

GIB/TN/CHAIZUP BEVERAGES/26.03.2021/HC-198

High Court Category : REFUND OF ITC

State : Tamil Nadu

Order No.: GIB/TN/CHAIZUP BEVERAGES/26.03.2021/HC-198

Name of Entry :

M/S.CHAIZUP BEVERAGES LLP

Date : 26-03-2021

Breif Issue :

FACTS OF THE CASE:

In this case the Petitioner is an exporter of tea and had engaged in export transactions without payment of Integrated Goods and Service Tax and accordingly claimed drawback under Customs Act, 1962. Further, despite the transactions being categorized as zero-rated supplies, the Petitioner remitted IGST, Central Goods and Services Tax and State Goods and Service Tax on the purchase of tea and such tax was credited in its electronic credit ledger.

Subsequently, the Petitioner filed an application for refund claim under Section 54 of the CGST Act for the period July, August and September, 2017, vide which 90% of the claim was sanctioned on a provisional basis but was followed by a Show Cause Notice dated April 2, 2018, since the Assistant Commissioner ("Respondent No. 1") was of the view that the refund was liable to be rejected in entirety invoking third proviso to Section 54(3) of the CGST Act and on the basis that the Petitioner had availed drawback at a higher rate than applicable. Thus, the claim was proposed to be rejected in full and the amount provisionally sanctioned was proposed to be recovered as well.

The Petitioner submitted the reply to the SCN however, refund rejection order was passed by the Respondent No.1 and subsequently confirmed by the Additional Commissioner (Appeals) ("Respondent No. 2"), vide order dated May 12, 2020.

In the meanwhile, the Petitioner took an alternate plea for sanction of refund before Respondent No. 2 after setting off the drawback already claimed for the months of August and September, 2017, which was also rejected, taking note of paragraph 2.5 of Circular No. 37/2018- Customs, on the ground that there has been an excess claim of duty draw back by the Petitioner, as per which, they have renounced their claim for Input Tax Credit.

ISSUE OF THE CASE:

Whether refund claim of ITC for the months of August and September, 2017 can be denied to

the Petitioner on the basis of Circular No. 37/2018- Customs?

Decision of Advance Ruling Authority :

DECISION:

Analysed the provision of Section 54(3) of the CGST Act and observed that, the Petitioner is entitled to one or the other of two benefits i.e., duty drawback or ITC. Thus, an option has been extended to an assessee engaged in zero rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC.

Noted that, the Petitioner, for the month of July, 2017 has opted to stick with the claim of duty drawback seeing as the amount of drawback is higher than the ITC for the months of August and September, 2017.

Held that, the claim of refund by Petitioner is in order as per of Section 54(3) of the CGST Act and the contents of paragraph 2.5 of the Circular No. 37/2018- Customs will not stand in the way since a circular cannot stand in the way of a benefit offered under a statutory scheme. Hence, contrary to the statutory provisions of Section 54(3) of the CGST Act and bad in law.

Petition allowed.