

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15114 of 2021
BHAGWATI CONSTRUCTION Versus UNION OF INDIA

Dated: 13th April 2022

Issue

Whether reimbursement of GST paid on contracts that were entered into in pre-GST regime but executed after GST can be denied on the ground that output tax was paid by debiting electronic credit ledger.

Facts of the Case

1. The writ-applicants are a partnership firm having its place of business at Ahmedabad and the partner of the said firm.
2. The writ-applicants are the Government approved railway contractors since last 20 years.
3. The writ-applicants were registered under the Gujarat Value Added Tax Act, 2003 (for short, 'the VAT Act'). It appears that the writ-applicants had opted for a lump sum tax scheme and hence their tax liability under the VAT Act was 0.6%. Further, the service tax in respect of the construction contracts pertaining to the railways was exempt by virtue of the Mega Exemption Notification No.25/2012 issued under the Finance Act, 1994.
4. The contractors preferred a representation with the Railways for granting reimbursement of the additional tax liability under the GST Act in respect of the contracts which were entered into prior to the GST regime. This was particularly because the GST Act has conferred a right to the suppliers of goods or services to collect tax from the recipients by way of issuance of tax invoice.
5. The writ-applicants put up a claim on 26.2.2018 for reimbursement of the differential tax paid under the GST Act in accordance with the Joint Procedure Order and the supplementary agreement. The claim was supported by a Chartered Accountant certificate and also by taking into consideration the input tax credit admissible, if any, for the contract.
6. The writ-applicants received a letter from the Deputy Engineer on 7.5.2019 again alleging that as against the tax refund/reimbursement of Rs.1,23,02,620.00 claimed by the writ-applicants, the tax of only Rs.33,92,980.00 was paid through the electronic cash ledger.

- 7.** Thereafter, it appears that the writ-applicants lodged a complaint dated 10.5.2019 with the Chief Engineer complaining that the refund/reimbursement was being withheld despite the fact that all the details as called for had been provided.
- 8.** The writ-applicants, thereafter, received the impugned letter dated 13.5.2019 from the Deputy Engineer informing them that they would not be granted reimbursement of the GST amount since only a part amount of the tax was paid through the electronic cash ledger.
- 9.** The writ-applicants once again renewed their request on 26.5.2020. It was pointed out that the neutralizing of the GST impact and the input tax credit in respect of each contract would be taken care of separately.
- 10.** Respondents have declined to release the GST refund/reimbursement.
- 11.** The parties to the agreement have clearly agreed to the GST neutralization in respect of such contract. Moreover, the writ-applicants have produced a certificate of the Chartered Accountant certifying that no GST paid inputs have been used in the execution of the contract and, therefore, there was no input tax credit pertaining to this contract.
- 12.** The writ-applicants are entitled to refund in terms of the order for the GST neutralization issued by the Ministry of Railways read with the JPO and the supplementary agreement. In fact, it appears that this was also determined by the respondents themselves by generating a pay order in favour of the writ applicants.
- 13.** The input tax credit is admissible under Section 16(1) of the GST Act of the tax paid on goods and services used in the course of the business. The input tax credit claimed by a taxable person gets credited into his electronic credit ledger. Such amount is the actual tax that such taxable person has paid to his supplier, which is further paid to the Government treasury. Thereafter, while making the payment of the output tax, Section 49 of the GST Act entitles a taxable person to utilize the balance available in the electronic credit ledger. Thus, the tax which was already paid by a taxable person is effectively allowed to be set off against the output tax liability.
- 14.** The input tax credit is admissible under Section 16(1) of the GST Act of the tax paid on goods and services used in the course of the business. The input tax credit claimed by a taxable person gets credited into his electronic credit ledger. Such amount is the actual tax that such taxable person has paid to his supplier, which is further paid to the Government treasury. Thereafter, while making the payment of the output tax, Section 49 of the GST Act entitles a taxable person to utilize the balance available in the electronic credit ledger. Thus, the tax which was already paid by a taxable person is effectively allowed to be set off against the output tax liability.

15. A reference was made to a judgement of the Supreme Court in the case of Jayaswal Neco Ltd. (supra), wherein the following was observed: "The mode of payment of duty through CenVAT credit is as good as making payment through account current."
16. In the case of Eicher Motors Ltd. v. Union of India [(1999) 2 SCC 361 : (1999) 106 ELT 3] Supreme Court said that "a credit under the ModVAT Scheme was 'as good as tax paid'."
17. Thus, the payment of tax by utilization of the tax credit is a valid mode of payment. The denial to release refund/ reimbursement on the ground that only part amount has been paid by the writ-applicants through the electronic cash ledger is not legally tenable.
18. The entire amount of the output tax paid under the GST Act in relation to the contract in respect of which the supplementary agreement has been entered into with the writ-applicants needs to be forthwith released irrespective of the fact, whether such amount has been paid through electronic cash ledger or through electronic credit ledger.
19. Insofar as the passing of the benefit of the input tax credit to the respondents is concerned, if no input tax credit is attributable to this particular contract since no GST-paid inputs have been used for the execution of the contract, then the question of passing of the benefit of the tax credit also does not arise. The certificate of the Chartered Accountant certifying that no GST-paid goods have been used for executing this particular contract is not refuted by the respondents.
20. The supplementary agreement is entered into with the writ-applicants only for one contract and, therefore, only input tax credit which is directly attributable to such contract is to be considered while deciding refund/ recovery.

Conclusion

The communication dated 13.5.2019 refusing to release the refund/reimbursement of the GST is hereby quashed and set-aside. The respondents were directed to forthwith release the refund of Rs.1,23,02,620.00 in respect of which the pay order has already been generated.