

IMPORTANT GST UPDATES



Issued in case of Vijay Flexi Packaging Industries by AAR Tamil Nadu
Advance Ruling No.106/AAR/2023 | Date: 05-09-2023

Ruling

No ITC Allowed on Payment of BCD, CVD, SAD on Non-Fulfilment of EPCG Obligation

Observations & Findings

The Applicant, Vijay Flexi Packaging Industries, operates as a partnership firm specializing in the manufacturing of printed poly packing materials and had imported machinery in 2011 under the Export Promotion Capital Goods (EPCG) Scheme. They benefitted from concessional duty under the EPCG Scheme for the import of capital goods, as authorized by the Assistant Director General of Foreign Trade, Madurai, through an authorization letter valid for eight years, ending in 2019. Due to unforeseen circumstances, the Applicant was unable to fulfill the export obligation outlined in the EPCG scheme. Consequently, they remitted the duty amount along with interest.

In seeking further clarification, the Applicant approached the Authority for Advance Ruling, questioning whether the payment of Basic Customs Duty (BCD), Special Additional Duty (SAD) made on non-fulfillment of EPCG obligations could be considered as Input Tax Credit under the GST Act.

The State Jurisdiction Officer provided remarks on the issue, highlighting the need for the Applicant to specify whether they had filed any revised returns within the stipulated time frame under Section 142(9)(2) of CGST. Additionally, critical details such as the status of the machinery and its usage, including any depreciation claimed, were absent, impacting the determination of eligibility for Input Tax Credit as per CENVAT credit Rules.

The authority noted that Rule 3 of the Cenvat Credit Rules permits the credit of additional duties, such as Countervailing Duty (CVD) and Special Additional Duty (SAD), paid under Section 3 of the Customs Tariff Act, 1975. However, the landscape changed with the introduction of GST Laws on July 1, 2017, where the levies of CVD and SAD of Customs were incorporated into GST.

In the present case, the imports pertain to a period before July 1, 2017, and the duties applicable at the time of import were duly paid by the Applicant. However, under the GST regime, concerning imported goods, the definition of Input tax and input tax credit, as outlined in Section 2 of the GST Act, 2017 explicitly includes only Integrated Goods and Services Tax (IGST) charged on imports of goods. The GST Law does not provide any provision for availing credit of CVD and SAD.

For the Applicant, Basic Customs Duty (BCD), Countervailing Duty (CVD), Special Additional Duty (SAD), along with interest, has been paid due to the non-fulfillment of prescribed export obligations on the import of capital goods under the Export Promotion Capital Goods (EPCG) scheme. This scheme began before the implementation of GST and concluded after the implementation of GST.

In light of the above considerations, the AAR ruled that the payment of Basic Customs Duty (BCD), Countervailing Duty (CVD) and Special Additional Duty (SAD) made on non-fulfillment of export obligations under the EPCG scheme cannot be claimed as Input Tax Credit under the GST Act, 2017.