

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 638 of 2021

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M/S. IPCA LABORATORIES LTD.
Versus
COMMISSIONER

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Appearance:

MR ANANDODAYA S MISHRA(8038) for the Petitioner(s) No. 1

MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 18/02/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“A. That this Hon’ble Court may be pleased to issue an appropriate a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the respondents themselves, their officers and subordinates to act upon or grant the petitioner refund of ITC on inward supply charged by the supplier and utilized IGST credit distributed by ISD and lying in Electronic Credit Ledger by quashing and setting aside the impugned order.

B. and pass, such further order/orders for granting relief(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.”

2 The facts giving rise to this writ application may be summarized as under:

3 The writ applicant is a pharmaceutical company. One of the

manufacturing facilities of the writ applicant – company is located in a Special Economic Zone at Kandla, Gandhidham. The writ applicant claims that it is authorized to operate as a Special Economic Zone at the Kandla SEZ, Kandla, Kutch and is engaged in the export of goods under the Letter of Undertaking (LUT) from the SEZ Unit. In the year 2017-18, the writ applicant accumulated Input Tax Credit (ITC) to the tune of Rs.21,66,887/-. The ITC accumulation was on account of :

“i. During the period from July 2017 to March 2018, the company has received Input Tax Credit in respect of ISD credit to the petitioner amounting to Rs.18,67,578/-.

ii. Further the petitioner had accumulated ITC of GST paid by the petitioner in case of inward supplies received for export of goods as charged by the supplier amounting to Rs.2,99,289/-.”

4 The writ applicant received the aforesaid Input Tax Credit of the integrated tax from its ISD and ITC inward supply charged by the supplier as is permissible under the law. It is the case of the writ applicant that being a SEZ Unit making Zero Rated Supplies under the GST, the writ applicant has not been utilized the credit and the same is lying unutilized in the Electronic Credit Ledger.

5 In such circumstances referred to above, the writ applicant filed the refund application in Form GST RFD – 01A on 3rd April 2019. No sooner the writ applicant filed the above refund application, a show cause notice in Form GST RFD – 08 dated 17th May 2019 came to be issued calling upon the writ applicant to show cause on the following:

“a. The petitioner is situated in Kandla SEZ and as per the CGST Act

the supply of goods and/or services to SEZ unit is zero rated hence the petitioner is not eligible for refund under Section 54 of the Central Goods and Services Act, 2017 (hereinafter referred to as CGST).

b. The refund filed by the petitioner cannot be processed under any category of refund specified under manual refund processing circular No.17/17/2017-GST, dated 15.11.2017 circular No.24/24/2017-GST dated 21.12.2017.

c. For the supply received from outside SEZ, SEZ unit is not supposed to pay any tax whether under forward charge or reverse charge mechanism and for the supply received from another unit within SEZ, any and all such supplies have no tax treatment and therefore there is no question of forwarded charge or reverse charge tax payment. SEZ unit is not supposed to pay any tax and thus there would be no question of ITC.

d. That till date no circular, notification / relevant guidelines have been issued by the board providing guideline to process GST refund claim application of units situated in Special Economic Zones in respect of tax paid on inward supplies. Therefore in absence of any circular / notification / relevant guidelines to process GST refund claim application of units situated in SEZ, this office is unable to process the refund application.”

6 The Assistant Commissioner, thereafter, proceeded to pass an order in Form GST RFD – 06 dated 27th May 2019 rejecting the refund claim of the writ applicant of Rs.21,66,867/- under Section 54 of the CGST Act, 2017.

7 The writ applicant, thereafter, preferred an appeal before the

appellate authority i.e. the Joint Commissioner (appeals). The Joint Commissioner dismissed the appeal.

8 In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

9 We have heard Mr. Anandodaya Mishra, the learned counsel appearing for the writ applicant and Mr. Nikunt Raval, the learned Senior Standing Counsel appearing for the respondents.

10 The issue raised in the present writ application is no longer *res integra* in view of the judgement and order passed by this Court dated 11th March 2020 in the case of **M/s. Britannia Industries Limited vs. Union of India [Special Civil Application No.15473 of 2019]**. We take notice of the fact that **M/s. Britannia Industries Limited (supra)** is based on **M/s. Amit Cotton Industries vs. Principal Commissioner of Customs [Special Civil Application No.20126 of 2018 decided on 27th June 2019]**.

11 In view of the aforesaid, the writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor.

12 For the foregoing reasons, this writ application succeeds and is hereby allowed. The impugned order is hereby quashed and set aside. The respondents are directed to process claim of refund made by the writ applicant for the unutilized IGST Credit lying in the Electronic Credit Ledger under Section 54 of the CGST Act 2017. Let this exercise be undertaken at the earliest and completed within a period of three

weeks from the date of receipt of the writ of this order. Direct service is permitted.

(J. B. PARDIWALA, J)

CHANDRESH

(NISHA M. THAKORE, J)

