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CASE LAW UPDATE

Compiled by CA Heenal Furia

*M/s AIM Worldwide Pvt Ltd V/s Union of India
High Court of Gujarat*

R/Special Civil Application No. 15648 of 2020

❖ Summary –

- M/s AIM Worldwide Pvt Ltd. filed an extra ordinary writ jurisdiction under Article 226 of the Constitution of India to Gujarat High Court for refund of IGST on “Zero rated supply”. The court direct the respondent Authorities to immediately sanction the refund towards IGST paid in respect of goods exported “Zero Rated Supplies” made under the shipping bill as referred hereinabove. In peculiar facts and circumstances of the case, we further direct respondent authorities to grant interest @ 9% from the date when the bills for refund of IGST were raised by the petitioner, till its actual payment. The amount of refund of IGST along with interest so determined shall be paid within a period of 8 (eight) weeks from the date of receipt of this order. In case the respondent Authorities fail to release such amount, then the petitioners shall be entitled for realization of further interest @ 9% till its actual payment.

❖ Facts –

- The Company was engaged in trading and export of cotton, yarn, textiles, fabrics, etc. and they held valid GST Registration No.27AAKCS0140G1ZL.
- The Company had exported goods (Comber Noil) under various invoices for which they had paid IGST. The Company have filed form GSTR-1 and GSTR-3B, within prescribed time.
- Company had claimed drawback at higher rate by punching option “A” and instead of claiming drawback at lower rate by punching option “B”, while generating shipping bills. It is claimed by the petitioners that having realized the aforesaid mistake, requested the authorities to amend the aforesaid shipping bills to the effect of punching of “A” to be treated as punching of “B”.



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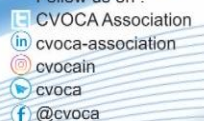
❖ Facts (Ctd.) –

- Further, the petitioner Company had submitted to the Deputy Commissioner of Customs (Exports), Customs House, to consider their case for IGST refund and had further disclosed their intention to not to claim higher drawback thereby showing their willingness to give back differential drawback amount and they gave back the differential amount to government.
- The goods supplied by the registered person were neither NIL rated goods nor exempt supplies. The said supplies are affected by the payment of IGST in accordance with the provisions contained in Section 16(3)(b) of the IGST Act. According to the said provision, a registered person making “Zero Rated Supply” has an option to claim refund in accordance with Section 16(3)(b) of the Act or as he may supply goods or service or both on payment of integrated tax and can claim refund of such tax paid on the goods or services or both supplied as per Section 54 of the Central Goods and Service Tax Act, 2017.

❖ Taxpayers Argument –

- Company had claimed drawback at higher rate by punching option “5202A” and option “600699A” instead of claiming drawback at lower rate by punching option “5202B” and option “600699B”, while generating shipping bills. It is claimed by the petitioners that having realized the aforesaid mistake, vide letter dated 12.09.2017, had immediately requested the Deputy Commissioner of Customs (Export), Customs House, Mundra, to amend the aforesaid shipping bills in exercise of powers conferred under Section 149 of the Customs Act, 1962. The request was also made to the effect of punching of “A” to be treated as punching of “B”. On 15.09.2017, the petitioner Company had submitted to the Deputy Commissioner of Customs (Exports), Customs House, Mundra to consider their case for IGST refund and had further disclosed their intention to not to claim higher drawback thereby showing their willingness to give back differential drawback amount and they gave back the differential amount to government.
- Further the goods supplied by the registered person were neither NIL rated goods or exempt supplies. The said supplies are affected by the payment of IGST in accordance with the provisions contained in Section 16(3)(b) of the IGST Act. According to the said provision, a registered person making “Zero Rated Supply” has an option to claim refund in accordance with Section 16(3)(b) of the Act or as he may supply goods or service or both on payment of integrated tax and can claim refund of such tax paid on the goods or services or both supplied as per Section 54 of the Central Goods and Service Tax Act, 2017.

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❖ Taxpayers Argument (Ctd.) –

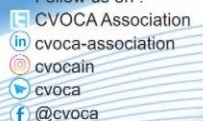
- Learned advocate for the petitioners has pressed into service, the decision of this Court in the case of Shri Jagdamba Polymers Ltd. Vs. Union India reported in 2013(289) E.L.T. 429 (Guj.) as well as the decision in the case of Purnima Advertising Agency Pvt. Ltd. Vs. Union of India reported in 2016(42) S.T.R. 785 (Guj.) and has submitted that the petitioner should be compensated by interest at 18% for the prejudice caused due to inordinate delay because of inaction on the part of the respondent

❖ Department`s Argument –

- The department urged that the petitioner company on it's own volition had punch option "Ä" and had drawn higher draw back. It is further urged that the respondent authorities are bound by the instructions issued under Board Circular and therefore cannot sanction IGST refund.
- The respondent Authorities have solely relied upon the instructions issued under Board Circular No.37/2018-Customs dated 09.10.2018 read with Notification No.131/2016-Cus (NT) dated 26.07.2017. By advertng to the aforesaid instructions, the respondents have contended that it would not be justified to allow the petitioners to avail IGST refund who on their own volition initially claimed benefits of higher drawback.
- It is also contended by the learned Counsel for the respondents that the decision rendered by this Court in the case of Amit Cotton (supra) had been challenged by filing SLP before the Hon'ble Apex Court, however, the said appeal has been not entertained on the ground of delay as against that the there is yet another SLP pending before the Hon'ble Apex Court where the very said decision relied upon is under consideration. The Learned Counsel fairly accepted that no stay has been granted by the Hon'ble Apex Court in the pending SLP.

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❖ Judgement –

- The shipping bills have been amended pursuant to the decision of the Superintendent of Customs (Export). It is not in dispute that the Demand Draft of differential drawback has been realized by the respondent Authorities.
- So far as issue of whether the respondents are justified in withholding the refund of IGST paid by the exporter of the goods i.e. “Zero Rated Supply” is concerned, is no more res integra. This Court had an occasion to deal with such issue in the similar set of facts of the cases Amit Cotton Industries Vs. Principal Commissioner of Customs reported in [2019] 107 (Gujarat), J.K.Lakshmi Cement Limited v. Commercial Tax Officer, Pali, reported in 2018(14) G.S.T.L. 497 (S.C.) and Awadkrupa Plastomech Pvt. Ltd. Vs. Union of India in Special Civil Application No.1014 of 2020 dated 15.12.2020. Thus the department was order to process the refund.
- So far as prayer of the petitioners to grant interest @ 18% on the amount of refund of IGST is concerned, the authorities have carefully gone through the decisions relied upon by the petitioners in the case Jagdamba Polymers Ltd. (Supra) and Purnima Advertising Agency Pvt. Ltd. (Supra). In both the aforesaid decisions, the issue with regard to entitlement of the interest at appropriate rate (i.e. 9%) for delay in not paying the refund.

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