

W.P.Nos.26164 and 26166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	25.10.2024
Pronounced On	02.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26164 and 26166 of 2021

and

W.M.P.No.27621 of 2021

Urjita Electronics Private Limited,
Represented by its Managing Director
Gunasekar Mandalap,
Unit 36-39, SDF III, MEPZ-SEZ,
Tambaram Sanatorium,
Chennai – 600 045.

... Petitioner in both W.Ps

Vs.

1.The Joint Commissioner of GST and
Central Excise (Appeals-II),
Newry Towers, 2nd Floor,
Plot No.2054,
I Block, II Avenue,
Anna Nagar, Chennai – 600 040.

2.The Assistant Commissioner of Central Tax,
Tambaram Division,
Chennai GST Outer Commissionerate,
Plot No.40, Ranga Colony,
Rajakilipakkam, Chennai – 600 073.

... Respondents in both W.Ps

Prayer in W.P.No.26164 of 2021: Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call



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for the impugned proceedings of the First Respondent passed in Order-in-Appeal Nos.62 and 63 of 2021 dated 27.04.2021 and quash the same for the period from October 2018 to December 2018 and further direct the second respondent to sanction the refund amount of Rs.1,52,333/- (being IGST of Rs.71,641/-, CGST of Rs.40,346/- and SGST of Rs.40,346/-) for the period October 2018 to December 2018 by following the order passed by this Court in W.P.No.13284 of 2020 dated 11.08.2021, which hold that there is no bar under the law for SEZ to claim refund under Section 54 of the CGST Act, 2017 and issue any other writ.

Prayer in W.P.No.26166 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the First Respondent passed in Order-in-Appeal Nos.62 and 63 of 2021 dated 27.04.2021 and quash the same for the period from January 2019 to March 2019 and further direct the second respondent to sanction the refund amount of Rs.2,18,663/- (being IGST of Rs.1,80,363/-, CGST of Rs.19,150/- and SGST of Rs.19,150/-) for the period January 2019 to March 2019 by following the order passed by this Court in W.P.No.13284 of 2020 dated 11.08.2021, which hold that there is no bar under the law for SEZ to claim refund under Section 54 of the CGST Act, 2017 and issue any other writ.

For Petitioner
(In both W.Ps)

: Mr.N.Murali

For Respondents
(In both W.Ps)

: Mr.Rajendran Raghavan
Senior Standing Counsel



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COMMON ORDER

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2. The petitioner is before this Court against the Impugned Common Order-in-Appeal Nos.62 and 63 of 2021 dated 27.04.2021 passed by the Joint Commissioner of GST and Central Excise (Appeals-II), Chennai.

3. By the Impugned Common Order, the petitioner's appeal against the Order-in-Original in R/O ARN AA330920029741G (C.No.V/18/18/2020-2021-GST-RF) dated 12.09.2020 in W.P.No.26164 of 2021 and Order-in-Original in R/O ARN AA331220008378P dated 03.12.2020 in W.P.No.26166 of 2021 have been rejected.

4. Operative portion of the Impugned Common Order-in-Appeal Nos.62 and 63 of 2021 dated 27.04.2021 is extracted below:-

“11. Thus, proof of receipt of goods or services as evidenced by the specified officer of the zone is a pre-requisite for filing of refund claim by the DTA supplier. The claim for refund when made for supplies made to SEZ Unit/Developer has to be filed along with the prescribed documents. Further, no proof has been given by the appellant to the effect that their suppliers have not claimed any refund within their jurisdictional GST authorities.

12. It could be seen that the entire procedure is stipulated for a person having GST Registration making a zero-rated supply is



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eligible to claim GST refund in accordance with the provisions of the CGST Act, 2017 when the option of supply of goods or services with payment of integrated tax is exercised under claim of GST refund on tax paid.

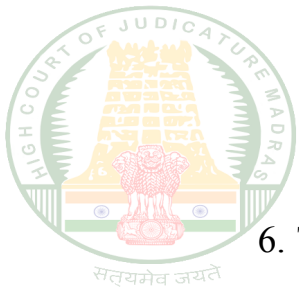
13. A harmonious reading of Section 54(3) of the CGST Act, 2017 and Section 16 & 2(5) of the IGST Act, 2017 reveals that any person doing exports is eligible to claim refund of ITC; that the second proviso to Rule 89(1) of CGST Rules, 2017 unambiguously stipulates that refund shall be claimed only by the suppliers of goods to the SEZ Unit and not by SEZ Unit. Further, Rule 89(2)(f) of CGST Rules, 2017, states that SEZ Units shall not avail ITC on the supplies received by them from non-SEZ suppliers.

14. Thus, on account of the aforesaid provisions concluded that SEZ Units/developers shall not claim refund of unutilized ITC in respect of supplies received by them from non-SEZ suppliers. The GST law facilitates the eligibility of refund claim to the suppliers who made supplies to SEZ Units/Developers with payment of tax. Accordingly, I am of the considered view that the refund claimed by the appellant is not in accordance with the provisions of the GST law and therefore liable to be rejected.

ORDER

15. In view of the foregoing facts and discussions, I reject the appeals filed by the appellant.”

5. The specific case of the petitioner is that the petitioner is engaged in manufacture of Radio Frequency (RF) Equipments and that the petitioner's unit is situated in SEZ and therefore all the supplies to the petitioner were to be made without payment of duty by the suppliers.



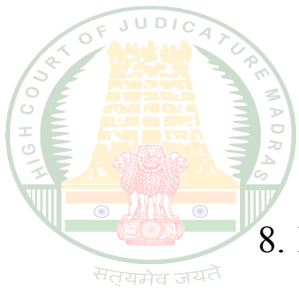
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6. The further case of the petitioner is that since the petitioner's status as

a SEZ unit located in SEZ was not reflected in the GST portal, the suppliers therefore paid GST on supplies made to the petitioner. Therefore, the petitioner claimed refund of the GST paid by the suppliers and borne by the petitioner under Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

7. Learned Counsel for the petitioner would submit that the issue is squarely covered by the decisions of the Courts rendered in the following cases:-

- i. **Platinum Holdings Private Limited, Represented by its Authorized Signatory Vs. Additional Commissioner of GST & Central Excise (Appeals-II), Chennai and another** in W.P.Nos.13284 of 2020 etc., batch dated 11.08.2021, 2021 (10) TMI 630.
- ii. **M/s.ATC Tires Private Limited, Represented by its Authorized Signatory Vs. Joint Commissioner of GST & Central Excise (Appeals), Madurai and another** in W.P (MD) No.949 of 2022 dated 08.03.2022, 2022 (4) TMI 1994.
- iii. **M/s.Thryve Digital Health LLP, Represented by its Authorized Signatory Vs. Joint Commissioner (Appeals-II) and others** in W.P.Nos.16611 and 16615 of 2023 dated 16.11.2023, 2023 (12) TMI 594.



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8. Learned counsel for the petitioner would submit that the tax was paid by mistake by the supplier on the supplies made by the petitioner and since the petitioner is a SEZ unit, it is not expected to be burdened with tax liability and therefore the petitioner is entitled for refund in terms of Section 54(1) of the CGST Act read with Explanation 2(g) to Section 54(14) of the CGST Act.

9. Learned counsel for the petitioner also drew attention to Rule 89 of the Central Goods and Service Tax (CGST) Rules, 2017 to state that merely because the supply in the hands of the supplier to the petitioner was a zero rated sale and exempted supply *ipso facto* would not mean that the petitioner was not entitled to refund of tax paid by the suppliers and borne by the petitioner.

10. On the other hand, learned Senior Panel Counsel for the respondents would submit that the Impugned Order of the Appellate Commissioner dismissing the appeals of the petitioner does not merit any interference and therefore these Writ Petitions are liable to be rejected.

11. Defending the Impugned Order, the learned Senior Standing Counsel for the respondents on the other hand would submit that the Impugned Order dated 27.04.2021 upholding the Orders-in-Original passed by the second



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respondent/first respondent does not warrant any interference as the order is

well-reasoned and within four corners of law relating to refund under Section

54 of the CGST Act, 2017 read with Rule 89(2)(f) of the CGST Rules, 2017.

12. It is further submitted that the petitioner has given misleading Statement of Facts and has made an attempt to seek a favourable order from the respondents, which has been rightly rejected and answered against the petitioner.

13. It is submitted that the units in Special Economic Zone are governed by (SEZ) a Special Scheme under Ministry of Commerce. As a part of the Government's export promotion strategy, SEZ unit is a economically privileged area and is subjected to regulations that differ from the rest of the Country, mainly to make it favorable for the inflow of the foreign exchange into India by boosting the exports and investments and is intended to promote the economy.

14. It is submitted that in India, the SEZs were introduced in 2000 for the first time. Later, a special legislation, the SEZ Act, 2005 was enacted to provide a legal framework for the scheme to operate. Subsequently, all other legislations which impacted the SEZ rules and norms were amended in line

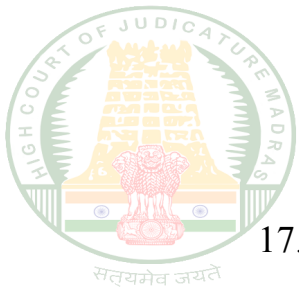


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with the SEZ Act, 2005. This included the Service Tax Law under the Finance Act, 1994, Customs Act, 1962, Central Excise Act, 1944 under previous regime. It is submitted that now under GST enactments in the current scenario also, same principal has been followed and adopted.

15. It is further submitted that Section 7 and Section 26 of the SEZ Act, 2005 grants exemption to every SEZ unit in a SEZ and developer of SEZ from taxes, duties and cess. Notification No.18/2017 IGST (Rate) dated 05.07.2017 also exempts import of services by a SEZ unit from IGST. Similarly, Notification No.64/2017-Cus exempts a unit in SEZ from IGST for import of goods into SEZ units.

16. It is submitted that the domestic procurements by SEZ are considered as “Zero-rated Supply” in the hands of the supplier. Thus, suppliers supplying goods/services to SEZ have two options i.e., either to supply under bond or LUT without payment of IGST and refund claim of Input Tax Credit of the supply or claim refund of IGST paid on such exports of goods or services to SEZ units.

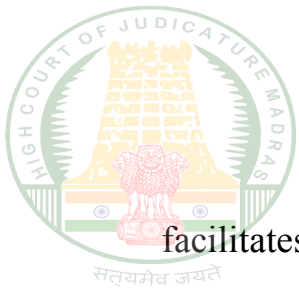


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17. Further, it is submitted that in terms of Section 16(3) of the IGST Act, 2017, any supply made to SEZ unit is zero-rated. In case, a supplier opts to pay tax on the supply to a unit in SEZ, it is the supplier who is eligible to claim refund. Similarly, Rule 89 of the CGST Rules, 2017 prescribes refund application to be made by the supplier in case of supplies to SEZ be made by the supplier. Considering these provisions, it is submitted that sanction of refund of amounts to SEZ is not available as Rule 89 of the CGST Rules, 2017 provides refund only to the supplier of goods or services to claim refund in case of supplies made to SEZ.

18. It is further submitted that under Rule 89(2)(f) of the CGST Act, 2017, the refund is available to the supplier only if tax has not been collected from the Special Economic Zone Unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both to a Special Economic Zone Unit or to the Special Economic Zone. Therefore, it is submitted that refund can be claimed by SEZ developer.

19. It is submitted that a conjoint reading of all the above provisions undoubtedly point towards a conclusion that SEZ unit/developers cannot claim any refund if the supplies received by them from non SEZ suppliers, the Act

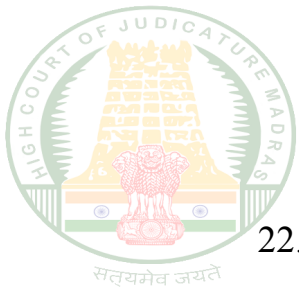


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facilitates eligibility for refund claim to the suppliers who made supplies to SEZ unit/developers with payment of tax.

20. It is submitted that there is a possibility of the supplier getting refund of IGST paid under the category 'supplies made to SEZ with payment of tax', if he shows these supplies made to the petitioner SEZ was on payment of tax. Moreover, in the transaction itself there is a wrong declaration regarding GST status of the petitioner SEZ unit. The recipient (SEZ unit) has to prove/submit declarations from his suppliers that they have not availed ITC and not got refund/will not apply for refund.

21. It is submitted that the facility of getting refund of tax paid is statutorily made available only to those tax payers who supplied goods or services to SEZ only, on payment of tax. This is to ensure that the refund of tax paid is claimed only by the suppliers to SEZ, on furnishing a declarations from their (SEZ) purchasers, to avoid duplicity of the claims, as there may be a situation where the SEZ unit gets supplies of goods/services from multiple number of vendor tax payers, spread from over different places, and it is not possible for the department to track their refund claims, against the supplies made to such SEZ unit, with payment of tax.



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22. That apart, it is submitted that the onus is on the part of the petitioner

to prove that the petitioner was indeed entitled to refund.

23. I have considered the submissions of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the Impugned Common Orders confirming the rejection of refund claim of the petitioner.

24. I have also considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the provisions of the Special Economic Zone Act, 2005 [SEZ Act, 2005], the provisions of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017) and Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017).

25. I have also considered the 3 decisions cited by the learned counsel for the petitioner in **ATC Tires Private Limited Vs. The Joint Commissioner of GST & Central Excise (Appeals-II) and another**, 2022 (4) TMI 1194 wherein a reference was made to the decision of this Court rendered in

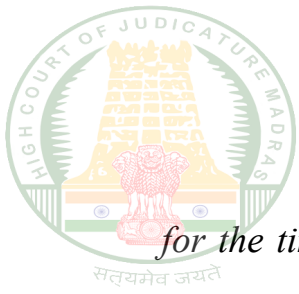


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Platinum Holdings Private Limited Vs. Additional Commissioner of GST and Central Excise (Appeals-II), 2021 (10) TMI 630 and the subsequent decision of this Court rendered in Thryve Digital LLP Vs. The Joint Commissioner (Appeals-II) and others, 2023 (12) TMI 594.

26. At the outset, it has to be stated that these 3 decisions are not directly applicable to the facts of the present case. Nevertheless, I am of the view that the refund of taxes paid by the supplier on the supplies effected to the petitioner are to be allowed in view of the special dispensation under the Special Economic Zone Act, 2005 [SEZ Act, 2005], subject to a factual determination that the supplier of goods has not availed the benefit of refund under the provisions of the IGST Act, 2017 and the CGST Act, 2017 as the supply of goods and service are exempt from payment of tax both under IGST Act, 2017 and the SEZ Act, 2005, it being a special enactment. I shall explain the position.

27. The provisions of the SEZ Act, 2005 have an overriding effect over the other enactments. This is evident from a reading of Section 51 of the SEZ Act, 2005. The phrase used in Section 51 of the SEZ Act, 2005 is “*notwithstanding anything inconsistent therewith contained in any other law*



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for the time being in force or in any instrument having effect by virtue of any law other than the said Act". Section 51 of the SEZ Act, 2005 reads as under:-

“51. Act to have overriding effect:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

28. Under section 7 of the SEZ Act, 2005, any goods or services which are exported out of or imported into or procured from a Domestic Traffic Area (DTA) exempt from the enactments specified in the First Schedule. They are subject to such terms, conditions and limitations, as may be prescribed in the enactments specified in the First Schedule.

29. Following enactments are specified in the First Schedule of the SEZ Act, 2005:

Sl.No.	Enactments
1	The Agricultural Produce Cess Act, 1940 (27 of 1940)
2	The Coffee Act, 1942 (7 of 1942)
3	The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946)
4	The Rubber Act, 1947 (24 of 1947)
5	The Tea Act, 1953 (29 of 1953)
6	The Salt Cess Act, 1953 (49 of 1953)
7	The Medicinal and Toilet Preparations (Excise Duties) Act,



Sl.No.	Enactments
	1955 (16 of 1955)
8	The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)
9	The Sugar (Regulation of Production) Act, 1961 (55 of 1961)
10	The Textiles Committee Act, 1963 (41 of 1963)
11	The Produce Cess Act, 1966 (15 of 1966)
12	The Marine Products Export Development Authority Act, 1972 (13 of 1972)
13	The Coal Mines (Conservation and Development Act, 1974 (28 of 1974)
14	The Oil Industry (Development) Act, 1974 (47 of 1974)
15	The Tobacco Cess Act, 1975 (26 of 1975)
16	The Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978)
17	The Sugar Cess Act, 1982 (3 of 1982)
18	The Jute Manufactures Cess Act, 1983 (28 of 1983)
19	The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of 1986)
20	The Spices Cess Act, 1986 (11 of 1986)
21	The Research and Development Cess Act, 1986 (32 of 1986)

30. To understand Section 7 of the SEZ Act, 2005, it can be read as under:-

(a)	(b)	(c)
Exported out of, or	Imported into, or	Procured from a Domestic Traffic Area (DTA)
by a		



(a)	(b)	(c)
(i) a unit in a Special Economic Zone: or	(ii) a Developer of Special Economic Zone	

31. For the sake of clarity, Section 7 of the SEZ Act, 2005 is also reproduced below:-

“7. Exemption from taxes, duties or cess:-

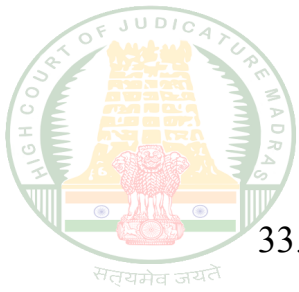
Any goods or services exported out of, or imported into, or procured from the Domestic Traffic Area by,

(i) a Unit in a Special Economic Zone; or

(ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from enactments specified in the First Schedule.”

32. Thus, under Section 7 of the SEZ Act, 2005, there is exemption from payment of taxes, duties or cess under the enactments specified in the 1st schedule to the Act, which is subject to such terms and conditions as may be prescribed under the Act. It has to be borne in mind that SEZ Act is an enactment which was enacted in 2005. At that point of time, independently other incentives were already operating in the Central Excise Rules, 2002.

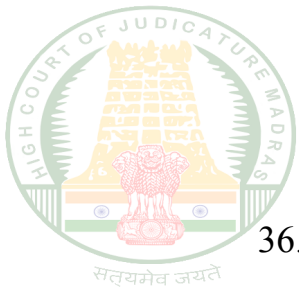


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33. To implement the objective of Section 7 of the SEZ Act, 2005, Section 16 of the IGST Act, 2017 and Section 54 of the CGST, 2017 have been incorporated into the respective enactments after GST Laws came into force with effect from 01.07.2017. Section 54 of the CGST, 2017 is a generic provision. It applies to different kinds of refunds. It is also an enabling provision for refund of Input Tax Credit (ITC) and Tax under the IGST Act, 2017.

34. As per Section 54(1) of the CGST, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the “**relevant date**” in such form and such manner as may be prescribed.

35. As per Explanation 1 to Section 54 of the CGST Act, 2017, refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised Input Tax Credit as provided under sub-section (3) to Section 54 of the CGST Act, 2017.



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36. Under section 16(1)(a) of the IGST Act, 2017, export of goods or services or both is a “Zero-rated Supply”. Under section 16(1)(b) of the IGST Act, 2017, supply of goods and/or services by a supplier located in a Domestic Tariff Area (DTA unit) to a unit located in a SEZ or a SEZ developer for authorised operation is also a “Zero-rated Supply”. For the sake of clarity Section 16(1) of the IGST Act, 2017 is reproduced below:-

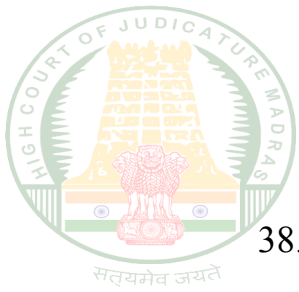
“16. Zero-rated supply:

(1) “Zero-rated supply” means any of the following supplies of goods or services or both namely:-

(a) export of goods or services or both; or

(b) supply of goods or services or both [for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.”

37. As per section 16(2) of the IGST Act, 2017, a DTA unit making such a “Zero-rated Supply” under Rule 16(1)(b) of the IGST Act, 2017 either to a “Special Economic Zone Developer” and/or a “Special Economic Zone Unit” for authorised operations is entitled to avail Input Tax credit on the tax paid on goods and/or services used for making such a “Zero-rated Supply” and claim refund.



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38. Section 16(2) of the IGST Act, 2017 is, however, subject to limitation

in Section 17(5) of the CGST Act, 2017. Section 17(5) of the CGST Act, 2017, prescribes limitation for availing of Input Tax Credit by the supplier. For the sake of clarity, Section 16(2) of the IGST Act, 2017 and Section 17(5) of the CGST, 2017 are reproduced below:-

Section 16(2) of the IGST Act, 2017	Section 17(5) of the CGST Act, 2017
(2) Subject to the provisions of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.	(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:- [(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:- A) further supply of such motor vehicles; or B) transportation of passengers; or C) imparting training on driving such motor vehicles; (aa) vessels and aircraft except when they are used- i. for making the following taxable supplies, namely:- A) further supply of such vessels or aircraft; or B) transportation of passengers; or C) imparting training on navigating such vessels, or



Section 16(2) of the IGST Act, 2017

Section 17(5) of the CGST Act, 2017

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D) imparting training on flying such aircraft;

ii. for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance insofar as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

PROVIDED that the input tax credit in respect of such services shall be available-

i. where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

ii. where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

i. food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance.



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Section 16(2) of the IGST Act, 2017

Section 17(5) of the CGST Act, 2017

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PROVIDED that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

ii. membership of a club, health and fitness centre; and

iii. travel benefits extended to employees on vacation such as leave or home travel concession:

PROVIDED that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation: For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or

**Section 16(2) of the IGST Act, 2017****Section 17(5) of the CGST Act, 2017**

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alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

[(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013);]

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

39. In this case, the dispute is not relating to limitation under Section 17(5) of the CGST Act, 2017. Therefore, we need not delineate on this aspect.

40. Under sub-section (3) to Section 16 of the IGST Act, 2017, a registered person making a “Zero-rated Supply” of goods or services, is entitled to make supply without payment of integrated tax under the IGST Act, 2017



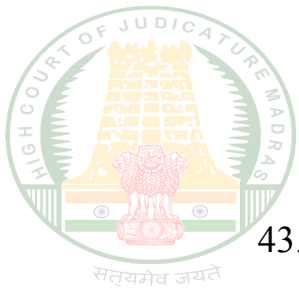
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either under bond or letter of undertaking. Such a person is eligible to claim refund of “unutilised Input Tax Credit” on supply of goods or services or both.

41. As per Section 54(3) of the CGST, 2017 also, a registered person may claim refund of any “unutilised Input Tax Credit” at the end of any “Tax Period”, in case of :

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

42. Under Section 16(4)(i) of the IGST Act, 2017, the Government may by notification, on the recommendation of the GST Council and subject to such conditions, safeguards and procedures, specify the class of person who may make zero-rated supply on payment of integrated tax and claim refund of tax so paid. This Scheme is also reflected in the definition of the expression “refund” in Explanation (1) to Section 54 of the CGST Act, 2017 when read with the definition of the expression “**relevant date**” in Explanation 2 to Section 54 of the CGST Act, 2017.



43. To implement the requirement of Section 16(4)(i) of the Central

Government has issued Notification No.1/2023-I.T., dated 31.07.2023. The Central Government has also notified goods or services (except the goods specified in column (3)) to the Table attached to it as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid. Section 16(4)(i) of the IGST Act, 2017 is reproduced below:-

“Section 16. Zero-rated supply

(1)

(2)

(3)

(4) **The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-**

- i. **a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid.**
- ii. **A class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”**

44. The aforesaid provisions are thus intended to facilitate a supplier making supply of goods or services to claim refund of unutilised input tax credit on supply of goods or services or both to the either to a “Special Economic Zone Developer” and/or a “Special Economic Zone Unit”, without payment of integrated tax, under bond or letter of undertaking in accordance



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with the provisions of Section 54 of the CGST Act, 2017. The said notification

came into force with effect from the 1st day of October, 2023. Relevant portion

of the above Notification reads as under:-

*“In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the “said Act”), the Central Government on the recommendations of the Council, hereby notifies all goods or services (except the goods specified in column (3) of the TABLE below) as the class of **goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid:-***

S.No.	Chapter / Heading / Sub-Heading / Tariff Item	Description of Goods
1	2	3
*	*	*

Explanation. -

(i) In this Table, “tariff item”, “sub-heading”, “heading” and “chapter” shall mean respectively a tariff item, sub-heading, heading and chapters as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(iii) For the purposes of this notification, the phrase “brand name” means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using



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such name or mark with or without any indication of the identity of that person.

2. This notification shall come into force with effect from the 1st day of October, 2023.

[Notification No. 1/2023-I.T., dated 31-7-2023]

*(*Left blank as the goods/service specified therein may not be relevant.)”*

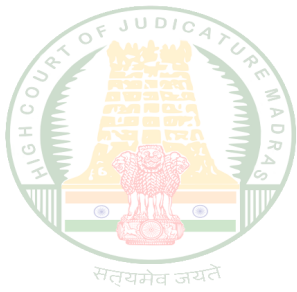
45. The above notification was amended by Notification No.5/2023-I.T., dated 26.10.2023. Text of Notification No.5/2023-I.T., dated 26.10.2023 is reproduced below:-

“In exercise of the powers conferred by sub-section (4) of section 16 of Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 1/2023-Integrated Tax, dated the 31st July, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 578(E), dated the 31st July, 2023, namely :-

*In the said notification, for the portion commencing with the words “**all goods or services**” and ending with the words “**the refund of tax so paid :**”, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2023, namely :-*

“(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services



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(except the goods specified in column (3) of the TABLE below) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:”

Explanation. - *For the purpose of this clause :—*

(i) the term “authorised operations” shall have the same meaning as defined in clause (c) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),

(ii) the term “Developer” shall have the same meaning as defined in clause (g) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),

(iii) the term “Special Economic Zone” shall have the same meaning as defined in clause (za) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),

(iv) the term “unit” shall have the same meaning as defined in clause (zc) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005).

2. This notification shall come into force on the date of its publication in the Official Gazette.

[Notification No. 5/2023-I.T., dated 26-10-2023] ”

46. The “supplier” of goods and/or service person is thus also eligible to claim refund of unutilised Input Tax Credit used for supply of goods or services or both, in accordance with the provisions of Section 54 of the CGST, 2017 and the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

47. This is by way of refund of Input Tax Credit under Section 16(3) of the IGST Act, 2017 read with Section 54(3) of the CGST Act, 2017 and Rule



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89 and Rule 91 of the CGST Rules, 2017. Thus, a supplier of goods or services or both as the case may be, is entitled to supply such goods or services without payment of Goods and Service Tax and associated cess etc. and claim refund of unutilized input tax credit on such supply. The ostensible reason to justify such refund is to not to burden the exports with duties.

48. The limitation under these enactments will not inhibit the petitioner from claiming refund of tax, cess and duties paid on the supplies made to the petitioner. The only care that needs to be taken note of is that there is no dual benefit on the same supply both in the hands of the petitioner and its suppliers.

49. For the sake of clarify, Section 16(3) of the IGST Act, 2017 and Section 54(3) of the CGST Act, 2017 are reproduced below:-

Section 16(3) of the IGST, 2017	Section 54(3) of the CGST, 2017
16. Zero-rated supply: (1) (2) (3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the	54. Refund of tax.— (1) (2) (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period: Provided that no refund of unutilised input tax credit shall be allowed in cases other than- i. zero-rated supplies made without payment of tax;



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Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

ii. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output put supplies supp (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

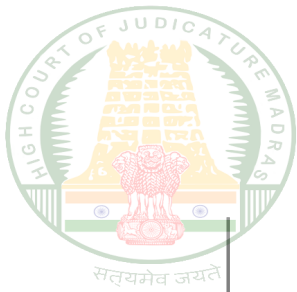
(14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—

For the purposes of this section,-

(1) **refund** includes **refund of tax paid on zero-rated supplies of goods or services or both** or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) **“relevant date”** means—



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(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

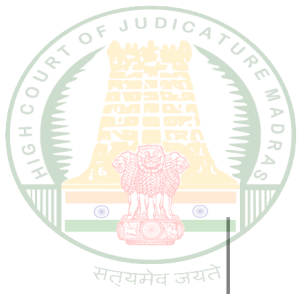
(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies.]

(c) in the case of services exported out of India where a



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refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

- i. receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
- ii. issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

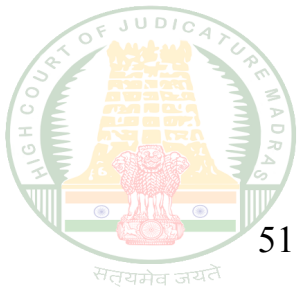
(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the



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	final assessment thereof; (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and (h) in any other case, the date of payment of tax.
Section 16(4)(i) of IGST, 2017 (4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify- - a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid. - A class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.	

50. Thus, a supplier of goods or services or both as the case may be, is not only entitled to supply such goods or services without payment of tax but also on payment of the IGST Act, 2017. In case, tax is paid on supply, the supplier is entitled to claim refund of ITC under the Scheme.



51. A recipient of goods or service is also entitled to claim refund. As

per Clause (g) to Explanation 2 to Section 54 of the CGST Act, 2017, in the case of person other than the supplier of goods or services, “**relevant date**” for filing refund claim is the date of receipt of goods or services or both by such person. Thus, even a person other than the supplier of goods and/or service is entitled to claim refund. This definition is similar to the definition of “**relevant date**” in Section 11 B of the Central Excise Act, 1994, Section 27 of the Customs Act, 1962.

52. Rule 89(2)(f) of the CGST Rules, 2017 is reproduced below:-

“89. Application for refund of tax, interest, penalty, fees or any other amount:

- (1)
- (2)
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) a declaration to the effect that the tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer.”



53. Thus, even a person who has borne the incidence of tax which was

paid by his supplier can also file a refund claim.

54. Section 11(b) of the Central Excise Act, 1944, Section 27 of the Customs Act, 1962 and Section 54 of the CGST Act, 2017 are reproduced below for comparison:-

Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
Refund of tax.— (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such	Claim for refund of duty. — (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in	Claim for refund of duty. — (1) Any person claiming refund of any duty or interest,— (a) paid by him; or (b) borne by him, may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest. Provided that where



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
refund in the return furnished under section 39 in such manner as may be prescribed. (2) (3) (14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees. Explanation.— For the purposes of this section,— (1) refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax	section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person : Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this subsection as amended by the said Act and the same shall be dealt with in accordance with the provisions of subsection (2) substituted by that Act :] [Provided further that] the limitation of [one year] shall not apply	an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under subsection (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of subsection (2): Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest. Explanation.— For the purposes of this sub-section, “the date of payment of duty or interest” in relation to a person, other than the importer, shall be construed as “the date



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
credit as provided under sub-section (3). (2) relevant date means- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,— (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or (ii) if the goods are exported by land, the date on which such goods pass the frontier; or (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;	where any duty has been paid under protest. (2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund : Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -	of purchase of goods” by such person. (1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty or interest, has not been passed on by him to any other person. (1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:— (a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2)



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished; (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of— (i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or (ii) issue of invoice, where payment for the	(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise]; (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act; (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person; (e) the duty of excise borne by the buyer, if he	of section 25, the limitation of one year shall be computed from the date of issue of such order; (b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction; (c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment. (2) If, on receipt of any such application, the



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
services had been received in advance prior to the date of issue of the invoice; (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction; (e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;] (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the	had not passed on the incidence of such duty to any other person; (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify : Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person. (3) Notwithstanding anything any judgment, decree, order or direction of the to the contrary contained in Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be	Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund : Provided that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under the foregoing provisions of this subsection shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to – (a) the duty and



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
date of adjustment of tax after the final assessment thereof; (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and (h) in any other case, the date of payment of tax.	made except as provided in sub-section (2). (4) Every notification under proviso to sub-section (2) shall be laid before each clause (f) of the first House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect,	interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use; (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; (d) the export duty as specified in section 26; (e) drawback of duty payable under sections 74 and 75; (f) the duty and interest, if any, paid on



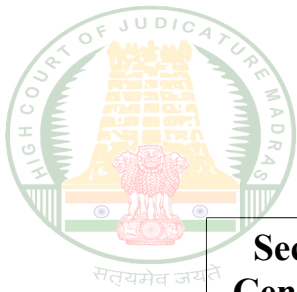
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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
	as the case may be, but without prejudice to the validity of anything previously done thereunder. (5) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.] [Explanation. — For the purposes of this section, - (A) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (B) “relevant date” means, -	such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify : Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person. (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
	(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or (ii) if the goods are exported by land, the date on which such goods pass the frontier, or (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India; (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other	refund shall be made except as provided in sub-section (2). (4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such



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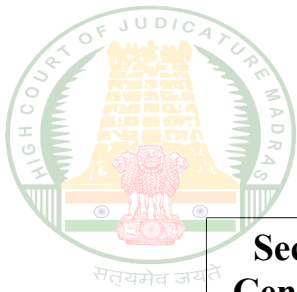
Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
	similar process, in any factory, the date of entry into the factory for the purposes aforesaid; (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory; (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period	modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder. (5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette. SECTION 27A. Interest on delayed refunds. — If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of



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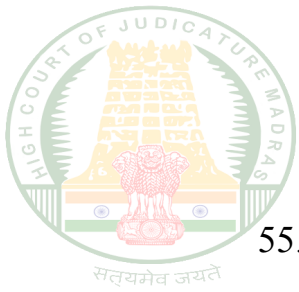
Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
	such rate is reduced, the date of such reduction; [(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;] in the case of goods which are exempt from payment of duty (eb) this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof; (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;] (f) in any other case, the date of payment of duty.]	application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five percent and not exceeding thirty percent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty : Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to



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Section 54 of the Central Goods and Services Tax Act	Section 11B of the Central Excise Act	Section 27 of the Customs Act
		the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty. Explanation. — Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

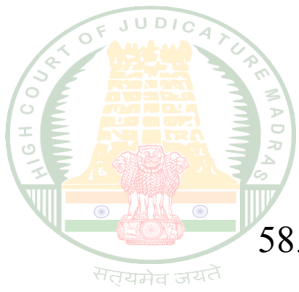


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55. A reading of the above provisions make it clear that they are *pari-materia*. Under Section 11B(1) of the Central Excise Act, 1944, an applicant who wants refund of excise duty has to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person.

56. Under clause (e) to *Proviso* to Section 11(2) of the Central Excise Act, 1944, where it is established duty has been paid in excess, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person.

57. The definition of “**relevant date**” in clause B(e) to Explanation to Section 11 of the Central Excise Act, 1944, also makes it clear that refund can be made by a person, other than the manufacturer, the date of purchase of the goods by such person in the case of goods which are exempt from payment of duty.

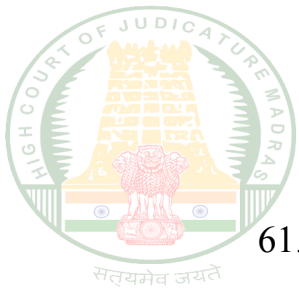


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58. Similarly, under Section 27(1)(b) of the Customs Act, 1962, any person who has borne incidence of duty can file a refund claim before expiry of one year from the date of payment of duty or interest. As per Explanation to Section 27(1) of the Customs Act, 1962, in relation to a person, other than the importer, the date of payment of duty or interest shall be the date of purchase of goods by such person.

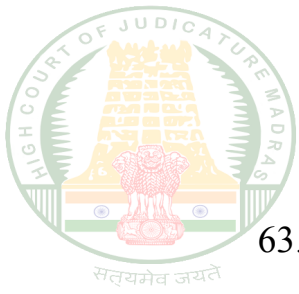
59. Clause (f) to Section 27(2) of the Customs Act, 1962, the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under Section 27(1) of the said Act shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.

60. Thus, if supplies of goods and/or services or both are made to a Special Economic Zone or a Developer of a Special Economic Zone, such supplies are exempted from payment of taxes, cess and other duties in the hands of the supplier. Section 54(3) of the CGST, 2017 is, however subject to the provisions of sub-section (10) of the CGST, 2017.



61. Therefore, I see no impediment under the scheme to allow refund of tax borne by the petitioner on the supply made by the supplier to the petitioner during the period in dispute. Independently, the supplier may or may not have been entitled to refund of input tax credit under Section 16(3) of the IGST Act, 2017 read with section 54(3) of the CGST Act, 2017 in absence of similar notification to Notification No.1/2023-I.T., dated 31.07.2023 as amended by Notification No.5/2023-I.T., dated 26.10.2023.

62. I therefore set aside the Impugned Common Orders dated 27.04.2021 and remit the case back to the 2nd respondent to pass a fresh order on merits allowing the refund claims filed by the petitioner together with interest thereon in accordance with law subject to petitioner furnishing a disclaimer from the supplier(s) that the supplier(s) as the case may be have neither claimed the benefit of refund of refund either under Section 16(3) of the IGST Act, 2017 or under Section 16(4) of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017. The petitioner may be heard before final orders of the *de novo* proceedings. This exercise shall be carried out by the 2nd respondent within a period of 60 days from the date of receipt of a copy of this order.



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63. These Writ Petitions stand allowed with the above observations. No

costs. Connected Writ Miscellaneous Petition is closed.

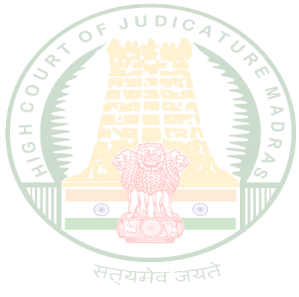
02.01.2025

Neutral Citation: Yes / No

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To:

- 1.The Joint Commissioner of GST and
Central Excise (Appeals-II),
Newry Towers, 2nd Floor,
Plot No.2054,
I Block, II Avenue,
Anna Nagar, Chennai – 600 040.
- 2.The Assistant Commissioner of Central Tax,
Tambaram Division,
Chennai GST Outer Commissionerate,
Plot No.40, Ranga Colony,
Rajakilipakkam, Chennai – 600 073.



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C.SARAVANAN, J.

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Pre-delivery Common Order in
W.P.Nos.26164 and 26166 of 2021

02.01.2025