

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12978 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

REAL PRINCE SPINTEX PVT. LTD.

Versus

UNION OF INDIA

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 07/12/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

Heard learned advocate Mr.Uchit N. Sheth

for the petitioner and learned advocate Mr.Utkarsh Sharma for the respondents.

1. **Rule**, returnable forthwith. Learned advocate Mr.Utkarsh Sharma waives service of notice of rule for and on behalf of the respondents.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

"A. This Hon'ble Court may be pleased to issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order in appeal dated 11.3.2022 (annexed at Annexure A) passed by the Commissioner of Appeals, Customs under Section 128A of the Customs Act, 1961;

B. This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in

nature of mandamus or any other appropriate writ or order directing the Respondents to forthwith release amount of refund of IGST which is reduced as a result of imposition of interest of Rs. 11,59,606;

C. This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the Respondents to forthwith grant interest on refund at the rate of 7% p.a. in accordance with the direction of this Hon. Court;

D. Pending notice, admission and final hearing of this petition, of this Hon'ble Court may be pleased to amount of refund of A IGST which is reduced as a result of imposition of interest of Rs. 11,59,606 and also grant interest on refund at the rate of 7% p.a. in accordance with the direction of this Hon.Court;

E. Ex parte ad interim relief in terms of prayer D may kindly be granted;

F. 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 petitioner shall forever pray."

3. The brief facts of the case are as under :

3.1. The petitioner is a private limited company engaged in business of trading of cotton yarn and cotton waste. The petitioner is duly registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the GST Act'). The GST regime was introduced with effect from 01.07.2017 declares the exports as "zero rated supplies". The petitioner is therefore not liable to pay any integrated goods and service tax (for short 'the IGST') under Section 16 of the Integrated Goods and Service Tax Act, 2017 (for short 'the IGST Act') which provides two options to the petitioner either to pay the IGST and get the refund on the export or not to pay the IGST at all. The first option available to an exporter is to make export without payment of tax against bond or letter

of undertaking in which case it could claim refund of unutilized input tax credit and the second option was to supply the goods or services on payment of IGST of such tax paid.

3.2. The petitioner obtained the letter of undertaking from the department for availing option of making exports without payment of tax on 27.11.2017 for export of the goods. The petitioner made exports from July 2017 till the letter of undertaking was obtained on payment of IGST on such exports.

3.3. It is the case of the petitioner that as the GST Act was introduced newly in the year 2017, the petitioner erroneously selected the option of export without payment of tax by filing shipping bills for exports even though the petitioner did not have the letter of

undertaking and also claimed higher rate of duty drawback under the Customs Act, 1962. The petitioner accordingly paid IGST on exports along with the returns filed in the Form GSTR-3B as the petitioner was liable to pay IGST since letter of undertaking required for making export without payment of tax was obtained only on 27.11.2017.

3.4. It is the case of the petitioner that as per Rule 96 of the Central Goods and Service Tax Rules, 2017 in case of exports made with payment of tax, the shipping bills itself is the application for refund of IGST and on basis of the shipping bills and the returns filed in the Form GSTR-3B, the Custom Authorities process the refund claim and the amount gets directly credited to the bank account of the exporter.

3.5. However, in the case of the petitioner, since the clearing and forwarding agent had erroneously selected the option of export without payment of tax while filing shipping bill, the amount of IGST paid was shown as Nil in the shipping bills and as a result thereof, the Custom Authorities did not grant refund of IGTS paid on exports by the petitioner. The petitioner thereafter made various correspondence with the Custom Authorities explaining the error committed by the clearing and forwarding agent in filing the shipping bills by showing that the exports were made without payment of tax. It is not in dispute that the petitioner had obtained the letter of undertaking only on 27.11.2017 and therefore exports made prior to such date have been made on payment of IGST and such tax in

fact was required to be refunded to the petitioner as per the Certificate obtained from the Chartered Accountant by the petitioner.

3.6. After scrutiny of the documents provided by the petitioner while the refund of IGST paid on export from October 2017 onwards, refund in relation to the exports made from July to September, 2017 was not granted on the ground that the petitioner had not claimed higher rate of duty drawback.

3.7. The petitioner thereafter persuaded the matter with the respondent-Authority explaining him that the clearing and forwarding agent had made an error in showing the exports as being made without payment of tax in the shipping bills and by claiming

higher rate of duty drawback whereas in fact the petitioner had made exports on payment of IGST and therefore, the petitioner was entitled to refund of such IGST as per Section 16 of the IGST Act.

3.8. The petitioner therefore requested the respondent-authority to grant refund after adjusting the differential duty drawback amount which was claimed erroneously because of mistake committed by the clearing and forwarding agent.

3.9. The petitioner however, did not receive any response from the authority and therefore the petitioner addressed a letter dated 14.08.2019 to the respondent No.3-Deputy Commissioner of Customs with a request to grant refund of IGST for the period from July to September, 2017 after adjusting the

differential amount of duty drawback. The petitioner thereafter preferred Special Civil Application No.14974 of 2019 before this Court which was disposed of vide order dated 04.03.2020 by the Court by directing the respondent-Authorities to sanction the refund of IGST paid with regard to the exported goods with 7% simple interest from the date of shipping bill till the date of actual refund after deducting the differential amount of the duty drawback for the period between July and September, 2017.

3.10. The petitioner therefore again made and application before the respondent-authorities to implement the order passed by this Court to grant the refund of the IGST after deducting the differential amount of duty drawback for the period between July and

September, 2017 with 7% simple interest.

3.11. However, the Deputy Commissioner of Customs passed the order pursuant to the directions of this Court and granted the refund by adjusting the differential duty drawback along with interest at the rate of 15% from the refund entitlement and further granted interest at the rate of 6% instead of 7% as directed by this Court. The respondent also filed the Special Leave Petition against the order passed by this Court which was dismissed by the Hon'ble Supreme Court vide order dated 19.07.2021.

3.12 Being aggrieved by the order passed by the Deputy Commissioner for charging interest at the rate of 15% on the differential duty drawback and reducing the interest from 7%

simple interest as ordered by this Court to 6%, the petitioner preferred an Appeal before the Appellate Authority which by order dated 11.03.2022 rejected the Appeal. The petitioner is therefore before this Court with the aforesaid prayers.

4. Learned advocate Mr.Uchit Sheth for the petitioner submitted that both the authorities below have committed grave error in implementation of the directions issued by this Court inasmuch as there is no question of charging interest on the differential duty drawback as the said amount is required to be deducted from the refund of the IGST to which the petitioner was entitled to and the respondent-authority should not have reduced the rate of interest to 6% in spite of the direction issued by this Court which has been

confirmed by the Supreme Court. It was submitted that the reasons assigned by the respondent-authorities are therefore in clear breach of the direction issued by this Court and therefore, the impugned order is liable to be quashed and set aside.

5. On the other hand, learned advocate Mr.Utkarsh Sharma for the respondent-authorities is unable to defend the impugned order as the same is passed in face of the directions issued by this Court.

6. Having heard the learned advocates for the respective parties and considering the facts of the case, it appears that the impugned order is passed contrary to the directions issued by this Court. Once this Court has issued the directions, the same are binding

upon the respondent-authorities and the respondent-authorities had no reason to take a different view than the directions issued by this Court while exercising the powers under Article 226 of the Constitution of India. The respondent-authorities are bound by the directions issued by this Court and therefore, the impugned order is hereby, quashed and set aside. The respondent-authorities are directed to comply with the directions issued by this Court while sanctioning the refund of IGST after deducting the differential duty drawback with 7% simple interest as ordered by this Court in the Special Civil Application No.14974 of 2019. Such exercise shall be completed within a period of four weeks from the date of receipt of the copy of this Order.

7. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent.

Direct service is permitted qua respondent
Nos.2 and 3.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

PALAK