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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 04.05.2022

+ **W.P.(C) 13152/2019**

PHOENIX CONTACT INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr R.Krishnan, Advocate.

versus

COMMISSIONER OF CUSTOMS (EXPORTS), NEW DELHI

..... Respondent

Through: Mr Harpreet Singh, Sr. Standing
Counsel with Ms Suhani Mathur, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. The substantive prayers made in the writ petition are as follows:

“(a) Issue appropriate writ or direction to the Respondent to sanction forthwith refund the IGST paid on the export of goods covered by the two shipping bills No. 7837037 and No. 8697421 respectively.

(b) Order payment of interest @ at least 15% per annum on the refund unreasonably and unjustifiably withheld by the respondent for nearly over two years without passing any order”

2. The broad facts, which are required to be noticed for disposal of the writ petition, are :

2.1. The petitioner is a manufacturer and exporter of electrical connectors falling under Chapter 85 of the Central Excise Tariff.

2.2. The petitioner avers [and that there appears to be no dispute about this fact] that its factory is located at Dudhola, Palwal, Haryana.

2.3. Insofar as the instant writ petition is concerned, the petitioner claims refund of Integrated Goods and Service Tax (IGST) against two shipping bills bearing nos. 7837037, dated 05.08.2017 and 8697421, dated 16.09.2017.

2.4. It is not disputed that the petitioner had paid IGST i.e., local tax @ 28% of the export value. The refund amount claimed against the two shipping bills i.e., bill no. 7837037 [dated 05.08.2017] is Rs. 8,00,621/-, while against shipping bill bearing no. 8697421 [dated 16.09.2017], the refund claimed is Rs. 8,25,349/-. These refunds are claimed under Section 16 of the IGST Act, 2017 [in short “IGST Act”] read with Rule 96 of the Central Goods and Service Tax (CGST) Rules, 2017 [in short “CGST Rules”].

2.5. It appears that the petitioner by oversight had claimed duty drawback by referring to the code no. 853699“A” instead of 853699“B”. Resultantly, the respondent/revenue granted duty drawback @ 2% of the FOB (free on board) value of exports amounting to Rs. 1,17,162/-, and not the IGST paid on the goods exported.

2.6. The petitioner having realised the mistake applied for correction. The respondent/revenue permitted the correction to be made upon payment of fee and penalty amounting to Rs.4,000/-, in respect of each of the

aforementioned two shipping bills. This correction was made on 25.10.2018. In other words, the petitioner was allowed to correct the duty drawback code; the correct code being 853699“B”, as noted above.

2.7. Despite the correction having been permitted, the refund of IGST was not granted to the petitioner. The petitioner has remained engaged with the respondent/revenue in this regard since October, 2018. Because there was no movement in the matter, the petitioner was propelled to file the instant petition.

3. Mr Harpreet Singh, who appears on behalf of the respondent/revenue, seeks to place reliance on the Central Board of Indirect Taxes and Customs’ (CBIC) Circular dated 09.10.2018. In particular, Mr Singh has relied upon paragraph 3 of the said circular. For the sake of convenience, the said paragraph is extracted hereafter:

“3. It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage.”

4. Having heard the learned counsel for the parties, we are of the view that the writ petition would have to be allowed. The refund would have to be ordered and interest would also have to be granted at the rate indicated hereafter.

5. The reason why we have reached this conclusion is as follows :

5.1. There is no dispute that the petitioner has paid the IGST. The

petitioner in terms of Section 16 of the IGST Act¹ read with Section 54 of the CGST Act, 2017² is clearly entitled to refund of IGST. Rule 96 of the CGST Rules³ also clearly provides for refund of IGST in respect of zero rated supplies.

6. Insofar as the argument advanced on behalf of the respondent/revenue is concerned, which is, that because the petitioner claimed duty drawback at higher rate, and, therefore, it cannot be permitted now to seek refund of IGST, is factually incorrect.

6.1. The Schedule, appended to the notification dated 31.10.2016 [which came into force on 15.11.2016] and is marked as Annexure P-4,[appended on page 37 of the case file] shows that the duty drawback against tariff entry no. 853699 with respect to Column A [drawback rate when CENVAT facility has not been availed] and Column B [drawback rate when CENVAT

¹ 16.(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:-

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

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(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-

xxx

xxx

xxx

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

² 54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:..

³ **Rule 96. Refund of integrated tax paid on goods [or services] exported out of India.**
- (1) The shipping bill filed 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...

facility has been availed] is identical i.e., 2%. Therefore, paragraph 3 of the circular dated 09.10.2018 will have no application in the instant case.

7. As indicated hereinabove, the petitioner had sought amendment of the duty drawback code, which was permitted upon payment of Rs. 4,000/- as fee and penalty in respect of each of the subject shipping bills. This amendment was permitted in October, 2018.

7.1. Despite this correction having been permitted, the refund of IGST was not ordered.

8. As correctly argued by the petitioner, the issue at hand is covered by the judgments of the Division Bench of the Gujarat High Court in *Amit Cotton Industries v. Principal Commissioner of Customs*, 2020 SCC OnLine Guj 2717 and in *M/s Shyam Textile Through Proprietor Rakesh Ram Swaroop vs. Principal Commissioner of Customs* dated 05.04.2021, passed in SCA 13448/2020. To be noted, the Special Leave Petition filed by the respondent/revenue against the judgment in *Shyam Textile* case i.e., SLP(C) No.19911/2021, was dismissed on 03.01.2022.

9. Thus, for the foregoing reasons, the respondent/revenue is directed to refund IGST against the aforementioned shipping bills.

9.1. Furthermore, having regard to the fact that the necessary fee and penalty was paid as far back as on 24.10.2018, interest will be paid at the rate of 7% (simple) per annum, albeit from 25.10.2018, when correction was effected by the respondent/revenue. [See *Amit Cotton Industries* and the judgment of this Court rendered in W.P.(C) No.2694/2019, titled *TMA International Pvt. Ltd. & Ors. v. Union of India and Anr.*, dated 26.03.2021.]

9.2. Parties will act, based on the digitally signed copy of this judgment.

10. The writ petition is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(POONAM A. BAMBA)
JUDGE

MAY 4, 2022
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Click here to check corrigendum, if any