

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.5160 OF 2021

SRC Chemicals Private Limited & Anr.

...Petitioners

vs.

Central Board of Indirect Taxes and
Customs through. Dept. of Revenue & Ors.

...Respondents

Mr. Rahul Sarda a/w Mr. Sankalp Anantwar, Mr. Tushar Gaikwad, Mt.
Pratik Kadav i/b SMA Law Partners for Petitioners.

Mr. Vijay Kantharia a/w. Dhananjay B. Deshmukh for the Respondent.

**CORAM : K. R. SHRIRAM &
AMIT B. BORKAR, JJ.**

DATE : 12th OCTOBER 2021

P. C. :

Petitioner has approached this Court for a direction against respondent to refund Integrated Goods and Service Tax (IGST) of Rs.22,92,587 paid by petitioner No.1 in respect of export of goods on 28/6/2017 the date when the provisions for refund and calculation of IGST under the CGST Act and the Integrated Goods and Services Tax Act, 2017 (the "IGST Act") had not been notified. On 1 July 2017, certain provisions of CGST Act and Goods and Services Act came into force. In the year 2017 the Government of India enacted the CGST Act, IGST Act and certain other Acts for introduction of a single unified tax system for imposition of one tax across the country that is Goods and Services Tax (GST).

2. Petitioner No.1 exported certain goods on 28/6/2017 from Jawaharlal Nehru Port, Nhava Sheva. The formalities pertaining to printing of shipping bill etc were undertaken at the Port. It is petitioner's case that as per the practice prevalent at the said Port, the shipping bill would get generated and printed at the said port based on documents submitted by the exporter. Since the indirect tax regime was set to undergo a complete change and since the said Port was also in the process of adopting new system for transition to GST regime, the shipping bill which should have got printed on 28/6/2017 got printed on 1/7/2017. Since GST was applicable with effect from 1/7/2017 and leviable on the export of goods, the shipping bill got printed on 1/7/2017 with petitioner No.1's GST Identification Number and levy of IGST albeit with the date of 29/6/2017. Copy of the shipping bill is annexed to the Petition.

3. Petitioner has submitted that he has no control over the process of printing the shipping bill at the said port (at the said port office printing the shipping bill is done based on documents submitted by the exporter without any involvement of the exporter). Petitioner submitted that supplies of goods and services for export have been categorized as "Zero Rated Supply" which means that goods could be exported under Bond or Letter of Undertaking without payment of integrated tax followed by claim of refund of unutilized input tax credit or on payment of integrated tax with provision for refund of the tax paid. Petitioner chose to pay the amount of Rs.22,92,587/- being the IGST and claimed refund. The

payment is reflected in the IGST returns of petitioner No.1. It is petitioner's case that as per Circular No.26/2017-Customs dated 1/7/2017, petitioner No.1 was not required to file any separate application for refund of IGST paid on supply of goods for exports. Shipping bill since had all details including IGST, invoice details was to be deemed to be an application for refund itself. As petitioner did not receive the refund of IGST of Rs.22,92,587/- on or about 16/9/2018 petitioner approached the customs office to check the status of its refund. Petitioner No.1 was informed that unless export data was transmitted from GSTN (GST Network) to ICEGATE (Indian Customs Electronic Gateway), the Customs office would not be in position to process the refund claim. Petitioner had no control or role to play in the transmission of data from GSTN to ICEGATE.

4. It is also stated in the petition that sometime in February 2019, the GST portal of Respondent No.1 permitted filing an application for refund in Form GST RFD-01A. Accordingly, on 5/3/2019 petitioner No.1 filed an application for refund in the said form. Petitioner No.1 thereafter received show cause notice from respondent No.3 proposing to reject petitioner's application for refund. Petitioner No.1 had filed a reply and notwithstanding the reply Respondent No.3 rejected petitioner's application for refund. Petitioner preferred an appeal before the Commissioner of Central Tax (Appeals-II) Pune which upheld the order passed by respondent No.3 and rejected the appeal on the ground that the jurisdiction of refund of the IGST paid on exported goods was with the Customs

Department. Therefore it does appear that petitioner's entitlement to refund is yet to be decided. Petitioner kept sending reminders. Respondent No.4 addressed communication dated 10/2/2020 addressed to respondent No.6 stating that the data for the said shipping bill of petitioner was not transmitted from GSTN to ICEGATE and therefore his office is unable to process IGST refund. Respondent No.4 has requested Respondent No.6 to look into the matter and provide suggestions so that refund with reference to Petitioner's shipping bill could be processed. As there was no further response petitioner sent reminders to Respondent No.5 who gave an endorsement in the office copy of petitioner's letters which reads as under:

"There is no information received from GSTN for this shipping bills. Through office interface,IGST amount can be refunded which gets reflected in system as per information from GSTN. Raise issue with GSTN helpdesk"

5. Notwithstanding all these efforts put by petitioner No.1 and notwithstanding the fact that there was no denial of petitioner No.1's entitlement to get the refund of Rs.22,92,587/-, respondents chose to keep quiet.

6. On finding no other option, petitioner approached this Court by way of this petition. On 7/9/2021 following order came to be passed.

"1. It appears from the affidavit of service tendered in Court today that the respondent no.6

(Joint Director, Directorate General of Systems and Management) has received the consignment bearing no. EM737470797IN which, according to Mr. Sarda, learned advocate for the petitioner was dispatched on India Post containing copy of the Writ Petition.

2. The prayer in this Writ Petition is for a direction to the respondents to refund, within a period of four weeks, the Integrated Goods and Service Tax realized from the petitioner in a sum of Rs.22,92,581/- with interest thereon.

3. Our attention has been drawn by Mr. Sarda to a communication dated February 10, 2020 of the Assistant Commissioner of Customs, Drawback Section, JNCH addressed to the respondent no.6. The contents of the communication, while dealing with the anxiety expressed by the petitioner with regard to non-refund of the said sum of Rs.22,92,581/-, points to the inability of the office of the Commissioner to process the IGST refund claim by the petitioner "because data is not transmitted from GSTN to ICEGATE".

4. We are informed by Mr. Sarda that the petitioner is not aware of any decision having been taken by the respondent no.6 pursuant to receipt of the said communication dated February 10, 2020.

5. Since we are satisfied that the respondent no.6 has been served with a copy of the Writ Petition and he has chosen not to be represented today, we direct him to take an appropriate decision on such communication within a period of a fortnight of service of a copy of this order. Such decision may be placed before this Court on the returnable date, i.e., September 28, 2021."

Notwithstanding this order respondent No.6 has chosen not to take a decision on the communication from respondent No.4. At least nothing has been placed on record by respondents.

7. On 28/9/2021 Shri Kantharia appeared for respondents and sought time to file reply. Time was granted upto 8/10/2021 and the matter stood over to today. Today Shri Kantharia sought further 3 weeks to file reply on written instructions which the Court was not inclined to grant and rejected the request. This is because first of all, as recorded in the affidavit of service, the petition was served on or before 31/8/2021 and Shri Sawant who is instructing Shri Kantharia, also appeared on 7/9/2021 though for respondent Nos.3 and 4 only. But on 28/9/2021 Shri Kantharia informed the Court that he is appearing along with Shri Sawant for all the respondents. In our view therefore respondents had enough time to file a reply. Respondent No.6 also had sufficient time to take appropriate decision on the communication from respondent No.4 and place the same on record. As no reply has been filed, none of the averments of the petition has been controverted. The directions of this court also has not been complied with. Moreover, even the communication dated 10/2/2020 from respondent No.4 to respondent No.6 indicates that petitioner No.1 is entitled to refund but petitioner No.1 is made to run from pillar to post only because data of IGST refund is not transmitted from GSTN to ICEGATE. That cannot be petitioner's problem and it was the responsibility of respondents and in particular respondent no.6 to ensure that petitioner No.1 got its refund. Unfortunately, it is more than 4½ years since the amount has not been refunded.

8. At the beginning itself this court indicated to the Counsel that we are inclined to dispose the petition at this stage itself because

respondent No.6 never attempted to resolve the problem of petitioner and no reply has been filed and directions of this court have not been complied with. In the circumstance petition is allowed in terms of prayer clause (a) which reads thus:-

"a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order or Writ of direction in the nature of Mandamus or any other order or Writ or direction directing the Respondents or such of them as this Hon'ble Court deems fit to refund within a period of four weeks the Integrated Goods and Service Tax of Rs.22,92,587/- (Rupees Twenty Two Lakh Ninety Two Thousand Five Hundred and Eighty-Seven Only) with interest thereon at the statutory rate of interest in accordance with the provisions of section 54 of the Central Goods and Services Tax Act, 2017 r/w section 16 of the Integrated Goods and Services Tax Act, 2017, irrespective of whether the relevant data has been transmitted from GSTN to ICEGATE."

9. Respondent No.1 shall, within 4 weeks ensure that the refund of Rs.22,92,587/- is paid to petitioner No.1 together with interest thereon @ 9% p.a. from the filing date of the petition i.e., 28/4/2021 together with costs in the sum of Rs.25,000/-.

10. All to act on copy of the order authenticated by the Associate of this Court. Respondents shall not insist on certified copy for complying with the order contained in paragraph 9 above.

(AMIT B. BORKAR, J)

(K. R. SHRIRAM, J.)