

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.6209 of 2019

Vedanta Limited,
Represented by its
Associate General Manager (Indirect Taxes),
SIPCOT Industrial Complex,
Madurai Bye-pass Road,
T.V.Puram Post,
Tuticorin-628 002.

... Petitioner

Vs.

1. The Commissioner of Customs (Drawback),
Customs House, Tuticorin,
Tamil Nadu.
2. The Goods and Services Tax Network,
Represented by its Chairman,
East Wing, 4th Floor, World Mark-1,
Aerocity, New Delhi-110037.
3. The GST Council,
Represented by its Secretary,
5th Floor, Tower-II,
Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi-110 001.
4. The Central Board of Indirect Taxes and Customs,
Represented by its Secretary,
North Block, New Delhi-110 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, to direct the respondents to transmit data with regard to Integrated Goods & Service Tax (IGST for short) paid on export of good pertaining to debit notes to the Customs ICEGATE portal either through the relevant port code or through any appropriate method, to facilitate the refund of IGST paid in view of the clarifications made vide Circular No.40/2018 within a time frame as may be prescribed by this Hon'ble Court.

For Petitioner : Mr.A.R.L.Sunderasan
for Mr.Y.Prakash

For Respondents : Mr.B.Vijayakarthishayan

ORDER

The petitioner exports goods on payment of Integrated Goods and Service Tax and he claims refund of such tax.

2. The petitioner Company exported goods vide 512 invoices through 71 shipping bills and duly paid the IGST of Rs.94,42,39,026 in terms of the Section 16 (3) of the IGST Act. While so, due to variation of rates in London Metal Exchange, the prices were revised in respect of 442 invoices covered by 61 shipping bills. The petitioner Company has paid tax on the differential export value to the tune of Rs.2,02,94,956. Thereafter, the petitioner claimed refund of Rs.94,42,39,026/- along with the additional tax paid due to variation of rates in London Metal Exchange

to the tune of Rs.2,02,94,956/-. The respondents have refunded Rs. 94,42,39,026/-. But they are not in a position to refund the balance amount of Rs.2,02,94,956/- as the entire process is system managed. There is no provision for processing the refund manually. Therefore, after deliberation they have taken a stand to find out a way for resolving such kinds of disputes. In fact, the fourth respondent issued Circular No.40 of 2018-Customs F.No.450/119/2017-Cus-IV, dated 24.10.2018, wherein, it is observed as under:-

"4. CBIC has been receiving representations where the refund scroll has been generated for a much lesser IGST amount than what has actually been paid against the exported goods. Broadly, this has happened due to:

(a).Error made by the exported / CHA in declaring the IGST paid amount in SB or

(b).Cases where Compensation Cess paid amount was not entered by the exporter in the SB along with the IGST paid amount of the same details were not transmitted by GSTN, and the scroll consequently got generated only for the IGST amount or,

(C).Typographical mistake by the customs office while sanctioning the refund through officer interface.

5.In a bid to provide relief to exporters in respect of categories indicated at Para 4 above, Directorate

of Systems has now provided a facility in ICES for the processing and sanctioning of the eligible differential IGST refund. The facility would be officer interface based and is similar to the procedure for processing certain SB005 refund claims refer Circular No.05/2018-customs dated 23.02.2018. This facility would be available only for cases where Shipping Bills have been filed till 15.11.2018. However, exporters need to be cautious while filing details in Shipping Bill as a similar facility may not be available in future for the same mistake for referred shipping bill. Also, Customs Officers while processing claims using Officer interface should exercise due diligence so that mistakes are not repeated again.

6. In order to claim the differential amount, the exporter is required to submit a duly filled and signed Revised Refund Request (RRR) annexed to this circular to the designated AC/DC. A scanned copy of the RRR may also be mailed to dedicated email address of Customs locations from where exports took place. The designated / concerned AC/DC will then proceed to sanction the revised amount after due verification through the option provided in ICES, a detailed advisory on which will be communicated by DG Systems to all the System Managers shortly. Once the revised amount is approved by the designated AC / DC in the system, a fresh scroll will be available for generation for the **differential amount** only."

3. In the peculiar circumstances, the respondents have issued the above circular to resolve the issue. Now the present case on hand is also similar to that of the problem which was faced by the respondents in similar circumstances. When there is no provision in the electronically managed system, they should have visualised the situation prior to its introduction to do away with these anomalies and provided solution to the same. When the issue of refund like the present one was dealt with by the Hon'ble High Court of Gujarat at Ahmedabad in **R/Special Civil Application No.20126 of 2018 dated 27.06.2019 (M/s. Amit Cotton Industries Vs. The Principal Commissioner of Customs and Others)**, the High Court has given a direction to the respondents to refund the IGST paid in regard to the goods exported i.e., 'Zero rated Supplies', with 7% Simple Interest in view of circular dated 09.10.2018 and Rule 96 of Central Goods and Services Tax Rules, 2017.

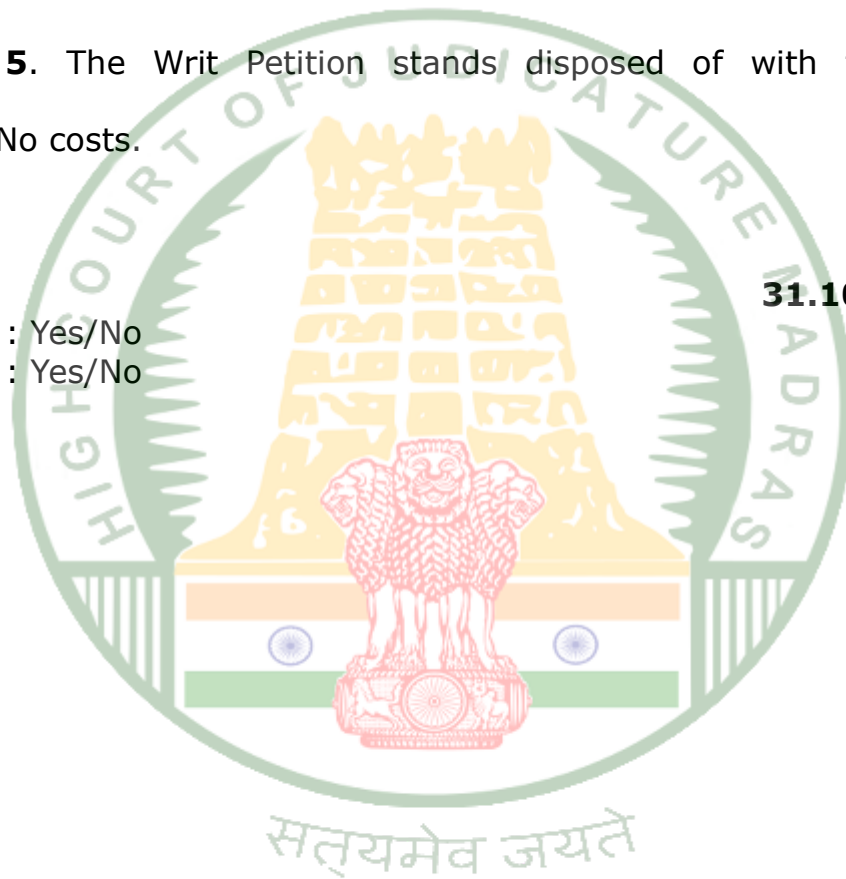
4. As stated supra, when the process is completely system managed, the respondents are supposed to visualise the complications and provide solutions to do away with the anomalies. The very object of encouraging exporters and augmenting the foreign currency will be defeated by such hiccups. Therefore, considering the judgment of Hon'ble High Court of Gujarat in R/Special Civil Application No.20126 of 2018, dated 27.06.2019 as well as the circular issued by the fourth respondent

dated 24.10.2018, a direction is given to the respondents to refund the additional IGST paid by the petitioner to the tune of Rs.2,02,94,956/- within a period of four weeks from the date of receipt of a copy of this order.

5. The Writ Petition stands disposed of with the above directions. No costs.

Index : Yes/No
Internet : Yes/No
tsg

31.10.2019

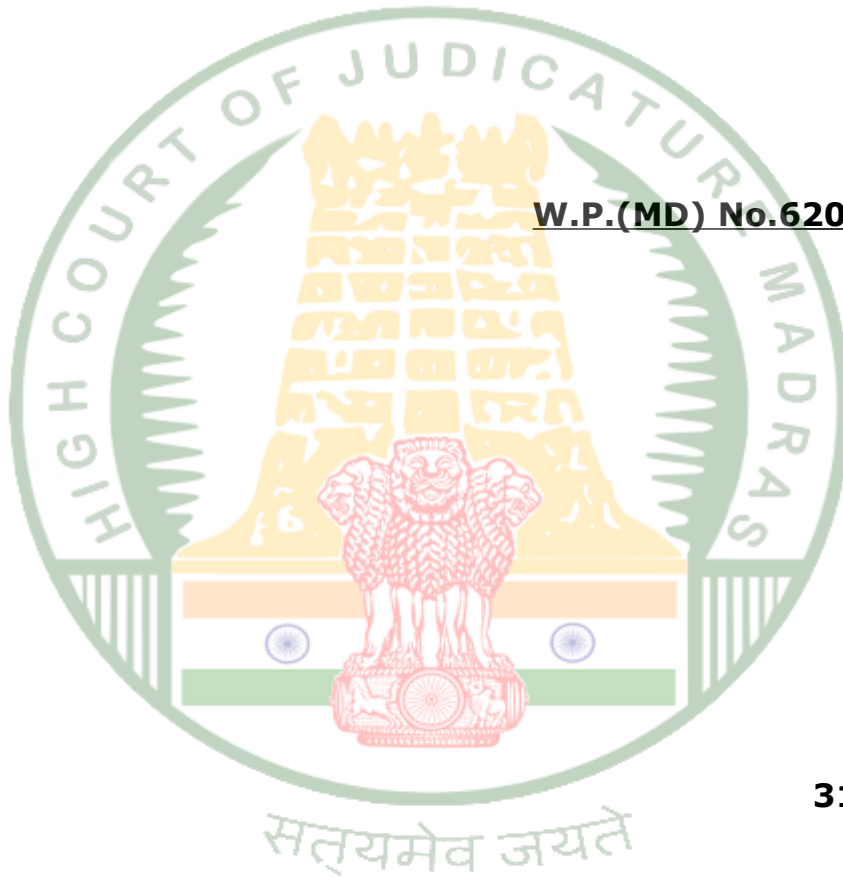


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M.GOVINDARAJ, J.

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