

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1330 OF 2025

Shri. Charan Singh Surjit Singh Gujral

...Petitioner

Vs.

Union of India & Ors.

...Respondents

Mr. Brijesh Pathak with Ms. Anjali Joshi and Mr. Dulraj Jain for the Petitioner.
Mr. S. D. Deshpande for Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 15 APRIL 2026.

Judgment (Per G. S. Kulkarni, J.):

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

“(a) to issue Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondent Nos.2 and 3 and their subordinates, servants and agents to forthwith release and refund the IGST amount in relation to zero rated supply/export of the goods covered by Shipping Bills, along with applicable interest till the date of refund, the details whereof is mentioned in Exhibit-A;

(b) to issue Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the Respondent Nos.2 and 3 and their subordinates, servants and agents to forthwith pay interest in terms of Section 54 of CGST Act read with Section 16 of the IGST Act, from the date of filing the Shipping Bills to the date of actual refund, in relation to zero rated supply/export of the goods covered by Shipping Bills, the details whereof is mentioned in

Exhibit-A.”

3. The facts lie in a narrow compass:- It is the petitioner’s case that he is carrying business of trading and export of parts and accessories of the motor vehicles and mobile accessories etc. in the name of his proprietary concern Guru Nanak Motor House. During the period between 21 December 2018 to 14 January 2019 the petitioner exported SD Super-Fast Data Sync and Cable and related items under the cover of 30 separate shipping bills. The petitioner contends that he had paid and discharged the amount of IGST at the time of procurement of such goods. All the goods were examined and finally assessed and permitted to be exported.

4. It is the case of the petitioner that he was entitled to receive refund of the IGST amount in terms of Section 54 of the Central Goods and Services Tax Act, 2017 (for short, “**CGST Act**”). Pursuant to the final assessment of the shipping bills, the same was considered as an application for refund. However, on 22 January 2019, the goods were seized by the Special Intelligence and Investigation Branch (SIIB) under Section 110 of the Customs Act, on the allegation that value was mis-declared, which ultimately led to an adjudication order being passed whereby the valuation as prayed by the petitioner was rejected in terms of the following operative order passed in the Order-in-Original by which the goods were inter alia confiscated. The extract of the said order as quoted in the orders passed by the appellate authority read thus:

“M/s Gurunanak Motor House, Plot No.41, Sector-5 Koperkhairne,
Navi Mumbai, Maharashtra-400701 (hereinafter referred to as

Appellant) filed an appeal dated 30.06.2020 against the Order in Original no.868/2019-20/ADC/NS-II/CAC/JNCH dated 03.03.2020 passed by the Additional Commissioner of Customs, NS-II JNCH, Nhava Sheva (hereinafter referred to as Respondent) wherein the following was ordered-

- a) rejected the declared FOB value of the goods of Rs.8,01,13,254/- covered in six Shipping Bills under provisions of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rule, 2007 and the same to be re-determined as Rs.2,18,40,000/- in terms of rule 6 of CVR, 2007.
- b) Rejected the claimed drawback of Rs.8,01,132/- made by the appellant in the six Shipping bills filed for export and the same to be restricted to Rs.2,18,400/- as per re-determined FOB value of Rs.2,18,40,000/- under section 75 of Customs Act, 1962. Further re-determined drawback is to be disbursed to exporter only on receipt of BRC with respect to subject Shipping bill.
- c) Rejected the MEIS claimed of Rs.16,02,265/- of Appellant in respect of the six export shipments and the same to be restricted to Rs.4,36,800/- as per re-determined FOB value of Rs.2,18,40,000/-
- d) Ordered confiscation of goods covered under the six shipping bills having declared FOB value of Rs. 8,01,13,254 under section 113(i) of Customs Act, 1962 with an option to redeem the same on payment of fine of Rs.5,00,000/- under section 125 of Customs Act, 1962 within 120 days from the receipt of the order.
- e) Rejected declared FOB value of Rs.7,63,18,299.80 of same goods i.e “Superfast Data Sync Charge Cable” in respect of past nine export shipments under the provisions of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rule, 2007 and the same to be re-determined as Rs.2,67,90,400/- in terms of rule 6 of CVR, 2007.
- f) Rejected the claimed drawback of Rs.7,63,182.65/- in respect of past nine export shipments made by the appellant and the same to be restricted to Rs.2,67,864/- as per re-determined FOB value of Rs.2,67,90,400/- under section 75 of Customs Act, 1962.
- g) Rejected the MEIS claimed of Rs.19,86,366/- in respect of past nine export shipments made by the appellant and the same to be restricted to Rs.5,35,808/- as per re-determined FOB value of Rs. 2,67,90,400/-
- h) Ordered confiscation of goods covered under past nine export shipments made by the appellant under provisions of section 113(i) of Customs Act, 1962 read with section 50(2) of Customs Act, 1962 and refrained from imposing any redemption fine as the goods were not physically available for confiscation.
- i) Ordered recovery of excess Drawback of Rs.7,25,318.62 and excess MEIS of Rs.14,50,558/- availed by the appellant on past export shipments: Drawback under Rule 17 of Customs and central Excise Drawback rules, 2017 along with interest and MEIS under Section

28AAA of Customs Act, 1962.

j) Imposed penalty of Rs.1,00,000/- on M/s Guru Nanak Motor House under section 114(iii) of the Customs Act, 1962.

k) Imposed penalty of Rs.1,00,000/- on Shri Charan Singh Gujral, Proprietor of M/s Guru Nanak Motor House under Section 114AA of the Customs Act, 1962.”

5. The aforesaid Order-in-Original was carried in appeal by the petitioner before the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II. By order dated 25 June 2021, the appellate authority allowed the appeal and made serious observations regarding the manner in which the Order-in-Original was passed. The operative portion of the appellate order is required to be noted, which reads thus:-

“16. In view of the above discussions and findings, I find that the investigations in this case has been carried out in a haphazard manner. The impugned goods were seized on 22.1.2019 under section 110(1) of the Customs Act, 1962, however Show Cause Notice was not issued to the appellant as prescribed under section 110(2) of the Act within six months of date of seizure nor any evidence of extension of the time Period in this regard for another six months is on the record. Appellant was not given an opportunity of personal hearing although appellant had vide their letter dated 7.1.2020 requested for granting a personal hearing. I observe that the appellant's request for finalizing the case in accordance with law has been mis- construed as a waiver to show cause notice and personal hearing and the case has been decided without following in principles of natural justice. I further observe that now the lower authority can not restore the lost Opportunities in resurrecting the edifice of principles of natural justice as the matter has moved much ahead of that stage. Since the matter already stands adjudicated, a show cause notice cannot be given in this case as the same stands time barred by now. Considering these factors the order in Original is completely bad in law and can be set aside on the grounds of non-adherence of principles of natural justice itself in terms of law being settled in this regard in terms of various judicial pronouncements. Further, even on merits, the case does not stand on its legs due to weak, haphazard investigation and botched up evidences as has been detailed in the para above. Hence, I am of the considered opinion that on both the counts i.e. legal as well as merits the order passed by the lower authority is not sustainable.

17. I therefore, set aside the Order-in-Original No. 868/2019-20/ADC/NS-II/CAC/JNCH dt. 3.3.2020 passed by the Adjudicating Authority and allow the appeal with consequential relief.”

6. The aforesaid order passed by the learned Commissioner (Appeals) was assailed by the Department before the Customs, Excise and Service Tax Appellate Tribunal (“the Tribunal”). However, the same came to be dismissed on 03 December 2021. The orders passed by the Tribunal were accepted by the Department. Also the goods were subsequently released, is an admitted position. No further steps were taken and/or no investigation is pending against the consignment in question. This position was recorded by the office of the CGST in a communication dated 11 December 2024, addressed to the Additional Commissioner of Customs, (I/C) IGST Refund, by the Joint Commissioner (AE), Belapur, CGST & Central Excise (page 53 of the paper-book). Thereafter, on 13 December 2024, the adjudicating authority passed an order confirming that the petitioner had properly availed the IGST.

7. On such backdrop, on 11 December 2024, the petitioner filed an representation/application before respondent no.2, requesting for the release of the export incentives and removal of the alert. Similar representations were thereafter made on 20 December 2024, 02 January 2025, 03 January 2025 and 07 January 2025. It is in these circumstances, the present petition came to be filed on 23 January 2025, seeking the reliefs as noted by us hereinabove.

8. Mr. Pathak, learned counsel for the petitioner, at the outset, submits that after filing of the present petition, the respondents have released the refund in respect of all consignments except 3 consignments dated 14 January 2019. We also find from the record that, in an interim order dated 14 July 2025 passed by a coordinate Bench of this Court, a statement made on behalf of the petitioner was

recorded that out of the total IGST refund of Rs.6,78,57,305/- due and payable after the institution of the petition, the respondents had refunded Rs.6,02,45,795/- to the petitioner, leaving a balance of approximately Rs.76,00,000/-. Further by another order dated 21 July 2025, a co-ordinate Bench of this Court observed that in the event instructions were not received by the learned counsel for the respondents, the Court would be constrained to hear the petitioner and dispose of the petition.

9. Insofar as the balance refund is concerned, by order dated 24 July 2025, the co-ordinate Bench of this Court passed the following order :-

“1. Heard learned counsel for the parties.

2. On the last occasion, Mr. Pathak has stated that after the institution of this petition, the respondents have refunded, Rs.6,02,45,795/- and the amount of Rs.76,11,150/- was yet to be refunded. He also submitted that no interest has been paid to the petitioner.

3. Accordingly, we had posted the matter for learned counsel for the respondent to obtain instructions. After some adjournment, instructions have been obtained and even affidavit in reply has been filed.

4. Regarding the issue of refund of Rs.76,11,150/- Ms. Thakkar pointed out that till date the petitioner has not exported the goods. Mr. Pathak submitted that the goods are with the Custom Authorities and because the Custom's Authorities have not permitted the exports, the goods remained with the custom's authorities. He submitted that the Customs Authority may be directed to permit exports and thereafter process the refund. Ms.Thakkar, on instructions states that there are some technical issues regarding permit of exports. She submitted that license of the Custom's House Agent (CHA) or Custom's Broker who had submitted shipping bills had been cancelled. She, therefore, points out that the petitioner will now have to engage some other license custom's broker or Custom House Agent to process the shipping bills and allow the exports. Ms. Thakkar says that no sooner these issues are sorted out, exports will be permitted and refunds processed.

5. Mr. Pathak states that the original bills are still with the custom's authorities. In any event, petitioner will engage some other broker/ Custom House Agent and sort out the issues now pointed out at the earliest.

6. Accordingly, we post this matter for further consideration and compliance on 18 September 2025. In the meanwhile, we expect that the issues now raised regarding exports are sorted out.”

10. We are informed by Mr. Pathak that the exports have already been made. Thus, the petition is now confined only to the issue on the interest amounts, in terms of what is mandated by Section 56 of the CGST Act. Mr. Pathak submits that, considering the scheme of Section 54 read with Section 56 of the CGST Act, it was obligatory on the part of the respondents to grant interest on the belated refund to the petitioner and more importantly when the Department has accepted the order passed by the State Tax authorities, and appropriate steps were taken to refund the IGST amount, as also to permit the export. He further submits that the petitioner’s case is supported by the decision of this Court in **Ms. Anita Agarwal vs. Union of India**¹, wherein, in similar circumstances, and considering the provisions of Section 56, the Court held that the petitioner therein was entitled to interest.

11. Section 56 provides for interest on delayed refunds. The said provision is required to be noted, which reads thus:-

“Section 56. Interest on delayed refunds.

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund ¹[for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed]:

Provided that where any claim of refund arises from an order

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passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.”

12. The purport of the provision is that if any tax ordered to be refunded under sub-section (5) of section 54 to an applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of the said provision, interest at such rate not exceeding six per cent, as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund, for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed as prescribed.

13. In the present case, it is clear that the petitioner had made a valid application, as the law would require. The assessment of the shipping bills itself was required to be treated as an application for refund. Ultimately, in the manner as noted hereinabove, the process was required to attain finality before the Customs, Excise and Service Tax Appellate Tribunal. Undoubtedly, the petitioner was entitled to a refund of Rs.76,11,150/-, which was ultimately granted to the petitioner during the pendency of this petition, as recorded by the co-ordinate Bench of this Court in its order recorded hereinabove. Thus, this is a clear case where the provisions of Section 56 are applicable, and the Department would be under an obligation to grant interest to the petitioner in accordance with the said provision. A co-ordinate Bench of this Court in Ms. Anita Agarwal (supra) has

also referred to the circular dated 17 June 2019 and policy wing circular issued in this regard being policy circular no.131/1/2020 dated 23 January 2020. The relevant observations are required to be noted which read thus:-

“10. In the instant case on 25 June 2019, an alert was inserted in the system of Respondents to keep the refund of IGST of the Petitioner in abeyance. As per the Circular dated 17 June 2019 issued by the Respondents, the Chief Commissioner of Central Tax shall get the verification of IGST refund claims and other related aspects in accordance with the standard operating procedure to be issued by the CGST policy wing. A report shall be furnished within 30 days specifying clearly whether the amount of IGST paid and claimed as a refund is in accordance with the law or not, and after that, the Chief Commissioner shall comply and forward the report within five working days after that to the concerned Customs Port of Export.

11. The CGST Policy Wing, vide its Circular No.131/1/2020 dated 23 January 2020, has stated that the verification shall be completed by jurisdictional CGST office within 14 working days of furnishing of information in proforma by the exporter and if the verification is not completed within 14 days, same shall be brought to the notice of the jurisdictional Chief Commissioner and exporter may also bring the same to the notice of the jurisdictional Principal Chief Commissioner. After that, the jurisdictional Chief Commissioner / Chief Commissioner of Central Tax should take appropriate action to complete the verification within seven working days. If the exporter does not get the refund within one month, then the exporter may register his grievance on the Respondents' portal, giving all the details.

12. In our view, the objective of Circular No.16 of 2019 and Circular No.131/1/2020 is to ensure that the investigation in case of a suspicious refund claim is completed within the time frame provided therein so that the exporters can get the refund within the time specified. It is also important to note that the refund plays a very important role in the working capital of an exporter, and therefore, any delay in the grant of the refund would affect the day-to-day running of the business. The objective of these Circulars is to make Indian businesses internationally competitive; therefore, working capital management is very important. It is keeping in mind this aspect and for ease of doing business that the above-referred Circulars have been issued to complete the investigation within the time frame specified therein.”

14. In our opinion, on a conjoint reading of Sections 54 and 56 of the CGST Act, there is a clear obligation on the Department to process the refund application in a time bound manner as prescribed, and in respect of delayed

refunds, a liability to pay interest in terms of Section 56 would stand attracted.

15. In the present case, considering the underlying facts on which there is no dispute, in our opinion, the same would unequivocally obligate the designated officer of the Department to comply with the provisions of Section 56.

16. We are however quite astonished at the stand taken on behalf of the respondents in the reply affidavit of Shri. Shashikant M. Borkar, Deputy Commissioner of Customs, inasmuch as, the Designated Officer mechanically refuses to recognize and/or consider the orders passed by the appellate authority as also by the tribunal setting aside the order-in-original. This is clear from the following statements made in paragraphs 10 and 11 of the affidavit which reads thus:-

“10. It is respectfully submitted that the Order-in-Original dated 13.12.2024 issued by the Joint Commissioner, CGST & Central Excise, Belapur, itself confirms that the exporter had availed and utilised ineligible IGST input tax credit amounting to Rs. 54,43,2001- in contravention of Section 16(2) of the CGST Act, 2017, for which demand, interest and penalty have been confirmed. These findings clearly indicate that at the relevant time, the bona fides of the exporter were not established, and therefore, the export incentives were rightly kept on hold to safeguard Government revenue. The action of inserting and maintaining the alert was thus a justified preventive measure in accordance with law and the prevailing facts, and not an arbitrary withholding of benefits.

11. It is submitted that interest is not payable when delay is caused due to bonafide administrative processes or statutory compliance, particularly when there is no malafide or willful withholding on part of the Respondents.

12. In light of the above, the prayer for grant of interest is without merit and deserves to be reject.”

17. Considering the aforesaid averments as made in the reply affidavit, we are of the opinion that the reply is absolutely mechanical to say the least, apart from

the fact that it completely disregards the obligations under Section 56 of the CGST Act. Moreover, we are surprised, as to how such a reply could have been vetted and at all filed, which is not only oblivious to the record of the proceedings and the binding orders passed by the appellate authority and the the Customs, Excise and Service Tax Appellate Tribunal, but also to the relevant provisions of law.

18. In the light of the aforesaid discussion, the writ petition needs to succeed. Accordingly Rule is made absolute in terms of the prayer clause (b).

19. Let the order be complied within a period of four weeks from the date of copy of this order is made available.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)