

W.P.(MD)No.20468 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	08.02.2022
Pronounced On	08.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.20468 of 2021

Numinous Impex (I) Pvt. Ltd.
Represented by its Managing Director,
S.Sureshkumar
1, Chaitram, SNV Garden,
Nanjundapuram Post,
Coimbatore-641 036.

... Petitioner

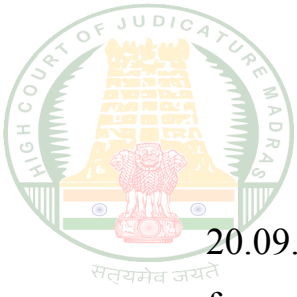
Vs.

1.The Commissioner of Customs,
Customs House,
Near Harbor Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of Customs-(Drawback),
Customs House,
Near Harbor Estate,
Tuticorin-628 004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Manadamus, to direct the respondents to settle the pending refund of IGST amount paid on the shipping bill numbers 7695398, dated 29.07.2017, 7878488, dated 08.08.2017, 8774535, dated



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20.09.2017 and 8774537, dated 20.09.2017 with accrued interest at 7% from the date on which a request for refund is made till the date of payment within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.Henri Tiphagne

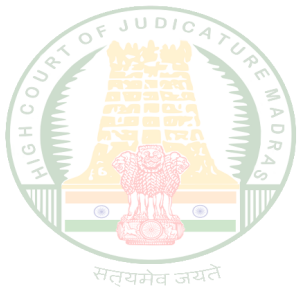
For Respondents : Mr.B.Vijaya Karthikeyan
Senior Standing Counsel

ORDER

Heard the learned counsel on either side and perused the communication exchanged between the petitioner and the respondents and copies of Notification No.131 of 2016-Cus(N.T), dated 31.10.2016 as amended by Notification No.73 of 2017-Cus (N.T), dated 26.07.2017, Circular No.37 of 2018-Cus, dated -09.10.2018.

2. I have also perused the communication filed by the learned Senior Standing Counsel for the respondents, dated 14.12.2021 from the legal Section of the respondents, wherein, it has been stated as follows:-

“It is further submitted that the petitioner has obtained drawback @ 2% in the present case. In as much as the petitioner, in his impugned shipping bills, have claimed drawback under sl.code A, it is deemed that they have availed higher drawback, irrespective of the fact that



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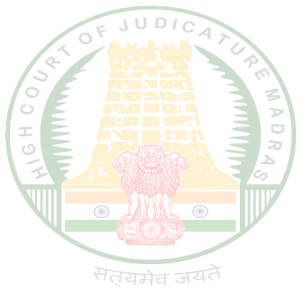
both the rates prescribed under A and B are equal.

It is further submitted that the drawback and IGST refund is entirely automated and there is no manual intervention of any kind is possible.”

3. This Writ Petition has been filed for a direction to the respondents to settle the pending refund claims of the petitioner on the exports made under following shipping bills:-

Shipping Bill No.	SB Date	IGST Status in SB	Draw back Serial Code	Draw back % under Cat A	Draw back % under Cat B	IGST Amount paid in INR
7695398	29/07/2017	NA	8483A	2%	2%	6,19,878.00
7878488	08/08/2017	NA	8483A	2%	2%	5,06,358.00
8774535	20/09/2017	NA	8483A	2%	2%	6,04,650.00
8774537	20/09/2017	NA	8413A	2%	2%	87,698.00
						18,18,584.00

4. The petitioner had exported consignments of goods classifiable under Customs Heading No.8483-40-00 of the Customs Tariff Act 1975 and claimed duty drawback under Section 75 of the Customs Act, 1962. Additionally, the petitioner claimed refund of input tax credit availed on the input and input services used in the export goods.

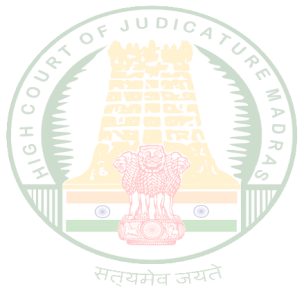


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5. It is the case of the petitioner that the exports effected by the petitioner are "zero rated supply" within the meaning of Section 16 of the Integrated Goods and Services Tax Act, 2017 and therefore, the petitioner is entitled to refund of unutilized input tax credit under Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017.

6. Since on the same export, the petitioner has claimed duty drawback under the provisions of Customs and Central Excise Duties and Service Tax Drawback Rules, 2017 r/w relevant Notification issued under Section 75 of the Customs Act, 1962, the refund of unutilized input tax credit under Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017 is being denied.

7. The point for consideration in the present writ petition is "whether exports made without payment of IGST under bond on which, duty drawback is claimed under the provisions of the Customs and Central Excise Duties and Service Tax Drawback Rules, 2017, (formerly 1995) would entitle such an exporter, the benefit of refund of input tax credit under sub-Section (3) of Rule 16 of the IGST Act 2017 r/w 54 of the CGST Act, 2017 read with the Rules made thereunder?".



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WEB COPY 8. When the goods were exported by the petitioner, the Central Excise Act, 1944, Rules made thereunder, Chapter V of the Finance Act, 1994 containing the provisions of Service Tax, Rules made thereunder and other Indirect Taxes had been repealed and subsumed into the provisions of the Goods and Services Tax enactments with effect from 01.07.2017. Corresponding changes in the Customs Notifications were not fully made.

9. As far as the duty drawbacks are concerned, they are governed by Section 75 of the Customs Act, 1962 and Notification issued thereunder. Exports made by the petitioner were immediately after the respective Goods and Service Tax enactments came into force.

10. During the period in dispute when the exports were made, the petitioner has claimed duty drawback under Section 75 of the Customs Act, 1962 read with Notification No.131/2016-Cus (N.T) dated 31.10.2016 as amended by Notification No.73/2017-Cus (N.T), dated 26.07.2017. The said Notification was later deleted by Notification No. 89/2017-Cus. (N.T.), dated 21.09.2017. After the period in dispute, new



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Notification for duty drawback was issued in Notification No.95/2018-

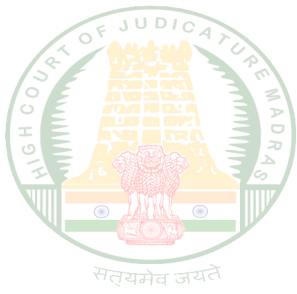
WEB COPY Cus. (N.T.), dated 06.12.2018 for drawback.

11. As per clause 12-A of the Notification No.131/2016-Cus (N.T) dated 31.10.2016 as amended by Notification No.73/2017-Cus (N.T), dated 26.07.2017, the rate and caps of drawback specified in column (4) and (5) of the schedule shall be applicable to export of a commodity product, if the exporter satisfies the following conditions, namely:-

(a) (i) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, **that no input tax credit of the central goods and services tax or of the integrated goods and services tax has been and shall be availed on the export product or on any of the inputs or input services used in the manufacture of the export product, or**

(ii) if the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed;

(b) **the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that the exporter has not**



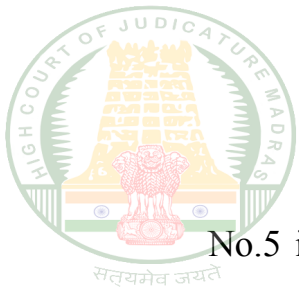
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carried forward and shall not carry forward the amount of Cenvat credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act, 2017 (12 of 2017).”

12. Refund of the input tax credit under Section 16(3) of Integrated Goods and Services Tax Act, 2017 r/w Section 54 of the Central Goods and Services Tax Act, 2017 and Rules 89 and 96 of Central Goods and Services Tax Rules, 2017 cannot be denied, merely because the petitioner has claimed duty drawback under the provisions of Customs and Central Excise Duties and Service Tax Drawback Rules, 2017. It does not mean that the petitioner is not entitled to refund under Section 16(3) of the Integrated Goods and Services Tax Act, 2017 r/w Section 54 of the Central Goods and Services Tax Act, 2017 and Rules 89 and 96 of Central Goods and Services Tax Rules, 2017.

13. As far as the duty drawback under Notification No.131/2016-Cus (N.T) dated 31.10.2016 is concerned, there are two rates of duty drawback. Column No.4 in Schedule to the said Notification deals with the situation where the CENVAT facility has not been availed. Column



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No.5 in Schedule to the said Notification deals with the situation where

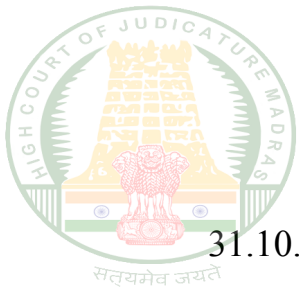
the CENVAT facility has been availed.

14. There are two rates of All Industry Duty Drawback (AIR) under the Notification No.131/2016-Cus (N.T) dated 31.10.2016 namely:-

- i. where input tax credit is availed.
- ii. where no input tax credit is availed.

15. As far as the goods falling under Customs Heading No. 8483-40-00 of the Customs Tariff Act 1975 are concerned, the rate of duty for goods both covered under these two Columns is only at 2%. Thus, there is no variation as far as the rate of duty is concerned. In this case, admittedly, the petitioner is entitled to duty drawback at 2% irrespective of the fact that whether the petitioner has availed input tax credit under the provisions of the Central Goods and Services Tax Act, 2017 or under the provisions of the State Goods and Services Tax Act, 2017.

16. The expression 'CENVAT Facility' in Column Nos.4 & 5 of the Schedule to the Notification No.131/2016-Cus (N.T) dated

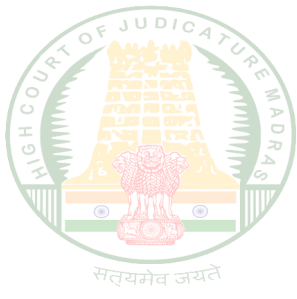


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31.10.2016 is to be read as 'Input Tax Facility' under the respective enactments. Further, as per notes and conditions in Paragraph No.7 to Notification No.131/2016-Cus (N.T) dated 31.10.2016, if the rate indicated is the same in the Column Nos.(4) and (6), it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat facility or not. The said notes and conditions in Paragraph No.7 to Notification No.131/2016-Cus (N.T) dated 31.10.2016 reads as under:-

(7) The figures shown in the said Schedule in columns (4) and (5) refer to the total drawback (Customs, Central Excise and Service Tax component put together) allowable and those appearing in columns (6) and (7) refer to the drawback allowable under the Customs component. The difference in rates between the columns (4) and (6) refers to the Central Excise and Service Tax component of drawback. If the rate indicated is the same in the columns (4) and (6), it shall mean that the same pertains to only Customs component and is available irrespective of whether the exporter has availed of Cenvat facility or not.

17. Therefore, there is no merit in the stand of the respondents that the petitioner is not entitled for the relief. Paragraph No.2.5 of the Circular No.37/2018-Cus., dated 09.10.2018 reads as under:-



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“2.5. By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims.”

18. SB 000 Error Code in terms of Para 4(i)(c) of Guide on IGST Refunds in ICES issued by Directorate General of Systems, CBIC reads as under:-

Para 4-Discussion on Error Codes:

(I) SB 000: Successfully validated

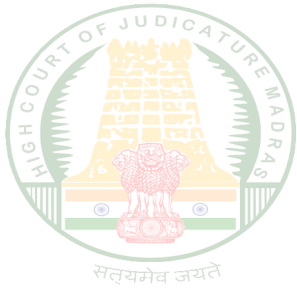
This response comes when all the decided parameters like GSTIN, SB number, Invoice number etc. match between GSTN and Customs databases. This code implies that the Shipping Bill is ripe for inclusion in the IGST refund scroll. However, it might happen that even with SB 000, the Shipping Bill does not appear in the refund scroll. This could be due to:

a)The exports might have been made under bond or LUT, hence not liable for refund.

b)If a Shipping Bills covers multiple invoices, few of the invoices might have been successfully validated with code SB 000 whereas other invoices might be stuck with any of the other errors.

c)Higher rate of Drawback has been claimed for that Shipping Bill, thus making the Shipping Bill ineligible for IGST refund.

d)Where the IGST claim amount is less than Rs. 1000/-.”

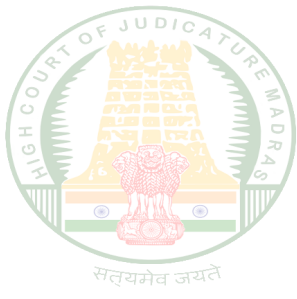


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WEB COPY 19. Paragraph No.2.5 of Circular No.37/2018-Cus, dated 09.10.2018 cannot be pressed to deny legitimate export incentive as same is not sanctioned under law. Only higher rate of drawback cannot be claimed exports covered by shipping bills, where for such exports, the refund of IGST is claimed if two rates are then. IGST refund is completely system driven and processed in the system and manual intervention by the Departmental Officers to rectify the same is also not possible. However, that would apply only where higher rate of duty drawback is claimed.

20. The decision of the Gujarat High Court in **Awadkrupa Plastomech Pvt. Ltd Vs. Union of India**, in R/Special Civil Application No.1014 of 2020, dated 15.12.2020 referred by the learned counsel for the petitioner, deals with a situation where an exporter had claimed refund of IGST paid at the time of export, though the Court in the penultimate paragraph concluded as follows:-

“...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.



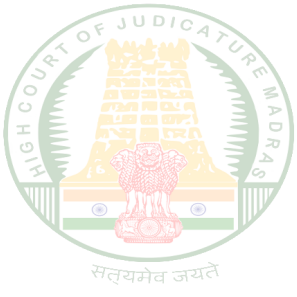
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“Zero Rated Supplies” made vide the shipping bills. It appears that the writ applicant has also prayed to pay interest at the rate of 9% on the amount of refund from the date of shipping bill till the date on which the amount is actually paid.”

21. The appeal of the Union of India against the said order has been dismissed by the Hon'ble Supreme Court confirming the order dated 15.12.2020 in S.C.A.No.1014 2020. Though the Gujarat High Court has taken the aforesaid view, the conclusion of the Gujarat High Court is not consisted with the reasoning given in the paragraphs preceding it.

22. In the light of the above discussion, this Writ Petition deserves to be allowed. The respondents are directed to scrutinize the refund claims filed by the petitioner under Section 16(3) of the Integrated Goods and Services Tax Act, 2017 read with Section 54 of the Central Goods and Services Tax Act, 2017 and Rule 89 of the Central Goods and Services Tax Rules, 2017 and other applicable Rules and refund the same together with applicable interest under the provisions of the respective enactments, within a period of three months from the date of receipt of a copy of this order.



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WEB COPY 23. Accordingly, this Writ Petition stands allowed. No cost.

08.04.2022

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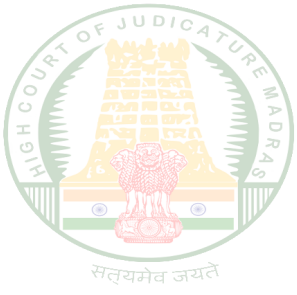
Index : Yes / No

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To

1.The Commissioner of Customs,
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C.SARAVANAN, J.

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Pre-Delivery Order
made in
W.P.(MD) No.20468 of 2021

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