Gujarat High Court

Awadkrupa Plastomech Pvt. Ltd. vs Union Of India on 15 December, 2020

Bench: J.B.Pardiwala, Ilesh J. Vora

C/SCA/1014/2020

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1014 of 2020

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AWADKRUPA PLASTOMECH PVT. LTD.

Versus

UNION OF INDIA

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Appearance:
HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 2
NOTICE SERVED BY DS(5) for the Respondent(s) No. 3
SERVED BY RPAD (N)(6) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/12/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writapplication under Article226 of the Constitution of India, the writapplicant has prayed for the following reliefs: (A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to the respondent authorities to immediately sanction the refund of IGST paid

in regard to the goods exported i.e. 'Zero Rated Supplies' made vide shipping bills mentioned hereinabove;

(B) YOUR LORDSHIPS may be pleased to direct the respondent authorities to pay interest @ 9% to the petitioner herein on the amount of refund from the date of shipping bill till the date on which the amount of refund is paid to the petitioner herein, as the same is arbitrarily and illegally withheld by the respondent authorities;

C)Your Lordships may be pleased to grant an exparte, ad interim order in favour of the petitioner herein in terms of prayer clause 'A' and 'B' hereinabove;

(D) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your Petitioners shall forever pray.

2. It appears from the materials on record that the writapplicant wants the respondent-authorities to sanction the refund of Integrated Goods and Service Tax [herein after referred to as the 'IGST'] paid in respect of the goods exported i.e. 'Zero Rated Supplies' vide the shipping Bill No.7452830, dated 19/07/2017. It is the case of the writapplicant that the respondents authorities have illegally withhold the refund of the IGST referred to above. The claim of the writapplicant came to be rejected under Section54 of the Central Goods and Service Tax Act, 2017 [herein after referred to as the 'CGST Act'] read with Section16 of the Integrated Goods and Service Tax Act, 2017. It appears from the materials on record that such claim came to be declined on the ground that the writ-applicant had claimed higher duty drawback. According to the writapplicant, there is no legal embargo to avail the drawback at higher rate on one hand and availing refund of the IGST paid with regard to the 'Zero Rated Supply' i.e. the goods exported out of India on the other.

3. It is pointed out by the learned counsel appearing for the writ applicant that some time in July 2017, the writapplicant had exported goods and effected 'Zero Rated Supply' under Section16 of the IGST of the finished goods of a total invoice value of Rs.29,73,166/. The total taxable value of the said export is Rs.25,19,632/. It is pointed out that C/SCA/1014/2020 ORDER the goods supplied by the registered person were neither Nil Rated goods nor exempt supplies. The said supplies are affected by payment of the IGST in accordance with the provision contained in Section16(3)(b) of the Act. According to the said provision, a registered person making 'Zero Rated Supply' has an option to claim refund in accordance with Section16(3)(b) of the Act in a manner as to he may supply goods or services or both, on payment of the Integrated Tax and claim refund of such tax paid on the goods or services or both supplied, in accordance with Section54 of the CGST Act.

4. As provided in Rule96 of the CGST Rules, 2017, the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of the Integrated Tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return in the Form - GSTR3 or Form

GSTR3B. It is submitted that however while filing the shipping bill the Custom House Agent (herein after referred to as the 'CHA') inadvertently failed to disclose the details of IGST paid i.e. Rs.4,53,534/ and was filed disclosing only the drawback amount. It is further submitted that however the aforesaid mistake was rectified and had been properly disclosed in its return filed under the CGST Act for the month of July, 2017 in the Form GSTR01 and GSTR3B.

5. It is submitted that owing to the fact that various IGST refunds were stuck due to mismatch of invoice and shipping bill, the Central Board of Excise & Customs (herein-after referred to as 'the CBIC') vide Circular No.05/2018Customs, dated 23.02.2018 provided an alternative mechanism to give the exporters an opportunity to rectify such errors C/SCA/1014/2020 ORDER committed in the initial stages which required the petitioner to submit a concordance table mapping between the GST invoices and Shipping Bill. Such concordance table was duly filed by the petitioner on 19.03.2018.

6. The respondents have invoked the Circular No.37/2018Customs dated 09/10/2018 to deny the refund. In para4.5 of the reply, the respondent authorities have relied on the Notification 131/2016-Cus. (N.T.) dated 31.10.2016, which specified the rate of drawback subject to the notes and conditions mentioned in the notification. It is submitted that in light of the Notification 131/2016-Cus.(N.T.) dated 31/10/2016, the petitioner has not availed the higher duty drawback as the rates of higher and lower duty drawback remains the same i.e. 2 percent. The stance of the respondents is that the condition no.7 of the notification dated 31/10/2016 mentions that if any exporter claims drawback under Column (4) and (5), it means that the drawback includes the Customs, Central Excise and Service Tax component and it's called the Higher drawback. Similarly, if any exporter claims drawback under Column (6) and (7), it means the drawback included Customs only and it's called the Lower drawback. After the introduction of the IGST, the condition 11 of the Notification 131/2016-Cust (N.T.) dated 31/10/2016 has been amended by the Notification 59/2017, dated 29/06/2017. The Condition No.11(d) mentions that the drawback under Column (4) and (5) i.e. Higher Drawback is not applicable to the goods if goods is exported by claiming refund of the integrated goods and services tax paid on such exports. Adverting to the Circular No.37/2018Customs contentions were raised that the exporters had availed the option to take drawback at higher rate in place of the IGST refund out of their own volition. Considering the fact that the exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing the exporters to avail the IGST refund after initially claiming the benefit of higher drawback.

7. We are of the view that the controversy raised in this writ application is squarely covered and settled by the decision of this Court in the case of Amit Cotton Industries Vs. Principal Commissioner of Customs reported in [2019] 107 taxmann.com 167 (Gujarat). We quote the relevant observation.

"23. Section 16 of the IGST Act, 2017, referred to above provides for zero rating of certain supplies, namely exports, and supplies made to the Special Economic Zone Unit or Special Economic Zone Developer and the manner of zero rating.

24. It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in subclauses

(a) and (b) to clause (3) of Section 16 referred to above.

25. Section 54 of the CGST Act, 2017, provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, shall make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined will have to be credited to the Fund referred to in Section 57 of the CGST Act, 2017.

26. Rule 96 of the CGST Rules provides for a deeming fiction. The shipping bill that the exporter of goods may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India. Section 54 referred to above should be read along with Rule 96 of the Rules. Rule 96(4) makes it abundantly clear that the claim for refund can be withheld only in two circumstances as provided in subclauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

27. In the aforesaid context, the respondents have fairly conceded that the case of the writapplicant is not falling within subclauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writ applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writapplicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated C/SCA/1014/2020 ORDER supplies'.

28. If the claim of the writapplicant is to be rejected only on the basis of the circular issued by the Government of India dated 9 th October, 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

29. We are not impressed by the stance of the respondents that although the writapplicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writapplicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

30. Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies :

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of subsection (10) or subsection (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

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34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear."

8. Mr. Parth Bhatt has one more argument to canvass. According to him, in Amit Cotton Industries [Supra], the assessee had returned the amount towards the difference of higher and lower duty drawback, C/SCA/1014/2020 ORDER whereas, in the instant case, the writapplicant has not returned the amount of the difference of higher and lower duty drawback.

9. 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.37/2018Customs, 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.

10. 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.

11. 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 writapplicant, the drawback rates being the same, it represents only the Customs elements, which did not get subsumed in the GST and thus, the writapplicant cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback.

12. 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.

We may only say that if the refund of the principal amount is not sanctioned and actually paid to the writ applicant within the period of six weeks from the date of the receipt of this order, then interest would start accumulating at the rate of 9% and the amount shall be paid accordingly.

(J. B. PARDIWALA, J) (ILESH J. VORA,J) A. B. VAGHELA