

MONTHLY NEWSLETTER

GST TRACKER

ISSUE: MAY 2023

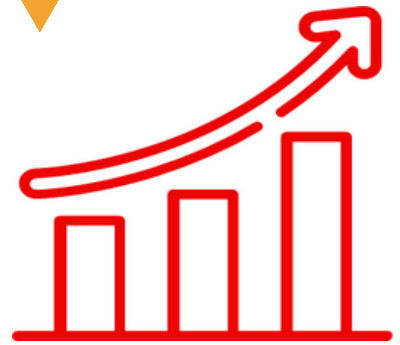


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Case Law Corner



CS Payal Kataria
Delhi NCR

Is Rule 89(4)(c) of the CGST Rules liable to be held unconstitutional

Particulars	Details
Name of Petitioner	M/S TONBO IMAGING INDIA PVT LTD
Authority	Union Of India
Date of Judgement	16.02.2023
Appeal No.	WP No. 13185 of 2020

Rule 89(4)(C) of the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules') amended vide Para 8 of the Notification No.16/2020-CT dated 23.03.2020

Before amendment	After Amendment
<p>"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;"</p>	<p>"Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"</p>

Brief Facts of the case

Petitioner being exporter applied for refund of unutilized input tax credit under Section 54(3)(i) of the Central Goods and Services Act, 2017

Meanwhile, Rule 89(4)(C) of the CGST Rules having been amended w.e.f 23.03.2020, Show Cause Notices dated 27.05.2020, 03.06.2020 and 04.06.2020 were issued by the respondents on the ground that the petitioner had not given proof, which was required to be given in terms of the amended Rule 89(4)(C) of the CGST Rules and that therefore, the refund claims could not be considered.

Petitioner replied that amended Rule 89(4)(C) of the CGST Rules would not be applicable in the instant case, as the period for which refund was being claimed (i.e., May 2018 to March 2019) was much prior to the amendment of Rule 89(4)(C) (i.e., on 23.03.2020) and that therefore, the petitioner would be governed by the old/un-amended Rule 89(4)(C) and not the amended Rule 89(4)(C).

The respondents proceeded to pass the impugned order dated 30.06.2020 rejecting the refund claim of the petitioner.

Contentions of the petitioner

It was submitted that Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 is ultra vires and invalid and deserves to be declared unconstitutional and struck down. It was further submitted that the impugned order is illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed and the respondents be directed to accept/allow the subject refund claims of the petitioner and grant refund of taxes along with interest in favour of the petitioner.

Intention of the zero-rating is to make entire supply chain of “exports” tax free, i.e., to fully ‘zero-rate’ the exports by exempting them from both input tax and output tax.

Rule 89(4)(C) of the CGST Rules is ultra vires Article 269A read with Article 246A of the Constitution of India as the Parliament has no legislative competence to levy GST on export of goods; neither in Article 246A nor in Article 269A, is there a reference to treatment of export of goods or services, while in Article 269A reference is made to import of goods or services or both, particularly when reference to export of goods or services in Article 286 is only for the purpose of placing restrictions on the powers of the State Legislature.

Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; it was submitted that the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act, i.e., in cases where export of goods is made without payment of duty under a Bond/Letter of Undertaking(LUT); however, no such restriction is imposed on cases falling under Section 16(3)(b) of the IGST Act, i.e., in cases where export of goods is made after payment of duty; by virtue of the above, there is a hostile discrimination between two class of persons

Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words “like goods” and “similarly placed supplier” in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules; in this context, it was submitted that considering the business of the petitioner, it is not possible to have any “like goods” and “same or similar placed supplier” for the unique and customized products being manufactured by the petitioner and the preciseness of definitions as found in the customs legislation is missing herein.

In this context, it was submitted that the impugned Rule fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or as to what would be the consequences in respect of a supplier who may have different In this context, it was submitted that the impugned Rule fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or.....

Department's Contentions

It was submitted that the petitioner has not submitted the proof that the export turnover mentioned in the instant claim is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier and hence, zero-rated turnover declared by the petitioner cannot be accepted for the purpose of calculation of eligible refund amount. Thus repudiating the various contentions of the petitioner, it was submitted that there was no merit in the petition and the same was liable to be dismissed.

Findings & Analysis

Deep analysis of all relevant Provisions, case Laws etc. was done in this matter.

The impugned amendment is also unreasonable and arbitrary as adequate reasoning is not present; this would make such amendment unreasonable for the reason that it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act (supra). While Section 16 of the IGST Act seeks to make exports tax-free by “zero-rating” them, the impugned Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 aims to do just the opposite by restricting the quantum of refund of tax available in making such exports.

Order

The impugned offending words, “or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier” appearing in Rule 89(4C) of the Central Goods and Services Tax Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax(F.No.CBEC20/06/04/2020-GST) dated 23.03.2020 is declared ultra vires the provisions of the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 as also violative of Articles 14 and 19 of the Constitution of India and resultantly, the same are hereby quashed;.....

GSTN Updates & Notifications Corner

GSTN Updates April 2023

Date	Subject
12.04.2023	Advisory: Time limit for Reporting Invoices on the IRP Portal
13.04.2023	Updated Advisory: Time limit for Reporting Invoices on the IRP Portal
24.04.2023	Advisory on Bank Account Validation
28.04.2023	New facility to verify document Reference Number (RFN) mentioned on offline communications issued by State GST authorities

Source: www.gst.gov.in

Notifications/Circulars/Orders issued in the month of April 2023

Central Tax Notifications April 2023

No Central Tax Notification was issued in the month of April 2023

Central Tax (Rate) Notification April 2023

No Central Tax (Rate) Notification was issued in the month of April 2023

Integrated Tax Notification April 2023

No Integrated Tax Notification was issued in the month of April 2023

Integrated Tax (Rate) Notification April 2023

No Integrated Tax (Rate) Notification was issued in the month of April 2023

Circular issued in the month of April 2023

No Circular was issued in the month of April 2023

Orders

No order was issued in the month of April 2023

Removal of Difficulty Orders April 2023

No order was issued in the month of April 2023

Source: www.cbic.gov.in

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The image is a YouTube video thumbnail. On the left, there is a red play button icon with a black squiggly line above it. Next to it is a photograph of a woman with glasses and a black blazer speaking into a microphone. To the right of the photo, the text reads: "GUJARAT HIGH COURT", "IGST refund withheld", "Violation of S 54(6) of GST Act", and "M/s. Choksi Exports Versus Union of India". In the top right corner, there is a circular logo with a green and white 'G' and a small Indian flag. At the bottom, there is a red bar containing the website "www.gstatoneplace.com" and a "Subscribe" button with a hand cursor icon pointing to it.

GUJARAT HIGH COURT

IGST refund withheld
Violation of S 54(6) of GST Act

M/s. Choksi Exports
Versus
Union of India

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Business matters

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