



GST Judicial Update (No FIRC ≠ No Refund)

Executive Summary:

GST refund on export of services was rejected by the department solely on the ground that non-submission of FIRC. However, the petitioner had submitted a CA certificate confirming receipt of convertible foreign exchange and` obtained RBI approval for their forex mechanism. The authorities did not dispute the fact of export of services. The Court held that all substantive conditions for refund were satisfied and that denial on procedural grounds was unwarranted. Accordingly, the rejection order was set aside, and the authorities were directed to process the refund application.

Background:

- The petitioner, (Kuehne plus Nagel Private Limited), is engaged in providing transportation and logistics services across various countries through its group entities. By considering the business model, the petitioner approached RBI in 1997, seeking permission to allow netting off of remittances against payments. The RBI duly approved this request in 1997.
- Petitioner filed an application for a refund of unutilized ITC.
- The refund application was submitted along with all requisite documents as prescribed under Circular No. 125/44/2019-GST, except for the Foreign Inward Remittance Certificate (FIRC). Owing to the same absence of the FIRC, both the adjudicating and appellate authorities rejected the refund claim.
- Aggrieved by the said rejection order, the petitioner has filed a Writ Petition before the Hon'ble Gujarat High Court.

Petitioners' contention:

- The petitioner contended that as per Section 2(6) of the IGST Act, 2017, export of services requires receipt of payment in convertible foreign exchange or Indian Rupees were permitted by the RBI. The section does not mandate submission of a FIRC. It was further submitted that there is no dispute regarding receipt of convertible foreign exchange by the authorities.
- The petitioner is also submitted that requirement of submission of FIRC arises only under circular 125/44/2019 relying on this circular the department authorities rejected the refund application. In this regard, petitioner contended that submission of FIRC is not a statutory mandate under the CGST or IGST Act. It is also pertinent to note that the Petitioner had submitted a CA Certificate confirming receipt of foreign inward remittance.
- Additionally, the petitioner highlighted that the department issued Form RFD-02 (Acknowledgement) instead of Form RFD-03 (Deficiency Memo), which indicates prima facie acceptance of refund application

Department contention:

- The Department contended that the refund was rightly rejected, based on CBIC Circular No. 125/44/2019, which mandates submission of the FIRC for export of services. Further, emphasized that the petitioner failed to provide the FIRC either to the original or appellate authorities and filed a substantial refund claim without complete documentation as mentioned in the Circular. This non-compliance reflects carelessness on the petitioner's part.
- The Appellate Authority also considered the petitioner's submissions and passed an order rejecting the claim based on the Circular. As per Annexure A of the Circular, submission of BRC/FIRC is a necessary condition for processing export-related refunds, and further contended that nowhere in the circular it was mentioned that Chartered Accountant's certificate will substantiate the proof of foreign remittance.

Gujrat High Court Judgment:

- Hon'ble Gujarat High Court after examining the fact that the RBI communication in 1997, had permitted the petitioner to undertake netting-off of foreign receivables against foreign payables. Such netting-off is recognized under the FEMA framework as a valid mode of receipt of foreign remittance. Consequently, individual FIRC's are not issued for each transaction.
- The Court held that circulars issued by the CBIC are intended to provide procedural clarity and cannot override the statutory provisions. While the requirement of FIRC under Circular No. 125/44/2019-GST facilitates for ease of verification to authorities, it does not mean that FIRC shall be treated as a mandatory document for issuance of refunds.
- **Further held that Substantive statutory compliance must prevail over procedural technicalities**
- The Court also relied on the judgment in Union of India v. Mangal Textile Mills Pvt. Ltd., wherein it was held that a CA certificate is a valid and acceptable document to evidence foreign exchange realization.
- In light of the above, the Hon'ble Court quashed the appellate order and directed the adj authorities to process the petitioner's refund claim

A3 Comments:

- ❑ This favorable ruling by the Hon'ble Gujarat High Court brings much needed relief to taxpayers, especially in recent times CBIC clarifications often favor the department.
- ❑ The judgment serves as a guiding precedent for authorities, particularly in cases where taxpayers are asked to submit documents not mandated under the law or circulars (e.g., insisting on both FIRC and BIRC).
- ❑ Importantly, the Court reaffirmed that if a taxpayer has complied with the conditions specified under the Act, in such cases refund cannot be denied merely for not submitting a document not explicitly required by statute. This ruling is expected to streamline similar refund cases and helps in resolving pending claims for both taxpayers and authorities.