

IMPORTANT GST UPDATES



Issued in case of M/S. Balaji Exim Versus Commissioner, CGST & ORS by Delhi High Court | Order No: 10407/2022 | 10-03-2023

Ruling

Mere allegations of availing Fake Credit cannot be a ground for rejecting the refund applications unless it is established through conclusive findings.

Observations & Findings

The petitioner M/S. Balaji Exim had filed its refund application seeking a refund of the unutilized Input Tax Credit (ITC) amounting to Rs. 72,03,961, which comprised Integrated Goods and Service Tax (IGST) and Cess. The respondent issued a deficiency memo stating that the supporting documents were not uploaded on the GST portal. The petitioner filed another application dated 23.09.2020 along with all documents in support of its refund application. It was acknowledged by the respondent on 01.10.2020.

A search was conducted by the officers of Central GST, Anti Evasion Branch, Delhi West Commissionerate on the premises of the petitioner on 21.10.2020. The petitioner (its proprietor) was summoned to the office of the respondent on 23.10.2020 to tender certain documents. The petitioner wrote several letters to the respondent requesting for early disposal of his refund applications. However, his requests were not acceded to.

In the meantime, the petitioner became aware of the allegations that its supplier had issued fake invoices, and its ITC was blocked. The supplier had moved the High Court of Calcutta by filing a writ petition seeking to unblock of its Electronic Credit Ledger (ECL).

Show cause notice dated 04.06.2021 was issued by the respondent to the petitioner proposing to reject the petitioner's refund applications. The show cause notice indicated that the respondent had sought a report regarding the legitimacy and genuineness of the export of goods from the Customs Station, Kolkata, which were purchased by the petitioner from M/s Shruti Exports who was being investigated by DGGI in connection with fake invoices allegedly issued by it.

The petitioner responded to the show cause notice. The petitioner was also afforded a personal hearing by the respondent. During the course of the proceedings, the petitioner also submitted additional documents in support of its refund claim.

The Appellate Authority held that although the petitioner was in possession of the tax invoices, it could not be said that the petitioner had received the goods. Therefore, one of the conditions as stipulated in Section 16(2) of the Central Goods & Services Tax, 2017 – the taxpayer has received the goods or services or both – was not satisfied. The Appellate Authority concluded that the present case was one of “goodless supply on the strength of fake invoices”.

The court noted that the petitioner's refund applications were rejected on a mere apprehension that its supplier had issued fake invoices. There is no conclusive finding on the basis of any cogent material that the invoices issued by M/s Shruti Exports to the petitioner are fake invoices.

The court clarified that in the event the respondents are able to find material to establish the allegations regarding the non-supply of any goods by M/s Shruti Exports to the petitioner, it would be open for the respondents to initiate such action as may be warranted in accordance with the law.