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CASE LAW UPDATE

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M/s Numinous Impex (I) Pvt Ltd V/s The Commissioner of Customs High Court of Madras

W.P. (MD) No. 20468 of 2021

❖ Summary –

- GST ITC Refund Can't Be Denied If Taxpayer Has Claimed Duty Drawback. It applies only in cases where a higher rate of duty drawback is claimed.

❖ Facts –

- The Taxpayer had exported consignments of goods and claimed duty drawback under Section 75 of the Customs Act, 1962. Additionally, the Taxpayer claimed refund of input tax credit availed on the input and input services used in the export goods.

❖ Taxpayers Argument –

- Taxpayer had effected the exports and are "zero rated supply" within the meaning IGST Act, 2017. hence the Taxpayer is entitled to refund of unutilized input tax credit under IGST Act, 2017.

❖ Department`s Argument –

- As the Taxpayer, in his impugned shipping bills, have claimed drawback under sl. code A and that they have availed higher drawback. Since on the same export, the Taxpayer has claimed duty drawback as well as the refund of unutilized input tax credit under IGST, Hence Refund of IGST is denied.



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❖ Judgement –

- The questions before Authority was,
- “whether exports made without payment of IGST under bond on which, duty drawback is claimed under the provisions of the Customs would entitle such an exporter, the benefit of refund of input tax credit under the IGST Act 2017?”.
- Refund of the input tax credit under IGST Act, 2017 cannot be denied, merely because the taxpayer has claimed duty drawback under the provisions of Customs.
- As far as the duty drawback under Notification No.131/2016- Cus (N.T) dated 31.10.2016 is concerned, there are two rates of duty drawback.
 - where input tax credit is availed.
 - where no input tax credit is availed.
- In Present Case, goods falling under Customs Heading No. 8483-40-00 of the Customs Tariff Act 1975, the rate of duty for goods under these two Columns is only at 2%. Thus, there is no variation in the rate of duty is concerned. In this case, the taxpayer is entitled to duty drawback at 2% irrespective he has availed input tax credit or not.
- Further, as per notes and conditions in Paragraph No.7 to Notification No.131/2016-Cus (N.T) dated 31.10.2016, if the rate indicated is the same in the Column Nos. (4) and (6), it means that the same pertains to only customs component and is available irrespective of whether the exporter has availed of cenvat facility or not.

❖ Author`s Comments –

- This is very welcome Case and clarify lot of issues and confusion related to GST Refund where Duty Drawback is also received. In most of cases, Even Proper officer is not aware about all conditions, Rates of Duty Drawback etc. which is covered in detailed manner in Present Case including all conditions to be fulfilled by exporter. Present Case will be useful to both Exporters/taxpayers as well as proper officer.

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