

Input Tax Credit of Customs Duty paid under EPGC Scheme?

In GST Act, 2017, the Central Government has taken care of perhaps all situations wherein the CENVAT Credit of excise duty paid in inputs / capital goods or service tax paid on various input services in earlier laws is transferred as input tax credit in electronic credit ledger maintainable under GST law. Sections 139, 140, 141 and 142 of CGST Act, 2017 have been framed wherein the provisions for transfer of credit or availment of credit has been laid down. No doubt these provisions are quite exhaustive, still there may be situations where trader is not able to avail the credit, particularly in the absence of certain provisions.

In Customs Tariff, there are number of notifications granting exemption from payment of additional duty leviable under section 3(1) or section 3(2) of the Customs Tariff Act, 1985. Such exemptions normally pertain to import of goods which are used for fulfilling export obligations. For example, exemption notifications have Export Promotion Capital Goods Scheme (EPCG). The exemptions in these notifications have been granted subject to fulfilment of export obligation, the period of which may vary depending upon the extent of export obligation or the extent of exemption being availed. The period of export obligation is extendable looking into the shortfall in export obligation subject to other terms and conditions.

The importer, at the time of clearance, is required to give a declaration before customs, binding himself to pay an amount equal to the duty forgone in case of non-compliance of conditions of notification. In other words, the importer is required to pay the duty forgone, if he is not able to meet the export obligation.

The same is the position in respect of other exemption notifications, like those issued under Advance Authorization Scheme. There are examples where the goods or capital goods have been imported in the period before 1 July 2017 i.e. prior to the GST regime. The period of export obligation is spread for up to next twelve years. An importer has already imported the goods with an intent to use the same in export products and to fulfil export obligation. Now at this point of time, he realizes that he is not in a position to fulfil the export obligation, say for any reason, and is prepared to pay the duty forgone on his own.

The question is whether he can avail the input credit of the duty now to be paid.

Section 15 of the Customs Act, 1962 relates to the date of determination of rate of duty and tariff valuation of imported goods. The same is reproduced as under: -

“Date for determination of rate of duty and tariff valuation of imported goods. —

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, —

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post”

In view of the above, the importer will have to pay the duty as applicable on the date on which a bill of entry is filed or the date of payment of duty. The provisions of section 15(1)(b) of the Customs Act, 1962 are not applicable to goods cleared under aforesaid notification. This means that the importer has to pay additional duty of customs under sections 3(1) and 3(2) as applicable on the date of bill of entry.

The input tax has been defined at section 2(62) of the CGST Act, 2017. The same is as under: -

“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;*
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;*
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;*
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*

but does not include the tax paid under the composition levy.”

Further, Rule 36(1) of CGST Rules, 2017 is also given as under: -

“Documentary requirements and conditions for claiming input tax credit.

- (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.”

The above provisions make it clear that under GST credit of integrated tax paid on imports is allowed. It does not allow the credit of additional duty paid under sections 3(1) and 3(2) of the Customs Act, 1962. The transitional provisions as mentioned hereinabove also do not cover this situation. An importer is not in a position to avail

the input tax credit of customs duty so paid, the credit of which was otherwise available, had there been the old laws continued to be there.

There needs to be some provision in GST for availing credit of tax so paid, as input tax credit (ITC) is the backbone of the GST regime. Absence of provision is against the very essence of Value Added Tax. Simply because a provision is not there in GST, an importer has to suffer.