

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.24793 of 2018

and

W.M.P.(MD)No.22481 of 2018

M/s.VSG Exports PVT., LTD.,
Rep., by its Director Mr.Bharat Chopra,
B-8/44, Sector-5 Rohini,
Delhi-110 085.

... Petitioner

-VS-

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of
Customs (Drawback Section),
Custom House, New Harbour Estate,
Tuticorin-628 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the second respondent herein to settle and release the pending refund of IGST amount paid on the Shipping Bill Nos., Viz, 7254660/11.07.2017, 7256106/11.07.2017, 7265768/11.07.2017, 7709921/31.07.2017, 78161550/04.08.2017, 7903380/09.08.2017, 8024352/16.08.2017, 8129114/21.08.2017, 8213317/24.08.2017, 8213105/24.08.2017, 8351457/31.08.2017, 8383716/01.09.2017, 8474843/06.09.2017, 8501257/07.09.2017 and 8501277/07.09.2017.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.R.Aravindan

ORDER

The instant writ petition has been filed for a mandamus to direct the second respondent to settle and release the pending refund of IGST amount paid on the Shipping Bill Nos. 8676491/15.09.2017, 8898781/26.09.2017, 8930537/27.09.2017, 8997183/29.09.2017 and 8997165/29.09.2017.

2.It is the case of the petitioner that they are regular exporters of Polished Granite Slabs and had registered with all the Government Authorities. According to the petitioner, they have exported Polished Granite Slabs to various countries on payment of IGST through the following Shipping Bills. The amount of IGST paid is mentioned against each Shipping Bills in the following table:

SI.No	Invoice No.	Date	Shipping No.	Date	IGST paid
1	VSG/EXP/G ST/01	09.07.2017	7254660	11.07.2017	552604.10
2	VSG/EXP/ GST/02	09.07.2017	7256106	11.07.2017	730700.00
3	VSG/EXP/G ST/03	10.07.2017	7265768	11.07.2017	605987
4	VSG/EXP/G ST/04	30.07.2017	7709921	31.07.2017	306321.30
5	VSG/EXP/G ST/05	03.08.2017	7816155	04.08.2017	139867.43

6	VSG/EXP/G ST/06	08.08.2017	7903380	09.08.2017	192596.73
7	VSG/EXP/G ST/08	15.08.2017	8024352	16.08.2017	208489.13
8	VSG/EXP/G ST/011	20.08.2017	8129114	21.08.2017	166515
9	VSG/EXP/G ST/13	24.08.2017	8213317	24.08.2017	146614
10	VSG/EXP/G ST/14	24.08.2017	8213105	24.08.2017	177550
11	VSG/EXP/G ST/15	30.08.2017	8351457	31.08.2017	211768
12	VSG/EXP/G ST/16	31.08.2017	8383716	01.09.2017	152218
13	VSG/EXP/G ST/17	05.09.2017	8474843	06.09.2017	313015
14	VSG/EXP/G ST/18	06.09.2017	8501257	07.09.2017	152040
15	VSG/EXP/G ST/19	06.09.2017	8501277	07.09.2017	265114

3. According to the petitioner, as per Rule 96A of CGST Rules, 2017, Shipping Bills filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. However, it is the case of the petitioner that the second respondent has not refunded the IGST amount paid on the above mentioned goods. According to the petitioner, on enquiry, it was found that IGST refund was pending for the reason that the petitioner has availed drawback at higher side i.e., Composite Rate.

4. According to the petitioner, they are eligible for the refund of the above mentioned IGST refund paid on export of goods. It is the case of the petitioner that consequent upon implementation of GST with effect from 01.07.2017, Customs Central Excise Duties and Service Tax Drawback Rules, 1995 were continued for a transition period of three months i.e., from July 2017 to September 2017, vide Notification No.22/2017-Customs, dated 30.06.2017. The learned counsel appearing for the petitioner submits that the Drawback rates have been prescribed in Drawback Schedule annexed to the Customs, Central Excise duties and Service Tax Drawback Rules, 1995, as amended vide Notification No.131/2016-CUSTOMS(N.T), dated 31.10.2016. In the above schedule, the goods exported by the petitioner i.e., Polished Granites Slabs are classifiable under Tariff Item No.680203.

5. According to the petitioner, in the Notification No.131/2016-CUSTOMS(N.T.), dated 31.10.2016, it is mentioned that "If the rate indicated is the same in the columns(4) and (6), it shall mean that the same pertains to only Customs component and is available irrespective of whether the exporter has availed of CENVAT Facility or not". The learned counsel appearing for the petitioner further

submits that as the claimant's commodity Polished Granite Slabs, it attracts the same rate under both the columns(4) & (6), it is evident that the petitioner has claimed drawback of customs component only for their exports.

6.It is also the case of the petitioner that under the Circular No. 22/2017-Customs, dated 30.06.2017, which deals with drawback claims for the transition period, clearly provides that "While a transition period of three months has been allowed, the exporters shall have an option to claim only Customs portion of AIRs of duty drawback i.e., rates and caps given under column (6) and (7) respectively of the Schedule of AIRs of duty drawback and avail input tax credit, CGST or IGST or refund of IGST paid on exports." Furthermore, it is the case of the petitioner that CBEC vide Circular No.37/11/2018 GST in F.No.349/47/2017 GST, dated 15.03.2018 has clarified that a supplier availing drawback only with respect to basic custom duty shall be eligible for refund of GST.

7.According to the petitioner, they are entitled to claim refund of IGST paid on exports. It is also the case of the petitioner that Circular No.05/2018-Customs, dated 23.02.2018 provides alternate

mechanism with officer interface for refund of IGST paid on exports wherein, it is mentioned that "Once all the invoices pertaining to Shipping Bill are verified by the officer, the system shall calculate the scroll amount against the Shipping Bill, after subtracting the drawback amount for each invoice, where applicable and display the refund amount to the officer for approval".

8. According to the petitioner, they have claimed lower rate drawback as per Notification 131/2016(NT), dated 31.10.2016, the petitioner has mistakenly declared in the Shipping Bills that they have availed higher drawback by selecting A instead of B.

9. According to the petitioner, this is purely an inadvertent error committed by the petitioner. The CBEC has issued various Circulars to rectify the same kind of errors committed by the exporters. According to the petitioner, one such error is discussed in CBEC Circular No.8/2018 Cus., dated 23.03.2018 as follows:-

"Exporters that by mistake they have mentioned the status of IGST payment as "NA" instead of mentioning "P" in the Shipping Bill. In other words, the exporter has wrongly declared that the shipment is not under payment of IGST,

despite the fact that they have paid the IGST. As a onetime exception, it has been decided to allow refund of IGST through an officer interface, wherein, the officer can verify and satisfy himself of the actual payment of IGST based on GST return information forwarded by GSTIN. DG (Systems) shall open a physical interface for this purpose”.

10. According to the petitioner, in the instant case, the mistake committed by the petitioner is similar to the mistake referred to in CBEC Circular No.8/2018-Cus dated 23.03.2018. According to the petitioner, the department can very well check the availment of lower drawback from the shipping bill filed by the petitioner and similar facility can also be extended to the petitioner as in the case of Circular No.08/2018, dated 23.03.2018 referred to above.

11. According to the petitioner, due to inadvertent error, a huge amount of refund of IGST has been deprived to the petitioner. According to the petitioner, they have been sending repeated reminders to the respondents requesting them to refund the IGST amount for the export of Polished Granite Slabs under the aforementioned Shipping Bills and the last such remainder was made on 06.09.2018.

12. According to the petitioner, since the respondents have not refunded the IGST amount, they were constrained to file this instant writ petition.

13. A counter affidavit has also been filed by the respondents, wherein, they have admitted in Paragraph 11 of the counter affidavit that the petitioner has inadvertently made an error by wrongly declaring the Drawback Code as 680203A instead of 680203B. Further, they have admitted that the petitioner is entitled to refund of IGST amount, but could not be processed due to the fact that the IGST refund is processed and sanctioned by the computer generated system. Since the Export General Manifest (EGM) has already been closed for the aforementioned shipping bills by the computer system, the refund of IGST amount could not be made by the respondents to the petitioner.

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14. It is also stated in the counter affidavit that amendment in the shipping bill is not possible, if EGM is closed and the shipping bill status has gone to history. They have also not disputed the circulars referred to by the petitioner in the affidavit filed in support of the writ

petition, namely, Circular No.05/2018, dated 23.02.2018 and Circular No.08/2018, dated 23.03.2018. Under Circular No.05/2018, the respondents have admitted that by way of alternate mechanism to correct the error code submitted by the exporters, refund of IGST can be processed.

15. Heard Mr.A.K.Jayaraj, learned counsel appearing for the petitioner and Mr.R.Aravindan, learned counsel appearing for the respondents.

16. According to the learned counsel for the petitioner, it is not in dispute that IGST refund for the aforementioned shipping bill is payable to the petitioner.

17. The learned counsel appearing for the petitioner drew the attention of this Court to the counter affidavit filed by the respondents and in particular, he referred Paragraph 11, wherein, the respondents have admitted that only because of the inadvertent error in mentioning wrong drawback code ie., 680203A instead of 680203B, the petitioner's claim for refund of IGST for the aforementioned shipping bills could not be processed, as the process

is done through a computer generated system.

18.The learned counsel appearing for the petitioner drew the attention of this Court to Circular No.08/2018, dated 23.03.2018, issued by the CBEC, dated 23.02.2018, which allows the refund of IGST through an officer interface specially opened by DG(Systems), a one time exception, where IGST refund is held up due to invoice mismatch (error code SB005) and errors due to discontinuance of transference copy of the shipping bill (error code SB006) and due to the mistaken declaration of the exporter's status of IGST payment as 'NA' instead of mentioning "P".

19.Referring to the said Circular, the learned counsel appearing for the petitioner would point out that the case on hand is similar to the same as only due to an inadvertent error by declaring wrong drawback code instead of correct drawback code, the refund of IGST by the respondent could not be processed. Further, according to him, under Circular No.8/2018, dated 23.03.2018, the facility is available for shipping bills filed upto 23.3.2018. But in the instant case, the last shipping bills were filed on 07.09.2017 and therefore, according to him, Circular No.08/2018, dated 23.03.2018 is squarely applicable for the petitioner.

20.The learned counsel appearing for the petitioner drew the attention of this court to a Judgment of the Hon'ble Supreme Court in the case of **Share Medical Care Vs. Union of India** reported in **2007 (209) E.L.T 321 (S.C.)** and referring to the said judgment, the learned counsel for the petitioner submitted that "Even if the applicant does not claim any benefit under a particular notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.

21.In the instant case also, according to him, Circular No. 8/2018, dated 23.03.2018, has not been repealed by the subsequent Circular No.37/2018, dated 09.10.2018. Further, it is the case of the petitioner that circular pertains to a different matter not pertaining to the issue on hand. Further, it is his case that Circular No.37/2018, dated 09.10.2018 cannot have retrospective effect.

22.Per contra, learned Standing Counsel appearing for the respondents fairly admitted that refund of IGST is payable for the shipping bills to the petitioner, but the same could not be processed only due to the fact that being a computer generated system, the

system will not process the IGST refund, if the drawback code has not been correctly mentioned. According to him, once EGM is closed for the said exports, it cannot be reopened by the computer system.

Discussion:-

23. Admittedly, due to wrong mentioning of the drawback code by the petitioner, refund of IGST for the aforementioned shipping bills could not be processed by the respondents. Only to overcome such inadvertent errors, CBEC, Ministry of Finance, Government of India, issued a Circular No.8/2018, dated 23.03.2018 it reads as follows:-

"CBEC has issued Circular No.5/2018-Customs dated 23.02.2018 which provided for an alternative mechanism with officer interface to resolve invoice mismatch cases. In the said circular, it was provided that the mechanism would be available for the shipping bills filed till 31.12.2017. Although the cases having SB005 error have now greatly reduced due to continuous outreach done by the Board and increased awareness amongst the trade, but some exporters have nevertheless, have committed errors in filing invoice details in shipping bill and GST returns. Therefore, keeping in view the difficulties likely to be faced by the exporters in case SB005 are allowed to be corrected through officer interface for Sbs filed upto 31.12.2017, it has been decided to extend his facility to those shipping bills filed till 28.02.2018.

2. Further, representations have also been received from:

(I) filed formation seeking resolution of SB006 errors due to discontinuance of transference copy of shipping bill. It has been proposed by the filed formations that in lieu of transference copy either the final Bill of Lading issued by the shipping lines or written confirmation from the custodian of the gateway port, may be treated as valid document for the purpose of integration with the EGM. The proposal from the filed formation has been examined in the Board. The proposal send from filed formation in such EGM error cases has been agreed.

(ii) exporters that by mistake they have mentioned the status of IGST payment as "NA" instead of mentioning "P" in the shipping bill. IN other words, the exporter has wrongly declared that the shipment is no under payment of IGST, despite the fact that they have paid the IGST. As a one time exception, it has been decided to allow refund of IGST through an officer interface wherein the officer can verify and satisfy himself of the actual payment of IGSt based on GST return information forwarded by GSTn. DG(Systems) shall open a physical interface for this purpose."

24.It is evident from the aforesaid Circular that the Government of India has provided an alternate mechanism in cases where, the exporters have committed errors in the shipping bills filed by them before the Customs Authority.

25.The case on hand will clearly indicate that only due to inadvertence, the drawback code in the shipping bill was wrongly mentioned as 680203A instead of 680203B. Further, it is undisputed by the respondents as seen from Paragraph No. 11 of the counter affidavit filed by them that IGST refund is payable for the aforementioned shipping bills to the petitioner. But only due to the fact that Export General Manifest for the shipping bills have been closed by the computer system, it is not possible to refund the IGST amount to the petitioner. The petitioner cannot be made helpless, just because the computer system does not enable them to refund the IGST amount. Being an undisputed fact that IGST refund is payable to the petitioner, the petitioner is absolutely entitled to the IGST refund from the respondents.

26.In the counter affidavit, the respondents have referred to Circular No.37/2018, dated 09.10.2018 issued by the CBEC, which reads as follows:-

“3.It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been

decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage.”

27.As seen from the aforesaid circular, the said circular applies only to cases where the exporters had availed option to take drawback at higher rate in place of IGST refund out of their own volition. In the instant case, the petitioner had never availed the option to take drawback at higher rate in place of IGST refund and therefore, the said Circular No.37/2018, dated 09.10.2018 is not applicable to the facts of the instant case. Further, the Circular No. 37/2018, dated 09.10.2018 issued by CBEC has also not rescinded the earlier Circular No.08/2018, dated 23.03.2018.

28.The judgment relied upon by the learned counsel for the petitioner referred to supra in **2004 (165) E.L.T. 257 (S.C.)** is squarely applicable for the facts of the instant case as Circular No. 808/18/23.03.2018, has not been rescinded by the subsequent circular and therefore, it is binding upon the respondents to follow the Circular No.8/18, dated 23.03.2018, wherein, an alternative mechanism has been provided to the respondents for processing

refund of IGST claim whenever, there is an inadvertent error in the shipping bills submitted by the exporters or any other documents submitted by the exporters.

29.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in a case of ***Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Limited reported in 2004 (165) E.L.T 257 (S.C.)*** and submitted that although the circular is not binding on the Court or an assessee, revenue cannot raise contention contrary to binding circular. However, according to him, when a circular remains in operation, revenue is bound by it and cannot be allowed to plea that it is not valid nor it is contrary to the terms of statute.

30.Considering the aforesaid factors and in the light of the Judgments referred to above, this Court is of the considered view that the respondents ought to have refunded the IGST amount for the aforementioned shipping bills to the petitioner.

31.In the result, the respondents are directed to refund the undisputed IGST amount payable to the petitioner for the below

mentioned Shipping Bill Nos., Viz, 7254660/11.07.2017, 7256106/11.07.2017, 7265768/11.07.2017, 7709921/31.07.2017, 78161550/04.08.2017, 7903380/09.08.2017, 8024352/16.08.2017, 8129114/21.08.2017, 8213317/24.08.2017, 8213105/24.08.2017, 8351457/31.08.2017, 8383716/01.09.2017, 8474843/06.09.2017, 8501257/07.09.2017 and 8501277/07.09.2017, within a period of eight weeks from the date of receipt of a copy of this order and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.04.2019

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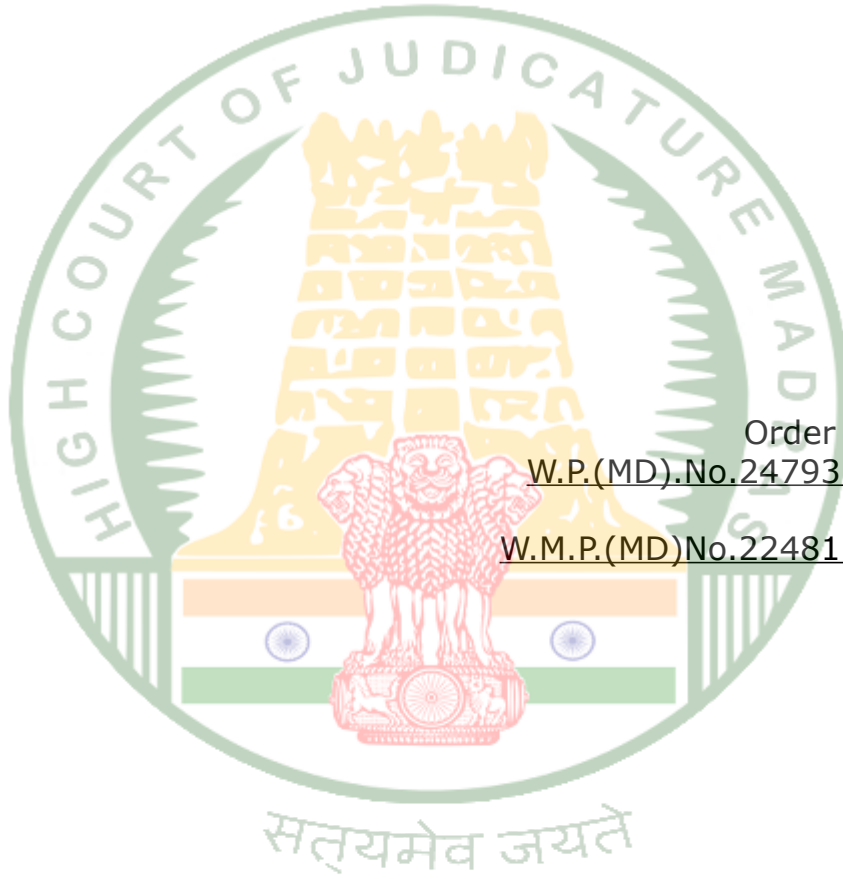


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Order made in
W.P.(MD).No.24793 of 2018
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