

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 5172 of 2022**

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M/S VARIDHI COTSPIN PRIVATE LIMITED  
Versus  
STATE OF GUJARAT

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Appearance:

MR HARDIK P MODH(5344) for the Petitioner(s) No. 1  
MR. TRUPESH KATHIRIYA, ASSISTANT GOVERNMENT PLEADER/PP for  
the Respondent(s) No. 1  
NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3

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**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA**  
and  
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 06/07/2022**

**ORAL ORDER**  
**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Looking to the compass of the controversy in the petition and having regard to the request and consent of the learned advocates appearing for the respective parties, the petition was taken up for final consideration.

1.1 Rule, returnable forthwith. Learned Assistant Government Pleader Mr. Trupesh Kathiriya waives service of notice of Rule on behalf of the respondent State.

1.2 Heard learned advocate Mr. Dhaval Shah for learned advocate Hardik Modh for the petitioner and learned Assistant Government Pleader.

2. The petitioner by filling this petition under Article 226 of the

Constitution challenged order dated 13.7.2021 passed by respondent No.3- the Deputy Commissioner of State Tax, Ghatak-17, Range-5, Division-2, D-3 Rajyakar Bhavan, Ashram Roadm, Ahmedabad. By the said order passed under section 54(5) read with section 56 of the Central Goods and Services Tax Act, 2017, the claim of refund of the petitioner came to be treated as inadmissible. It could be seen from the order that the ground mentioned for rejecting the claim is “Wrong ITC Claim”.

2.1 The aforesaid order preceded show cause notice dated 19.6.2021. It was a notice pursuant to the refund application filed by the petitioner under section 54 of the Act.

3. The petitioner happens to be an importer holding license under the Export Promotion Capital Goods Scheme (for short ‘EPCGS’) prescribed under Chapter 5 of the Foreign Trade Policy 2015-2020. It appears that the petitioner filed the refund application under section 54 of the CGST Act in FORM RFD-01 for an amount of IGST paid on the import of capital goods during the month of July, 2017 and August, 2017 against the EPCG license. The petitioner filed the refund claim of Rs. 1.24 crores in FORM RFD-01 vide ARN No. AA241219075153C on 28.12.2019.

4. While proposing not to entertain the prayer for refund, the competent authority in the aforementioned show cause notice indicated reasons for disinclination to grant the refund. The reasons in form of remarks read as under,

“(1) As per SGST Act-Section 54(1) refund period is more than two years, so refund application is liable to reject.

(2) There is no clear ground on which refund application is filed.

(3) On which ground refund amount is calculated is not clear.

(4) Attached documents are incomplete.

So Kindly prove that why your refund application should not be rejected on above mentioned grounds.”

4.1 Therefore, the grounds indicated for proposed refusal for refund were *inter alia* that the claim for refund was more than two years old; that the clear ground was not mentioned; that the refund calculation was also not clear and that the documents were incomplete.

4.2 In this regard, it is the case of the petitioner that the petitioner was called for personal hearing on the next date of issuance of show cause notice, which opportunity he could not avail due to paucity of time, but according to the case of the petitioner, some representation is made to the authority in reply to the said show cause notice.

5. The striking infirmity in the impugned order whereby the refund was rejected was that it was entirely new ground than the aforesaid mentioned in the show cause notice. The claim was negated as above on the ground that refund was inadmissible because of wrong ITC claim. It turns out that the new ground is relied on by the authority. It rejected claim of refund which was never mentioned in the show cause notice. The petitioner has never opportunity to meet with the said ground.

6. On the aforesaid short ground only, the impugned order deserves to be quashed. It is accordingly quashed and set aside. The refund claim/application of the petitioner shall be reconsidered by the authority concerned afresh after following due procedure in law and appropriate order in accordance with law shall be passed to complete the entire

exercise within 12 weeks from today.

6.1 We make it clear that we have not gone into nor have expressed any opinion on the merit aspect of the case of either side.

7. The petition is allowed to the aforesaid extent. Rule is made absolute in the said terms.

C.M. JOSHI

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

