Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.168 OF 2021

MINESCAPE MINERALS PVT. LTD., REP. BY ITS AUT. SIGN., ASHOK ANTONIO COTTA ...PETITIONER

Versus

UNION OF INDIA, THR. MINISTRY OF FINANCE, NEW DELHI AND 3 ORS. ...RESPONDENTS

Mr. Nikhil A. Vaze, Advocate *for the Petitioner.*
Ms. Suzette Pereira, Standing Counsel *for the Respondents.*

CORAM:	**M. S. SONAK &** **M. S. JAWALKAR, JJ.**
DATED:	**11th October 2021**

P.C:

1. Heard Mr. Nikhil Vaze, the learned Counsel for the petitioner and Ms. Suzette Pereira, the learned Standing Counsel for the respondents.

2. This matter was adjourned from time to time at the request made on behalf of the respondents. However, today, Ms. Suzette Pereira, the learned Standing Counsel for the respondents states that there is a subsequent development in the context of clarification dated 20.09.2021 and based upon the same, she has written instructions to consent to this Petition being allowed.

3. Ms. Pereira has placed on record the communication dated 30.09.2021 issued to her by Assistant Commissioner, Legal, CGST, Goa containing such instructions. She has also placed on record communication dated 24.09.2021 and clarification dated 20.09.2021, which clarifies the position and answers the issue in favour of the petitioner herein.

4. In the circular dated 20.09.2021, which clarifies certain GST related issues, reference is necessary to clause 3, which reads as follows:

3.	Whether the first proviso to section 54(3) of CGST/ SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.	1. The term 'subjected to export duty' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.

		Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

5. The learned Counsel for the parties submit that the aforesaid clarification settles the issues raised in this Petition in favour of the petitioner herein. Accordingly, we quash and set aside the order-in-original dated 16.03.2020 and the order in Appeal dated 27.11.2020 and direct the respondents to process the case of the petitioner herein having regard to the aforesaid clarification.

6. This Petition is allowed in the aforesaid terms. There shall be no order as to costs.

7. All concerned to act on authenticated copy of this order.

M. S. JAWALKAR, J. **M. S. SONAK, J.**

VAIGANKAR ESHA SAINATH Digitally signed by VAIGANKAR ESHA SAINATH Date: 2021.10.11 16:42:17 +05'30'