

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11423 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MS. JUSTICE NISHA M. THAKORE**

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

PAREKH PLASTICHEM DISTRIBUTORS LLP
Versus
UNION OF INDIA

Appearance:

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

MR DHAVAL D VYAS(3225) for the Respondent(s) No. 3

NOTICE NOT RECD BACK for the Respondent(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA**and****HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 23/03/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. Rule returnable forthwith. Mr. Dhaval Vyas, the learned senior standing counsel waives service of notice of rule for and on

behalf of the respondent no.1.

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

24(A) be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the respondents to forthwith grant and release refund of IGST paid on exports made for the month of September 2018 along with statutory interest on such refund.

(B) pending notice, admission and final hearing of this petition, be pleased to direct the respondents to forthwith grant and release refund of IGST paid on exports made for the month of September 2018 along with statutory interest on such refund;

(C) Ex parte ad interim relief in terms of prayer B may kindly be granted;

(D) 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 facts giving rise to this litigation may be summarized as under:-

3.1 The writ-applicant is a Limited Liability Partnership having place of business at Ahmedabad. The writ-applicant is engaged in the export of Fly Ash. It received a purchase order from one M/s. Buildex Trading and Contracting WLL located at Doha, Qatar for the purchase of Fly Ash.

3.2 Pursuant to such export order, the writ-applicant purchased the goods from one M/s. Ashtech (India) Pvt. Ltd. M/s. Ashtech (India) Pvt. Ltd. is based in Mumbai. The responsibility of delivering

the goods up to Hamad Port, Qatar was on the vendor in accordance with the terms of the contract.

3.3 The goods were exported to Qatar. The writ-applicant issued export invoices to the foreign customer, wherein the IGST was charged. The shipping bills were duly filed with the customs authorities, wherein the details of IGST paid on the exports were stated.

3.4 The shipping company accepted the goods for transportation to Qatar and issued the bills of lading. The writ-applicant received the entire consideration towards the export invoices in foreign exchange.

3.5 The IGST on exports as mentioned in the shipping bills was duly paid by the writ-applicant alongwith the returns filed under the GST Act. Rule 96 of the Central Goods and Services Tax Rules, 2017 provides that the shipping bills are themselves to be considered as refund applications for the IGST paid on the exports. The IGST amounts were mentioned in the shipping bills and therefore, the writ-applicant had reasons to believe that the customs authorities would grant refund of the IGST on the basis of the shipping bills.

4. The writ-applicant is here before this Court redressing the grievance that the IGST refund for exports made to Qatar in the month of September 2018 was not processed. It appears that the refund was withheld on account of large difference between the

FOB value and the IGST taxable value in the shipping bill.

5. The writ-applicant offered satisfactory explanation to the authorities concerned pointing out that the Circular dated 17.06.2019, upon which, the Department was placing reliance, was not applicable having regard to the facts of the case.

6. Ultimately, the refund amount was credited in the account of the writ-applicant on 17.01.2022 i.e. during the pendency of the present writ-application.

7. Thus, the main grievance as regards non-sanctioning of the amount towards refund has been taken care. The only issue now remains as regards the statutory interest to be paid on the delayed refund amount. This statutory interest is in accordance with Section-56 of the CGST Act, 2017. Section-56 reads thus:-

“Section-56 – Interest on delayed refunds. – If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately

after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).”

8. We have heard Mr. Uchit Sheth, the learned counsel appearing for the writ-applicant and Mr. Dhaval Vyas, the learned senior standing counsel appearing for the respondent no.1.

9. The plain reading of Section-56 of the Act would indicate that if any tax, which is ordered to be refunded under Sub-section (5) of Section-54 to any applicant, is not refunded within sixty days from the date of receipt of the application under Sub-section (1) of that section, interest at the rate not exceeding 6% [six percent] shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under Sub-section (5) of Section-54 of the Act.

10. While opposing this writ-application vehemently Mr. Dhaval Vyas, the learned senior standing counsel submitted that there was delay in processing the refund amount and actually crediting the said amount in the account of the writ-applicant on account of some technical glitch.

11. We are of the view having regard to the facts and circumstances of the case that the writ-applicant herein is entitled to interest on the delayed payment towards refund at the rate of

6% [six percent] as provided under Section-56 of the Act.

12. We dispose of this writ-application with a direction to the authorities concerned to calculate the amount towards interest towards the delayed refund amount in accordance with the provisions of Section-56 of the Act referred to above within a period of *six weeks from today*.

13. With the aforesaid, this writ-application stands disposed of. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

A. B. VAGHELA

