BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.08.2025**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No. 21931 of 2025
and
W.M.P.(MD) Nos.17023 & 17024 of 2025

M/s. AIM Worldwide Pvt Ltd.,
rep. by its Proprietor. ... Petitioner

Vs

1. The Commissioner of Customs & Central Excise (Appeals),
Coimbatore @ Tiruchirapalli,
No.1, Williams Road,
Cantonment,
Tiruchirappalli.

2. The Assistant Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned order passed by the second respondent *vide* his proceedings in C.No.VIII/20/216/2018-IGST, dated 17.01.2020, which was subsequently confirmed by the first respondent in A.No.C24/07/2022-TTN(CUS) APP, dated 20.12.2024 and quash the same as illegal and further, direct the second respondent to refund the IGST paid by the petitioner to the tune of Rs.7,19,365/- for the exports made during July 2017 to August 2017 with accrued interest at 7% from the date on which a request for refund is made till the date of payment.

For petitioner : Mr. R.L.Dhilipan Pandian

For respondents : Mr. R.Nandha Kumar
Senior Standing Counsel
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ORDER

This Writ Petition is taken up for hearing at the time of admission with the consent of the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents.

2. The petitioner has challenged the impugned order in Appeal, dated 20.12.2024 in Appeal Number in A.No.C24/07/2022-TTN (CUS)-APP in Order-in-Appeal No.37/2024-TTN(CUS)-APP against Order-in-Original Letter C.No.VIII/20/216/2018-IGST, dated 17.01.2020.

3. By the impugned order, the appeal of the petitioner against the communication/order of the second respondent, dated 17.10.2020 bearing reference in Letter C.No.VIII/20/216/2018-IGST has been rejected. Operative portion of the impugned order of the first respondent/Appellate Commissioner reads as under:

> *DISCUSSION AND FINDINGS*
>
> *I have carefully gone through the case records, submissions made in the grounds of appeal and the submissions made at the time of personal hearing.*
>
> *6.1. The Impugned letter was issued on 17.01.2020. I find that the appeal has been filed on 04.02.2022. As per Section 128 of the Customs Act, 1962 any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order. In the case on hand the appeal has been filed beyond 60 days from the date of receipt of the Impugned letter. I find that the impugned letter has been issued during the outbreak of the Covid-19 pandemic. Taking into consideration of the litigants difficulties faced by the In filing petitions/applications/suits/appeals/all other quasi judicial proceedings, the Hon'ble Supreme Court vide order dated 10.01.2022 in Misc. Application No. 665 of 2021 and No.21 of 2022 in Suo Motu Writ Petition (C) No.3 of 2020 pronounced that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, not withstanding the actual balance period of limitation remaining, all persons shall have a limitation of 90 days from 01.03.2022. Therefore, this appeal has been filed within the time limit as per the said Order*

dated 10.01.2022 of the Hon'ble Supreme Court.

6.2. Further, as this appeal has been filed against rejection of refund of IGST amount claimed by the appellants, the question of mandatory pre-deposit required under Section 129E of the Customs Act, 1962 does not arise.

7.0. During the pendency of this appeal, the appellants had filed Writ Petition W.P. (MD) No.24175 of 2024 and W.M.P. (MD) No.20444 of 2024 before the Madurai Bench of Hon'ble High Court of Madras with a prayer to quash the impugned letter C.No. VIII/20/216/2018-IGST dated 17.01.2020 and direct the department to refund the IGST pald by them. The Hon'ble Court vide Order dated 18.10.2024 directed the Appellate Authority to dispose the appeal filed by the petitioner inasmuch as the petitioner had already availed the statutory remedy by way of appeal.

8.0.The appellants had exported "100% Cotton Comber Noil" falling under CTH 52029000 under seven shipping bills during the period from July, 2017 to August, 2017. They had claimed and availed duty drawback @1% on the said exported goods. They had exported the said goods on payment of IGST. At the request of the appellants, the said seven shipping bills were amended manually vide letter C.No.VIII/06/166/2017-Export dated 20.11.2017 of the Assistant Commissioner of Customs (Exports), Tuticorin as the EDI amendment was not possible. Since the amendment of shipping bills had not been made in EDI system, the appellants filed refund claims manually on 23.07.2018 for sanction of the refund of IGST paid on the impugned goods. Then the appellants vide their letter dated 15.11.2019 requested for sanction of the refund of IGST and reminded subsequently vide letter 20.12.2019. The Assistant Commissioner of Customs, Custom House, Tuticorin vide impugned letter C.No.VIII/20/216/2018-IGST dated 17.01.2020 replied quoting the Circular No.37/2018-Customs dated

09.10.2018 wherein it was stated that "it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback" and advised that the jurisdictional GST authority alone is competent to pass an order in terms of sub-rule (6) of rule 96 of the CGST Rules, 2017.

9.0. Section 128(1) of the Customs Act, 1962 states, "any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order".

10.0. The appellants have filed this appeal against a letter which is mere communication. It is not a decision or order. The refund application filed by the appellants has not been disposed off / rejected by way of passing order. The mere letter communication cannot be treated as a decision. In the first place, the appellants should have pursued the refund sanctioning authority to pass a proper order against their refund application. The instant appeal has been filed only against the letter of the Assistant Commissioner of Customs, Custom House, Tuticorin. The sald letter is a mere communication of the advice of the Assistant Commissioner. The Assistant Commissioner ought to have passed an order on the refund application filed by the appellants after following the principles of natural justice. Instead he has only issued the impugned letter. Now, the appellants have every right and opportunity to ask for a speaking order on their refund application. After an order or decision is passed, if the appellants are aggrieved by such order or decision, the appellants can legally file an appeal before this authority against that order or decision. As this appeal is not compliance with Section 128(1) of the Customs Act, 1962, since the appeal is not against a decision or order passed under the Customs Act, 1962, but is only against a communication letter, the appeal is not maintainable. The appeal is liable to be rejected.

11.0. In view of the foregoing, I pass the following order.
6.

ORDER

12.0. The appeal A.No.C24/07/2022-TTN (CUS)-APP filed by the appellants M/s. Aim Worldwide Pvt. Ltd., Mumbai is rejected.

4. A reading of the above order of the first respondent as the Appellate Authority indicates that the appeal has been rejected on the ground that the order/communication of the second respondent, dated 17.01.2020 bearing reference Letter C.No.VIII/20/216/2018-IGST to entertain an appeal before the first respondent as an Appellate Authority. The order/communication of the second respondent, dated 17.01.2020 bearing reference in Letter C.No.VIII/20/216/2018-IGST is Extracted below.

"2. Your request for sanction of IGST refund had been carefully examined.

3. It is seen that the issue raised by you had already been considered by the Central Board of Indirect Taxes and Customs. In para 3 of the Circular No. 37/2018 - Customs dated 09.10.2018 it is categorically states 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'.

3. This Circular is still valid and has not been withdrawn. It is well settled that the Circulars issued by the Board are binding on the

Departmental Officers. As such, a view contrary to the decision of the Board cannot be entertained at this juncture.

4. As regards your plea that you had re-paid the alleged 'excess drawback', it is seen that Customs Act, 1962 or the rules made thereunder do not explicitly provide for such a repayment to enable an exporter to claim refund of IGST subsequently. In the absence of such a legally valid recognition, your claim for IGST refund is not sustainable.

5. Also please note that the jurisdictional GST authority alone is competent to pass an order in terms of sub-rule (6) of rule 96 of the CGST Rules, 2017.

6. Your request for refund of IGST stands disposed of accordingly."

5. By the aforesaid communication, the second respondent has rejected the refund claim by relying on a Circular No.37/2018- Customs, dated 09.10.2018. Any Communication which determines the rights of a party is an order. Therefore, order/communication impugned before the second respondent was an order and therefore, appealable before the first respondent. Circular issued by the Board is binding only on the field formation, however, it is not binding on the Appellate Authority. This is the Statutory Scheme under the Central Exercise Act, 1944 as also the Customs Act, 1962.

6. It is evident from the reading of Section 37B of Customs and Central Exercise Act, 1944 and Section 151A of the Customs Act, 1962, which are reproduced below:

<table>
<tr><th>Section 37B of Customs and Central Exercise Act, 1944</th><th>Section 151A of the Customs Act, 1962</th></tr>
<tr><td colspan="2">151A. Instructions to officers of customs.
The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:
Provided that no such orders, instructions or directions shall be issued-
(a)so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
(b)so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.</td></tr>
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7. *Proviso* to the respective provisions extracted above indicates that such Circular is not binding on the Appellate Authority. Law on the subject is also well settled. Therefore, rejection of the appeal based on the Circular is unjustified. Therefore, the impugned order is set aside and the case is remitted back to the first respondent to re-do the exercise by passing reasoned order as to whether the petitioner was entitled to duty drawback on the exports made by the petitioner.

8. This exercise shall be completed by the first respondent within a period of three (3) months from the date of receipt of a copy of this order, however, not influenced by the above Circular.

9. This Writ Petition is allowed, with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

13.08.2025

To

1. The Commissioner of Customs & Central Excise (Appeals),
Coimbatore @ Tiruchirapalli,
No.1, Williams Road,
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2. The Assistant Commissioner of Customs,
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C.SARAVANAN, J.

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