

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s. ITC Limited - SBU Packaging & Printing,
P.O. Box No.2277,
Thiruvottiyur,
Chennai – 600 019.

2. **FACTS:**

Querist intends to apply for an EPCG licence for import of capital goods. In this connection, they have stated that they may opt for payment of IGST while importing the machinery, in which case, their export obligation will be limited to basic Customs duty together with Social Welfare Cess (six times of duty saved). At the same time, para 5.01 of the Policy states that when IGST is paid without availing the exemption, then, the input tax credit also is not to be taken for the purpose of excluding the IGST component from the duty saved amount.

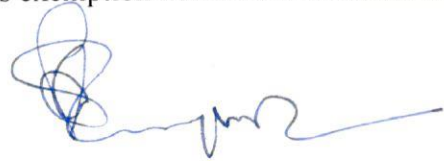
3. **QUERY:**

In this regard, querist would like to seek clarification as to the exact scope of this provision.

4. **OPINION:**

4.1 As far as the Foreign Trade Policy is concerned, it is clear that if IGST is paid without availing the exemption, then, for computing the duty saved amount the relevant IGST together with compensation cess, if any, will not be taken into consideration. However, this is subject to the condition that input tax credit of the above payments are also not availed by the importer.

4.2 It is to be noted that implementation of EPCG scheme is governed by the Foreign Trade Policy provisions, the import authorisation issued in terms of the above policy and also the relevant customs notifications issued specifically providing for duty exemption under Customs Act in respect of such EPCG authorisations. In this regard, it may be seen that the relevant customs notification under this scheme is 16/2015-Customs dated 01.04.2015, as amended. The opening para of this exemption notification reads as follows:



...2

“Exemption to capital goods and spares thereof when imported under a valid authorization issued under EPCG Scheme permitting import of goods on a Zero Customs Duty. — In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from, -

- (i) *the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the said Customs Tariff Act), and*
- (ii) *the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act, when specifically claimed by the importer.*
- (iii) *the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act :*

Provided that the exemption from integrated tax and the goods and services tax compensation cess shall be available up to the 31st March, 2022.”

It is also to be noted that Condition No.6 of the above notification reads as follows:

“(6) that if the importer does not claim exemption from the additional duty leviable under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;”

A copy of this notification is attached.

- 4.3 A reading of the above provisions will indicate that there is no option regarding not availing exemption from payment of IGST as such under the relevant customs notification. It is available only in respect of additional duty of customs leviable in terms of sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, wherever such additional duty is applicable. At the same time, it also may be noted that once there is no option for not opting for IGST exemption, the question of availing credit of any IGST paid at the time of import will not arise.



- 4.4 In the customs notification, such IGST exemption is being extended periodically and during the last occasion in terms of Notification 23/2021-Customs dated 31.03.2021 the exemption was provided for and extended upto 31st March 2022. We have to wait and see whether this exemption will be continued beyond 31st March 2022, only during the last week of March 2022.
- 4.5 From the above, it also will be clear that the provisions contained in the Foreign Trade Policy and the relevant customs notification are not exactly aligned as of now. As such, as on date, as per the relevant customs notification there is IGST exemption and the same has to be availed by the EPCG authorisation holder.



S. MURUGAPPAN

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.