

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.9811 of 2020

M/s.Raj Exim,
Represented by its Proprietor
K.Thirupathi Rajan,
No.3, Balaji Street,
M.G.M.Nagar,
Madurai – 625 012.

Petitioner

Vs.

1.The Assistant Commissioner of Customs,
Custom House, IGST Section,
Poland Sea Port,
Gujarat.

2.Union of India,
(Through the Minister of Finance),
Ministry of Finance,
Parliament Street, Central Secretariat,
North Block,
New Delhi – 110 001.

Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent herein to sanction the refund of IGST of Rs.2,35,008/- paid by the petitioner in respect of the goods exported i.e 'Zero Rated Supplies' made vide shipping bills mentioned herein above along with entitled interest @ 9% to the petitioner till the date of actual refund.

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.S.Jeyasingh

ORDER

This Writ Petition has been filed by the petitioner to direct the respondent herein to sanction the refund of IGST of Rs.2,35,008/- paid by the petitioner in respect of the exported goods.

2. Though the Writ Petition has been filed on 17.08.2020 and though adjournment has been granted for filing counter affidavit, no counter affidavit has been filed till date.

3. The petitioner is a proprietor of M/s. Raj Exim, who is a merchant exporter having Goods and Service Tax registration No. 33ABTPT0566G1ZB. It is stated that as provided in Rule 96 of the CGST Rules, 2017, the shipping bill filled 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 the person in charge of conveyance carrying the export goods duly files and export manifest or an export report covering

the number and the date of shipping bills or bills of export and the applicant has furnished a valid return in Form -GSTR-3 or Form GSTR-3B. Accordingly, the petitioners have for the purpose of exporting goods out of India issued Commercial Invoice and Export Invoice. The goods were exported through Amreli Sea port and Shipping Bills, Export General Manifest and Bill of Lading were also generated. It is further submitted that as provided in Section 54 of CGST Act, 2017, read with Section 16 of IGST Act, 2017, immediately after the goods are exported, considering the shipping bills as application for refund of IGST paid in regard to the export goods, the respondent authorities are supposed to refund the said amount of IGST to the petitioner immediately. The grievance of the petitioner is that exports were made in September 2017, but till date, IGST is not refunded to the petitioner. Hence, this Writ Petition.

4. The learned counsel for the petitioner relied on a judgment stating that the issue involved in this Writ Petition is covered by the orders of various Courts across the Country. More particularly, he relied on the order of this Court in **2020(1) TMI 90 – Madras High Court, M/s. Precot Meridian Limited Vs. The Commissioner of Customs, The**

Assistant Commissioner of Customs in W.P.(MD) No.20504 of 2019, dated 19.11.2019 and the relevant portion is extracted as under:-

“9.It is not in dispute that the petitioner exported cotton through seven shipping bills and paid a sum of Rs.4,80,355/- towards IGST. It is also not in dispute that the statute provides for refund of IGST on export of materials. The only condition is that if the export is made after payment of tax, he is entitled to get refund. According to the petitioner, he has complied with the requirements of Sub-Clauses (a) and (b) of Sub-Rule (1) of rule 96 of CGST Rules, 2017. Accordingly, he is entitled for refund and it cannot be ignored by citing the circular.

10.The Hon'ble Supreme Court, in a similar circumstance, in the case of Commissioner of Central Excise, Bolpur Vs.Ratan Melting and Wire Industries [2008(12) S.T.R.416 (S.C)] has held as follows:-

'6.Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct

that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the state Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law'

...

12. When the above circular was dealt with by the Hon'ble Division Bench of Gujarat High Court at Ahmedabad in M/s. Amit Cotton Industries through partner, Veljibhai Virjibhai Ranipa vs. Principal Commissioner of Customs, in R/Special Civil Application No.20126 of 2018, dated 27.06.2019, the Division Bench has held that it has nothing to do with the IGST refund and it is incumbent on the respondents to refund the IGST as claimed by the petitioner herein. The respondents have already passed a circular when they were facing lot of problems because of the fact that the refunds are completely system managed and they have taken a

conscious decision to refund the amount vide Circular No.40/2018-Customs, dated 24.10.2018.

13.In view of the above discussion, the respondents are directed to refund the amount of Rs.4,80,355/- of IGST paid by the petitioner for the goods exported form India which are zero rated supplies, within a period of six weeks from the date of receipt of a copy of this order.”

5. Therefore, the above judgment is squarely applicable to the present factual circumstances of the case. In the light of the above, the Writ Petition stands allowed. The first respondent herein is directed to sanction the refund of IGST of Rs.2,35,008/- paid by the petitioner in respect of the goods exported i.e 'Zero Rated Supplies' made vide shipping bills mentioned herein above along with entitled interest @ 9% to the petitioner till the date of actual refund, within a period of six weeks from the date of receipt of a copy of this order. No costs.

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17.04.2021

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Assistant Commissioner of Customs,
Custom House, IGST Section,
Poland Sea Port,
Gujarat.

2. Union of India,
(Through the Minister of Finance),
Ministry of Finance,
Parliament Street, Central Secretariat,
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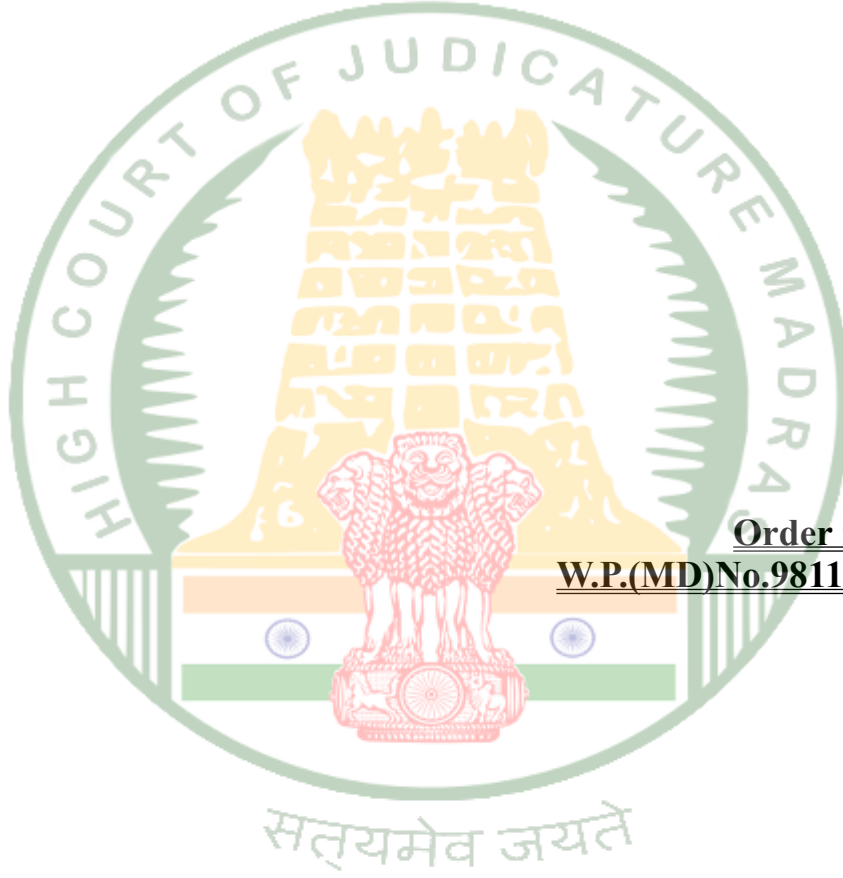


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Order made in
W.P.(MD)No.9811 of 2020

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