

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 13480 of 2023**

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M/S KASHI EXPORTS
Versus
UNION OF INDIA & ORS.

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
MS ANCHAL A PODDAR(13386) for the Petitioner(s) No. 1
MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 3,4
MR PY DIVYESHVAR(2482) for the Respondent(s) No. 1,2

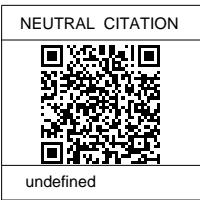
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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 04/12/2024**ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.Avinash Poddar for the petitioner through video conference, learned advocate Mr.P.Y.Divyeshvar for the respondent Nos.1 and 2 and learned Assistant Government Pleader Ms.Shrunjal Shah for the respondent Nos.3 and 4.

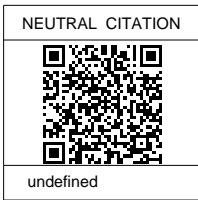
2. This petition is filed with a prayer to



direct the respondent-Authorities to refund the IGST amounting to Rs.20,20,803.80/- on account of the zero rated supply made by the petitioner.

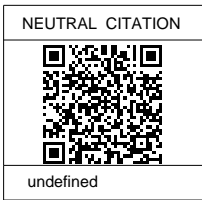
3. The brief facts of the case are as under :

3.1. The petitioner is a proprietorship firm engaged in the business of export of fresh fruits and vegetables and duly registered under the provisions of the Central Goods and Services Tax Act, 2017 (for short the CGST Act). The petitioner is not having any domestic sales. The petitioner generally exports the goods without payment of GST under Letter of Undertaking (LUT) as per the provisions of Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017 (for short 'the IGST Act').



3.2. It is the case of the petitioner that as the petitioner has made zero rated supply of the goods, the petitioner was entitled to get the transaction value of unutilised accumulated Input Tax Credit (for short 'the ITC') as per the provisions of Section 54(3) of the CGST Act read with Rule 89(4) of the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules').

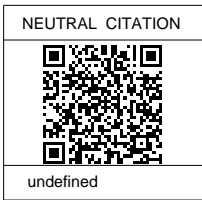
3.3. It is the case of the petitioner that for exporting the goods, an exporter ordinarily issues various documents including shipping bill and export invoice wherein, the details of the goods i.e. description and quantity, value, quality, etc. are stated, the price of the goods charged by the exporter and also the Fee on Board i.e. FOB value or Cost Insurance Freight (CIF Value) as the case may



be are also declared.

3.4. For the period July, 2017 till September, 2021, the petitioner was granted transaction value under Rule 89(4) of the CGST Rules before the explanation was inserted amounting to Rs.22,55,96,206.85/- considering the price actually received by the petitioner from the foreign customers, however, the FOB value of such goods shown in the shipping bills was Rs.12,34,04,096/- which is 56% of the actual transaction value.

3.5. The petitioner accordingly filed a refund claim of Rs.56,14,652/- and the refund was paid by the respondent No.4 amounting to Rs.35,31,021.90/- and rejected the claim of Rs.20,20,803.80/- considering the Notification No.14/2022 dated 5th July, 2022, more



particularly, Explanation (c) inserted in Rule 89(4) of the CGST Rules which reads as under :

"(c) in sub-rule (4), the following Explanation shall be inserted, namely:

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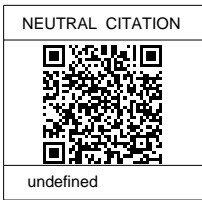
"Explanation. - For the purposes of this sub-rule, the value of goods exported out of India shall be taken as-

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.";

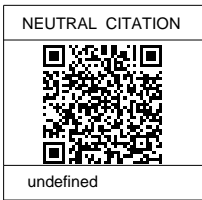
(d) in sub-rule (5) for the words "tax payable on such inverted rated supply of good and service the brackets, words and letters" {tax payable on such



inverted rated supply of goods and services x (Net ITC/ITC availed on inputs and input services)}" shall be substituted;"

4.1. Learned advocate Mr. Avinash Poddar for the petitioner has submitted that during the pendency of the petition, the Central Board of Indirect Taxes and Customs (for short 'the CBIC') by Circular No.197/09/2023-GST dated 17th July, 2023 has issued Clarification on Manner of calculation of Adjusted Total Turnover under Sub-rule (4) of Rule 89 of the CGST Rules consequent to the Explanation inserted in Sub-rule (4) of Rule 89 of the CGST Rules vide Notification No.14/2022 dated 05.07.2022 which reads as under :

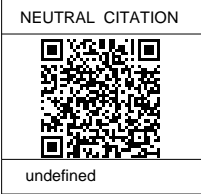
"3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of



Rule 89 vide Notification No. 14/2022-CT, dated 05.07.2022.

3.1 Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

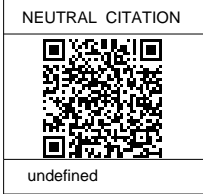
3.2 In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No.16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified that the same value of zero-rated/ export



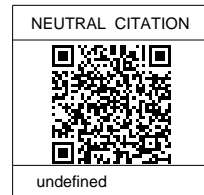
supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover?" for the purpose of sub-rule (4) of Rule 89.

3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule."

4.2. It was submitted that in view of above Clarification, the petitioner is now entitled to the refund which was rejected by the respondent-Authorities. It was submitted that



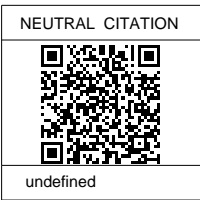
as per the Clarification, the value of the zero rated supply of goods is required to be calculated as per the amended definition of "Turnover of zero-rated supply of goods" by taking into consideration the turnover in the State or Union territory and accordingly, adjusted total turnover for the purpose of Sub-rule (4) of Rule 89 of the CGST Rules. It was therefore submitted that now in view of such Clarification, numerator and denominator would be the same and the petitioner would be entitled to get the entire refund of Rs.56,14,652/- instead of Rs.35,31,021.90/- as sanctioned by the respondent-Authorities. Learned advocate Mr.Avinash Poddar therefore submitted that the matter may be remanded back to the respondent-Authorities to recalculate the refund and process the refund application as claimed by the petitioner as per the



Clarification made by the CBIC in Circular No.197/09/2023-GST dated 17th July, 2023.

5. Learned advocate Mr.P.Y.Divyeshvar for the respondent Nos.1 and 2 submitted that the respondent-Authorities rejected the refund relying upon the Notification No.14/2022 dated 05.07.2022, however, as per the Clarification issued by the CBIC, the respondent-authorities shall again process the refund application if the matter is remanded back.

6. Considering the above submissions, the matter is remanded back to the respondent-Authorities to reconsider the refund application made by the petitioner so as to grant the refund by applying the Circular No.197/09/2023-GST dated 17th July, 2023. Such exercise shall be completed within a period of



twelve weeks from the date of receipt of the copy of this order after providing an opportunity of hearing to the petitioner.

7. The petition is accordingly disposed of.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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