

Satyen Polymers Pvt. Ltd.Petitioner

Versus

The Union of India and Ors.Respondents

Mr. J. B. Mishra a/w Mr. Siddharth Chandrashekhar for Respondent No. 1 & 3.

DATE : 11th SEPTEMBER, 2023.

1. Rule. Rule made returnable forthwith. Respondents waives service. By consent of the parties heard finally.

2. By this petition under Article 226 of Constitution of India, the Petitioner has prayed for various reliefs but at the time of the hearing has pressed for only one prayer which reads thus :

" (c). This Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction to the Respondent No.1 to release the refund claim of Rs.17,04, 127/- on account of zero-rated supplies along with interest as prescribed under the IGST Act, from the end of 3 months after the filing of the Shipping Bills till the date of payment of refund to the Petitioner."

Narrative of Events :

3. The Petitioner is engaged in the business of manufacturing Polyester Resin and produces raw material from various sources complying with the ISO standards.

4. The Petitioner, in the month of July and September 2017 exported two consignments containing unsaturated Polyester Resin ESPOL categorised under HSN Code 39079120 from JNPT, Mumbai to Hamad Port, Qatar by sea on the basis of two invoices dated 25th July, 2017 and 5th September, 2017 vide Shipping Bill No.7651882 dated 28th July, 2017 and 8557766 dated 9th September, 2017, respectively.

5. The Petitioner engaged services of Custom House Agent (CHA) for the purpose of exporting the above referred consignments. At the time of filing various documents for export of the aforesaid consignment, the CHA inadvertently selected Tariff Item 3907-A instead of 3907-B. The CHA on an affidavit dated 16th January, 2020 has stated on oath the mistake committed and the reason for the same. The rate of drawback under 3907-A as well as 3907-B is same i.e. 1.5%.

6. On 29th August, 2017 and 12th October, 2017, the Petitioner received export proceeds in their bank account against the aforesaid export as evident from the certificate of the banker certifying the receipt.

7. On 19th August, 2017 and 22nd November, 2017, the CHA as agent of the Petitioner paid Integrated Goods and Service Tax (IGST).

8. The Petitioner made a claim for refund of IGST on the ground that the export of goods is treated as zero rated supply under Section 16 of the IGST Act. However, inspite of various follow-up the refund was not granted on the ground, which was informed orally, that since the Petitioner has opted for higher duty drawback by mentioning Tariff Code 3907-A, the Petitioner has given up its right to claim the refund of tax paid under IGST Act. The Petitioner was informed about the said stand of the revenue by relying upon Circular No.37 of 2018 dated 9th October, 2018.

9. On 6th May, 2019 the Petitioner's Advocates addressed a detailed letter to Director General of Foreign Trade as also to the Central Board of Indirect Taxes and Customs narrating the aforesaid facts and requesting to give permission to the Petitioner to rectify and amend the shipping bill to substitute HSN Code 3907-A by 3907-B. However, there was no response from any of the authorities.

10. It is on the backdrop of the aforesaid events that the present petition is filed seeking refund of Rs.17,04,127/- alongwith the interest.

11. **Submission of the Petitioner** : The Petitioner submitted that the

duty drawback rate under HSN Code 3907-A and 3907-B is same and therefore, it is not a case where the Petitioner has claimed higher rate of duty drawback. The Petitioner also stated that there was an error in mentioning HSN Code 3907-A instead of correct HSN Code 3907-B, which error has been admitted by the CHA on affidavit and therefore even on this account the Petitioner's claim to get refund cannot be withheld. The Petitioner relied upon the decision of this Bench in the case of *Sunlight Cable Industries V/s. The Commissioner of Customs NS II And 2 Ors.*¹ wherein on an identical situation, the claim of the refund was granted by relying upon various decisions rendered by different High Courts namely, *M/s. Amit Cotton Industries V/s. Principal Commissioner of Customs*², *Awadkrupa Plastomech Pvt. Ltd. V/s. Union of India*³, *Kishan Lal Kuria Mal International V/s. Union of India*⁴ and *Gujrat Nippon International Pvt. Ltd. V/s. Union of India*⁵. The Petitioner, therefore prayed for grant of refund alongwith the interest.

12. **Submissions of the Respondents** : The Respondents in their reply have placed reliance on Circular No.37 of 2018 dated 9th October, 2018 to contend that the Petitioner is not entitled to claim refund of IGST. The Respondents contended that the Petitioner has consciously availed higher

1 Writ Petition No. 284 of 2021 dated 27th June, 2023

2 2019 (29) G.S.T.L. 200 (Guj.)

3 2021 (46) G.S.T.L. 31 (Guj.)

4 (2023) 95 GST 177 (Delhi)

5 2022 (64) G.S.T.L. 45 (Bom.)

rate of duty drawback and therefore in view of the said circular the claim of the Petitioner is not tenable. The Respondents further submitted that the Petitioner has consciously relinquished their claim of refund by mentioning the HSN Code 3907-A. However, the Respondents fairly and rightly so conceded that the duty drawback rate under 3907-A as well as 3907-B is same and therefore the issue is covered by the decision of this Court in the case of *Sunlight Cable Industries (supra)*.

13. Having heard the learned counsel for the Petitioner and the learned counsel for the Respondents, we are of the view that for the reasons stated herein below, the contentions of the Petitioner are justified.

14. At the outset, it is not disputed that the duty drawback rate under HSN Code 3907-A and 3907-B is same and therefore it is not a case of higher duty drawback. Secondly, the CHA in his affidavit has admitted the mistake in preparing the shipping bills on which instead of mentioning 3907-B, they have mentioned 3907-A. There is no rebuttal to the said averment of the Petitioner by the Respondents.

15. The Circular on which reliance is placed by the Respondents is dated 9th October, 2018, whereas the export was made on 25th July, 2017 and 5th September, 2017, which is much before the date of Circular. It is a settled position that the circular cannot be made applicable

retrospectively. Even otherwise, the circular proceeds on a footing of claim of higher duty drawback and not where the rate of drawback is same and further more the circular also dose not deal with the rectification of mistake if suffix (A) is mentioned instead of suffix (B), while mentioning the HSN Code, which the facts in the instant case.

16. This Court in an identical facts/situation in the case of *Sunlight Cable Industries (supra)*, faced with a similar situation allowed the claim of refund by observing as under :

"9. We have heard learned Counsel for the parties. We have also perused the record. Section 54 of the CGST Act provides for refund of tax, which would entitle the Assessee to claim any refund of tax and interest or any other amount paid by him by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Explanation below Section 54 provides for refund, which includes refund of tax paid on zero rated supplies of goods or services or both or on inputs services, etc. In the present case, it is not in dispute that the case of the Petitioner is a case of zero rated supply under Section 16(3) of the IGST Act. In these circumstances, Rule 96 of the CGST Rules, which provides for refund of integrated tax paid on goods or services exported out of India had become applicable. On this, there is no dispute.

10. In such circumstances, the only question, which is required to be determined is as to whether the Respondents are correct in their assertion that in making the refund as claimed by the Petitioner the Petitioner had claimed duty drawback at the higher rate of the IGST refund as seen from the reply received by the Petitioner from the CPRAMS. It appears that there is no factual foundation for the Respondents to come to such conclusion and, in fact, such a conclusion is contrary to the record, subject matter of consideration by the authorities. This is also clear from the notification dated 31st October 2016 prescribing common duty at 2% in respect of the goods in question.

11. This apart, in a similar situation where the claim of the assessee was not a claim to take a drawback at higher rate, the Gujarat High Court in *Awadkrupa Plastomech (supra)* in considering a prior decision in *Amit Cotton Industries vs. Principal Commissioner of Customs*, observed that is a situation when the claim made by the Petitioner was not to avail double benefit, that is of the IGST refund and the drawback, the Petitioner therein had become entitled to the IGST

Refund. Relevant observations as made by the Division Bench are required to be noted, which read thus:

“8. We are not impressed by such submission because the rates of higher and lower duty drawback remains the same i.e. two percent and no occasion would arise to refund the differential amount as argued by the learned counsel appearing for the revenue. The Circular No.37/2018-Customs, dated 09/10/2018 referred to above by the Competent Authority would apply only to the cases, where the exporters have availed the option to take drawback at the higher rate in place of the IGST refund out of their own volition. In the instant case, the assessee had never availed the option to take drawback at higher rate in place of the IGST refund. In such circumstances, the Circular is not applicable to the facts of the present case.

9. Even as per the Condition No.7 of the Notification 131/2016-Cus. (N.T.) dated 31/10/2016, if the rate indicated in the columns (4) i.e. higher duty drawback and (6) i.e. lower duty drawback are the same, then it shall necessarily imply that the same pertains only to the Customs component and is available irrespective of whether the exporter has availed of the CENVET facility or not.

10. The petitioner had exported Rope Making Machine HSN Code 84794000 which attracts the same rate under both the columns (4) & (6) respectively i.e. 2 per cent. Thus it is evident that the petitioner has claimed drawback of the customs component only for their exports and there arises no question of denying the refund of IGST. The rationale for not allowing the refund of IGST for those exporters, who claim higher duty drawback is that the higher duty drawback reflects the elements of Customs, Central Excise and Service Tax taken together and since higher duty drawback is already being availed than granting the IGST refund C/SCA/1014/2020 ORDER would amount to double benefit as the Central Excise and Service Tax has been subsumed in the GST. In the case of the writ-applicant, the drawback rates being the same, it represents only the Customs elements, which did not get subsumed in the GST and thus, the writ-applicant cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback.

11. In the result, this petition succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund towards the IGST paid in respect to the goods exported i.e. 'Zero Rated Supplies' made vide the shipping bills. It appears that the writ-applicant has also prayed to pay interest at the rate of 9% on the amount of refund from the date of shipping bill till the date on which the amount is actually paid.”

12. A Division Bench of this Court in *Gujarat Nippon International (supra)*, considering the prior decision in *Awadkrupa Plastomech (supra)*, granted a similar reliefs in the said case *inter alia* making the following observations:

“6. From the facts on record, it is evident that the petitioner is claiming drawback of the custom component only for the goods exported by the petitioner at the rates specified therein. The rates of drawback 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.”

13. Also in *Kishan Lal Kuria Mal International vs. Union of India*, the Division Bench of the Delhi High Court, following the decision of the Gujarat High Court in *Amit Cotton Industries* (supra) allowed the prayer for refund of the IGST. The following are the observations of the Court:-

“8. Since the facts in the present cases are *pari materia* to the case in *M/s. Amit Cotton Industries* (supra), the present writ petitions are allowed directing the Respondent authorities to grant refund of IGST paid on the goods exported by the Petitioners during the transitional period, after deducting the differential amount of duty drawback, if the said differential amount has not already been returned by the petitioner, within twelve weeks along with appropriate interest at the rate of 7% p.a. on such refund from the date of the shipping bill till the date of actual refund”.

14. In the aforesaid circumstances, in the present case, the Petitioner is entitled to a refund of the IGST paid on the exports in question, as it is certain that this is not a case where the Petitioner is availing any double benefit that is of the IGST refund and a higher duty drawback."

17. The above decision of this Court is squarely applicable in the facts of the present case. In the light of the above discussion, we allow the petition by following order:

ORDER

- i) The Petition is allowed in terms of prayer clause (c).

- ii) The Respondents are directed to refund of Rs.17,04,127/- to the Petitioner the IGST paid in respect of the zero rated supply under shipping bills in question alongwith interest as per the IGST Act.
- iii) Amount be released within a period of two weeks of the receipt of the authenticated copy of the present order by the concerned officers.
- iv) The Petition is allowed in the aforesaid terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]