

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

+ **W.P.(C) 5228/2021**

VANDNA PHARMA INDUSTRIES.....Petitioner

Through: Mr. Rajesh Mahna with Mr. Mayank
Kouts, Advocates.

versus

COMMISSIONER OF GOODS AND SERVICE TAX & ORS.

..... Respondents

Through: Mr. Devesh Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **07.05.2021**

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM APPL. No. 16048/2021

1. Allowed, subject to just exceptions.

CM APPL. No. 16049/2021

2. This is an application filed on behalf of the petitioner seeking exemption from filing attested affidavits along with the writ petition.

3. The prayer made in the captioned application is allowed, subject to the petitioner placing on record the attested affidavits, within three days of the resumption of the normal and usual work pattern by this court.

4. The application is, accordingly, disposed of.

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5. This is a writ petition, whereby, the petitioner asserts that its application for refund of income tax credit in respect of tax paid on purchase of goods, which were utilised in turn for the manufacture of goods, that were ultimately exported, amounting to Rs.46,97,630/- concerning February 2020, has been wrongly rejected.

5.1. To be noted, the petitioner not only claims refund of the aforesaid amount but also seeks a direction for payment of interest by the respondents.

5.2. The petitioner's claim for refund is pivoted on the provisions of Section 16 of the Integrated Goods and Service Tax Act, 2017 (in short „IGST Act“).

5.3. Mr. Devesh Singh, who appears on advance notice on behalf of the respondents/revenue, says that the rejection of the petitioner's refund-claim is in order.

5.4. According to Mr. Singh, since bank realisation certificates were not produced, the order of rejection ought not to be disturbed. In support of his plea, Mr. Singh has relied upon Section 8 of the Foreign Exchange Management Act, 1999 (in short „FEMA“).

6. A perusal of Section 8 of FEMA would show that, it calls upon the concerned person to take “reasonable steps” for realisation and repatriation of foreign exchange proceeds. In this case, the realisation and repatriation of foreign exchange involves proceeds from goods exported by the petitioner.

6.1. Furthermore, nothing has been shown to us by Mr. Singh, which would have us connect the provisions of Section 8 of the FEMA with Section 16 of the IGST Act.

7. To our mind, the matter requires further examination.

8. Accordingly, issue notice.

9. Mr. Singh accepts service on behalf of the respondents.

9.1. Counter-affidavit will be filed within two weeks. Rejoinder thereto, if any, will be filed before the next date of hearing.

10. Mr. Rajesh Mahna, who appears on behalf of the petitioner, is given liberty to place the correspondence and other relevant material on record, which would show that reasonable steps have been taken by the petitioner to realise the export proceeds. If any such material is sought to be placed on record, the same will be supported by an affidavit. A copy of the said affidavit along with the material appended thereto will be furnished to Mr. Singh.

10.1. We make it clear that this direction is being issued to Mr. Mahna without prejudice to his contention that Section 8 of the FEMA and Section 16 of the IGST Act are not related.

11. List the matter on 28.05.2021.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MAY 7, 2021/tr

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Click here to check corrigendum, if any
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