

Supply of goods to or from Duty Free Shops not liable to GST: Allahabad HC

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Summary

The Allahabad High Court (HC), dismissing a Public Interest Litigation (PIL)¹, filed before it held that supply of goods either to or from Duty Free Shops (DFS) located at arrival or departure terminal of international airport is not liable to tax under the Integrated Goods and Services Tax Act, 2017 (IGST 2017). Further, the HC held that accumulated unutilised input tax credit (ITC) is also refundable.

Facts of the case

- The Petitioner² filed a PIL before the Allahabad HC to ensure that the provisions of the GST laws are implemented in proper manner on the DFS located at Lucknow International Airport.
- The Petitioner alleged that DFS has been operating at both the arrival and departure terminal of the Airport since 2004. Further, the operations of these shops are governed in accordance with the provisions of the Customs Act 1962 and the GST laws.

Petitioner's contentions

- The petitioner argued that the provisions of GST law are being misinterpreted, and the DFS operated are currently enjoying various exemptions causing severe loss of revenue to the public exchequer.

¹ Petition in public interest no. P.I.L. CIVIL No. 12929 of 2019 dated 3 May 2019

² Atin Krishna

- The Petitioner submitted that a transaction must be liable to IGST the moment the goods cross territorial waters of India. Therefore, it was argued that the supply of imported goods to the DFS should be subjected to tax³.
- Further, it was argued that DFS is incorrectly permitted to claim refund of accumulated ITC⁴ on the ground that the sale made to international passengers at the departure terminal is exports of goods, and hence zero-rated. Further, it was contended that the sale invoice issued to these passengers is incorrectly being considered as proof of exports of goods.
- The sale made to international passengers at the arrival terminal should be considered as intra-state supply of goods⁵, and accordingly attract GST⁶ up to 31 January, 2019.

Contention of DFS

- **Export of goods:** The DFS, relying on the decisions of the Hon'ble Supreme Court⁷, submitted that supply of goods to and from the DFS is before the clearance of imported goods for home consumption/export. Accordingly, it contended that the supply of goods from DFS at international airports is to be treated as export of goods. It was also submitted that the definition of 'export' and 'export of goods' under the customs and GST law is the same.
- **To be treated as inter-state supply:** The DFS located in the custom airport and the custom warehouse are both part of the custom area⁸. The supply of imported goods to and from the DFS do not cross the customs frontier, and hence these supplies should be an inter-state supply⁹.
- **Taxable event for purpose of customs duty:** The taxable event for the purpose of levy of customs duty is the time when the goods cross the customs barrier and

³ U/s 5 of the Integrated Goods and Services Tax Act, 2017 (IGST Act)

⁴ Of the GST paid by it on rental payments made to the Airport Authority of India and procurement of domestic goods and services

⁵ U/s8 (1) of the IGST Act

⁶ U/s9 (1) of the CGST Act

⁷ M/s Hotel Ashoka (India Tourism Development Corporation Limited) Vs. ACCT and Anrs (Civil Appeal No. 2560 of 2010), Sandeep Patil Vs. Union of India & Anrs, Central Government's order dated 31.08.2018 bearing No. 634/2018- CUS (WZ)/ASRA/Mumbai

⁸ As defined under Section 2 (11) of the Customs Act, 1962

⁹ In accordance to Section 7 (2) of the IGST Act

the bill of entry for home consumption is filed. Thus, it was argued that both custom duty and IGST is not payable when goods are imported from outside India and are kept in customs warehouse and exported therefrom.

- **Supply of warehoused goods to arriving passengers:** It was argued that the warehoused goods are supplied to the international arriving passengers before clearance for home consumption. Thus, the arriving passengers pays applicable duties of customs while crossing the customs frontier. The goods being a part of the passenger's bonafide baggage are cleared for home consumption by the passenger¹⁰ and not by the DFS, hence no customs duty is payable by the DFS and therefore no IGST is payable¹¹.
- **Supply of warehoused goods to departing passengers:** It was submitted that the supply of warehoused goods to departing passengers is never cleared for home consumption and accordingly, the levy of customs duty and IGST does not arise.

HC's observations and order

- The HC distinguished the cases relied by the Petitioner and observed that in case of a foreign going passenger, the passenger acts as a carrier and the goods are appropriated outside India.
- Thus, the HC dismissing the PIL, held that the exemption under the GST on goods supplied to and from DFS is eligible to DFS, and the claims of any accumulated unutilised ITC are refundable to the DFS.

Our comments

This is a welcome ruling by the Allahabad High Court and should provide relief to the buyers as well the duty-free shop operators. At this juncture, it is imperative to note that the Madhya Pradesh HC had given a contradictory ruling on a similar matter stating that such transactions shall be liable to GST. Further, Authority for Advance Ruling (AAR) has also held that the supply of goods to outbound passengers from DFS at airports shall be liable to GST. Thus, it has become imperative on part of the

¹⁰ Under the Baggage Rules, 2016

¹¹ Under proviso of Section 5 (1) of the IGST Act read with Section 12 of the Customs Act 1962,

government to issue appropriate clarification to avoid further litigation on this account.

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