Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 320 OF 2024

Gulabdas International Trading LLP …Petitioner

Versus

Union of India …Respondent

Mr Prithwiraj Choudhari with Ms. Kavsar Jahan Sayed with Mr. Paresh Revar i/b Prabhakar Shetty, for Petitioner.
Mr Karan Adik i/b Saket Ketkar, for Respondents.

CORAM: M.S. Sonak &
Advait M. Sethna, JJ.

DATED: 10 DECEMBER 2025

ORAL ORDER:- (*Per M. S. Sonak J.*)

1. Heard the learned Counsel for the parties.

2. Leave to amend the prayer clause. Amendment is to be carried out forthwith.Re-verification is dispensed with.

3. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

4. The Petitioner challenges the Revisional Authority's order dated 13 September 2023 in the context of drawback/export refund.

5. The record shows that the Petitioner had filed two applications: -

i) One for interest on delayed payment of IGST refund under the IGST Act dated 18 September 2020 (Exhibit "A1" at Pg No.40).

ii) One for interest on delayed payment of drawback under the customs Act dated 23 September 2020 (Exhibit "A2" at Pg. No. 44).

6. Both the applications were rejected vide a common order dated 01.12.2020 (Exhibit "B" at Pg No. 48) passed by the Respondent No.5 while acting as the original adjudicating authority.

7. The Petitioner filed an appeal before Respondent No.3 against the aforesaid common order and the said appeal was also rejected by the Respondent No.3 on both counts vide common order dated 31.03.2022 (Exhibit "C" at Pg No. 61).

8. Thereafter, the Petitioner filed an appeal before the Respondent No.2 which was partly allowed vide the Impugned Order dated 13.09.2023 to extent of interest on delayed payment of drawback under the Customs Act. As far as the interest on delayed payment of IGST refund is concerned, the Respondent No.2 held that customs appellate authorities are not the appropriate appellate authorities, and appeal should have been preferred under the GST Acts before the GST appellate authorities.

9. This Petition is restricted to the issue of interest on IGST refund, which was declined on the ground that the Petitioner should have appealed against the original order before the authorities constituted under the GST Acts. The relevant observations in this regard are in paragraph No. 8 of the impugned order which reads as under: -

> *"8. As regards to the issue of interest on IGST refund, Government notes that present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The Provisions of the CGST Act, 2017 are not exercisable in revision proceedings. In the result, the revision applications filed by the Applicant to the extent of the issue of interest on IGST refund are not maintainable under Section 35EE of the Central Excise Act, 1944."*

10. The Petitioner was diligently pursuing the issue of interest on IGST refunds before the Appellate Authorities constituted under the Customs Act. At no stage, it appears, was any objection raised to the Petitioner pursuing such issues before the Appellate Authorities constituted under the Customs Act. This objection finds place for the first time in the impugned order.

11. Be that as it may, the learned Counsel for the Petitioner submits that the Petitioner is still ready to approach the Appellate Authorities under the GST Act, so that even this objection no longer persists. However, he submitted that the period during which the Petitioner was pursuing the remedies before the Appellate Authorities under the Customs Act may be excluded and the Appellate Authorities under the GST Act may be directed to decide the issue of interest on IGST refunds on merits.

12. In the peculiar facts of the present case, we think that the request made on behalf of the Petitioner is quite reasonable. As noted earlier, the Petitioner was pursuing the issue of interest on IGST refund quite diligently, though before the authorities under the Customs Act. The objection before this Court was taken for the first time in the impugned order.

13. The learned Counsel for the Petitioner states that the Petitioner will institute an Appeal against the common order dated 01 December 2020, in so far as it concerns the issue of interest on IGST refunds before the Appellate Authorities constituted under the GST Act within four weeks from the date of uploading of this order. If such Appeal is indeed instituted within four weeks, then, we direct the Appellate Authority under the GST Act to consider and dispose of such Appeal on its own merits and in accordance with law but without adverting to the issue of limitation.

14. Apart from the limitation, all contentions of all parties on merits are however left open to be decided by the Appellate Authority in the first instance.

15. The Rule is disposed of in the above terms. No costs.

16. All concerned must act on an authenticated copy of this order.

(Advait M. Sethna, J) **(M.S. Sonak, J)**