IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10716 OF 2023

Man Energy Solutions India Private
Limited (formerly known as Man Diesel
& Turbo India Pvt. Ltd.),
Through its
Mr. Atul Kulkarni (Director of the Petitioner
Company), Age-41 years &

Mr. Ghanshyam Jarare (Manager of the
Petitioner Company), Age-43 years,

R/o-E-73, MIDC, Waluj,
Aurangabad-431136,
Maharashtra.

...PETITIONER

VERSUS

1) Union of India,
Through its Secretary,
Ministry of Finance (Department
of Revenue) No.137, North Block,
New Delhi- 110 001,

2) Central Board of Indirect Tax and Customs,
Through its Chairman,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001,

3) The Assistant Commissioner of Customs,
N-5, CIDCO,
Aurangabad-431001.

...RESPONDENTS

...
Mr. Abhijeet Dagdiya Advocate h/f. Mr. Kalyan V. Patil Advocate for Petitioner.
Mr. D.S. Ladda Advocate for Respondent Nos.1 to 3.
...

CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.

DATE OF RESERVING JUDGMENT : 2nd FEBRUARY 2024

DATE OF PRONOUNCING JUDGMENT : 9th FEBRUARY 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for following reliefs:-

"A) Be pleased to kindly issue a writ of mandamus or any other appropriate writ or order directing the Respondent No.3 to immediately process and sanction the amount of INR 2,44,61,247/- (Rs. Two Crores Forty Four Lakhs Sixty One Thousand and Two Hundred and Forty Seven only) of IGST paid by the petitioner towards the goods exported from India in respect of Shipping Bill and deemed refund application bearing number 7114580 dated 24 August 2018;

B) Be pleased to kindly issue a writ of mandamus or any other appropriate writ or order directing the Respondent No.3 to pay interest @ 9% to the Petitioner on the amount of IGST mentioned in (i) above, from the date of the Shipping Bill and deemed refund application bearing number 7114580 dated 24 August 2018 was treated as filed till the date on which the amount mentioned in (i) above is paid to the credit of the Petitioner since the Respondents

> have illegally and arbitrarily failed to process and sanction such amount.”

2. The factual matrix leading to the Petition are, that the petitioner is engaged in the business of manufacturing and selling high capacity diesel engines. The petitioner exports its articles outside India, which culminate in valuable foreign exchange. The petitioner is registered with the Goods and Service Tax (for short “GST”) authorities in the State. The controversy arose, as per the petitioner, upon the failure of respondent No.3 in processing the refund claim of Integrated Goods and Service Tax (for short “IGST”) to the tune of Rs.2,44,61,247/- (Rupees Two Crores Forty Four Lakhs Sixty One Thousand Two Hundred and Forty Seven) in respect of the goods exported out of India by the petitioner under the cover of Shipping Bill No.7114580. The statutory obligation under the Central Goods and Services Tax Act, 2017 (for short “CGST Act”) and the Integrated Goods and Services Tax Act, 2017 (for short “IGST Act”) along with its Rules, have been duly discharged by the petitioner, still the petitioner has been deprived. Rule 96 of the Central Goods and Services Tax Rules, 2017 (for short “CGST Rules”) provides that 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. Accordingly the shipping bill ought to have been considered by the respondents as application for refund. Under Rule 96(3) of the CGST Rules, the customs authorities were statutorily bound to sanction the rebate upon receiving confirmation regarding the filing of Form GSTR-3B. There was no occasion to withhold the processing of rebate. The reasons stated in the impugned letter regarding mismatch in the data has nothing to do with the petitioner, as it is the prime responsibility of the agent and the customs officers to get the proper data. As the processing of refund has not been initiated within stipulated period, the petitioner deserves to be compensated with interest.

3. Respondents have filed affidavit-in-reply i.e. by Devki Nandan Pant – Deputy Commissioner of Customs, Aurangabad, wherein almost all the facts are admitted, however, it has been stated that the petitioner had opted for rebate route under Section 16(3) of the IGST Act for the relevant export of IC Diesel Engine and they had lodged Shipping Bill (for short “SB”) No. 7114580 dated 24th August 2018 along with other supporting documents at port of shipping, ICD, Waluj where the shipping line responsible for conveyance of the goods under export moved

the goods to Mumbai Port and were ultimately exported to Singapore. Petitioner's IGST refund was pending for processing in the ICES system for Error / Response Codes SB005 i.e. for invalid invoice number and SB006 Gateway EGM not filed. It is stated that the current status of the EGM, on inquiry in the ICEGATE, shows error code as NC i.e. SB006 N.C. The petitioner was knowing the errors and has not made the corrections to rectify error code - SB006, though the petitioner rectified the error code – SB005. It is then stated that even otherwise the customs officer – respondent No.3 cannot authenticate rectification of the errors by the petitioner's shipping line.

4. Heard learned Advocate Mr. Abhijeet Dagdiya holding for learned Advocate Mr. Kalyan V. Patil for Petitioner and learned Advocate Mr. D.S. Ladda for Respondent Nos.1 to 3.

5. The learned Advocate for the petitioner has taken us through the documents along with the Petition and submitted that in fact the Shipping Bill was presented by the petitioner and it should have been taken as the application for refund in view of Rule 96 of the CGST Rules. The respondents have issued Circular dated 16th March 2018, wherein it is said that: "The Shipping

lines / agents have been filing EGM electronically for exports originating from gateway ports. However, for cargo originating from ICDs, the Shipping lines / agents were filing EGM in manual mode. Absence of electronic EGMs and their integration with local EGMs has been the major obstacle in processing of refund claims in the case of exports from ICDs." It is then stated in the said Circular that, for hassle free processing of refund claims, the steps to be ensured by the jurisdictional officers in ICDs, which includes rectification of errors in local and gateway EGM, wherever necessary. It has been further reiterated that, there is shared responsibility between officers working at ICDs and gateway ports in ensuring an error free filing and integration of local and gateway EGMs. Error free filing and integration of EGMs is a pre-requisite for smooth processing of refunds and therefore it was stated that necessary outreach may be done to sensitize domestic carriers as well as shipping lines and the agents with regard to due diligence that is required in filing of EGMs and its critical importance in hassle free processing of IGST refunds. Again by another Circular dated 2nd January 2019 further directions in respect of mismatch in local and gateway EGM were given. The responsibility was on the officers and the shipping lines / agents. The petitioner was only to submit the Shipping Bill which should be processed and refund should be given within sixty days, as per the Rules. However, without any reason the respondents are not processing and granting the refund.

6. Learned Advocate for the petitioner relied upon the decision in ***Modern India Products vs. the Assistant Commissioner of Customs, Union of India, 2021(4) TMI 1213 - Madras High Court, M/s. Swastik International vs. Union of India, 2022(4) TMI 819 – Gujarat High Court and M/s. Vimla Food Products vs. Union of India, 2021(12) TMI 1328 – Gujarat High Court***, to support his contentions that Rule 96 of the Central Goods and Services Tax Rule, 2017 makes it mandatory to treat the Shipping Bill filed by an exporter of goods to be the application for refund of integrated tax paid and thereupon the authorities should process it for refund within the stipulated period.

7. Learned Advocate for the respondents strongly opposes the Petition and submitted that since it is a computerized system, the customs officer i.e. respondent No.3 cannot make any changes. The petitioner is having knowledge as to who is the shipping agent and the code that was given. Therefore, it was for the petitioner to ask the shipping agent to make the corrections,

however, unnecessarily it has been made a prestige point. Even if now the petitioner undertakes to contact the shipping agent and the shipping agent makes the correction, the respondents would process the refund.

8. Before we proceed, we are taking note of the letter issued by Assistant Commissioner, ICD Waluj, Aurangabad to the Assistant Commissioner, Customs Chapter Cell, Aurangabad on 28th October 2021, wherein it is stated that:-

> "As per the exporter's submission it is seen that the Gateway EGM No.156344 dtd. 23.08.2018 was filed by the Shipping Line i.e. M/s Samsara Shipping Pvt. Ltd., Mumbai a day before filing of Shipping Bill No. 7114580 dated 24.08.2018 by the exporter. Thus, the details of Gateway EGM was not be updated in the ICEGATE after filing Shipping Bill and the error SB006 still persists as being shown in the ICEGATE document status till date."

9. Therefore, taking into consideration the contents of the said letter, now the error SB006 only appears to be pending. It is not in dispute that Rule 96 of CGST Rules, 2017 prescribes that 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, and such bill (deemed application) was presented by the petitioner to the respondents. In view of the same, the respondents ought to have taken up the

proceedings in view of Section 54 of the CGST Act, 2017. As per Section 54(7) of the CGST Act, the proper officer shall issue the order under Sub-section (5) within sixty days from the date of receipt of the application complete in all respects. Herein the present case, the Shipping Bill is dated 24th August 2018. Thereafter many times the mail was sent to the respondents for the refund, yet the refund has not been paid. The Circulars dated 16th March 2018 and 2nd January 2019 are issued by the respondents, wherein the responsibility has been fixed on the officers and the shipping agent. Now the respondents cannot say that the petitioner should correct the error SB006. Withholding of the refund is impermissible, it has to be either allowed or rejected, for the reasons to be recorded. No such reasons have been recorded and rejection order has not been passed. The ratio in the decisions relied upon by the petitioner would be applicable as regards the application of Rule 96 of the CGST Rules, 2017 is concerned. When the respondents are trying to shirk their responsibility, the case is made out for exercise of the constitutional powers of this Court.

10. In the result, the Writ Petition succeeds. Accordingly, the Writ Petition stands allowed. We hereby direct Respondent No.3 to immediately process and sanction an amount of

Rs.2,44,61,247 (Rupees Two Crores Forty Four Lakhs Sixty One Thousand Two Hundred and Forty Seven) of IGST paid by the petitioner towards the goods exported from India in respect of Shipping Bill and deemed refund application bearing No. 7114580 dated 24th August 2018, within a period of four weeks from the date of this order.

11. We further direct Respondent No.3 to pay interest at the rate of 6% per annum to the petitioner on the aforesaid amount of IGST paid from the date of Shipping Bill and deemed refund application dated 24th August 2018, till the actual date of realization of the said amount.

12. Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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