2022 (2) TMI 441 - GUJARAT HIGH COURT

JAL ENGINEERING THROUGH PARTNER KARISHMA SHAIKH VERSUS UNION OF INDIA THROUGH SECRETARY

R/SPECIAL CIVIL APPLICATION NO. 5040 OF 2021

Dated: - 16 December 2021

Refund of IGST - goods exported zero rated supplies - Refund withheld on the ground that since drawback is claimed at a higher rate of refund of the petitioner, the same cannot be sanctioned under Section 54 of the Central Goods and Service Tax Act, 2017 - inadvertently the Custom House Agent (CHA)failed to disclose the details of IGST paid of ₹ 17,30,468/- - HELD THAT:- The provision of Section 54 of the CGST Act read with Section 16 of IGST Act after the goods are exported, the shipping bills are treated as the application of refund of IGST paid in regard to the export goods and the respondents are required to refund the amount of IGST to the petitioner. In the matter on hand, the exports had been made on September, 2017, the refund has not been made available. It is though the contention raised by the respondents of the rate of higher and lower duty drawback, though is of 2% in the instant case, the Circular No. 37 of 2018 dated 09.10.2018 is applicable and the exporters, who had availed the option to take drawback at higher rate in case of IGST refund will need to punch accordingly in the EDI system and the mistake, which has been made by the petitioner in relation to the three bills where the refunds have not been given, the EDI system itself has not allowed the IGST refund.

We are in complete disagreement with the respondents as not only the petitioner in subsequent correspondence with the respondents has made it completely clear that in the case of these exports the higher duty drawback and the lower duty drawback are the same, the case is covered by the decision of this Court rendered in case of M/S AMIT COTTON INDUSTRIES THROUGH PARTNER, VELJIBHAI VIRJIBHAI RANIPA VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS [2019 (7) TMI 472 - GUJARAT HIGH COURT] where the Court in detailed has discussed this very issue and held that respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

As the issue raised before this Court is identical, no separate or independent discussion would be necessary to be made before this Court. Therefore, the request of refund so far as the three shipping bills are concerned will need to be permitted. The respondent authority is required to sanction the refund of IGST paid in regard to the goods exported i.e. zero rated supplies made vide these three Shipping Bills No.8465051, 8459617 and 8455069 dated 05.09.2017, 05.09.2017 and 14.09.2017 respectively.

The decision in case of Amit Cotton Industries has been delivered on 27.06.2019. The representation had been made by the petitioner in May, 2019 and the last one before this petition has been filed, was on 03.02.2021, when this decision had already become final. Assuming that there was nothing in respect of the interest so far as the IGST refund of the said shipping bills was concerned, it could have granted the same knowing fully well that the issue has been covered, the respondents have chosen not to abide by the decision - Considering the fact that the sanction of the refund towards the IGST paid in respect of the goods exported i.e. “zero rated supplies”, vide the shipping bills ought to have been completed as the two circumstances provided in sub clauses (a) & (b) of Clause (4) of Rule 96 of Rules, 2017 do not exist. The shipping bills, as per Rule 96, exporter once file are deemed to be an application for refund of Integrated tax paid on the exports of goods and withholding of the same is made permissible under Rule 96 (4) when read with Section 54 as specified in the said decision of Amit Cotton Industries.

The respondents are directed to sanction the refund towards the IGST paid in respect to the goods exported i.e. ‘Zero Rated Supplies’ made vide the Shipping Bills No. 8465051, 8459617 and 8455069 dated 05.09.2017, 05.09.2017 and 14.09.2017 respectively - Petition allowed.

Judgment / Order

HONOURABLE MS. JUSTICE SONIA GOKANI AND HONOURABLE MS. JUSTICE NISHA M. THAKORE

HIREN J TRIVEDI FOR THE PETITIONER

PRIYANK P LODHA FOR THE RESPONDENT

JUDGMENT

PER : HONOURABLE MS. JUSTICE SONIA GOKANI

1. By way of the present petition, the petitioner invokes the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India and seeks direction against the respondents for immediate sanction of the refund of Integrated Goods and Service Tax (‘the IGST’ hereinafter) paid in regard to the goods exported zero rated supplies made vide Shipping Bills No.8465051, 8459617 and 8455069 dated 05.09.2017, 05.09.2017 and 14.09.2017 respectively. It is averred that the authority has illegally withheld the refund of the petitioner and the e-mail received on 14.09.2019 from ICEGATE stating that since drawback is claimed at a higher rate of refund of the petitioner, the same cannot be sanctioned under Section 54 of the Central Goods and Service Tax Act, 2017 (‘the CGST Act’ hereinafter) read with Section 16 of the Integrated Goods and Service Tax Act, 2019 (‘the IGST Act’ hereinafter. The petitioner is before this Court seeking following reliefs:

“22…

(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to the respondent authorities to immediately sanction the refund of IGST paid in regard to the goods exported i.e. ‘Zero Rated Supplies’ made vide shipping bills mentioned hereinabove;

(B) YOUR LORDSHIPS may be pleased to direct the respondent authorities to pay interest @

9% to the petitioner herein on the amount of refund from the date of shipping bill till the date on which the amount of refund is paid to the petitioner herein, as the same is arbitrarily and illegally withheld by the respondent authorities;

(C) YOUR LORDSHIPS may be pleased to grant an ex-parte, ad interim order in favour of the petitioner herein in terms of prayer Clause 'A' and 'B' hereinabove;

(D) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your Petitioners shall forever pray."

2. The petitioner is a partnership firm and is engaged in the business of manufacturer, export and supply of premium quality array of Gate Valve, Globe Valve, Swing Check Valve, Ball Valve, pressure Seal Valve, Conduit Gate Valve, etc. It also is registered under the GST Act and having IEC Code.

2.1 During September, 2017, it exported certain goods and hence effected zero rated supply under Section 16 of the IGST Act of finished goods and the total invoice value of ₹ 96,13,714/- and the total taxable value of the said export is ₹ 78,83,246/- including IGST amount of ₹ 17,30,468/-. The three shipping bills' details are as follow:

SB NO.	DATE OF SB	INVOICE DATE AND NO	TAXABLE VALUE	IGST
8465051	05.09.2017	002/17-18	42,50,476/-	9,67,415/-
8459617	05.09.2017	003/17-18	6,15,566/-	1,35,124/-
8455069	14.09.2017	004/17-18	27,60,918/-	6,27,979/-
				17,30,468/-

2.2 The registered person making zero rated supply has an option to claim refund in accordance with Section 16(3)(b) Of the CGST Act, he may supply goods or services or both on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied in accordance with Section 54 of the Central Goods and Service Tax Rules, 2017 ('the CGST Rules,2017' hereinafter).

2.3 It is the say of the petitioner that the shipping bills filed by an export of goods as provided in Rule 96 of the CGST Rules, 2017 shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in-charge of conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of the shipping bills or bills of export and the applicant has fulfilled all the requirements and a valid return was furnished in Form-GSTR-3 or Form GSTR-3B.

2.4 It is the case of the petitioner that inadvertently the Custom House Agent (CHA)failed to disclose the details of IGST paid of ₹ 17,30,468/-. This was rectified eventually and the same had been disclosed in the return itself.

2.5 The refunds were stuck due to mismatch of invoice and shipping bills and Central Board of Excise

& Customs (CBEC) vide Circular No.05 of 2018-Customs dated 23.02.2018 provided an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stage. It envisaged an officer interface on the Customs EDI System through which the Custom Officer may verify the information furnished in GSTN and Custom EDI system and sanction refund in those cases where detail of invoice provided in GSTR-01/Table 6A are correct.

2.6 So far as the petitioner is concerned, he has complied with the circular and filed the concordance table on 13.06.2018 pinpointing the errors in shipping bill and the invoice and the GST return.

2.7 There was no response from the authority, several written requests had been made for sanctioning the refund. The respondent No.3 vide e-mail on 14.05.2019 addressed to ICEGATE, the reply is saying that the drawback scheme A instead of drawback scheme B was erroneously mentioned. According to the petitioner, the rate of both higher and lower duty drawback is 2% and hence, there was complete non application of mind.

2.8 On 15.05.2019 the petitioner had been intimated that it was asked to approach the office of respondent No.2 for further clarification. The petitioner again made a representation on 03.02.2021 where it had mentioned that the rate of drawback in case of the petitioner remains the same i.e. 2% whether he claims the higher drawback, it was the punching which was mistakenly made &'A' was clicked instead of punching column 'B'. The rate of drawback being 2% irrespective whether 'A' or 'B' is punched, the request was made to allow the refund which had been withheld. This request since had not been acceded to, the petitioner approached this Court due to this non release or sanction of the refund.

3. Affidavit-in-reply has been filed by the respondents where the stand taken by the respondents is that the punching at 'A' is a higher rate of drawback and 'B' is a lower rate of drawback, sanction may not be possible if any error is found. The ICEGATE had replied on 14.05.2019 that refund was not feasible on account of this wrong mentioning. The system itself would not allow the respondent to clear on account of the said error. As per EDI system, it has been revealed that the petitioner has filed the shipping bills in ICEGATE where he has opted by suffixing 'A' with drawback serial number and claimed higher rate of drawback instead of IGST.

3.1 It is also the say of the respondents that the right of claiming the higher rate of duty drawback during the transition period and necessary obligations were created vide Notification No.131/2016-Custom dated 31.10.2016 as amended vide Notification No.59/2017-Customs (N.T.) dated 29.06.2017 and Notification No.73/2017-Customs (N.T.) dated 26.07.2017. Thus, there is no question of withholding the refund amount as the claim is non-est. The petitioner is not related to the withholding of the refund, but for the relinquishment of the refund.

3.2 According to the respondents, the sole objective of the circular was to clarify that there was no justification for reopening once, the voluntary option of choosing between the higher rate of duty drawback or IGST refund is availed by the exporter. In other words, once the exporter had made a conscious decision of claiming higher rate of drawback, the rights and liabilities under the shipping bills shall be treated accordingly and they cannot be permitted to change on the basis of judgment of the ***Amit Cotton Industries vs. Principal Commissioner of Customs,*** reported in ***(2019) 107 taxmann.com 167 (Guj.)*** decided in favour of the exports. According to the respondents, the

department had preferred an SLP Diary No.5502 of 2021 and on the technical ground of delay in filing SLP, no order on merit has been issued, therefore, the request is made to dismiss this petition in limine.

4. This Court has heard at length the learned advocate, Mr.Hiren Trivedi and learned senior standing counsel, Mr.Priyank Lodha.

5. We notice that the provision of Section 54 of the CGST Act read with Section 16 of IGST Act after the goods are exported, the shipping bills are treated as the application of refund of IGST paid in regard to the export goods and the respondents are required to refund the amount of IGST to the petitioner. In the matter on hand, the exports had been made on September, 2017, the refund has not been made available. It is though the contention raised by the respondents of the rate of higher and lower duty drawback, though is of 2% in the instant case, the Circular No. 37 of 2018 dated 09.10.2018 is applicable and the exporters, who had availed the option to take drawback at higher rate in case of IGST refund will need to punch accordingly in the EDI system and the mistake, which has been made by the petitioner in relation to the three bills where the refunds have not been given, the EDI system itself has not allowed the IGST refund.

6. We are in complete disagreement with the respondents as not only the petitioner in subsequent correspondence with the respondents has made it completely clear that in the case of these exports the higher duty drawback and the lower duty drawback are the same, the case is covered by the decision of this Court rendered in case of ***Amit Cotton Industries (supra)*** where the Court in detailed has discussed this very issue and held thus:

> *"20. Before adverting to the rival submissions canvassed on either side, we may refer to the three provisions of law relevant for the purpose of deciding the controversy between the parties.*
>
> *Section 16 of the IGST Act, 2017, reads thus :*
>
> *"16. Zero rated supply.-- (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—*
>
> *(a) export of goods or services or both; or*
>
> *(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*
>
> *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zerorated supplies, notwithstanding that such supply may be an exempt supply.*
>
> *(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—*
>
> *(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*
>
> *(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such*

tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder."

21. Section 54 of the CGST Act, 2017, reads thus:

"54. Refund of tax.--(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided *that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.*

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed

was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under subsection (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under subsection (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to--

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(b) refund of unutilised input tax credit under subsection (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.-For the purposes of this section,—

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

22. Rule 96 of the CGST Rules, 2017, reads thus:

"Rule 96: Refund of integrated tax paid on goods or services exported out of India.-- (1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;

(2) The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR1 for the said tax period.

(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/2017- Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017."

23. Section 16 of the IGST Act, 2017, referred to above provides for zero rating of certain supplies, namely exports, and supplies made to the Special Economic Zone Unit or Special Economic Zone Developer and the manner of zero rating.

24. It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

25. Section 54 of the CGST Act, 2017, provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, shall make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined will have to be credited to the Fund referred to in Section 57 of the CGST Act, 2017.

26. Rule 96 of the CGST Rules provides for a deeming fiction. The shipping bill that the exporter of goods may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India. Section 54 referred to above should be read along with Rule 96 of the Rules. Rule 96(4) makes it abundantly clear that the claim for refund can be withheld only in two circumstances as provided in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of

the Rules, 2017.

27. In the aforesaid context, the respondents have fairly conceded that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writ-applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

28. If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

29. We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

30.Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies:

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of subsection (10) or sub-section (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear."

4.1 This had been followed in the second decision of ***Union of India and ors. vs. Awadkrupa Plastomech Pvt.Ltd.*** rendered in Special Civil Application No.1014 of 2020 on 15.12.2020. We need to make a mention at this stage that the decision of ***Amit Cotton Industries (supra)*** was challenged by preferring the SLP before the Apex Court and the SLP Diary No.5502 of 2021 was not entertained on the ground of delay in filing SLP. However, the subsequent decision had been once again challenged on merits and by way of Special Leave to Appeal No.7095 of 2021 the Apex Court on 30.07.2021 dismissed the SLP by passing the following order:

"1. There is a clear finding of fact which has been recorded by the Divsiion Bench of the High Court of Gujarat in its order dated 15 December, 2020 that the respondent had claimed an IGST

export refund only to the extent of the customs component. We see no error in the finding of the High Court.

2. The Special Leave Petition is accordingly dismissed."

4.2 As the issue raised before this Court is identical, no separate or independent discussion would be necessary to be made before this Court. Therefore, the request of refund so far as the three shipping bills are concerned will need to be permitted. The respondent authority is required to sanction the refund of IGST paid in regard to the goods exported i.e. zero rated supplies made vide these three Shipping Bills No.8465051, 8459617 and 8455069 dated 05.09.2017, 05.09.2017 and 14.09.2017 respectively.

5. This brings us to the issue of the interest stuck at 9% claimed by the petitioner. We notice that in both the decisions of ***Amit Cotton Industries (supra)*** and that of ***Awadkrupa Plastomech Pvt.Ltd (supra),*** the Court has passed the following order without discussing the issue on the interest.

"11. In the result, this petition succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund towards the IGST paid in respect to the goods exported i.e. 'Zero Rated Supplies' made vide the shipping bills. It appears that the writ=applicant has also prayed to pay interest at the rate of 9% on the amount of refund from the date of shipping bill till the date on which the amount is actually paid.

We may only say that if the refund of the principal amount is not sanctioned and actually paid to the writ-applicant within the period of six weeks from the date of receipt of this order, then interest would start accumulating at the rate of 9% and the amount shall be paid accordingly."

Learned senior standing counsel, Mr.Priyank Lodha seeks to rely on this to urge this Court that the refund of the principal amount, if is not sanctioned within period of six weeks, then only the interest component should run.

6. We do not agree with this proposition. The respondent has chosen not to follow the decision of this Court. We notice that the decision in case of ***Amit Cotton Industries (supra)*** has been delivered on 27.06.2019. The representation had been made by the petitioner in May, 2019 and the last one before this petition has been filed, was on 03.02.2021, when this decision had already become final. Assuming that there was nothing in respect of the interest so far as the IGST refund of the said shipping bills was concerned, it could have granted the same knowing fully well that the issue has been covered, the respondents have chosen not to abide by the decision. Assuming further that Special Leave Petition was pending, when it comes to the decision of ***Awadkrupa Plastomech Pvt.Ltd (supra)*** which had been decided on 15.12.2020 and further challenged had been made to the said decision by way of Special Leave Petition No.7095 of 2021 which came to be dismissed by the Apex Court on 30.07.2021. Under the pretext that this petition was pending before this Court, it has chosen not to still release the refund.

6.1 It is unthinkable as to how every assessee needs to be driven to this Court to ask for the IGST when the issue is squarely covered and there is nothing further to be adjudicated. This tendency on the part of the respondents authorities is something which had been deprecated by this Court following the decision of the Apex Court in case of ***Union Of India Versus Kamlakshi Finance Corporation Ltd***.,

reported in ***AIR 1992 SC 71*** and the decision of this Court rendered in case of ***E.I.Dupont India (P.) Ltd. vs. Union of India***, reported in ***2014(305) ELT 82 (Guj.).***

6.2 This Court in case of ***E.I.Dupont India (P.) Ltd.(supra)*** held thus:

> *"5.1 Before parting with the present order, we are constrained to strongly disapprove such arbitrary act on the part of the lower adjudicating authority and/or lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/Courts. Time and again the Hon'ble Supreme Court as well as various High Courts and this Court have disapproved such conduct/act on the part of the lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/courts. Still it appears that message has not reached the concerned authorities. In the recent decision in the case of Claris Lifesciences Ltd. (supra) in para 26 this Court has observed as under:*
>
> > *"26.Despite such clear and specific directions and authoritative pronouncements, act of issuance of show cause notice by the Deputy Commissioner is wholly impermissible and unpalatable and deserves to be quashed and struck down with a specific note of strong disapproval. The respondents simply could not have exercised the powers contained under the statute in such arbitrary exercise and in complete disregard to the pronouncement of this Court particularly reminding the Revenue authorities of the binding effect of decision of Tribunal on the identical question of law. This not only led to multiplicity of proceedings but also speaks of disregard to the direction of this Court rendered in the earlier petition of this very petitioner. Resultantly, petition stands allowed. Both the show cause notices dated 21.8.2012 and 22.1.2013 are quashed and struck down."*
>
> *It appears that still the message has not reached the concerned authorities in following the binding decisions of the higher appellate authorities and/or courts solely on the ground that the same is in the case of another assessee. Such a conduct is also required to be viewed from another angle. This would not only amount to disregarding the direction of the court rendered in earlier petitions but would also lead to multiplicity of proceedings. When the courts are overburdened and are accused of arrears, it is the duty of the concerned authorities to avoid multiplicity of proceedings and lessen the burden of the courts. Being a part of the justice delivery system. All efforts should be made by the authorities/quasi judicial authorities and judicial authorities to see that there is no multiplicity of proceedings and to pass the orders considering the binding decisions. It would also avoid unnecessary harassment to the parties as well as the unnecessary expenditure.*
>
> *5.2 As observed hereinabove despite clear and unequivocal message by the pronouncement of the decisions by the Hon'ble Supreme Court as well as this Court, the message has not reached to the concerned authorities, we direct respondent No.2 – Central Board Excise and Customs, New Delhi to issue a detailed circular to all the adjudicating authorities considering the observations made by this Court in the present judgment and order as well as the law laid down by the Hon'ble Supreme Court in various decisions referred to in the present judgment and order, within a period of 30 days from the date of receipt of the present order so that such eventuality may not happen again and again."*

Considering the fact that the sanction of the refund towards the IGST paid in respect of the goods exported i.e. “zero rated supplies”, vide the shipping bills ought to have been completed as the two circumstances provided in sub clauses (a) & (b) of Clause (4) of Rule 96 of Rules, 2017 do not exist. The shipping bills, as per Rule 96, exporter once file are deemed to be an application for refund of Integrated tax paid on the exports of goods and withholding of the same is made permissible under Rule 96 (4) when read with Section 54 as specified in the said decision of ***Amit Cotton Industries (supra).*** The respondent has chosen to follow this circular when the Court has already interpreted the same and finally decided the matter on 27.06.2019, there could not have been any other conclusion in that respect nor could the respondent go on taking the very stand obstinately, being finally aware of the challenge made to the decision of ***Amit Cotton Industries (supra)*** before the Apex Court also.

7. Resultantly, this petition is allowed. The respondents are directed to sanction the refund towards the IGST paid in respect to the goods exported i.e. ‘Zero Rated Supplies’ made vide the Shipping Bills No. 8465051, 8459617 and 8455069 dated 05.09.2017, 05.09.2017 and 14.09.2017 respectively. Respondents authorities are also directed to pay interest, at the rate prescribed under the statute, to the petitioner on the amount of refund from 01.07.2019 within a period of six weeks from the date of receipt of a copy of this order.

8. Over and above the regular mode of service, direct service is permitted thorough speed post as well as e-mode.

Citations: in 2022 (2) TMI 441 - GUJARAT HIGH COURT

1. 1991 (9) TMI 72 - Supreme Court
2. 2020 (12) TMI 1116 - GUJARAT HIGH COURT
3. 2019 (7) TMI 472 - GUJARAT HIGH COURT
4. 2014 (5) TMI 128 - GUJARAT HIGH COURT
5. 2013 (10) TMI 567 - GUJARAT HIGH COURT
6. 2021 (8) TMI 349 - SC Order
7. 2021 (8) TMI 521 - SC Order