

(2023) 07 GUJ CK 0033

In the Gujarat High Court

Case No : R/Special Civil Application No. 560 Of 2022

M/S. Panji Engineering Private Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Integrated Goods And Services Tax Act, 2017 — Section 16
Central Goods And Services Tax Act, 2017 — Section 54, 254(1), 54(5), 56
Central Excise Act, 1944 — Section 11B(1), 11B(2), 11BB

Citation : (2023) 07 GUJ CK 0033

Hon'ble Judges : Vipul M. Pancholi, J;Devan M. Desai, J

Bench : Division Bench

Advocate : Hardik P Modh, Utkarsh R Sharma, Priyank P Lodha

Final Decision : Disposed Of

Judgement

Devan M. Desai, J

[1] By way of this petition filed under Article 226 of the Constitution India, the petitioner has prayed for the following reliefs:-

"12A. That this Hon'ble Court be pleased to issue a writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Order or direction for calling upon the refund application of the petitioner and after going through the same, Respondent No.3 may be ordered to sanction the refund claim of the Petitioner in terms of the provisions of law;

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 appropriate Order or direction directing the Respondents, their servants, agents or representatives to adjudicate the refund Application of IGST paid on export of the goods along with duty drawback without any further delay and remove the tagging of "Red flag" against the Petitioner'

C. That pending Notice, admission and disposing of this petition, this Hon'ble Court may be pleased to direct the Respondents, their sub-ordinates, agents or their representatives;

i. to forthwith sanction the refund claim of the Petitioner with such terms and conditions as deemed fit and proper by this Hon'ble Court; or

ii. to direct the Respondents, their sub-ordinates, agents or their representatives to decide the pending refund applications forthwith without any further delay;

D. for ad-interim relief in terms of prayer (c) above;

E. for costs of the petition/application and orders thereon and;

F. for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

[2] Heard the learned advocate Mr. Hardik Modh for the petitioner and learned Standing Counsel Priyank Lodha for the respondent.

[3] Since the issue involved in the present petition is in a very narrow compass, learned advocates appearing for the parties have requested to take up this petition for final hearing.

[4] Hence, Rule. Learned Standing Counsel Mr. Priyank Lodha waives service of notice of rule for and on behalf of respondents.

[5] The brief facts of the case are as under:-

5.1 The petitioner has challenged inaction on the part of respondents of not sanctioning refund claims of Integrated Goods and Service Tax paid on export of goods and duty drawback eligible to the petitioner without any reason.

5.2 It is the case of the petitioner that the petitioner availed input tax credit as per the provisions of Central Goods and Services Tax Act, 2017 ('CGST Act' for short) on the goods and services purchased by the petitioner. The goods and services are used in manufacture of submersible pumps which are further supplied in India and exported outside India.

5.3 As per Section 16 of the Integrated Goods and Services Tax Act, 2017, the petitioner is eligible for the refund of paid Integrated Tax and also eligible for Customs Act, 1972.

5.4 The petitioner filed FORM GSTR-1 and FORM GSTR-3B and also paid Integrated Goods and Services Tax amount. The refund was not sanctioned to the petitioner as per the provisions of Integrated Goods and Services Tax Act, 2017. A communication was issued by the petitioner to the jurisdictional CGST and SGST Department, inter alia, informing about the non-receipt of the refund and also sought reasons for non-sanctioning of refund.

5.5 The petitioner on 23.07.2021 lodged a grievance at Centralized Public

Grievance Redress and Monitoring System. Reminders were also sent by the petitioner but there was no response from the respondent authority and the grievance was closed on 01.09.2021 without granting refund. It is the case of the petitioner that under Section 54 of the CGST Act, 2017, the proper Officer shall issue provisional refund within seven days while final refund shall be issued within sixty days from the date of receipt of the application.

5.6 It is further submitted by the learned advocate for the petitioner that if the refund is withheld, the proper Officer of Integrated Tax of the Custom Officer has to intimate the petitioner and jurisdictional Commissioner and such intimation shall be transmitted to the common portal. But the respondent failed to intimate the petitioner as well as jurisdictional Commissioner and also failed to transmit such communication on the common portal.

5.7 The petitioner, on 22.09.2021 received an email communication from Assistant Commissioner (Anti-Evasion), Gandhinagar, inter alia, clarifying that the office has not received information with regard to investigation from the petitioner and no investigation is pending against the petitioner. In the said email communication, the Assistant Commissioner vide referring Circular No.131/1/2002 dated 23.01.2023, advised the petitioner to approach the Deputy Commissioner, Gandhinagar for the resolution of the issue.

5.8 Pursuant to the email communication dated 22.09.2021, petitioner wrote a communication dated 23.09.2021 to the Deputy Commissioner, Gandhinagar to sanction the refund and other documents. The refund of the petitioner was withheld for almost six months and after six months, petitioner was put in the category of 'Risky Exporter' without providing any reason. The petitioner vide communication dated 30.09.2021 submitted all documents required by the concerned Department.

5.9 Pursuant to the grievance lodged by the petitioner on 23.09.2021, the petitioner received letters dated 28.10.2021 and 08.11.2021, whereby clarification was sought by the respondents. Thereafter, vide email dated 15.11.2021, the Principal Chief Commissioner informed the petitioner that the petitioner was not eligible for refund because of mismatched between the ITC availed in FORM GSTR-3B and FORM GSTR-1. Petitioner vide email dated 01.12.2021 and vide letter dated 03.12.2021 furnished the information as sought for in the letter dated 28.10.2021 and 08.11.2021 and further stated that there was no mismatched in ITC availed in FORM GSTR-3B and FORM GSTR-1.

5.10 It is further submitted by the learned advocate for the petitioner that the petitioner was informed by the authorized person of the Custom Department that 'Red Flag' was tagged against the name of the petitioner and therefore refund and duty drawback was not issued. It is submitted by the learned advocate for the petitioner that the petitioner was never intimated about such 'Red Flag' tag from the Department. Hence, this petition.

[6] The learned advocate for the petitioner in support of his contentions has

relied upon the documents in support of the petition.

[7] Per contra, the learned Standing Counsel for the respondents has mainly relied upon the Affidavit-in-reply and has submitted that the petition is not maintainable and the processing of the refund claim is automatic process wherein the respondent has no power to manually consider the refund application. It is further submitted that granting of refund is an inbuilt mechanism which is done after validating the shipping bill data available in return data transmitted by GST Act. It is further submitted by learned Standing Counsel for the respondent that the various authorities observed that there were cases of availment of IGST refund by using fraudulent ITC claims by some exporters. It is further submitted by the learned Standing Counsel for the respondent that an email dated 04.03.2021 was received from Customs Headquarter of Ahmedabad Commissionerate, inter alia, stating that the IGST Refund Scroll is pending with Customs formation and it was further directed to suspend the processing of pending IGST refund (Scroll). Hence, the respondent suspended the refund scroll of the petitioner.

[8] During the pendency of this petition, some development took place. To bring the development that has occurred during the pendency of this petition, an additional Affidavit dated 25.07.2022 is also filed by the petitioner, wherein, the petitioner has stated that except the refund involved in the Shipping Bill No.8723678 dated 17.02.2021, petitioner has received refund of IGST involved in the goods exported. Thus, as per the say of the petitioner, refund of Shipping Bill No.8723678 dated 17.02.2021, is yet to be received by the petitioner. In the said Additional Affidavit, the petitioner has alleged that the petitioner is entitled to get interest in view of the provisions of Section 56 of the Central Goods and Services Tax Act, 2017, since the refund was not sanctioned within 60 days from the date of receipt of the application.

[9] As against this, the learned advocate for the respondent has submitted that so far as refund involved in the Shipping Bill No.8723678 dated 17.02.2021, the same is under process and the petitioner will receive the same very soon.

[10] In view of the above development pending this petition, now the issue which is left for consideration is whether the petitioner is eligible to get interest on the delayed refund amount or not.

[11] In support of the submissions, the learned Advocate for the petitioner has relied upon Section 56 of the Central Goods and Services Tax Act, 2017. The same is reproduced for convenience:- Interest on delayed refunds. refunded under '56. If any tax ordered to be 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 from the date immediately after the expiry of sixty days from the date of receipt of

application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order 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.

Explanation:- For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

[12] Thus, Section 56 of the Central Goods and Services Tax Act provides for the interest on delayed refunds. Section 56 envisages that when any tax order to be refunded under Sub-section 5 of Section 54 to any applicant, if the applicant, is not refunded within 60 days from the date of receipt of the application, under Sub-section 1 of Section 54, 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 from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund of such tax.

[13] The learned advocate for the petitioner has heavily relied upon the decision of the Hon'ble Apex Court in the case of Ranbaxi Laboratories Ltd. Vs. Union of India, reported in 2011 (273) E.L.T 3 (S.C). In the said decision, the Hon'ble Apex Court has referred Section 11BB of the Central Excise Act, 1944. The learned advocate for the petitioner has submitted that wordings of Section 11BB of the Central Excise Act, 1944 and Section 56 of Central Goods and Services tax Act, 2017 are same. In the aforesaid decision in para 9, the Hon'ble Apex Court has observed as under:-

"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the

Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

[14] Thus, considering the provisions of Section 56 of the Central Goods and Services Tax Act, 2017, the same are clear and unambiguous. The said provisions are mandatory provision. The said provision entitles the petitioner to claim interest on the delayed refunds. It is worthwhile to note that pending this petition, respondent authority has released the refund to the petitioner except the refund involved in the Shipping Bill No.8723678 dated 17.02.2021. However, the respondent authority has not granted interest on the delayed refunds, which according to this Court, is against the provisions of Section 56 of Central Goods and Services Tax Act, 2017. Petitioner is entitled to interest on delayed refund.

[15] In view of the totality of the facts and circumstances together with the development which has taken place during the pendency of this petition, the present petition is disposed of with a direction to the concerned respondent authority to release the refund involved in the Shipping Bill No.8723678 dated 17.02.2021 and grant interest on the delayed refunds as per the provisions of law.

[16] With the above observations and directions, the present petition stands disposed off. Rule is made absolute to the aforesaid extent.