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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10822/2022

M/S KISHAN LAL KURIA MAL
INTERNATIONAL

..... Petitioner

Through: Ms. Sakshi Singhal & Ms. Lovely
Singh. Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Himanshu Pathak, Sr. Panel
Counsel for R-1/UOI.
Ms. Anushree Narain & Ms. Sapna
Jain, Advocates for Customs.

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+ W.P.(C) 10406/2021

M/S OVERSEAS COMMITMENT
& ORS.

..... Petitioner

Through: Ms. Sakshi Singhal & Ms. Lovely
Singh. Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Shoumendu Mukherji, Sr. Panel
Counsel with Ms. Meghna Sharma &
Mr. Rajat Kashyap, Advocate for R-
1/UOI.
Ms. Anushree Narain & Ms. Sapna
Jain, Advocates for Customs.

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Date of Decision: 06th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petitions have been filed seeking declarations that Paragraph 11(d) read with 12A(a)(ii) of the Notes and Conditions of the Notification dated 31st October, 2016, [as amended by Notifications dated 29th June, 2017 and 26th July, 2017], Circular No. 37/2018 dated 09th October, 2018, is *ultra vires* Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 as well as Rule 96 of CGST Rules, 2017 and violative of Articles 14, 19 and 21 of the Constitution of India. Petitioners also seek directions to the Respondents to grant refund of IGST paid on goods exported by the Petitioners during the Transitional Period (July-September, 2017) after deducting the differential amount of duty drawback, along with appropriate interest on such refund from the date of the shipping bill till the date of actual refund.

2. Learned Counsel for the Petitioners states that the cumulative effect of the impugned instruments is to deny refund of IGST paid by exporters like the Petitioners on export of goods, in cases where Drawback was claimed by the exporter at the higher rates under column A of the Drawback Schedule prescribed in the said notification.

3. Learned counsel for the Petitioners states that in the present cases, even though drawback rates prescribed in respect of goods exported by the Petitioners were higher in column A (1%) than the rates prescribed in column B (0.15%), yet the rate at which IGST (18%) was paid on the goods exported was even much higher than the said rate in column A. Therefore, she states that Petitioners did not have any benefit in claiming drawback

under Column A at the cost of forgoing their IGST refund and the drawback was claimed under Column A because of the confusion and lack of technical knowledge prevalent during the transitional phase about working of the new indirect tax laws.

4. Learned Counsel for the Petitioners submits that the issue raised in the present writ petition is no longer *res integra* and is squarely covered by the judgment of this Court in ***Maxam India Private Limited v. Union of India & Ors., W.P. (C) No. 6172 of 2022***, wherein refund of IGST paid on goods exported by the Petitioner during the Transitional Period was allowed, which had been withheld by the department on the ground that duty drawback was claimed by the Petitioner at higher rate under column A of the Drawback Schedule instead of claiming drawback at lower rate under column B of the Drawback Schedule.

5. On the last few dates of hearing, learned counsel for the Respondents had taken time to obtain instructions. She, however, states that as no instructions have been received from the Board ('CBIC'), she has instructions to defend the actions of the Respondents as the same are in accordance with paragraph no. 3 of Circular dated 09th October, 2018. Learned counsel for the Respondents also submits that the present writ petitions are liable to be dismissed on account of non-joinder of necessary and proper parties as various Jurisdictional Commissionerates dealing with the separate refund claims of the Petitioners have not been impleaded as parties to the writ petitions.

6. A perusal of the paper book reveals that the matter in issue is covered by the judgment of Gujarat High Court in ***M/s Amit Cotton Industries v.***

Principal Commissioner of Customs, 2019 (29) G.S.T.L.200 (Guj.). The relevant portion of the said judgment is reproduced hereinbelow:-

“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.

35. In view of the same, the writ-applicant is entitled to claim the refund of the IGST.

36. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. ‘zero-rated supplies’, with 7% simple interest from the date of the shipping bills till the date of actual refund.”

(emphasis supplied)

7. Even a Special Leave Petition filed against the said judgment titled ***Principal Commissioner of Customs & Ors. v. M/s Amit Cotton Industries, SLP (C) Diary No. 5502/2021*** has already been dismissed by the Supreme Court of India on 22nd March, 2021.

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.

9. However, the Jurisdictional Commissionerates shall be entitled to verify the extent of duty drawback availed by the Petitioners and also whether they have availed duty drawback/CENVAT Credit of Central Excise & Service Tax component in respect of the exports made by them. If any adjustment is to be made, the same shall be done by the Jurisdictional Commissionerate.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 06, 2022/msh

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