

BOMBAY HIGH COURT

WRIT PETITION (L) NO. 30843 OF 2021

R. K. Copper and Alloy LLP-Appellant

Versus

Union of India-Respondent

R. D. DHANUKA & S. M. MODAK, JJ.

Date of order: 28/01/2022

Decision-In Favour of assessee

Issue Involved: The Petitioner has prayed for a writ directing the Respondents to sanction refund of IGST amount of Rs. 5,80,58,350/- and duty drawback amounting to Rs. 39,65,237/- immediately along with interest @ 24 % p.a. and to sanction provisional refund @ 90% of the disputed amount in terms of [Section 54 \(6\)](#) of the CGST Act, 2017 read with Central Goods and Services Rules, 2017 and for other reliefs.

Contention of Petitioner: The learned counsel for the Petitioner, tenders copy of the [Circular dated 23/01/2020](#), Press release dated 29/10/2017 and [Circular No.17/17/2017-GST](#) dated 15/11/2017 in support of his contention that the Respondents cannot withhold the payment of refund of IGST as well as duty drawback.

Held that: The Court directed the Respondent to decide the applications for refund of IGST and duty drawback, within a period of four weeks. If any further investigation is required to be made before granting final refund of IGST as well as duty drawback, the Respondent shall pass the order for provisional refund within the time prescribed in terms of [Section 54\(6\)](#) of the Act, 2017.

Appearance:

Mr. Bharat Raichandani a/w Mr. Rishabh Jain i/by M/s UBR Legal - Advocate for the Petitioner

Case referred/cited :-

1. [Bhagyanagar Copper Private Limited V/S The Central Board of Indirect Tax and Customs](#)

JUDGMENT

Rule. Ms. Neeta Masurkar, the learned counsel waives service of notice on behalf of the Respondents. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of mandamus directing the Respondents to sanction refund of IGST amount of Rs. 5,80,58,350/- and duty drawback amounting to Rs. 39,65,237/- immediately along with interest @ 24 % p.a. and to sanction provisional refund @ 90% of the disputed amount in terms of [Section 54](#) (6) of the Central Goods and Services Tax Act, 2017 read with Central Goods and Services Rules, 2017 and for other reliefs.

3. It is not in dispute that the applications filed by the Petitioner for seeking refund from IGST is pending which was made vide letters dated 03/12/2021, 08/12/2021 and 16/12/2021. The Petitioner had also applied for duty drawback by those letters. There is no response received by the Petitioner to those letters/applications for seeking refund of IGST as well as duty draw back till date.

4. Ms. Neeta Masurkar, the learned counsel for the Respondents, on instructions, states that there are certain investigations going on.

5. Mr. Bharat Raichandani, the learned counsel for the Petitioner, tenders copy of the [Circular dated 23/01/2020](#), Press release dated 29/10/2017 and [Circular No. 17/17/2017-GST](#) dated 15/11/2017 in support of his contention that the Respondents cannot withhold the payment of refund of IGST as well as duty drawback. He also placed reliance on judgment of Telangana High Court in case of The Central Board of Indirect Tax and Customs and 5 Ors. in [Writ Petition No. 15804 of 2021, 2021-TIOL-2143-HC-Telangana-GST](#) in support of his submission.

6. In view of the fact that the applications for refund of IGST and duty drawback are still pending, we direct the Respondent No. 3 to decide the applications for refund of IGST and duty drawback made by the Petitioner referred in aforesaid within a period of four weeks from today without fail.

7. The Respondent No. 3 while processing the applications made by the Petitioner shall take into consideration the [Circular dated 23/01/2020](#), Press release dated 29/10/2017 and [Circular No. 17/17/2017-GST](#) dated 15/11/2017 and principles laid down by the Telangana High Court in case of Bhagyanagar Copper Private Limited V/s The Central Board of Indirect Tax and Customs and 5 Ors. referred to aforesaid.

8. The Respondent No. 3 shall also grant personal hearing to the Petitioner before passing the appropriate order.

9. It is made clear that if according to the Respondent No. 3 any further investigation is required to be made before granting final refund of IGST as well as duty drawback, the Respondent No. 3 shall pass the order for provisional refund within the time prescribed in terms of [Section 54](#)(6) of the Central Goods and Services Tax Act, 2017 read with Central Goods and Services Rules, 2017.

10. Order that would be passed by the Respondent No. 3 shall be communicated to the Petitioner within one week from the date of passing of order. Respondent No. 3 shall record reasons in the order that would be passed. If the applications made by the Petitioner for refund of IGST as well as duty drawback is allowed fully or partly the refund shall be made within one week from the date of passing of such order.

11. If order that would be passed by the Respondent No. 3 goes adverse against the Petitioner, the Petitioner would be at liberty to file appropriate proceedings.

12. It is made clear that this Court has not expressed any views on the merits of the matter. All contentions of both the parties are kept open.

13. Respondent No. 3 shall give 48 hours clear notice to the Petitioner before the date of hearing proposed by the Respondent No. 3.

14. Writ Petition is disposed of in aforesaid terms.

15. Rule is made absolute. Accordingly, no order as to costs.

16. Parties to act on the basis of an authenticated copy of this order.