BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.4562 of 2022

M/S.Abi Technologies,
Represented by its Authorised Signatory,
Shri.R.Seenivasan,
No.18, K.R.Puram,
Avarampalyam Road,
Ganapathy (PO), Coimbatore-641 006. ... Petitioner

Vs.

The Assistant Commissioner of Customs,
IGST refunds,
Tuticorin Customs House,
New Harbour Estate, Tuticorin. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent to sanction their refund claims of Rs.24,72,018/- pertaining to the exports made during July 2017, September 2017 and October 2017 within a time frame as may be fixed by this Court.

For Petitioner : Mr.C.Natarajan

For Respondent : Mr.B.Vijaykarthikeyan
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the respondent to sanction a sum of Rs.24,72,018/- as refund on the exports made by the petitioner during July, 2017, September, 2017 and October, 2017.

2.It is the specific case of the petitioner that though the petitioner had correctly declared the details in the monthly returns in Form GSTR-1 regarding the exports made by the petitioner on payment of tax by debiting the input tax credit, a mistake was committed by the petitioner in GSTR-3B under Rule 61(5) of the CGST Rules, 2017.

3.The learned counsel for the petitioner submits that the outward supplies ie., exports would have qualified as a zero rated supply and therefore, the petitioner should have filled the details in Form GSTR-3B in column 3.1 (b). Instead, the petitioner by mistake has given the details of the export as outward taxable supply (other than zero rated, nil rated and exempted).

4.The learned counsel for the petitioner further submits that similar mistake was made by the petitioner for all the three months, as a result of which though the petitioner has exported goods on payment of tax, the refund

of integrated tax on exports under the provisions of the CGST Act, 2017 and IGST Act, 2017 has been denied to the petitioner. In this connection, the learned counsel for the petitioner has placed reliance on the circular issued by the C.B.I. & C., GST Policy Wing, in Circular No.45/19/2018-GST, dated 30.05.2018, wherein it has been clarified as under:-

> *"4.Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:-*
>
> *4.1. It has been represented that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in FORM GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an inbuilt validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cessmentioned under column 3.1(b) of FORM GSTR-3B (zero rated supplies) filed for the corresponding tax period.*
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> *4.2 In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A*

on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period."

5.The learned counsel for the petitioner submits that though the said circular has been issued in the context of supplies made to the SEZ and the supplies by SEZ, the clarification made therein would apply even for direct exports by a Unit in the domestic tariff area, like the petitioner.

6.Opposing the prayer, the learned Senior Standing Counsel for the respondent on the other hand submits that the refund would be granted subject to the petitioner giving the correct informations in the returns, namely GSTR-1 and GSTR-3B. It is only the information, which match and invoices, which were uploaded, the refund would be sanctioned. In this connection, the learned Senior Standing Counsel has relied to Rule 96 of the CGST Rules, 2017.

7.It is further submitted that it was the responsibility of the petitioner to file a valid GSTR-1 and GSTR-3B returns. It is submitted that upon filing of the valid returns, the GSTN portal will transmit the details of export invoices

to the system designated by the customs. Upon receipt of such details only, the designated system of the customs department or the proper officer of the customs would proceed to process the refund claims. Since the respondent is not in a position to process the petitioner's refund claim as the details itself have not been received from GSTN portal to the designated system of the customs, the question of granting refund to the petitioner does not arise. It is further submitted that on verification of the 6 shipping bills with the designated system of the customs, the scroll system shows “Not Ready” due to non-receipt of details from the GSTN portal.

8.The learned Senior Standing Counsel for the respondent thus submits that refund of IGST can be processed by the designated system of customs or by the proper officer of the customs only on receiving the details from the GSTN portal and since no data was transmitted from the GST common portal, the question of sanctioning refund under Rule 96 of CGST Rules, 2017 was neither permissible nor practically possible.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

10.The refund of tax/duty paid on exports has been long recognized under the provisions of the Central Excise Act, 1944 r/w Central Excise Rules, 1944 and later under the provisions of the Central Excise Rules, 2002. These Rules have been incorporated under the GST regimes, except that under the GST regime, most of the proceedings are system driven as has been stated by the learned Senior Standing Counsel for the respondent. The export incentives have been given to encourage exports, so that there is inward remittance of foreign currency. The procedure prescribed under the aforesaid Rules is not intended to defeat such legitimate export incentives, if indeed on facts there is export on payment of integrated tax under the provisions of IGST Act, 2017 r/w CGST Act, 2017.

11.In my view, the procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives that are available to an exporters. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Sales Tax, U.P. Vs. Auriya Chamber of Commerce, Allahabad*** reported in ***1986(25) E.L.T.867 (S.C)***, wherein the Hon'ble Supreme Court held that procedures are nothing but handmaids of justice and not mistress of law. In my view, the procedures prescribed under the aforesaid Rules should not be

applied strictly so as to defeat the legitimate export incentives, which an exporter otherwise would have been entitled to but for the technicality involved in the system.

12.Under these circumstances, I am inclined to dispose of this writ petition by directing the respondent to get the data directly from the petitioner and from their counterparts in the customs department. If indeed there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers, the refund shall be granted. The petitioner is also directed to furnish the details to the respondent within a period of 30 days from the date of receipt of a copy of this order. On receipt of the same, the respondent shall consider, verify the same from the counterparts from the customs department and proceed to sanction the refund claim, if the petitioner otherwise is entitled to such refund. It is made clear that procedural infraction shall not come in the legitimate way of grant of refund under the IGST Act, 2017 r/w CGST Act, 2017 and the Rules made thereunder.

13.The writ petition stands disposed of, in terms of the above observation. No costs.

Index : Yes / No **28.04.2022**

Internet : Yes/ No

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C.SARAVANAN, J.

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W.P(MD).No.4562 of 2022

28.04.2022