

W.A.(MD)No.701 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 06.01.2025

PRONOUNCED ON : 24.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)No.701 of 2020
and
C.M.P.(MD)No.4159 of 2020

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

2.Goods and Services Tax Network,
Represented by its Chairman,
East Wing, 4th Floor, World Mark-1,
Aerocity, New Delhi- 110 037.

3.The GST Council,
Represented by its Secretary,
5th Floor, Tower-II,
Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi-110 001.

4.The Central Board of Indirect Taxes & Customs,
Represented by its Secretary,
North Block,
New Delhi, Delhi-110 001.

... Appellants/ Respondents

-VS-



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WEB COPY
M/s.Vedanta Limited,
Represented by its,

Associate General Manager(Indirect Taxes),
SIPCOT Industrial Complex,
Madurai Bye-Pass Road,
T.V.Puram Post,
Tuticorin - 628 002.

... Respondent/ Petitioner

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.6209 of 2019 dated 31.10.2019 on the file of this Court.

For Appellants : Mr.R.Anandakumar

For Respondent : Mr.Vishal Agarwal
Senior Counsel
for Mr.Y.Prakash
Assisted by Mr.M.Karthikeyan

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

The matter arises in respect of claim of refund of additional IGST paid by the respondent.

2. The short facts leading to the filing of the above writ petition are as under :



WEB COPY (a) M/s.Vedanta Limited (“Respondent”) are engaged in the manufacture of copper anodes, cathodes and continuous copper rods for both domestic sale and export. The goods are exported on payment of Integrated Goods and Services Tax (IGST) and then the refund of such IGST paid is claimed under Section 54 of the CGST Act, 2017 and Section 16(3)(b) of IGST Act, 2017 read with Rule 96 of CGST Rules, 2017 and Section 20 of the IGST Act, 2017.

(b) During August 2017, the respondent had exported goods under 71 Shipping Bills covering 152 invoices. An IGST of Rs.9,42,39,026/- (Rupees Ninety four crores forty two lakhs thirty nine thousand and twenty six only) was paid against such export. Out of the said 71 shipping bills and 512 invoices, the respondent claims that goods covered in 61 shipping bills and 442 invoices underwent a revision in price subsequent to the export necessitating the issuance of 7 debit notes.

(c) The differential IGST said to have been paid upon such revision amounts to Rs.2,02,94,956/- (Rupees Two crores two lakhs ninety four



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thousand nine hundred and fifty six only). The respondent had also in 2018 cancelled the 7 debit notes and issued a debit note for each invoice where the price had undergone a revision. These notifications were reflected in Table-9 of June 2018.

3. According to the writ petitioner R.94,42,35,026/- is to be refunded. However, the revenue has refunded some amount and balance of the refund amount is Rs.2,02,94,956/- which is under dispute before this Court in the instant case.

4. The undisputed facts as admitted by both the parties as the factual position and the application of provision of law are as under:

a. GST was introduced w.e.f. 01.07.2017. Section 16(3) of the IGST Act, 2017 stipulates that a supplier would be entitled to claim refund of the IGST paid by such supplier on the goods that are exported.

b. Rule 96 of the CGST Rules, 2017, provides that the Shipping Bill itself is to be regarded as the refund application. As per Rule 96(2) ibid, the details of the relevant export invoices are to be transmitted electronically through the common portal maintained by the GSTN to the system designated



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by the Customs (ICEGATE) and the said system has to transmit electronically
WEB COPY to the system maintained by GSTN, a confirmation that the said invoices have been exported out of India. Rule 96(3) *ibid*, provides that on receipt of information regarding furnishing of a valid return in FORM GSTR-3B from the GSTN portal, the system designated by the Customs or the proper officer of the Customs, shall process the refund in respect of export of goods and an amount equal to the Integrated Tax paid in respect of the Shipping Bill shall be electronically credited to the bank account mentioned in his registration particulars, as intimated to the Customs Authority.

5. The glitch of the matter is that while the respondent (assessee) has been sanctioned IGST refund of Rs.94,42,39,026/- in respect of goods covered against 71 Shipping Bills covered by 512 invoices, the balance refund to the tune of Rs.2,02,94,956/- was not sanctioned on the ground that particulars of the said different duty paid had not been transmitted to the ICEGATE (designated system maintained by the Customs) from the GSTN portal.

6. At this juncture, it is relevant to point out that taking cognizance of the fact that there have been glitches in the transmission of data from



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ICEGATE to the GSTN portal and vice-versa and also taking cognizance of

WEB COPY the fact that GST was a new law and errors were committed by exporters,

which was hampering the sanctioning of the refund, the CBIC has issued various Circulars laying down the alternate mechanism for interface with the officers, to resolve the mismatches and process the refund claims.

7. One such instruction was issued on 24.10.2018, wherein it has been recorded that CBIC has been receiving representation where refund scroll has been generated for a much lesser IGST amount than what was paid against the goods exported, which could broadly have happened due to error made by exporter/CHA in declaring IGST in the Shipping Bill or typographical mistake by the Customs officer.

8. In respect of all such cases where IGST refunded is less than what has been paid, it was clarified that the directorate of systems had provided a facility in the ICES for processing and sanctioning of eligible IGST refund.

9. In the instant case on hand, the respondent (assessee/writ petitioner) under cover of letters dated 07.01.2019 and 19.02.2019, had requested the



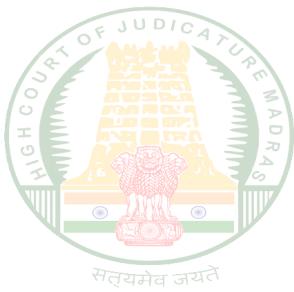
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Commissioner of Customs, Tuticorin (appellant herein) to apply the CBIC instruction dated 24.10.2018 and disburse the IGST paid on the exported goods to the tune of Rs.2,02,94,956/-.

10. While things be so, since the Customs did not take any action qua the requests made before them, the respondent (petitioner/assessee) preferred a writ petition before this Court wherein *inter alia* sought a direction to the respondent for transmitting the data with regard to the IGST paid on goods exported to the Customs ICEGATE portal and to facilitate refund of the IGST paid in light of the Circular No.40/2018-Customs within a prescribed time frame.

11. Before the learned Single Judge, on 09.08.2019 the revenue has filed counter affidavit, which is two fold wherein it was contended that -

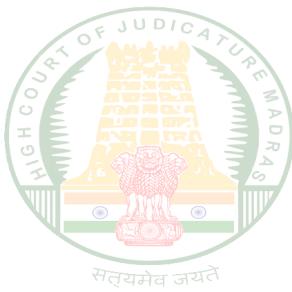
(a) the Circular No.40/2018-Customs, specified the situation in respect of which ONLY refund of IGST was to be granted in cases, where the refund sanctioned was lesser than the duty paid and



WEB COPY (b) the verification of the additional IGST paid could be caused at the GSTN end and that the Commissioner of Customs, Tuticorin did not have a mechanism in place to verify the same.

12. After hearing both the parties, the learned single Judge, by an order dated 31.10.2019, as per the above referred Circular No.40, dated 24.10.2018, in para No.6, has observed as follows:

“6. In order to claim the differential amount, the exporter is required to submit a duly filled and signed Revised Refund Request (RRR) annexed to this circular to the designated AC/DC. A scanned copy of the RRR may also be mailed to dedicated email address of Customs locations from where exports took place. The designated/concerned AC/DC will then proceed to sanction the revised amount after due verification through the option provided in ICES, a detailed advisory on which will be communicated by DG Systems to all the System Managers shortly. Once the revised amount is approved by the designated AC/DC in the system, a fresh scroll will be available for generation for the differential amount only.”

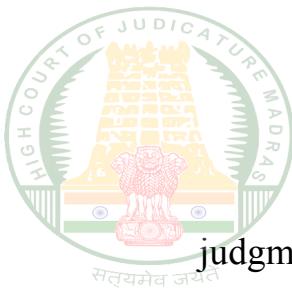


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13. Accordingly the learned Single Judge has rendered a categorical finding that the present case on hand is also similar to that of the problem which was faced by the respondents in similar circumstances. When there is no provision in the electronically managed system, they should have visualised the situation prior to its introduction to do away with these anomalies and provided solution to the same. When the issue of refund like the present one was dealt with by the Hon'ble High Court of Gujarat at Ahmedabad in R/Special Civil Application No.20126 of 2018 dated 27.06.2019 (M/s Amit Cotton Industries v. The Principal Commissioner of Customs and Others), the High Court has given a direction to the respondents to refund the IGST paid in regard to the goods exported i.e., 'Zero rated supplies', with 7% simple interest in view of circular dated 09.10.2018 and Rule 96 of Central Goods and Services Tax Rules, 2017.

14. After the above finding, the learned Single Judge has observed that when the process is completely system managed, the respondents are supposed to visualize the complications and provide solutions to do away with the anomalies. The very object of encouraging exporters and augmenting the foreign currency will be defeated by such hiccups and also by considering the

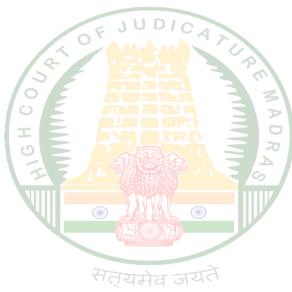


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judgment of the Gujarat High Court on the similar issue. Accordingly, **WEB COPY** direction was issued to the respondents to refund the additional IGST paid by the petitioner to the tune of Rs.2,02,94,956/- within a period of four weeks from the date of receipt of a copy of that order.

15. Aggrieved against the said order passed by the learned Single Judge, the revenue has filed this appeal. The learned counsel Mr.R.Nandakumar, appearing for the Revenue/appellants would state that the Circular No. 40/2018-Customs dated 24.10.2018 does not cover the instant case since the same does not fall under any of the three conditions listed at para 4 of the said circular which broadly refers to mistakes that could have happened in entering the IGST amount either by the exporter or officer and consequently refund obtained is lesser than the amount paid.

16(a) According to the Department, the price was revised after export and therefore, the amount refund to the writ petitioner is equal to the amount of IGST as declared in the shipping bill and besides the circular is for only the one time relief and hence, the writ petitioner is not entitled for the relief.



16(b) It remains to be stated that when there was a revision of price in goods exported under 61 Shipping Bills covered by 442 invoice in respect of which admittedly additional IGST to the tune of Rs.2,02,94,956/- is paid. This was not disputed by the appellants. The goods covering the said amount of IGST is also exported. These two facts are admitted.

17(a) The writ petitioner exports goods on payment of Integrated Goods and Service Tax and when the writ petitioner claims refund of such tax. In the pre GST regime, the statute used the version “Rebate”. Under the GST regime it is termed as 'refund'. It is general principle of law that goods only ought to be exported and not taxes.

17(b) At this juncture, it is relevant to point out that while claiming the rebate on export, as long as the substantive compliance and the factum of export is not in dispute. The procedural requirements should be interpreted liberally as it is a beneficial scheme as hold in ***Ford India Pvt. Ltd., v. Assistant Commissioner*** reported in [2011 (272) E.L.T.353 (Mad.,)]



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18. It is also relevant that the aforesaid principle that Circular No. 40/2018-Customs has been issued, which has been applied by the Hon'ble

Bombay High Court in the case of **Venus Jewel** [2024(388)E.L.T(Bom.,)] wherein it has been held that merely due to non-compatibility of the data between the two portals, refund cannot be denied.

19. After perusing the order passed by the Gujarat High Court in the case of Amit Cottons(supra), which has also been followed in the case of **Precot Meridian [2020 (34) GSTL 27 (Mad.,)] Raj Exim [2022(67)GSTL 563(Mad.,)]** and **Real Prince Spintex Pvt. Ltd., v. Union of India [2020(35) G.S.T.L.369 (Guj.,)]**, which has also been affirmed by the Hon'ble Supreme Court vide their judgment reported in 2021(53) G.S.T.L.J 39 (S.C.,)].

20(a) It is settled law laid down by the Hon'ble Apex Court in the case of **CCE vs. Ratan Melting and Wire Industries** reported in 2008 (231) ELT 22 (SC) that Circulars issued by the CBIC are binding on the Department. In view thereof as well, it was not open to the Appellant to have disregarded the Circular dated 24.10.2018 and thereby sit on the respondent's refund.

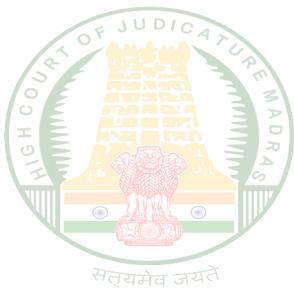


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20(b) It is cardinal principle of law that only goods are to be exported and not taxes. Reliance in this regard is placed on the judgment of the Hon'ble

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Delhi High Court in the case of **TMA International Ltd., v. Union of India [2020(35) GSTL 22]**. In view thereof as well, inasmuch as there is no dispute as to the fact that the goods were exported and that respondent had paid the disputed amount of IGST, refund of which has been claimed, it was incumbent upon the appellant to have refunded the same forthwith.

20(c) Hence, after perusing the judicial pronouncement of the Hon'ble Supreme Court in the decision reported in **(2021) 53 GST LJ 39 SC** as stated supra in **Real Prince Spintex Pvt. Ltd.**, case and also **TMA International Limited** case as cited supra **Amith cottons** case cited supra **Venus Jewel** case cited supra, we find that the order passed by the learned Single Judge to refund the additional IGST amount paid by the petitioner to the tune of Rs. 2,20,94,956/- does not suffer from any irregularity or illegality warranting interference at the appellate stage. Such an order passed by the learned Single Judge is in tune of the ratio laid down by Hon'ble Bench of this Court in **Fort India case** and hence, we find that there is no good reason to interfere with the same.



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WEB COPY 21. In the result this writ appeal is dismissed. The appellants/respondents in the writ petition are directed to comply with the order of the learned Single Juge within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

**[T.K.R., J.] [N.S., J.]
24.02.2025**

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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and
N.SENTHILKUMAR, J.

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Judgment made in
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24.02.2025