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

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Date of Decision: 30.10.2023

+ **W.P.(C) 9065/2023**

INTEC EXPORT INDIA PRIVATE LIMITED Petitioner

Through: Ms. Sakshi Singhal, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sushil Raaja, Adv. for R-1.

Mr. Gibran Naushad, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying as under:

- “a) Declare that paragraph 11(d) read with 12A(a)(ii) of the Notes and Conditions of the Notification No.131/2016-Cus.(N.T.) dated 31.10.2016 (**Annexure P-4**) [as amended by Notification No.59/2017-Cus. (NT) dated 29.06.2017 (**Annexure P-5**) and Notification No.73/2017-Cus.(NT) dated 26.07.2017 (**Annexure P-6**)] are (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 and Rule 96 of CGST Rules, 2017, & (ii) unconstitutional and violative of Article 14, 19 and 21 of the Constitution of India & Quash the same;
- b) Declare that Circular No.37/2018-CUSTOMS dated 09.10.2018 (**Annexure P-10**) is (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act,



2017 and Rule 96 of CGST Rules, 2017, and (ii) unconstitutional and violative of Article 14,19 and 21 of the Constitution of India & Quash the same;

- c) Direct Respondent Authorities to grant refund of IGST, amounting to Rs.7,98,444/-, paid in respect of goods exported by the Petitioner during the Transitional Period pertaining to which duty drawback rates were identical in Column A and B, along with appropriate interest on such refund from the date of the shipping bill till the date of actual refund;
- d) Direct Respondent Authorities to grant refund of IGST, paid in respect of goods exported by the Petitioner during the Transitional Period pertaining to which duty drawback rate was higher in Column A than in B, after deducting differential amount of duty drawback, i.e. grant refund of Rs.63,039/- [i.e. Rs.1,07,551 – (Rs.57,960 – Rs.13,444)], along with appropriate interest on such refund from the date of the shipping bill till the date of actual refund;”

2. The petitioner is a merchant exporter and is engaged in the business of exporting goods out of India.

3. The petitioner has filed the present petition being aggrieved, essentially, by denial of refund of Integrated Goods and Service Tax (hereafter ‘IGST’) paid by the petitioner on goods exported out of India during the transition period after the rollout of the GST Regime (from 01.07.2017 to 30.09.2017).

4. The petitioner has been denied refund for the aforesaid period in view of the following impugned notifications and the impugned circular

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“(i) Paragraph 11(d) read with 12A(a)(ii) of the Notes and Conditions of Notification No.131/2016-Cus. (N.T.), dated 31.10.2016 (as amended by Notification No.59/2017-Cus. (NT) dated 29.06.2017 and Notification No.73/2017-Cus.(NT) dated 26.07.2017) issued by Respondent No.1 &

(ii) Circular No.37/2018-Customs dated 09.10.2018 issued by Respondent No.2.”

5. A taxpayer can be denied refund of IGST in respect of the goods exported by virtue of the impugned notifications and the circular dated 09.10.2018 if the taxpayer had claimed a higher duty drawback. The aforementioned notifications prescribe two rates of duty drawback in respect of the specified goods. The higher rate, as specified in column ‘A’, covers duty drawback to compensate the taxpayer in respect of customs duty, excise duty, service tax and other indirect taxes. The lower rate of drawback in column ‘B’ is to neutralize the effect of custom duty paid on inputs. Under the scheme of the notifications and the circular, if an exporter claims drawback at higher rates, it would not be allowed refund of IGST. The petitioner has been denied refund of IGST as it had claimed duty drawback at the rates specified in Column ‘A’.

6. In several cases, the drawback referred to in columns ‘A’ and ‘B’ are identical. The same clearly establish that no part of the indirect taxes (other than customs duty) were covered under the rates of the duty drawback. It is apparent where two rates are identical, the same only neutralize the part of the customs duty and would not subsume drawback in respect of other indirect taxes.



7. Concededly, the controversy involved in the present case is covered by the decision of this Court in ***TMA International Pvt. Ltd. & Ors. v. Union of India: Neutral Citation No.2021:DHC:1150-DB.***

8. The learned counsel has also referred to the decision of the Gujarat High Court in ***Awadkrupa Plastomech Pvt. Ltd. v. Union of India: 2020 (12) TMI 1116*** where the Division Bench of the Gujarat High Court has held as under:

“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 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.”



9. The Special Leave Petition preferred by the respondents against the said decision was rejected as the Supreme Court found no error in the finding of the Gujarat High Court [Order dated 30.07.2021 in Special Leave to Appeal (C) No.7095/2021].

10. The learned counsel for the petitioner also referred to the decision of this Court in *M/s Kishan Lal Kuria Mal International v. Union of India & Ors.* Neutral Citation No. 2022:DHC:4086-DB and other connected matters. She points out that the petitioners in that case were also granted further relief of the differential amount between the IGST paid and the duty drawback in cases where the exporters had availed a higher duty drawback for the transition period. She submits that the said issue is also covered by the decision of the Gujarat High Court in *M/s Amit Cotton Industries v. Principal Commissioner of Customs: 2019 (29) G.S.T.L. 200 (Guj.)*.

11. The relevant extract of the decision of this Court in *M/s Kishan Lal Kuria Mal International v. Union of India & Ors.* (*supra*) reads as under:

“6. A perusal of the paper book reveals that the matter in issue is covered by the judgment of Gujarat High Court in *M/s Amit Cotton Industries v. Principal Commissioner of Customs, 2019 (29) G.S.T.L.200 (Guj.)*. The relevant portion of the said judgment is reproduced hereinbelow:-

“34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the



provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear.

35. In view of the same, the writ-applicant is entitled to claim the refund of the IGST.

36. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zerorated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund."

(emphasis supplied)

7. Even a Special Leave Petition filed against the said judgment titled ***Principal Commissioner of Customs & Ors. v. M/s Amit Cotton Industries, SLP (C) Diary No. 5502/2021*** has already been dismissed by the Supreme Court of India on 22nd March, 2021.

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."

12. Since the issues raised by the petitioner are covered by the aforementioned decisions amongst others, we direct the respondents to



process the petitioner's claim for refund along with applicable interest in accordance with law in light of the aforesaid decisions.

13. It is clarified that the concerned officer is also entitled to verify the extent of duty drawback availed by the petitioner and other relevant facts for processing the petitioner's claim for refund. Needless to state that the concerned officer is also required to make the requisite adjustments where necessary in respect of duty drawback while processing the petitioner's refund claim.

14. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 30, 2023

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