

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2507 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Approved for Reporting	Yes	No
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RUHI SIRAJ MAKDA PROPRIETOR OF ARIES IMPEX

Versus

UNION OF INDIA & ANR.

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1

MR CB GUPTA(1685) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI**Date : 14/08/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Hiren J. Trivedi for the petitioner and learned advocate Mr. C.B. Gupta for the

respondents.

2. Having regard to the controversy involved which is in a narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

3. Rule returnable forthwith. Learned advocate Mr. C.B. Gupta waives service of notice of rule on behalf of the respondents.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to the respondent authorities to immediately

sanction the refund of IGST paid in regard to the goods exported i.e. 'Zero Rated Supplies' made vide shipping bills mentioned hereinabove;

(B) YOUR LORDSHIPS may be pleased to direct the respondent authorities to pay interest @ 9% to the petitioner herein on the amount of refund from the date of shipping bill till the date on which the amount of refund is paid to the petitioner herein, as the same is arbitrarily and illegally withheld by the respondent authorities;"

5. Brief facts of the case are that the petitioner exported certain goods during the period between April, 2018 to September, 2018 and filed three shipping bills and paid IGST, details of which are as under:

Sr. No.	SB Number	SB Date	Port Code	Return month	IGST Paid (Rs)
1	4537791	28/04/2018	INPAV1	Jun-2018	4,26,614
2	7188551	28/08/2018	INPAV1	Sep-2018	4,08,175
3	7429875	07/09/2018	INPAV1	Sep-2018	1,13,760
Total Pending IGST Refund					9,48,549

6. It is the case of the petitioner that while filing the return in Form GSTR-1, the petitioner had inadvertently made typographical error by entering IGST amount as Rs. Zero under Table 6A wherein export details are filled in. However, the petitioner paid IGST corresponding to each bill and invoice as stated here-in-above which was shown in return in Form GSTR-3B in Table 3.1(a) instead of Table 3.1(b).

7. In view of such error committed by the petitioner, IGST scroll generated online in ICEGATE also showed Nil IGST to be refunded to the petitioner. The petitioner therefore, made a representation on 11.09.2020 before the respondents along with the certificate issued by Chartered

Accountant regarding export of goods with payment of IGST along with copies of necessary documents such as export invoice, shipping bill, bill of lading and DRC and downloaded copies of relevant GSTR-3B and IGST payment challan. However, the respondents did not issue any refund and therefore, the petitioner by another representation dated 20.03.2021 again contended that the shipping bills have been already processed and therefore, the option for rectification by making amendment in Form GSTR-1 by using Table 9A in Form GSTR-1 is not available to the petitioner and therefore, IGST refund is required to be processed by the respondents.

8. Thereafter the petitioner has

preferred this petition with aforesaid prayers.

9. Learned advocate Mr. Hiren J. Trivedi submitted that it is not in dispute that the petitioner has exported goods and also paid IGST of Rs.9,48,549/- on the three shipping bills between the month of April, 2018 to September, 2018 and foreign exchange is also realised and therefore, the petitioner is entitled to refund of IGST paid as per Rule 96 of Central/State Goods and Services Tax Rules, 2017 (For short "the GST Rules"). In support of his submission, reliance was placed on decision of this Court in case of **Amit Cotton Industries v. Principal Commissioner of Customs** reported in (2019) 107 taxmann.com 167 (Gujarat)

10. It was therefore, submitted that the respondents may be directed to process the refund claim of the petitioner forthwith along with statutory interest in accordance with law.

11. On the other hand, learned advocate Mr. C.B.Gupta for the respondents submitted that the petitioner has committed an error while filing GST return and entered the IGST amount as Rs.Zero under Table 6A of Form GSTR-1 wherein export details are filled in and therefore, the same data was transmitted to the customs portal as Rs. Zero and details of IGST paid on GST portal did not match with customs data and thus refund scroll was processed with amount Rs.Zero.

12. In support of his submissions, learned advocate Mr. Gupta referred to and relied upon the following averments made in the affidavit in reply:

"12) In the present case, as mentioned hereinabove, the petitioner while filing GSTR-1 entered the IGST amount as Rs. Zero under table 68 of GSTR-1, wherein export details are filled in. Therefore, the petitioner was required to amend its GST Return so that the data on GST portal could have been corrected and after such amendment the data would be transmitted on its own from GST portal to customs portal and the scroll could have been generated with the correct amount of IGST paid. Further it is pertinent to mention that EDI system at customs allows amendment in details of shipping bill only. In this case amendment was needed in GSTR return. Therefore, in EDI system, the IGST amount is showing Zero and EDI system is not allowing amendment of IGST paid amount.

13) In respect to contents of Para D to E of the Petition, it is

submitted that the respondent authority has not withheld the refund of the petitioner, the same has already processed. IGST refund has been processed as per data transmitted from GST portal, which was put by taxpayer himself. However, as the petitioner has entered the IGST amount as Rs. Zero under table 6A of GSTR-1, the details of IGST transmitted to Customs portal as Rs. Zero and the details of IGST paid on GST portal does not match with Customs data on customs portal and thus at the common portal, IGST refund scroll was processed with amount Zero.

14) In respect to Para F and G, it is submitted that processing of IGST Refund is a fairly automated system with minimal human intervention and squarely based on declarations made by the taxpayers himself. Upon E-filing of Shipping Bill, E-filing of EGM by the shipping line and E-filing of GST returns by the Exporter, the data submitted by taxpayer in its GST Portal transmitted to the EDI system of the Customs, thereafter IGST scroll is generated with amount of IGST Refund, automatically by the system. All the necessary requirements under Rule 96(1) appeared to have been compiled, accordingly Customs data

and GSTN data transmitted electronically and IGST amount scrolled to Zero. IGST scrolled amount Zero shows that the customs and GST returns data was transmitted on time as per the details entered by the petitioner in their GST returns.

(15) In respect of para H, it is submitted that since the petitioner had filed their GSTR-1 return for the month of July 2017 and entered amount of IGST paid Zero. The system had acted in accordance with rule 96 of CGST Rules 2017. Data filled in GST returns were transmitted electronically by the common portal to the system designated by the Customs and the said system electronically transmitted to the common portal, resulted in IGST scrolled amount Zero.

(16) In respect of para I, it is submitted that Respondent authority had not withheld the refund on account of Zero rated supplies by the petitioner. The petitioner while filing GSTR-1 had entered the IGST amount as Rs. Zero under Table 6A wherein export details are filled in. The details of IGST paid on GST portal does not match with customs data on customs portal and thus at the

common portal, IGST refund scroll was processed with Zero amount.”

13. It was further submitted that the facts in case of **Amit Cotton Industries**(supra) referred to and relied upon on behalf of the petitioner are different and therefore, the said decision would not be applicable in facts of the case of the petitioner as the petitioner has committed an error in filing GST return and without rectifying such return, the respondents are unable to process the refund claim of the petitioner.

14. Having heard the learned advocates for the respective parties and considering the facts of the case, it is not in dispute that the petitioner committed an error in filing GST return, but at the same time,

it is also not in dispute that the petitioner exported the goods along with payment of IGST of Rs.9,48,549/- and therefore, the petitioner is entitled to refund as per provisions of Rule 96 of the GST Rules.

15. This Court in case of **Amit Cotton Industries**(supra) has held that the respondent customs department is entitled to withheld the refund of IGST as per the provisions of Rule 96(4) only and has observed as under:

"25. Section 54 of the CGST Act, 2017, provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, shall make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If, on receipt of any such application, the proper officer is satisfied that the whole or part

of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined will have to be credited to the Fund referred to in Section 57 of the CGST Act, 2017.

26. Rule 96 of the CGST Rules provides for a deeming fiction. The shipping bill that the exporter of goods may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India. Section 54 referred to above should be read along with Rule 96 of the Rules. Rule 96(4) makes it abundantly clear that the claim for refund can be withheld only in two circumstances as provided in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

27. In the aforesaid context, the respondents have fairly conceded that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writ-applicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to

seek the refund of the IGST paid in connection with the goods exported, ie. 'zero rated supplies'.

28. If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law,

29. We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

30. Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and

the claim for refund can be withheld only in the following contingencies

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

31. Mr. Trivedi invited our attention to two decisions of the Supreme Court as regards the binding nature of the circulars and instructions issued by the Central Government.

32. In the case of Commissioner of CCE v. Ratan Melting & Wire Industries 2008 taxmann.com 1649 (S.C.), the Supreme Court observed as under:

"4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars cannot be given primacy over the decisions.

5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the

circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the

particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

7. As noted in the order of reference the correct position vis-a-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-a-vis the circular, the question that. To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would

be against very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution."

33. In the case of J.K. Lakshmi Cement Ltd. v. Commercial Tax Officer 2018 (14) GSTL 497 (S.C.), the Supreme Court observed as under:-

"25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of rex judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter The Commercial Tax Department, by a circular, could have extended the benefit under a notification and

therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the detriment of the assessee. Circulars issued under sax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See: UCO Bank, Calcutta

v. Commissioner of Income Tax, West Bengal (1999)4 SCC 599.

26. In Commissioner of Central Excise, Bolpur. Ratan Melting and Wire Industries (2008) 13 SCC 1. has been held that circulars and instructions issued by the Board are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular

27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular

dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994.

28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary

opinion. In case of an ancient statute, doctrine of contemporanea exposition is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See GP Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344). It has been held in Rohitash Kumar and others. Om Prakash Sharma and others(2013)11 SCC 451 that the said doctrine has to be applied with caution and the Rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and

clear, it does not admit of two different interpretations

29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000.

34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned

department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear."

16. In view of above dictum of law, the respondent customs department could not have withheld the refund of IGST only on the ground of difference between the GST data as per GST return and customs data ignoring the representation made by the petitioner along with the relevant documents to show that the petitioner has exported the goods being zero rated supply as per provisions of section 16 of the Integrated Goods and Service Tax Act, 2017 read with Rule 96 of the GST Rules, 2017.

Therefore, the petitioner is entitled to claim the refund of IGST.

17. Petition succeeds and is accordingly hereby allowed. Respondents are directed to immediately sanction the refund of IGST paid with regard to goods exported i.e. zero rated supplies with statutory interest as may be applicable in accordance with law from the date of shipping bills till the date of actual refund.

18. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

RAGHUNATH R NAIR