

Prajakta Vartak

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

WRIT PETITION NO. 2188 OF 2022

ABB Limited	...Petitioner
Vs	
The Union of India & Ors.	...Respondents

AND
WRIT PETITION NO. 3128 OF 2024

Siemens Ltd.	...Petitioner
Vs	
The Union of India & Ors.	...Respondents

Mr. Sriram Sridharan with Mr. Shanmuga Dev for the Petitioners in both petitions.

Mr. Karan Adik with Ms. Niyati Hakani and Ms. Bhavana Ahire for Respondents in WP No. 2188/2022.

Mr. Karan Adik with Mr. Satyaprakash Sharma for Respondents in WP No. 3128/2024.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 1 APRIL 2026.

P.C.

1. Both these petitions raise common issues of law, hence the same are being disposed of by this common order. For convenience, we note the substantive prayers made in both the petitions which read thus:-

“Prayers in Writ petition No. 2188 of 2022

a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the impugned Order No. 138/2021-CX (WZ)/ASRA/Mumbai dated 16.3.2021 (Ex passed by Respondent No. 2;

b1) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India directing that the Petitioner is entitled to a re-credit of Rs. 3,79,54,713/- in its Cenvat Credit Account and the said amount be refunded in cash to the Petitioner by virtue of Section 142(3) of the CGST Act;

b2) alternatively, that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India ordering that the Petitioner is entitled to directly avail re-credit of the amount of Rs. 3,79,54,713/- in its monthly GSTR-3B returns;

c) that pending the hearing and final disposal of this Petition, the Respondents themselves, their officers, subordinates, servants and agents be directed by an interim order and injunction of this Hon'ble Court to forthwith deposit an amount of Rs. 3,79,54,713/- with interest thereon at the rate applicable under Section 11BB of the Central Excise Act, 1944 in this Hon'ble Court and the Petitioner be permitted to withdraw the same on such terms and conditions as the Hon'ble Court may deem fit."

Prayers in Writ Petition No. 3128 of 2024

a) That this Hon'ble Court be pleased to issue a writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the impugned order dated 30.08.2023 passed by Respondent No. 2 after going into the validity and legality of the same thereof to quash and set aside the same;

b) That this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India holding or ordering that the Petitioner is entitled to a re-credit of Rs. 58,08,147/- in its CENVAT Credit account and consequently directing the Respondent themselves, the officers, subordinates, servants and agents to forthwith sanction, grant and pay to the Petitioner the refund of Rs. 58,08,147/- with appropriate interest thereon in cash under Section 142(3) of Central Goods and Services Tax Act, 2017;

c) alternatively, that this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India holding or ordering that the Petitioner is entitled to directly availed re-credit of the amount of Rs. 58,08,147/- in its monthly GSTR-3B returns."

2. The relevant facts are required to be noted:- The Petitioners are manufacturers of goods which were subsequently cleared domestically for home

consumption as well as for the export market. In relation to exports, some consignments were exported without payment of duty upon furnishing of a LUT/bond under Rule 19 of the Central Excise Rules, 2002 and some consignments were exported upon payment of duty alongwith a rebate claim under Rule 18 of the Central Excise Rules, 2002.

3. The present petitions are confined only to the exports which were made upon the payment of duty alongwith a rebate claim under Rule 18 of the Central Excise Rules, 2002. The said duty was paid by the Petitioners by debiting their CENVAT Credit account.

4. The petitioners filed rebate claims with the Respondents for the rebate of the excise duty paid by the Petitioners on the goods which were manufactured and exported under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-C.E. (N.T.) dated 06 September 2004. Such rebate claims as made by the petitioners have been rejected solely on the ground of being barred for limitation.

5. At the outset, Mr. Sridharan, learned counsel for the petitioners, would submit that the petitioners are not contending that the rebate claims of the petitioners are filed within limitation, in the light of the decision of the Supreme Court in **Sansera Engineering Limited v. Deputy Commissioner, Large Tax Payer Unit, Bengaluru**¹. Thus, any contention assailing an issue on limitation is no longer available to the petitioners.

¹ 2022 (382) E.L.T. 721 (SC)

6. It is however, the petitioners' case that upon rejection of its rebate claims, it is entitled to a re-credit of the duty paid by it. It is contended that the re-credit needs to be granted to the petitioners in cash as per the provisions of Section 142(3) of the Central Goods and Services Tax Act, 2017 being the miscellaneous transitional provisions.

7. Mr. Sridharan in supporting the prayers in the petitions would submit that it is settled law that no excise duty is payable on exported goods, and even if the rebate claims are time barred, the respondents cannot withhold the duty paid by the petitioners on the exported goods. For such reason, the respondents are required to return to the petitioners the excess duty paid by the petitioners in the same form as it was paid. It is next submitted that it has been the policy of the Union of India that there would be no embedded tax on goods which are exported, to ensure that Indian goods are competitive in the international market as also to encourage the export of goods from India. Such policy, according to him, was noticed by this Court in **Repro India Ltd. Vs. Union of India**².

8. It is Mr. Sridharan's submission that earlier, Rule 19 of the Central Excise Rules, 2002 granted an exemption from the payment of duty for the goods exported from India, as also Rule 18 was an additional/beneficial provision, or an incentive extended by the Government to the exporters to encourage the export from India. According to him, Rule 18 was a unique option which allowed the parties to pay output excise duty on exported goods and claim a refund in cash of the said amount paid. Mr. Sridharan would thus submit that under the erstwhile

2 2009 235 ELT 614 (Bom)

regime (prior to GST laws), there were no provisions for the grant of refund in cash of any CENVAT Credit as availed by an assessee, as in such context, the only exception was in relation to exported goods. It is submitted that in the case of exports, an assessee could choose to pay excise duty on its exported goods by utilizing CENVAT Credit and claim a refund of the same in cash, being the incentive or benefit extended to exports.

9. On such backdrop, it is the petitioners' case that it is not in dispute that the petitioners had paid excise duty by debiting their CENVAT account and since no duty was payable on exports, the Department was required to return back to the petitioners the excess duty paid, in the same form in which it was paid. It is submitted that such benefit would be available even if the petitioners' refund claim was time barred. This relief ought not be denied to the petitioners, as it is well settled that an assessee can claim relief on any other ground, as held by the Supreme Court in **CIT, Madras Vs. Mahalakshmi Textile Mills Ltd.**³ and **Share Medical Care vs. Union of India**⁴. It is hence the petitioners' contention that even if a rebate claim under Rule 18 is rejected as time-barred, the fact remains that on account of Rule 19, no duty was payable on exports, hence, the duty paid by the petitioners on the exports is clearly an excess payment, which cannot be retained by the respondents. It is next submitted that upon rejection of the rebate claim under Rule 18, the petitioners are entitled to a re-credit of the duty paid by them by debiting their CENVAT account. Relying on the settled position in law, it is submitted that the amount paid in excess of duty liability must be returned in

3 AIR 1968 SC 101

4 2007 209 ELT 321 (SC)

the manner in which it was initially paid by the assessee. It is submitted that the position of the petitioners is not different from that of an assessee who paid excess duty on exported goods being eligible for a re-credit of the said amount. In such context, reliance is placed on the decision of this Court in **Commissioner vs. Cipla Ltd.**⁵.

10. It is submitted that in terms of Section 142(3) of the CGST Act, if in a proceeding relating to the refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the old law, any amount of Credit which eventually accrues to assessee in such situation the credit is liable to be paid in cash to the assessee. For such reason, the re-credit due to the petitioners subject matter of the impugned rejection of the petitioners' rebate application under Rule 18 is in fact liable to be paid to the petitioners in cash under Section 142(3) of the CGST Act, 2017 being filed under the present GST regime. In the alternative, and without prejudice to the said submissions, it is submitted that the petitioners may be granted the alternative relief of being allowed to directly avail re-credit in their monthly GSTR-3B returns.

11. On the other hand, on behalf of the respondents, the petitions are opposed to submit that by the impugned order, the relief has been appropriately denied to the petitioner, including on the ground that the claim is time-barred.

12. Having heard learned counsel for the parties and having perused the record, the petitioners have taken an alternate position while acknowledging that

5 2015 320 ELT 419 (Bom)

the petitioners' application for rebate claim was time-barred. However, the petitioners are now canvassing an alternate case as noted hereinabove that the respondents could not withhold the duty paid by the petitioners on the exported goods and the same would be required to be returned to the petitioners in the same form as it was paid. We find that such case of the petitioners needs to be specifically asserted in an application, and it ought not to be incidental to what was being decided by the authorities, leading to passing of the impugned order. Thus, in our opinion, a substantive application needs to be filed by the petitioners to that effect before the designated officer invoking Section 142(3) of the CGST Act. As noted hereinabove, the proceedings originated before the original authority, were carried to the appellate authority, and were subsequently filed before the revisional authority. Insofar as these contentions are concerned, they are required to be appropriately raised, as the petitioners intend to maintain such entitlement under law.

13. In the aforesaid circumstances, we are of the clear opinion that these petitions can be conveniently disposed of, by permitting the petitioners to file a substantive application before the designated officer, namely, respondent no.4, seeking relief for return of the excess duty paid by the petitioners as asserted and noted by us hereinabove.

14. Let such representation be made within a period of four weeks from today and if so made, let the same be decided as expeditiously as possible, and in any event within a period of six weeks from the date of the receipt of the said application, after granting an opportunity of hearing to the petitioners.

15. The Assistant Commissioner shall decide the application without being influenced by the impugned orders rejecting the petitioners' rebate claim applications.

16. All contentions of the parties are expressly kept open.

17. Both the petitions stand disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)