NEUTRAL CITATION
2023:GUJHC:49334-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 24138 of 2022

[On note for speaking to minutes of order dated 14/09/2023 in R/SCA/24138/2022]

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ADF FOODS LTD.
Versus
UNION OF INDIA

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Appearance:
MR HARDIK P MODH(5344) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3,4,6,7,8
MR ANKIT SHAH(6371) for the Respondent(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 3,4,5,6,7,8
NOTICE SERVED for the Respondent(s) No. 2,5

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CORAM: **HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 20/10/2023

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. Perused the Speaking to Minutes note.

2. It transpires that while citing the prayers of the petition in para 3 of the judgement dated 14.09.2023 passed in the captioned petition, following two shipping bills have been missed out:

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(I) Shipping Bill No. 8279481 and

(II) Shipping Bill No. 8685452 dated 15.09.2017.

3. The aforesaid numbers of two shipping bills shall be considered as part of reproduction of para 24(b) in para 3 of the judgement dated 14.09.2023. Speaking to minutes note is accordingly allowed.

(BIREN VAISHNAV, J)

(BHARGAV D. KARIA, J)

DIVYA

Present Judgment is modified vide Order dtd. 20/10/2023 in R/SCA/24138/2022

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 24138 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ADF FOODS LTD.
Versus
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Appearance:
MR.PRASANNAN NAMBOODIRI, ADVOCATE for MR HARDIK P MODH, ADVOCATE (5344) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3,4,6,7,8
MR ANKIT SHAH(6371) for the Respondent(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 3,4,5,6,7,8
NOTICE SERVED for the Respondent(s) No. 2,5

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 14/09/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

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1. **RULE** returnable forthwith. Mr.Ankit Shah learned advocate waives service of notice of Rule on behalf of the respondent no.1 and Mr.Nikunt Raval learned advocate waives service of notice of Rule on behalf of the respondent nos.3 to 8.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

"24...

(a) Your Lordships be pleased to admit and allow this petition;

(b) Your Lordships be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondents to immediately sanction the refund of IGST paid in regard to the goods exported vide Shipping Bill Nos.8134141 dated 21.08.2017, 9044375 dated

03.10.2017, 8282183 dated 28.08.2017, 8359804 dated 31.08.2017, 8372438 dated 31.08.2017, 8402425 dated 01.09.2017, 8414985 dated 02.09.2017 and 8754952 dated 19.09.2017;

(c) That the Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondent authorities to pay interest @6% 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, as the same is arbitrarily and illegally withheld by the Respondents;

(d) Pass order to grant an ex-parte, ad interim order in favour of the petitioner herein in terms of prayer clause 'A' and 'B' herein above;

(e) Pass such other orders and further orders as may be deemed necessary on the facts and circumstances of the case;

(f) Such other and further relief as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case;

(g) Cost relating to the present petition."

4. Facts in brief are as under:

4.1 The petitioner challenges the inaction on the part of the respondents not to sanction the refund claims of integrated goods and service tax

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paid on exported goods i.e. “Zero Rated Supplies” through Mundra Customs Port. The details of the shipping bills on which amounts of refund is claimed read as under:

Sr. No.	Shipping Bill Number	Shipping Bill Date	Amount of Refund (in Rs.)
1	8134141	21.08.2017	222899
2	8279481	28.08.2017	199867
3	8685452	15.09.2017	208725
4	9044375	03.10.2017	221886
	Total		853357

4.2 It is the case of the petitioner that he further seeks full refund of Rs.2,13,543/- paid as IGST on goods exported i.e. “Zero Rated Supplies” through Hazira Port vide shipping bill no.8188824 dated 23.08.2017.

4.3 Sometimes in August-October 2017, in context of the shipping bills, the petitioner had exported goods from Mundra Customs Port and

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Hazira Customs Port. The supplies were affected by payment of IGST in accordance with the provisions of Section 16(3)(b) of the IGST Act under claim of refund of IGST paid on export goods under Section 16(3)(b) of the Act read with Rule 96 of the CGST Rules, 2017. The petitioner had declared details of such supplies by filing form GSTR-1 and GSTR-3B.

4.4 Vide letters dated 05.09.2022 and 15.09.2022, the petitioner requested for refund of IGST in respect of shipping bill. It was their case that due to oversight, the Custom House Agent had inadvertently selected “A” suffixed with the serial number in the drawback notification which provides for higher drawback rates concerning cases where CENVAT facility has not been availed, instead of “B” which provides for lower draw back for cases that are

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otherwise. It was their case that the excess drawback on account of availing of CENVAT credit facility had been repaid with interest and therefore the petitioner is entitled to the refund of IGST in respect of the shipping bills.

5. Mr.Prasannan Namboodiri learned advocate appearing with learned advocate Mr.Hardik Modh for the petitioner would submit that undisputedly the goods exported by the petitioner were “Zero Rated Supplies” and in accordance with Section 16(3)(b) of the IGST Act, the petitioner is entitled to refund of such tax paid on the goods and services. It was only through oversight that the custom house agent had selected ‘A’ rather than ‘B’. Reliance was placed on the following decisions:

(I) In case of ***Real Prince Spintex Pvt. Ltd. v.***

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Union of India reported in ***2020 (35) G.S.T.L. 369 (Guj)***

(II) In case of ***Aniket Exports v. Union of India*** rendered in Special Civil Application No.10226 of 2020

(III) In case of ***Amit Cotton Industries v. Principal Commissioner of Customs*** reported in ***2019 (29) GSTL 200 (Guj).***

(IV) In case of ***Awadkrupa Plastomech Pvt. Ltd. v. Union of India*** reported in ***2021 (46) GSTL 31 (Guj).***

(V) In case of ***Asian Organo Industries v. Principal Commissioner of Customs*** reported in ***2021 (46) GSTL 225 (Guj).***

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5.1 It was argued by the learned counsel for the petitioner that the case was squarely covered by the decision of this Court in case of ***Amit Cotton Industries*** (supra).

6. Learned counsel for the respondent Mr.Nikunt Raval would submit that the processing of refund claim is an automatic process. The Customs EDI System has an inbuilt mechanism to automatically grant refund after validating the shipping bill data available in ICES against the CGST returns. Relying on the notification dated 31.10.2016, he would submit that since the petitioner had claimed higher drawback, he was not entitled to IGST refund and the petition therefore should be dismissed.

7. Having considered the submissions made by the learned counsel for the respective parties, it is

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not in dispute that the issue is covered by a decision of this Court in the case of ***Amit Cotton*** (supra) which was subsequently followed in the case of ***Real Prince Spintex Private Limited*** (supra). Before the coordinate bench of this Court, it was the case of the petitioner therein that it was eligible to seek refund of IGST in accordance with the provisions of the Act inasmuch as the export supplies were "Zero Rated Supplies". The Revenue had disputed the claim relying on the very notification dated 31.10.2016 after having considered the issue at hand especially Sections 16 and 54 of the CGST Act, the Division Bench of this Court held as under:

> *"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.*

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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 sub-clauses (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 sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

27. In the aforesaid context, the

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respondents have fairly conceded that the case of the writ-applicant is not falling within sub-clauses (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 writ-applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

28. If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th 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 writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant 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

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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 sub-section (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.

31. Mr.Trivedi invited our attention to two decisions of the Supreme Court as regards the binding nature of the circulars and instructions issued by the Central Government.

32. In the case of Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, reported in 2008(12) S.T.R. 416 (S.C.), the Supreme Court observed as under :

> *"4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars cannot be given primacy over the decisions.*
>
> *5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on*

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the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another

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angle, a circular which is contrary to the statutory provisions has really no existence in law.

7. As noted in the order of reference the correct position vis-a-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-a-vis the circular. It has to be the revenue authority who has to question that. To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution. "

33. In the case of J.K.Lakshmi Cement Limited v. Commercial Tax Officer, Pali, reported in 2018(14) G.S.T.L. 497 (S.C.), the Supreme Court observed as under : "25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by

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the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March, 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See : UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal – (1999)4 SCC 599. 26. In Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries – (2008)13 SCC 1, it has been held that circulars and instructions issued by the

Board are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court. In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular. 27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994. 28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary opinion. In case of an ancient statute, doctrine of contemporanea exposition is

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applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See : G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344). It has been held in Rohitash Kumar and others v. Om Prakash Sharma and others – (2013)11 SCC 451 that the said doctrine has to be applied with caution and the Rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and clear, it does not admit of two different interpretations. 29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000."

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

8. Relying on a decision of the Supreme Court in the case of ***J.K.Laxmi Cement Limited v. Commercial Tax Officer, Pali*** reported in ***2018 (14) G.S.T.L. 497,*** the Division Bench held that the circular cannot run contrary to the statutory rule, more particularly, Rule 96. The Division Bench therefore, held that the circular had nothing to do with IGST refund. The petition was allowed directing the respondents to immediately sanction the refund of IGST.

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9. Issue therefore raised in this petition is identical to the one decided by this Court and therefore, the petition on this count alone in light of the decision in the case of ***Amit Cotton*** (supra) deserves to be allowed and is accordingly allowed.

10. The respondents are directed to sanction the refund of IGST paid in context of shipping bills referred to in para 24(b) of the petition with simple interest @ of 6% from the date of the shipping bills till the date of actual refund. Rule is made absolutely accordingly with no order as to costs.

(BIREN VAISHNAV, J)

(BHARGAV D. KARIA, J)

ANKIT SHAH