

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

THURSDAY, THE 29TH DAY OF AUGUST 2019 / 7TH BHADRA, 1941

WP(C).No.2981 OF 2019(W)

PETITIONER/S:

G NXT POWER CORP,
VYLASSERRY ROAD,
PALARIVATTOM P.O.,
COCHIN 682 025, REPRESENTED BY ITS MANAGING PARTNER
HARISH KUMAR.

BY ADVS.
SRI.JOHN VARGHESE
SRI.A.L.GEORGE

RESPONDENT/S:

- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY
GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT
OF REVENUE, (CENTRAL BOARD OF EXCISE AND CUSTOMS),
NORTH BLOCK, NEW DELHI 110 001.
- 2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI 110 001, REPRESENTED BY ITS CHAIRMAN.
- 3 COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,
COCHIN 682 009.
- 4 DEPUTY COMMISSIONER OF CUSTOMS
REFUNDS AND DRAWBACK CUSTOM HOUSE, COCHIN 682 009.

R2-4 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND
CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.08.2019, ALONG WITH WP(C).2457/2019(F), THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

THURSDAY, THE 29TH DAY OF AUGUST 2019 / 7TH BHADRA, 1941

WP(C).No.2457 OF 2019(F)

PETITIONER/S:

SOUTHERN CARBON AND CHEMICALS,
PERLACHITHRA, VYLOPILLY LANE, AZAD ROAD,
KALOOR, COCHIN - 682 017,
REPRESENTED BY ITS PARTNER AND ITS AUTHORIZED SIGNATORY
SRI. BABU THOMAS.

BY ADVS.
SRI JOHN VARGHESE
SRI.A.L.GEORGE

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE (CENTRAL BOARD OF EXCISE AND
CUSTOMS),
NORTH BLOCK, NEW DELHI - 110 001.
- 2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTIOMS,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI - 110 001, REPRESENTED BY ITS CHAIRMAN.
- 3 COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE,
COCHIN - 682 009.

4 DEPUTY COMMISSIONER OF CUSTOMS (REFUNDS AND DRAWBACK),
CUSTOM HOUSE, COCHIN - 682 009.

R2-4 BY SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND
CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.08.2019, ALONG WITH WP(C).2981/2019(W), THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C).2981/2019, WP(C).2457/2019]

Dated this the 29th day of August 2019

Heard Mr. John Varrghese for petitioners and Sri P.R. Sreejith for respondents.

2. The petitioners in these two writ petitions though are distinct entities, as the writ prayers are substantially same, the writ petitions are disposed of by this common judgment. The counsel have treated W.P.(C) No.2981 of 2019 as the lead writ petition and have made submissions by referring to the materials in W.P.(C) No.2981 of 2019. It is further stated that consideration of circumstances in lead writ petition would be sufficient for disposing of the other writ petition as well.

W.P.(C) No.2981 of 2019

3. The petitioner is an exporter. The petitioner through Exts.P3 and P4 have exported goods. It is relevant to note that GST has been introduced in the country with effect from 01.07.2017. The goods exported comes under IGST. The petitioner has been granted drawback of Central Excise component and denied IGST paid as cash. The petitioner by filing the instant writ petition contends that he is entitled for refund of IGST paid during the transition period as per Ext.P6. According to petitioner, the amended claim for refund could be submitted in terms of Section 149 of Customs Act, 1962. The denial of refund of IGST on a transaction which is otherwise zero-rated transaction is illegal, contrary to Article 265 of Constitution of India and prays for appropriate directions for refund of the IGST paid by the petitioner. The petitioner refers to and relies on the judgment in *M/s. Amit Cotton Industries through Partner, Veljibhai Virjibhai, Ranipa Vs. Principal Commissioner of Customs*¹ and the operative portion reads thus:

¹ Judgment dated 27.06.2019 in R/Special Civil Application No.20126 of 2018

“ 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, i.e. '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.

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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 subsection (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 Customs Act, 1962.

.....

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.

35. In view of the same, the writ applicant is entitled to claim the refund of the IGST.

36. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e., 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund."

4. The learned Standing Counsel appearing for respondents does not dispute the fact that the subject transaction in fact is with effect from 01.07.2017, come under Section 16 of IGST Act and are zero-rated. It is also not disputed that the voluntary or erroneous payment of IGST is required to be refunded to petitioner. The objection pointed out by Sri Sreejith is that the petitioner has already drawn or availed the higher rate of duty drawback and therefore while ordering refund of IGST the petitioner is required to refund the higher rate of duty drawback already availed by the petitioner with interest. Adv. John Varrghese by way of reply submits that the respondents if insist upon refund of higher rate of duty drawback by the petitioner with interest, the respondents are also required to pay interest to petitioner from the date on which the petitioner requested for refund of IGST. After hearing the counsel on the adjustment, the Court has suggested refund of IGST after adjusting the higher rate of duty drawback availed by the

petitioner without refunding IGST amount. The counsel have consented to disposing of the writ petition by this order:

- a) The respondents are given liberty to adjust the amount already availed by the petitioner on account of higher rate of duty drawback and pay the balance of IGST payable to petitioner within six weeks from the date of receipt of a copy of this judgment.
- b) The respondents are directed to pay the balance amount i.e., IGST minus higher rate of duty drawback already availed by the petitioner within the time granted by this Court and avoid the additional burden of interest payment on IGST refund. The respondents, if commit default in payment of balance amount as directed by this judgment, the respondents will be obligated to pay interest @ 7% together with balance amount payable from the date on which a request for refund is made by the petitioner till the date of payment.

W.P.(C) No.2457 of 2019

Having regard to the above discussion W.P.(C) No.2457 of 2019
disposed of on the same terms and conditions as noted above.

Sd/-

S.V.BHATTI

JUDGE

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APPENDIX OF WP(C) 2981/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE INVOICE NO. 15 DT. 7.9.2017 SUBMITTED BY THE PETITIONER.
EXHIBIT P2	TRUE COPY OF THE INVOICE NO. 16 DT. 7.9.2017 SUBMITTED BY THE PETITIONER
EXHIBIT P3	TRUE COPY OF THE SHIPPING BILL NO. 8702118 DT. 16.9.2017 SUBMITTED BY THE PETITIONER
EXHIBIT P4	TRUE COPY OF THE SHIPPING BILL NO. 8687717 DT. 15.9.2017 SUBMITTED BY THE PETITIONER
EXHIBIT P5	TRUE COPY OF THE FORM GSTR-3B MADE BY THE PETITIONER IN RESPECT OF EXHIBITS P-3 AND P-4 DT. NIL.
EXHIBIT P6	TRUE COPY OF THE CIRCULAR NO. 22/2017 CUS. DT. 30.6.2017 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P7	TRUE COPY OF THE CIRCULAR NO. 32/2017 CUS. DT. 27.7.2017 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE CIRCULAR NO. 16/2009 CUS. DT. 25.5.2009 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P9	TRUE COPY OF THE CIRCULAR NO. 37/2018-CUSTOMS DT. 9.10.2018 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DT. 17.12.2018
EXHIBIT P11	TRUE COPY OF THE CIRCULAR NO. 01/2019-CUSTOMS DT. 2.1.2019 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P12	TRUE COPY OF THE CIRCULAR NO.17/17/2017-GST DATED 15/11/2017 ISSUED BY THE GOVERNMENT OF INDIA.

APPENDIX OF WP(C) 2457/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE INVOICE SUBMITTED BY THE PETITIONER BEARING NO.SCC01004/17-18 DT. 08-07-2017.
EXHIBIT P2	TRUE COPY OF THE INVOICE SUBMITTED BY THE PETITIONER BEARING NO.SCC01005/17-18 DT. 26-07-2017.
EXHIBIT P3	TRUE COPY OF THE SHIPPING BILL NO.7471211 DT. 20-07-2017 SUBMITTED BY THE PETITIONER.
EXHIBIT P4	TRUE COPY OF THE SHIPPING BILL NO.7768846 DT. 02-08-2017 SUBMITTED BY THE PETITIONER.
EXHIBIT P5	TRUE COPY OF THE FORM GSTR-3B MADE BY THE PETITIONER IN RESPECT OF EXHIBITS P-3 AND P-4
EXHIBIT P6	TRUE COPY OF THE CIRCULAR NO.22/2017 CUS. DT. 30-06-2017 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE CIRCULAR NO.32/2017 CUS. DT. 27-07-2017 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE CIRCULAR NO.16/2009-CUS. DT. 25-05-2009 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P9	TRUE COPY OF THE CIRCULAR NO.37/2018-CUSTOMS DT. 09-10-2018 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DT.06-12-2018.
EXHIBIT P11	TRUE COPY OF THE CIRCULAR NO. 01/2019-CUSTOMS DT. 02-01-2019 ISSUED BY THE 1ST RESPONDENT.
EXHIBIT P12	TRUE COPY OF THE CIRCULAR NO.17/17/2017 GST DT 15-11-2017 ISSUED BY THE GOVERNMENT OF INDIA.