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

\+ W.P.(C) 7793/2023

EMSIG MANUFACTURING INDIA PRIVATE LIMITED .....Petitioner

Through: Ms. Sakshi Singhal, Advocate

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Raj Kumar Yadav & Mr. Umakant Mishra, Advocates for R-1/UOI.
Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Mr. Kumar Abhishek, Mr. Nalin Khanna, Mr. Sudhashu Goel, Ms. Khushi Gupta & Ms. Neha Rawat, Advocates for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **19.07.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "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-3)** [as amended by Notification No. 59/2017-Cus. (NT) dated 29.06.2017 **(Annexure P-4)** and Notification No. 73/2017-Cus. (NT) dated 26.07.2017 **(Annexure P-5)]** 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-9)** 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.17,01,745/-, paid on goods exported by the Petitioner during the Transitional Period, along with appropriate interest on such refund from the date of the shipping bill till the date of actual refund."

2. Pursuant to the disclosures which have been made by the respondents in these proceedings, we find that although the refunds have been affected on different dates and all shipping bills have been duly attended to, the claim of the petitioner for statutory interest on account of delayed refund remain outstanding.

3. Learned counsel appearing on behalf of the petitioner draws our attention to the judgment rendered by the Court in **TMA International Pvt. Ltd. Vs. Union of India** [2019 SCC OnLine Del 12397] wherein, while dealing with this aspect the Court had observed as follows:

> "15. We find merit in the submission of Mr. Bansal that the exporters would not voluntarily opt for the claim of drawback under Column A at the cost of foregoing IGST paid on exports, where the duty drawback rates under Column A and B were same, the exporters would have received the same amount of drawback even if they would have mentioned "B" in their shipping bills instead of "A" for claiming drawback. Since the condition for not claiming IGST refund is not applicable to cases where duty drawback has been claimed under Column B, exporters would have received IGST refund also on mentioning "B". Therefore, exporters did not have any benefit in claiming drawback under Column A. It is not pointed out by the Respondents that the Petitioners derived any undue advantage by their aforesaid mistake. On the contrary, it would result in causing loss for the value of the IGST paid on exports. By way of illustration, we take note of one such instance as pointed out by Mr. Bansal that if Steel Strips (HSN7211) are exported then whether duty drawback is claimed under Column A or Column B, the rate is 2%. However, rate of IGST on the said export is 18%. In such a situation under no circumstances it can be assumed that the exporters intentionally decided to claim duty drawback should forego IGST refund. Besides, if the petitioners

have claimed and received only the customs duty portion of the drawback and element of IGST (earlier Central Excise Duty and Service Tax) was not included in the drawback rate, granting of IGST refund would not result in double neutralisation of input taxes. Respondents have also, infact, never intended to deny refund of IGST paid on export in cases where only custom component was claimed as drawback."

4. In view of the limited nature of the controversy which remains, we dispose of this writ petition by directing the competent authority of the respondents to duly examine the claim of the petitioner for grant of interest on account of delayed refund. Any application, if made within a period of one week from today, may be duly examined and disposed of expeditiously and preferably within a period of four weeks therefrom.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 19, 2024
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