

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

WRIT PETITION NO.5942 OF 2021

Gujarat Nippon International Pvt. Ltd. Petitioner

Vs.

Union of India & Ors. Respondents

Mr. Prakash Shah i/b M/s.M/s.PDS Legal for the Petitioner

Ms.Sangeeta Yadav for the Respondent no.2

Mr.J.B.Mishra a/w Mr.Satya Prakash Sharma and
Mr.Ranjith Aithe for the Respondent nos.4 and 5

**CORAM: S.V. GANGAPURWALA &
M. G. SEWLIKAR, JJ.**

DATED : MAY 2, 2022

P.C.

1. The Petitioner seeks direction against the Respondents to sanction refund for RS.17,45,941/- in terms of section 16(3)(b) of the IGST Act read with section 54 of the CGST Act and Rule 96 of the CGST Rules.

2. Mr.Shah, the learned counsel for the Petitioner submits that the Petitioner had never claimed higher draw back. Mistakenly suffix 'A' was included instead of 'B' but the draw back claimed was the same as the custom component.

3. The learned counsel relies upon the judgment of the Gujarat High Court in the case of ***Awadkrupa Plastomech Pvt. Ltd. vs. Union of India***¹. The learned counsel submits that the said judgment has been confirmed by the Apex Court in the case of ***Union of India vs. Awadkrupa Plastomech Pvt. Ltd.***² The Apex Court by dismissing the SLP observed that Respondents had claimed an IGST refund only to the extent of custom component and saw no error in the finding of the High Court. According to the learned counsel, the case of the Petitioner is squarely covered by the judgment of the Gujarat High Court confirmed by the Apex Court (Supra).

4. Mr.Mishra, the learned counsel for the Respondents submits that the moment the Petitioner had suffixed 'A', it is sufficient to infer that the Petitioner claimed higher draw back. The circular dated 09.10.2018 clearly suggests that by declaring draw back serial suffixed with 'A' or 'C' and by making above declaration, the exporters consciously relinquished their IGST / ITC claims. In view of the said circular dated 09.10.2018, Petitioner is not entitled for refund.

5. The Petitioner, it appears, exported the goods to Jawaharlal Nehru Port Trust (JNPT) and Mumbai Airport, Mumbai on payment of integrated goods and service tax. Under notification dated 21.09.2017, effective from

1 2021(46) G.S.T.L. 31(Guj.)

2 2021(54) G.S.T.L. J55 (S.C.)

01.10.2017, the two different rates in cases where credit is availed and credit not availed i.e. column 'A' and 'B' are done away with and replaced with a single rate. It is the case of the Petitioner that Petitioner has been granted refund of the IGST paid on goods exported by it post the amendment dated 01.10.2017. The only reason for denying the benefit to the Petitioner is that by affixing suffix 'A', Petitioner has claimed higher draw back. The Petitioner, it is suggested is not entitled to any draw back in excess to the rate specified in column 'B'. In the present case, rates specified under column 'A' and 'B' are the same. Respondents also do not dispute that the rates specified by the Petitioner in column 'A' and 'B' are the same.

6. From the facts on record, it is evident that the Petitioner is claiming draw back of the custom component only for the goods exported by the Petitioner at the rates specified therein. The rates of draw back under column 'A' and 'B' for the product exported by the Petitioner is the same. The said fact is not disputed by the Respondents. It is only on technical ground that affixing suffix 'A' claim of the Petitioner is denied. The case of the Petitioner is similar to the one decided by Gujarat High Court in the case of Awadkrupa Plastomech Pvt. Ltd. (Supra) and confirmed by the Apex Court.

7. In view of the above, the Petitioner succeeds. Respondents shall sanction the refund towards IGST paid in respect of the goods exported i.e. supply made by shipping. Of course, in case, if there is no other impediment, statutory

interest shall follow.

8. Writ Petition accordingly disposed of. No costs.

(M. G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)