Rule 89 has been reproduced hereunder-

> ***"Provided further that in respect of supplies to a SEZ unit or a developer, the application for refund shall be filed by the -***
>
> ***(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.***
>
> ***(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone."***

From abovementioned provision, one could infer that option of claiming a refund for supplies effected to SEZ unit/developer can be exercised only by suppliers and not by the SEZ unit/developer (i.e. the recipient of such supplies).

However, Hon'ble courts have assessed other crucial aspects of the entire GST refund application filed by a SEZ unit, which has been highlighted as below:

- Rule is not intended to deny the legitimate benefit available to an exported effecting zero rated supplies

- Section 54(1) of CGST Act, 2017 states the phrase ***"Any person claiming refund"***
, through which it implies that intention of law is to provide benefit of refund to all registered persons and not categorically rule out SEZ units from such benefit

- It has been specified that the supplier had not claimed the above said refund

- an undertaking by SEZ unit to the effect that if supplier at any point of time takes refund same shall be recovered with interest

It is imperative to note that today, SEZ units are BEARING THE UNBEARABLE burden of GST where supplier opt to charge IGST and full invoice value is paid by SEZ. This inter-alia becomes part of cost due to non-utilisation of ITC and non-availability of GST refund of ITC. GST authorities have been drawing reference from ruling issued by the Appellate Authority, GST, Andhra Pradesh, in
"Re: Vaachi International Pvt. Ltd. [Order No. 4990 of 2020 dated 10th February 2020]"
wherein it was held that the SEZ unit/ developer shall not claim any refund against ITC involved in supplies received from non-SEZ suppliers as GST law provides mechanism for refund claim by suppliers.

Needless to mention, the recent rulings of hon'ble high courts of Gujarat and Madras (re SE Forge and ATC Tires) are blessing in disguise and will support in bringing in uniformity for SEZ units seeking refunds. However, government needs to clear the dust by issuing an appropriate clarification considering the views of judicial outcome to avoid unwanted litigations and to make GST a **Good & Simple Tax.**

(Also contributed by Pradeep Tyagi, Assistant Manager, Grant Thornton Bharat. The views expressed are strictly personal.)

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