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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 18.05.2022

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W.P.(C) 11226/2021**M/S GUJARAT NIPPON INTERNATIONAL PRIVATE LIMITED**

..... Petitioner

Through: Mr Prakash Shah, Mr Mhir D. Mehta,
Mr Prashant Srivastava and Mr
Deepak Mahajan, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms Samiksha Godiyal, and Mr
Govind Manoharan, Advs. for R-1&2.
Mr Gigi C. George, Adv.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical court hearing/ hybrid hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. The substantive prayers made in the writ petition read as follows:

“(i) Issue an appropriate writ(s)/direction(s) holding the Circular No. 37/018-Cus dated 09.10.2018 ultra virus the provisions of CGST Act, 2017 to the extent it purports to clarify that refund of IGST will not be granted when drawback is claimed under column “A” of drawback schedule and to direct the Respondents;

(ii) Direct the Respondents to grant forthwith the refund of IGST paid on the exported goods to the tune of Rs.7,12,996.00 in terms of Section 16(3)(b) of the IGST Act read with Section 54 of the CGST Act and Rule 96 of the CGST Rules along with appropriate interest.”

2. The prayers have been made in the backdrop of the following essential facts :

(i) The petitioner has, admittedly, exported goods valued at

Rs.39,61,094/-.

(ii) At the relevant time, the petitioner exercised the option available under Section 16(3)(b) of the Integrated Goods and Service Tax Act, 2017 [in short ‘IGST Act’] which allowed the petitioner to pay IGST, and, thereafter, claim the refund. Admittedly, the petitioner has paid Rs.7,12,996/- towards IGST.

(iii) To be noted, it is not in dispute that the export of the subject goods was made by the petitioner between July 2017 and September 2017.

(iv) It appears that the petitioner, *albeit*, inadvertently, in the shipping bills filed qua the subject goods, mentioned the wrong sub-serial number i.e., 8455A, instead of 8455B. Furthermore, since the petitioner appended suffix “A” to serial number 8455 the following declarations got triggered.

“DBK001- I declare that no input tax credit of the Central Goods and Services Tax or of the Integrated Goods and Services Tax has been availed for any of the inputs or input services used in the manufacture of the export goods.

DBK002- I declare that no refund of Integrated Goods and Services Tax paid on export goods shall be claimed.

DBK003- I declare that CENVAT credit on the inputs or input services used in the manufacture of the export goods has not been carried forward in terms of the Central Goods and Services Tax Act, 2017.”

(v) It is the petitioner’s case that the rate of drawback referred to in Column ‘A’ [i.e., drawback when CENVAT facility has not been availed] and Column ‘B’ [i.e., drawback when CENVAT facility has been availed] for products exported by the petitioner is the same. In this behalf, the petitioner has adverted to the Schedule appended to the Notification 131/2016-Cus. (N.T.) dated 31.10.2016 [“ 2016 Notification”]

2.1. Insofar as these core facts are concerned, they are not in dispute.

3. According to the Petitioner the refund of IGST was not made available as the respondents erroneously concluded that the rate of duty drawback qua the subject goods exported by the petitioner under column A was higher.

3.1. However, what has emerged, as noticed above, is that rates referred against products exported by the petitioner, both, in Column 'A' and Column 'B' are identical i.e., 2%.

4. The other essential fact, which is not in dispute, and as noticed above, is that the petitioner did trigger the declaration that it would not be claiming IGST refund when it indicated that its product would fall under Column 'A'.

5. Given these core facts, Mr Prakash Shah, who appears on behalf of the petitioner, claims that the petitioner was not required to file a separate application for seeking refund of IGST.

5.1. It is Mr Shah's submission that the provisions of Section 54 of the Central Goods and Services Act, 2017 read with Section 16 of the IGST Act, would clearly establish that the shipping bill would work as a refund application.

5.2. Besides this, Mr Shah also seeks to place reliance on Rule 96(1) of the CGST Rules which, *inter alia*, is indicative of the fact that the shipping bill filed by the exporter would be deemed as an application for seeking refund of IGST on goods exported out of India.

5.3. Furthermore, Mr Shah relies upon provisions of Section 56 of the CGST Act to contend that if refund was not approved within the stipulated period i.e., 60 days, then the petitioner would be entitled to statutory interest at the rate of 6% commencing from the date of receipt of application up until

the date of payment of the refund.

6. Based on the aforesaid facts and submissions, Mr Shah says that the petitioner is entitled to refund along with statutory interest.

7. On the other hand, Ms Samiksha Godiyal, who appears on behalf of the respondents, contends that the respondents were well within their rights not to grant refund, as no application was preferred for correcting the error, which the petitioner had, admittedly, committed.

7.1. It is, therefore, Ms Godiyal's submission that once an application is made, only then correction would be made in the system, which could, thereafter, perhaps lead to the petitioner obtaining relief as claimed i.e., refund of IGST.

8. We have heard the learned counsel for the parties and perused the record.

8.1. According to us, the issue raised in the petition is no longer *res integra*, and is covered by various judgments passed by this Court as well as by the other High Courts. For the sake of brevity, reference is made to the following judgments:

- (i) ***M/s Gujarat Nippon International Pvt. Ltd. v. Union of India & Ors.***, passed by the Bombay High Court in W.P.(C) No.5942/2021, dated 02.05.2022.
- (ii) ***TMA International Pvt. Ltd. & Ors. v. Union of India & Anr.***, passed by the Delhi High Court in W.P.(C.) 2694/2019, dated 26.03.2021.
- (iii) ***Phoenix Contact India Pvt. Ltd. v. Commissioner of Customs (Exports)***, 2022 SCC OnLine Del 1368.
- (iv) ***Amit Cotton Industries v. Principal Commissioner of Customs***, 2020

SCC OnLine Guj 2717.

(v) *Shyam Textile Through Proprietor Rakesh Ram Swaroop v. Principal Commissioner of Customs* dated 05.04.2021, passed by the Gujarat High Court in SCA No.13448/2020.

8.2. Insofar as the last judgment is concerned i.e., *Shyam Textile*, evidently, a special leave petition was filed i.e., SLP(C.)No.19911/2021, which was, dismissed by the Supreme Court on 03.01.2022.

9. Having regard to the ratio of the aforementioned judgments, we tend to agree with Mr Shah that a separate application for refund was not required to be filed.

9.1. The shipping bills would operate as a refund application as envisaged under Section 54 of the CGST Act read with Section 16 of the IGST Act, as also Rule 96(1) of the CGST Rules.

9.2. Therefore, the petitioner, in our view, is entitled to seek refund.

10. The only other point which arises for consideration in the matter is with regard to the period from which the statutory interest should kick-in.

10.1. Mr Shah has submitted, with some vehemence, that interest should kick-in from the date discernible, as per Section 56 of the CGST Act.

10.2. Ms Godiyal, on the other hand, with equal vehemence, has opposed this contention of the petitioner, given the facts and circumstances which have arisen in this case.

10.3. According to Ms Godiyal, since the petitioner did not take steps for having, in the very least, the declaration corrected, no interest should accrue to the petitioner. At this juncture, it may be relevant to refer to the declaration which the petitioner made, upon, inadvertently, choosing the wrong option:

“DBK002 - I declare that no refund of Integrated Goods and Services Tax paid on export goods shall be claimed.”

10.4. Clearly, unlike the *Phoenix* case, no application for correction was made in the instant case. In that case, as noticed in paragraph 20 of the judgement that an application for correction was made, which was given effect to by the revenue by a particular date, despite which, refund was not paid. It is in these circumstances that the Court had directed the payment of refund from the date, when the correction was effected by the revenue.

11. That said, it is quite evident that once the petitioner had taken steps to move the Court and notice was issued in the writ petition, the respondents were, in a sense, forewarned that statutory interest would kick-in.

11.1. To be noted, notice in this petition was issued on 01.10.2021, when the revenue was represented by counsel.

11.2. Therefore, in our view, in the given facts, in the very least, interest should accrue to the petitioner at the statutory rate i.e., 6% (simple) from 01.10.2021.

12. Before we conclude, we may indicate that Mr Shah has clearly stated that the petitioner is not pressing that part of prayer clause (i) whereby a direction is sought to declare the circular dated 09.10.2018 as *ultra vires* the CGST Act.

13. In these circumstances, we allow the writ petition to aforesaid extent.

13.1. The respondents/revenue are directed to refund the IGST amounting to Rs.7,12,996/- along with interest at the rate of 6% (simple) commencing from 01.10.2021. The interest will run till the time payment is made to the petitioner.

13.2. Furthermore, the respondents will act with due expedition and refund the amount along with interest, as indicated above, at the earliest, though, not later than three weeks from today.

14. The writ petition is disposed of in the aforesaid terms.

15. Needless to add, the respondents will make the necessary correction in the web portal, having regard to what is stated by us hereinabove.

16. The parties will act, based on the digitally signed copy of the judgment rendered today.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MAY 18, 2022/aj

[Click here to check corrigendum, if any](#)