

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP No.5306 of 2021 (O&M)****Date of decision: 14.02.2023****M/s Silverline Chemicals****...Petitioner****Vs.****Union of India and others****...Respondents****CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA****Present: Mr. Sukesh K. Jindal, Advocate,
for the petitioner.****Mr. Deepesh Kakkar, Advocate,
For Mr. Anshuman Chopra, Senior Standing Counsel,
for the respondents.************Ritu Bahri, J. (oral)**

M/s Silverline Chemicals-petitioner is seeking a writ in the nature of mandamus directing the respondents to sanction refund of the IGST paid with regard to the goods exported i.e. 'zero rated supplies', made vide shipping bill Nos.7229240 and 7451382 dated 08.07.2017 and 19.07.2017 respectively.

The petitioner is registered with the Ministry of Commerce and in this regard, certificate of Importer-Exporter Code (IEC) dated 29.08.2003 (Annexure P-1) has been issued by the Assistant Director General of Foreign Trade. The petitioner has also placed on record copy of the GST Registration Certificate (Annexure P-2) to show that the company is registered with the Goods and Service Tax Authorities. Copies of the shipping bills and air way bills have been attached as Annexure P-3. As per petitioner, the goods were exported to Iran and IGST with regard to those goods was paid. After the goods were exported, as per Section 54 of the CGST Act, 2017, read with

IGST paid with regard to the export goods. Further, on the request/complaint made by the petitioner, a correction was made in the bills and the amount of IGST paid by it (petitioner) was corrected as Rs.2,01,423.31/- for shipping bill No.7229240 dated 08.07.2017 and Rs.2,47,486/- for shipping bill No.7451382 dated 19.07.2017. However, the refund of IGST paid was rejected due to drawback in Part 'A' taken by the petitioner.

Learned counsel for the petitioner has argued that as per Rule 96 (4) of the CGST Rules, 2017, claim of the refund can only be withheld on two eventualities, which are as under:-

“(a). A request has been received from the jurisdictional Commissioner of Central tax, State tax or Union Territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.”

Learned counsel for the petitioner further argued that case of the petitioner does not fall under any of the aforesaid eventualities. Claiming drawback is no ground for withholding the refund of IGST amount paid in respect of goods exported.

Upon notice, reply on behalf of respondent Nos.1 to 3 has been filed, wherein they have justified the rejection of the refund of IGST by referring to the Central Board of Indirect Taxes & Customs (CBIC/Board) Circular No.22/2017-Customs dated 30.06.2017 (Annexure R-1), wherein it has been clarified that during the transition period from 01.07.2017 to 30.09.2017, the exporter may, for exports made during this period, continue to claim the composite rates i.e. rates and caps given under columns (4) and (5) respectively of the Schedule of AIRs of duty drawback, subject to certain additional conditions. In respect of such cases, where IGST refunds have

not been granted due to claiming higher rate of drawback or where higher rate and lower rate were identical, another Circular bearing No.37/2018-Customs dated 09.10.2018 (Annexure R-2) has been issued. After considering various representations from the exporter/export associations and extensively examining the matter, the Board has observed as follows:

“.....the legal provisions related to Drawback claims are as under:

Notes and condition (11) No.131/2016-Cus(NT) dated 31.10.2016 (as amended by Notf. No.59/2017-Cus (NT) dated 29.06.2017), under which All Industry Rates of Drawback had been notified and which were applicable for availing composite rates during period in question (i.e. 01.07.2017 to 30.09.2017), prescribed that ‘The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall not be applicable to export of a commodity or product if, such commodity or product is –

.....

(d) exported claiming refund of the integrated goods and services tax paid on such exports;

2.2 Notes and Condition (12A) of No.131/2016-Cus (NT) dated 31.10.2016 (as amended by Notfn. No.59/2017-Cus (NT) dated 29.06.2017 and 73/2017-Cus (NT) dated 26.07.2017) prescribed that “The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product, if the exporter satisfies the following conditions, namely:-

(ii) If the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed;.....

2.3 In terms of Rules 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the shipping bill itself is treated as claim for drawback in terms of the declarations made on the shipping bill.

2.4 The declarations required in terms of above Notes and Conditions and provisions of the Drawback Rules are made electronically in the EDI. When composite drawback rate was claimed (by declaring suffix A or C with Drawback serial number), exporter was abacus required to tick DBK002 and DBK003 declarations in the shipping bills. In fact, for period 1.7.2017 to 26.7.2017, a manual declaration was also required to be given as the changes made on 26.07.2017 were made applicable for exports made from 01.07.2017 onwards.

2.5 By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims.

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. 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.”

Hence, exports pertaining to the transition period i.e. 01.07.2017 to 30.09.2017 cannot be refunded. It is further stated that the petitioner cannot claim the benefit of refund under Rule 96 (4) of the CGST Rules, 2017, as the present is not the case of withholding of refund where the refund is otherwise admissible.

Learned counsel for the petitioner has referred to the order dated 23.02.2021 passed by this Court in a similar matter i.e. CWP No.2854 of 2021, where in a separate petition filed by the present petitioner, the refund has been allowed by the Deputy Commissioner of Customs, due to which, the said petition had been rendered infructuous. In that petition, the petitioner had approached this Court seeking direction to the respondents to release the refund of the IGST paid with regard to the goods exported i.e. ‘zero rated supplies’, made vide shipping bill Nos.8097714 and 8141742 dated 18.08.2017 and 21.08.2017, respectively. Upon notice in that petition, reply on behalf of respondent No.2 had been filed, admitting that the petitioner had exported the goods out of India from the Mundra Port and the same were to be termed as ‘zero rate supply’ as per Section 16 of the IGST Act, 2017. The petitioner had opted to payment of integrated tax and claimed refund of such tax as per the provisions of

Section 54 of the Central Goods and Services Tax Act or the rules made there under. Details of the shipping bills have been given as under:-

Sr. No.	Shipping Bill No.	Shipping Bill date	IGST amount declared in shipping bill
1	8097714	18.08.2017	1667
2	8141742	21.08.2017	6363
Total			8030

It was admitted that as per Rule 96 of the CGST Rules, 2017, 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, once Export General Manifest (EGM) and valid GSTR-1 and GSTR-3B for the relevant period has been filed. It was further stated that the petitioner had declared the IGST amount of Rs.1667/- and Rs.6363/- in the shipping bills (refund application) and accordingly, IGST refund was processed automatically in the Customs EDI System. The said amount was credited in the designated bank account of the petitioner on 09.06.2018. If, the petitioner would have not made any mistake in filing of IGST amount in shipping bills, he might get the total refund automatically on 09.06.2018. After processing the said shipping bills, the petitioner had requested for amendment of shipping bills under Section 149 of the Customs Act, 1962 in IGST amount column in the shipping bills, which was approved by the competent authority on 04.05.2018. The said shipping bills were processed in the month of August, 2017 and request for amendment was made only in the month of May, 2018. After carrying out the correction, remaining amount of Rs.1,21,910/- and Rs.3,97,496/- could not be sanctioned automatically and the same could only be processed using Officers Interface

by way of generating **supplementary scroll**. The petitioner should have approached the concerned section for the supplementary scroll. It was further stated that the IGST refunds were automatically transmitted from GSTN portal to EDI systems and subsequently, the amount is transmitted without any problems to the bank account concerned, if there is no errors in the documents etc. In the case of the petitioner (therein), they had wrongly entered IGST amount without converting the amount into rupees from Euros and Dollars in the shipping bills. In this backdrop, in order to generate supplementary scroll, human interference was required. Finally, the IGST refund amounting to Rs.1,21,910/- in respect of shipping bill no.8097714 and Rs.3,97,496/- in respect of shipping bill no.8141742/- was credited in their designated bank account.

In CWP-2854-2021, the petitioner was given refund as he had not claimed higher duty drawback. Therefore, the present case has to be dealt with separately.

The present one is the second petition filed by the same petitioner seeking the similar benefit. In the present case, IGST paid by the petitioner was corrected as Rs.2,01,423.31/- for shipping bill No.7229240 dated 08.07.2017 and Rs.2,47,486/- for shipping bill No.7451382 dated 19.07.2017. However, the refund of IGST paid was rejected due to drawback in Part 'A' taken by the petitioner. This prayer of the petitioner for refund is governed by circular dated 30.06.2017 (Annexure R-1) and circular bearing No.37/2018-Customs dated 09.10.2018 (Annexure R-2). These circulars have been issued for the transition period from 01.07.2017 to 30.09.2017. In the case of the petitioner, the shipping bills were dated 08.07.2017 and 19.07.2017. Hence, a perusal of circular No.37/2018-Customs dated

exports affected during the transition period by declaring drawback serial number suffixed with A or C, the exporters have consciously relinquished their IGST/ITC claims.

Reference, at this stage, can be made to a judgment passed by the High Court of Kerala in **G.NXT Power Corp. vs. Union of India**, 2019 (29) G.S.T.L. 616 (Ker.), wherein the revenue was alleging that the petitioner had already availed/drawn higher rate of duty drawback, therefore, while ordering refund of IGST, the petitioner was required to refund higher rate of duty drawback with interest. On the other hand, claim of the petitioner-assessee was that the respondent-revenue was liable to pay interest on IGST paid from the date on which request for refund was made. While deciding the matter, the respondents were directed to adjust amount already availed by the petitioner on account of higher rate of duty drawback and pay balance of IGST payable to petitioner within six weeks. It was further observed as under:-

“4. The learned standing counsel appearing for respondents does not dispute the fact that the subject transaction in fact is with effect from 01.07.2017, came under Section 16 of IGST Act and are zero-rated. It is also not disputed that the voluntary or erroneous payment of IGST is required to be refunded to petitioner. The objection pointed out by Sri Sreejith is that the petitioner has already drawn or availed the higher rate of duty drawback and therefore, while ordering refund of IGST, the petitioner is required to refund the higher rate of duty drawback already availed by the petitioner with interest. Adv. John Varrghese by way of reply submits that the respondents, if insist upon refund of higher rate of duty drawback by the petitioner with interest, the respondents are also required to pay interest to petitioner from the date on which the petitioner requested for refund of IGST. After hearing the counsel on the adjustment, the Court has suggested refund of IGST after adjusting the higher rate of duty drawback availed by the petitioner without refunding IGST amount. The Counsel have consented to disposing of the writ petition by this order:

(a) The respondents are given liberty to adjust the amount already availed by the petitioner on account of higher rate of duty drawback and pay the balance of IGST payable to petitioner within six weeks from the date of receipt of a copy of this judgment.

(b) The respondents are directed to pay the balance amount i.e. IGST minus higher rate of duty drawback already availed by the petitioner within the time granted by this Court and avoid the additional burden of interest payment on IGSt refund. The respondents, if commit default in payment of balance amount as directed by this judgment, the respondents will be obligated to pay interest @ 7% together with balance amount payable from the date on which a request for refund is made by the petitioner till the date of payment.”

The ratio of the aforesaid judgment is fully applicable in the present case.

Accordingly, keeping in view the judgment passed in **G.NXT Power Corp.’s** case (supra), the present petition is disposed of by giving direction to the respondents to adjust the amount already availed by the petitioner on account of higher rate of duty drawback and pay the balance of IGST payable to the petitioner within a period of six weeks from the date of receipt of certified copy of this order, failing which the respondents will pay interest @ 7% together with the balance amount payable from the date on which, a request for refund was made by the petitioner till the date of payment. The respondents are further directed to pay the balance amount of IGST minus higher rate of duty drawback already availed by the petitioner within the time granted by this Court and avoid the additional burden of interest payment on IGST refund.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.02.2023
ajp