

No GST at Duty Free Shops: Allahabad HC

written by Pathik Choudhury | June 18, 2019

In Atin Krishna V. Union Of India Thru Secy. Ministry of Finance and Others^[1], the Division Bench of Hon'ble Allahabad High Court comprising of Justice Pankaj Kumar Jaiswal and Justice Rajnish Kumar has clarified that the sale or supply of goods at the Duty Free Shops at the arrival and departure terminals of international airports would be considered as export of goods under Customs Law and would also be considered as export of goods under GST Act, hence, no GST at Duty Free Shops or no tax shall be levied in case of purchase made at Duty Free Shops.

Background - No GST at Duty Free Shops

The Petitioner had filed a petition

in public interest praying before the Hon'ble Court to ensure that the provisions of the CGST Act, 2017, Uttar Pradesh GST Act and IGST Act, 2017 are

implemented in proper manner qua the Duty Free Shops which are being operated at Chaudhary Charan Singh International Airport, Lucknow. The Petitioner contended that the Respondent No. 3 i.e. the Duty Free Shop at Chaudhary Charan

Singh International Airport, Lucknow has been operating since 2004, and the shops are being governed under the provisions of the Customs Act, 1962, whereas

the shops should obtain registration under CGST Act and SGST Act and the business activity of the shops attracts the provisions of the GST Act. The Petitioner further contended that the provisions of the abovementioned statutes

are being misinterpreted resulting in providing various exemptions to the Duty

Free Shops which is causing huge loss to the public exchequer.

Petitioner's Contentions

Contentions raised by the Petitioner are as follows:

1. Duty

Free Shops are liable to pay IGST on the goods imported into the territory of India.

2. Sale

of goods by the Duty Free Shops to international passengers at arrival terminals should be considered as intra state supply of goods and applicable taxes under Section 9 (1) of CGST Act and SGST Act should be charged on such sale.

3. Duty

Free Shops are incorrectly permitted to claim refund of Input Tax Credit on GST

paid on service of renting of immovable property by Airport Authority of India

and procurement of domestic goods and services because such refund is granted when sale made to international passengers at departure terminal is export of goods hence, zero rated.

4. The

Petitioner also contended that the a sale by Duty Free Shops must suffer IGST the moment the goods crosses the territorial waters of India, therefore such

supply of goods by Duty Free Shops must be subjected to tax under Section 5 of IGST Act.

Judgment - No GST at Duty Free Shops

The Hon'ble Bench held that the

supply of goods to and from the Duty Free Shops do not cross the custom frontier of India, hence as per Section 7(2) of IGST Act, it is to be regarded

as supply of goods in course of inter-state trade or commerce. The Hon'ble Court has further observed that crossing the custom area includes the area of custom port, custom airport or land custom station or a warehouse and also the

area where the imported goods are ordinarily kept before clearance by custom authority. The Duty Free Shops at the airport are part of custom area as denied

under Section 2 (11) of Customs Act, hence the supplies of goods made by them will be termed as inter-state supply. Thus, there cannot be an inter-state supply liable to CGST and SGST under Section 9 of the CGST Act and SGCT Act. The Hon'ble Court has further observed that effective taxable event for the purpose of levy of custom duty is the time when the goods cross the custom barrier and the bill of entry for home consumption is filed. Hence, when the goods are imported from outside India and are kept in customs warehouse and exported therefrom, the stage for payment of custom duty or IGST does not arise.

In the situation, when an arriving

passenger purchases goods from a Duty Free Shops at the arrival terminal of an

airport, the supply of goods takes place before clearance for home consumption.

After the goods are supplied, the passenger crosses the custom frontier at the

airport with the supplied goods and then clears the same for home consumption.

Hence, the goods are cleared by passengers for home consumption under Baggage Rule, 2016 and not by Duty Free Shops. Thus no custom duty is payable by the Duty Free Shops and the passengers are liable to pay the applicable custom duties.

The Hon'ble Bench further held that

the sale or supply of goods to departing international passengers are not cleared for home consumption and therefore, will not attract GST. The sale or supply of goods by the Duty Free Shops of international departure terminal would be considered as export under the Customs Law and thus would also be considered as export of goods under GST Act. It has also been held by the Hon'ble Bench that the invoice which is issued to the passengers after the sale

of the goods would deem to be "shipping bill" for the purpose of export under Section 69 of Customs Act. Rejecting the contention of the Petitioner that there is no export as the goods do not have a specific destination, the Hon'ble

Court also held that the destination for export would be the foreign country where the passenger is going and the passengers would act as the carrier of

the
goods.

The Hon'ble Court has further held
that sale or supply of goods falls under
export of goods and export of goods is a zero-rated supply and person making
zero-rated supply is entitled to claim refund of Input Tax Credit under
Section

16(1) and (3) of IGST Act. Therefore, Duty Free Shops are entitled to claim
refund of Input Tax Credit on GST paid on service of renting of immovable
property by Airport Authority of India and procurement of domestic goods and
services.

Contributed By - Pathik Choudhury

Designation - Associate

[1] P.I.L. Civil No. 12929 of 2019

King Stubb & Kasiva,

Advocates & Attorneys

Click Here to Get in Touch

New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi

Tel: +91 11 41032969 | Email: info@ksandk.com