

(2023) 06 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No.284 Of 2021

Sunlight Cable Industries

APPELLANT

Vs

Commissioner Of Customs NS II And 2 Ors

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Goods And Services Tax Rules, 2017 — Rule 96
Integrated Goods And Services Tax Act, 2017 — Section 16, 16(3)
Central Goods And Services Tax Act, 2017 — Section 54

Citation : (2023) 06 BOM CK 0097

Hon'ble Judges : G.S. Kulkarni, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Prathamesh Gargate, Bharat Raichandani, Jitendra B. Mishra,
Sangeeta Yadav

Final Decision : Allowed

Judgement

G.S. Kulkarni, J

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties heard finally.
2. This petition under Article 226 of the Constitution of India primarily prays for a relief that the Petitioner be granted a refund of IGST paid in relation to the exports undertaken by it of goods which are described to be insulated cables to a party based in Myanmar, namely, M/s. Khin Maung Tum & Brothers Co. Ltd.
3. The Petitioner has contended that such claim of the Petitioner, which is for an amount of Rs. 21,41,451/-, has been denied by Respondent No.2, which was legitimately due to the Petitioner, being a zero rated supply in terms of Section 16(3) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act") read with Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Rule 96 of the Central Goods and Services Tax Rules, 2017 ("CGST Rules").

4. The Petitioner has contended that on 19th December 2017, the Petitioner had filed a GST Return in Form No.GSTR-1 for the month of August 2017, inadvertently mentioning an incorrect Invoice No. and Port Code in respect of export transaction made vide Tax Invoice No. SUN/03/2017-18 and corresponding Shipping Bill No.8360082. On realizing such a mistake, on 22nd February 2018, the Petitioner filed an amended/corrected Return for the month of January 2018 in Form No.GSTR-1 amending particulars with respect to the said Tax Invoice No. SUN/03/2017-18 correcting the invoice number and the Port Code. Consequent thereto, on 9th January 2019, the Petitioner submitted before Respondent No.2 an Annexure in the prescribed format establishing concordance between the Tax Invoice and Shipping Bill in pursuance of circulars of the Department of Revenue (Central Board of Excise and Customs). After such compliances, on 15th March 2019, the Petitioner made an application to Respondent No.2 requesting to release the refund of IGST amount. Also a Certificate of Amendment issued by Respondent No.1 amending Shipping Bill No.8360082 dated 24th March 2019 came to be submitted.

5. It is the case of the Petitioner that as the CGST refund was not being made, the Petitioner addressed a letter dated 29th August 2019 to the Commissioner of GST, Daman Commissionerate. The Additional Commissioner, CGST & CE, Daman Commissionaire, in turn addressed a letter to Commissioner of GST dated 24th September 2019, requesting to look into the application made by the Petitioner. Also the Petitioner, thereafter, re-submitted the refund documents, namely, the Tax Invoice, Shipping Bill, GST Forms, etc. Also a Certificate issued by a Chartered Accountant certifying the Petitioner's export transaction vide Shipping Bill No.8360082 came to be submitted by the Petitioner.

6. The Petitioner has contended that, however, despite all such compliances, there was no response from the Respondents. On such backdrop, on 26th September 2020, the Petitioner lodged a grievance in regard to the IGST refund with the Central Public Grievance Redress And Monitoring System ("CPGRAMS"). The Petitioner's grievance was acknowledged. The Petitioner received an e-mail dated 7th October 2020 that the Petitioner's grievance has been disposed on the ground that the Petitioner had availed a higher duty drawback on its exports under the said Export Invoice and corresponding Shipping Bill. On such backdrop, as according to the Petitioner the reasons for rejection were not correct the Petitioner submitted a fresh grievance on 9th October 2020, justifying and clarifying that it had not realized any higher amount of drawback against the said Shipping Bill. However, by e-mail of the CPGRAMS dated 5th November 2020, the Petitioner again received a communication that the grievance of the Petitioner has been closed. It is on such backdrop, the Petitioner is before the Court praying that the decision to close the case of the Petitioner on IGST refund be quashed and set aside and also the Respondents to grant IGST refund to the Petitioner.

7. Learned Counsel for the Petitioner has drawn our attention to the facts, as

averred in the petition, which we have noted above. It is his submission that this was a case purely of an inadvertent error, which came to be rectified by filing an amended Return on 22nd February 2018 and, hence, the Petitioner was legitimately entitled for the IGST Return paid on the goods exported. This, more particularly, in view of the amended Return and on corresponding documents in that regard being placed before Respondent No.2. It is the Petitioner's submission that it is not in dispute that the exports of the Petitioner were admittedly a zero rated supply in terms of the Section 16 of the IGST Act. Hence, considering the clear position in law as seen from the provisions of Section 54 of CGST Act as also Rule 96 of the CGST Rules, such refund could not be denied to the Petitioner. Learned Counsel for the Petitioner would submit that the decision of the Respondents to close the case of the Petitioner was not correct in as much as this was not a case where the Petitioner had claimed a drawback at a higher rate, as the notification dated 31st October 2016 clearly indicates that the rate of duty and the duty drawback was 2% being a common rate as seen in respect of Item 854499 in Schedule annexed to the petition. In support of the Petitioner's contention, reliance is placed on the decision of the Delhi High Court in the case of Kishan Lal Kuria Mal International vs. Union of India (2023) 95 GST 177 (Delhi). , decision of a Division Bench of the Gujarat High Court in Awadkrupa Plastomech Pvt. Ltd. vs. Union of India 2021 (46) G.S.T.L. 31 (Guj.) and the decision of the Division Bench of this Court in Gujarat Nippon International Pvt. Ltd. vs. Union of India 2022 (64) G.S.T.L. 45 (Bom.), which follows the decision of Awadkrupa Plastomech Pvt. Ltd. (supra).

8. Mr. Mishra, learned Counsel for the Revenue, would not dispute the facts of the case. He would fairly state that the documents would reveal that the export in question was a zero rated supply in terms of Section 16(3) of the IGST Act, hence, the provisions of Section 54 of CGST Act, as well as Rule 96 of CGST Rules, would become applicable. Mr. Mishra would submit that the exports of the Petitioner also were bearing the same rate of duty drawback with 2% in Entry No.854499, as set out in notification dated 31st October 2016, notifying the rates of drawback in relation to the goods specified in the Schedule annexed to the set of notification.

9. We have heard learned Counsel for the parties. We have also perused the record. Section 54 of the CGST Act provides for refund of tax, which would entitle the Assessee to claim any refund of tax and interest or any other amount paid by him by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Explanation below Section 54 provides for refund, which includes refund of tax paid on zero rated supplies of goods or services or both or on inputs services, etc. In the present case, it is not in dispute that the case of the Petitioner is a case of zero rated supply under Section 16(3) of the IGST Act. In these circumstances, Rule 96 of the CGST Rules, which provides for refund of integrated tax paid on goods or services exported out of India had become applicable. On this, there is no dispute.

10. In such circumstances, the only question, which is required to be determined is as to whether the Respondents are correct in their assertion that in making the refund as claimed by the Petitioner the Petitioner had claimed duty drawback at the higher rate of the IGST refund as seen from the reply received by the Petitioner from the CPRAMS. It appears that there is no factual foundation for the Respondents to come to such conclusion and, in fact, such a conclusion is contrary to the record, subject matter of consideration by the authorities. This is also clear from the notification dated 31st October 2016 prescribing common duty at 2% in respect of the goods in question.

11. This apart, in a similar situation where the claim of the assessee was not a claim to take a drawback at higher rate, the Gujarat High Court in *Awadkrupa Plastomech (supra)* in considering a prior decision in *Amit Cotton Industries vs. Principal Commissioner of Customs 2019 (29) G.S.T.L. 200 (Guj.)*, observed that is a situation when the claim made by the Petitioner was not to avail double benefit, that is of the IGST refund and the drawback, the Petitioner therein had become entitled to the IGST Refund. Relevant observations as made by the Division Bench are required to be noted, which read thus:

"8. We are not impressed by such submission because the rates of higher and lower duty drawback remains the same i.e. two percent and no occasion would arise to refund the differential amount as argued by the learned counsel appearing for the revenue. The Circular No.37/2018-Customs, dated 09/10/2018 referred to above by the Competent Authority would apply only to the cases, where the exporters have availed the option to take drawback at the higher rate in place of the IGST refund out of their own volition. In the instant case, the assessee had never availed the option to take drawback at higher rate in place of the IGST refund. In such circumstances, the Circular is not applicable to the facts of the present case.

9. Even as per the Condition No.7 of the Notification 131/2016-Cus. (N.T.) dated 31/10/2016, if the rate indicated in the columns (4) i.e. higher duty drawback and (6) i.e. lower duty drawback are the same, then it shall necessarily imply that the same pertains only to the Customs component and is available irrespective of whether the exporter has availed of the CENVET facility or not.

10. The petitioner had exported Rope Making Machine HSN Code 84794000 which attracts the same rate under both the columns (4) & (6) respectively i.e. 2 per cent. Thus it is evident that the petitioner has claimed drawback of the customs component only for their exports and there arises no question of denying the refund of IGST. The rationale for not allowing the refund of IGST for those exporters, who claim higher duty drawback is that the higher duty drawback reflects the elements of Customs, Central Excise and Service Tax taken together and since higher duty drawback is already being availed than granting the IGST refund C/SCA/1014/2020 ORDER would amount to double benefit as the Central Excise and Service Tax has been subsumed in the GST. In the case of the writ-applicant, the drawback rates being the same, it represents only the

Customs elements, which did not get subsumed in the GST and thus, the writ-applicant cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback.

11. In the result, this petition succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund towards the IGST paid in respect to the goods exported i.e. 'Zero Rated Supplies' made vide the shipping bills. It appears that the writ-applicant has also prayed to pay interest at the rate of 9% on the amount of refund from the date of shipping bill till the date on which the amount is actually paid."

12. A Division Bench of this Court in Gujarat Nippon International (supra), considering the prior decision in Awadkrupa Plastomech (supra), granted a similar reliefs in the said case inter alia making the following observations:

"6. From the facts on record, it is evident that the petitioner is claiming drawback of the custom component only for the goods exported by the petitioner at the rates specified therein. The rates of drawback under column 'A' and 'B' for the product exported by the petitioner is the same. The said fact is not disputed by the respondents. It is only on technical ground that affixing suffix 'A' claim of the petitioner is denied. The case of the petitioner is similar to the one decided by Gujarat High Court in the case of Awadkrupa Plastomech Pvt. Ltd. (supra) and confirmed by the Apex Court.

7. In view of the above, the petitioner succeeds. Respondents shall sanction the refund towards IGST paid in respect of the goods exported i.e. supply made by shipping. Of course, in case, if there is no other impediment, statutory interest shall follow."

13. Also in Kishan Lal Kuria Mal International vs. Union of India 2023) 95 GST 177 (Delhi). , the Division Bench of the Delhi High Court, following the decision of the Gujarat High Court in Amit Cotton Industries (supra) allowed the prayer for refund of the IGST. The following are the observations of the Court:-

"8. Since the facts in the present cases are pari materia to the case in M/s. Amit Cotton Industries (supra), the present writ petitions are allowed directing the Respondent authorities to grant refund of IGST paid on the goods exported by the Petitioners during the transitional period, after deducting the differential amount of duty drawback, if the said differential amount has not already been returned by the petitioner, within twelve weeks along with appropriate interest at the rate of 7% p.a. on such refund from the date of the shipping bill till the date of actual refund".

14. In the aforesaid circumstances, in the present case, the Petitioner is entitled to a refund of the IGST paid on the exports in question, as it is certain that this is not a case where the Petitioner is availing any double benefit that is of the IGST refund and a higher duty drawback.

15. We, accordingly, pass the following order:

(i) The Respondents are directed to refund to the Petitioner the IGST paid by the Petitioner in respect of the goods exported, i.e. zero rated supply, under shipping bills in question being an amount of Rs. 21,41,451/- with simple interest at 7% per annum with effect from 22nd February 2018.

(ii) The amounts be released within two weeks of the receipt of the authenticated copy of the present order by the concerned officer, authorised to release the amounts.

(iii) The petition is allowed in the aforesaid terms. No costs.