BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P(MD) No.949 of 2022

M/s. ATC Tires Private Limited,
Plot No A2, SIPCOT Industrial Growth Centre,
Gangaikondan, Tirunelveli-627 352,
Represented by its Authorized signatory,
Mr.Ramesh Kumar Balakrishnan. ... Petitioner

Vs.

1.Joint Commissioner of GST &
Central Excise (Appeals),
Coimbatore, Circuit Office, Madurai,
4, Lal Bahadur Shashtri Marg,
C.R.Buildings, Madurai – 625 002.

2.Assistant Commissioner of CGST
and Central Excise,
Tirunelveli Division,
Central Revenue Building, Tractor Road,
Ngo 'A' Colony, Tirunelveli – 627 007. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order-in-Appeal No. 151/2021-JC(GSTA) dated 07.10.2021 passed by the 1st Respondent and quash the same and consequentially direct the 1st Respondent to grant to

the Petitioner the refund of unuitlised Input Tax Credit of Rs. 1,42,11,506/- for the period from April 2019 to September 2019.

For Petitioner : Mr.RaghavanRamabadran
For M/s.Lakshmi Kumaran and Sridharan Attorneys

For Respondents : Mrs.S.Ragaventhre
Junior Standing Counsel

O R D E R

The petitioner herein has challenged the impugned Order-in-Appeal No.151/2021-JC [GSTA] dated 07.10.2021 passed by the first respondent Joint Commissioner of GST and Central Excise [Appeals].

2. By the impugned order, the Joint Commissioner of GST and Central Excise [Appeals], has dismissed the appeal filed by the petitioner against order in Refund Order No.16/2021-2022, dated 16.08.2021, passed by the second respondent herein.

3. The brief facts of the case are that the petitioner has two manufacturing units in India. One of the units of the petitioner is the Special Economic Zone Unit (SEZ), at Gangaikondan Village,

Tirunelveli District in respect of which we are concerned in the present writ petition and the other an Export Oriented Unit [EOU], at Dahej in the State of Gujarat.

4. The petitioner's SEZ Unit is engaged in the manufacture of Tyres, Flaps, and Tubes at Gangaikondan Village, Tirunelveli District. It is submitted that in addition to physical export of goods, the SEZ Unit of the petitioner also made few domestic supplies in the Domestic Tariff Area [DTA].

5. It is the case of the petitioner that the exports made from its SEZ unit amounts to 'Zero-rated supply' within the meaning of Section 2(23) of the Integrated Goods and Services Tax Act, 2017 [hereinafter referred to as "IGST Act"] and therefore the petitioner was entitled for refund of tax paid on input and input services under Section 16(3)(i) of the IGST Act.

6. It is submitted that certain categories of common services were purchased at the petitioner's Head Office in Mumbai and distributed the proportionate credit as an input service distributed by its head office as

an input service distributor within the meaning of Section 2(61) of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act] to petitioner SEZ unit. This credit was claimed as refund by the petitioner under Section 16(3)(i) of the IGST Act.

7. It is submitted that petitioner's Head Office in Mumbai has distributed proportionate input tax on the services, which were commonly used for the petitioner's Head Office, petitioner’s SEZ unit and the EOU unit.

8. The learned counsel for the petitioner submits for the exports made by the petitioner from its SEZ Unit in Gangaikondan, Tirunelveli District, the Petitioner filed refund claims of accumulated input tax credit which was transferred/distributed by the petitioner's Head Office as Input Service Distributor.

9. Under these circumstances, the petitioner filed six different refund claims under Section 54(3) of the CGST Act read with Rule 89 of the Central General Services Tax Rules 2017 [hereinafter referred to as "the CGST Rules"], as detailed below:-

Sl. No.	ARN No.	Date	Period of Claim	Refund Type	Claim Amount (Rs.)
1	AA330420008178Q	22.04.2020	April 2019	Export of Goods/Service W/o payment of Tax (Accumulated ITC)	24,57,679
2	AA3304200081904	22.04.2020	May 2019		26,83,891
3	AA330420008568J	23.04.2020	June 2019		22,44,654
4	AA330420008577K	23.04.2020	July 2019		14,00,674
5	AA330420008964J	24.04.2020	August 2019		25,01,738
6	AA330420009616P	25.04.2020	September 2019		29,22,870

10. These refund claims were sought to be denied by the second respondent and therefore, the show cause notice dated 27.04.2020 was issued to the petitioner.

11. The learned counsel for the petitioner submits that for the identical exports made prior to the above said period between October 2017 and March 2019 has now been allowed by the second respondent, vide order dated 16.08.2021, in Refund Order No.16/2021-2022, bearing C.No.V/GST/17/16/2021 – Refund, Form-GST-RFD-06.

12. The learned counsel for the petitioner submits that the aforesaid refund claims have not been disturbed or appealed against. It is submitted that the above said order was passed in the light of the decision of the Gujarat High Court in the case of **Britannia Industries Limited vs. Union of India [SLP(C) No.15473 of 2019]** reported in **2020 (42) GSTL 3 (Guj.)**].

13. The learned counsel for the petitioner further submits that said view was also followed by the Gujarat High Court in **IPCA Laboratories Ltd. vs. Commissioner [2022-VIL-136-Guj]**. The learned counsel for the petitioner fairly submits that the decision of the Gujarat High Court in **Britannia Industries Limited** case referred to supra has been appealed before the Hon'ble Supreme Court vide S.L.P.(C)No. 13431 of 2021 in **Union of India and others vs. M/s.Britannia Industries Ltd.** and the same has been admitted on 09.09.2021.

14. The learned counsel for the petitioner submits that even in the course of direct supply by a third party Unit to SEZ refund has been allowed by this Court in the case of **Platinum Holdings Private Limited vs. Additional Commissionerof GST and Central Excise (Appeals-II),**

Assistant Commissioner of GST and Central Excise reported in **2021 (10) TMI 630** W.P.No.13284 of 2020 etc. batch, vide order dated 11.08.2021. The learned counsel for the petitioner also submits that an appeal is however pending before the Principal Seat of this Court in W.A.No.3066 of 2021.

15. The learned counsel for the petitioner submits that as far as the maintainability of the present Writ Petition is concerned, under the scheme of the C.G.S.T. Act, an appeal is to be filed before the respective G.S.T. Tribunal. However, till date, such Tribunal has not been constituted and therefore, the present Writ Petition has been filed against the impugned order of the first respondent Joint Commissioner [Appeals], upholding/confirming the order of the second respondent.

16. As far as the merits of the case are concerned, the learned counsel for the petitioner submits that common input service were raised on the petitioner's Head Office at Mumbai. The credit had to be distributed and was therefore distributed by the Head office. It is further submitted that the Head office was not engaged in supply of goods or service and therefore could not have filed refund of input tax credit under

Section 16(3) of the I.G.S.T. Act read with Rule 89 of the Central General Services Tax Rules, 2017.

17. The learned counsel for the petitioner further submits that the purchase of common services at the petitioner's Head Office, was meant for the petitioner's Head Office, the petitioner's SEZ Unit and the Dahej Unit, Gujarat. A specific reference was made to the provision to Rule 89 of the C.G.S.T. Rules, 2017 which provides for the machinery for implementing refund under Section 54 of the Central General Services Tax Act, 2017.

18. The learned counsel for the petitioner submits that reliance placed by the respondents in the impugned orders on sub-clause 2(f) of Rule 89 is also not relevant.

19. The learned counsel for the petitioner further submits that the incentives given to SEZ Unit cannot be denied on zero-rated supplies. It is submitted that only if the supply of such service was directly made for the services and invoices were raised on the petitioner's Unit at Tirunelveli, the supplier would have been entitled to avail a benefit under

Section 54 of the C.G.S.T. Act, 2017 read with Rule 89 of the C.G.S.T. Rules, 2017 read with Section 16 of the I.G.S.T. Act.

20. The learned counsel for the petitioner further submits as per Section 16(3) of the I.G.S.T. Act, only the supplier of goods or services or both to SEZ Developer or SEZ Co-developer or SEZ Units is eligible for claim of refund and there is no provision for granting of refund to the SEZ Unit under the provision of the I.G.S.T. Act. It is, therefore, submitted that there is no merit in the present Writ Petition.

21. Opposing the prayer, the learned Standing Counsel for the respondents submitted that the petitioner is entitled for refund for unutilized input tax credit, which was passed by the petitioner's Head Office as an input service distributor within the meaning of Section 16 (1) of the I.G.S.T. Act. It is submitted that as per Section 54(3) of I.G.S.T. Act read with Rule 89(1) of the C.G.S.T. Rules 2017, it is clear that when the supply is made to a Special Economic Zone Unit or a Special Economic Zone developer, the supplier of goods or receiver is entitled to file refund application.

22. It is, therefore, submitted that since the petitioner is a recipient of service, the benefits of refund on IGST bond on input service in terms of above provision would not inure to the petitioner.

23. The learned Standing Counsel for the respondents further submits that the refund granted vide subsequent order dated 16.08.2021 in Refund Order No.16/2021-2022 is not relevant, as it is based on the decision of the Gujarat High Court in **Britannia Industries Ltd. Case** [supra], which itself under challenge before the Hon'ble Supreme Court in S.L.P.No.13431 of 2021.

24. It is further submitted that the order of the second respondent for the subsequent period vide Refund Order No.16-2021-2022, dated 16.08.2021 itself, is now subject matter of an appeal in **Appeal No.2 of 2021 – GST (D)** and therefore, the petitioner is not entitled to any relief based on the decision.

25. That apart, the learned Standing Counsel for the respondents further submits that the decision of this Court rendered in the case of **Platinum Holdings Private Limited [supra],** is not applicable to the

facts of the case as it relates to direct supply which has been now appealed before the Division Bench of this Court and the same is pending.

26. The learned Standing Counsel for the respondent submits that only a supplier is entitled to avail refund of input tax credit in terms of Section 16(3) of the IGST r/w Section 54 of the Act and 89 (1) of the CGST Rules, 2017.

27. The learned Standing Counsel for the respondents further submits that the refund granted vide subsequent order dated 16.08.2021 in Refund Order No.16/2021-2022 is not relevant, as it is based on the decision of the Gujarat High Court in **Britannia Industries Ltd.** case [*supra*], which itself under challenge before the Hon'ble Supreme Court in S.L.P.No.13431 of 2021. It is further submitted that the order of the second respondent for the subsequent period vide Refund Order No. 16-2021-2022, dated 16.08.2021 itself, is now subject matter of an appeal in Appeal No.2 of 2021 – GST (D) and therefore, the petitioner is not entitled to any relief based on the decision.

28. That apart, the learned Standing Counsel for the respondents further submits that the decision of this Court rendered in the case of Platinum Holdings Private Limited [*supra*], is not applicable to the facts of the case as it relates to direct supply which has been now appealed before the Division Bench of this Court and the same is pending.

29. A specific reference was made to the clarification of the Central Board of Indirect Taxes and Customs (CBIC), vide Circular No. 17/17/2017- GST, dated 15.11.2017 for manual filing and processing of refund claims in respect of zero-rated supplies and Circular No. 24/24/2017-GST, dated 21.12.2017 for manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger.

30. It is submitted that refund claim made by the petitioner cannot be processed under any of the above mentioned categories or treated as eligible refunds specified under Manual Refund Processing vide Circular No.17/17/2017- GST, dated 15.11.2017 and Circular No.24/24/2017-GST, dated 21.12.2017. It is therefore submitted that the refund has been rightly rejected.

31. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I have perused the impugned order dated 07.10.2021 passed by the first respondent. I have also examined the provisions from the respective GST enactments.

32. The impugned order seeks to deny the benefit of refund of accumulated Integrated Goods and Service by placing reliance on the second proviso to Rule 89 of Central Goods and Service Tax Rules, 2017. The operative portion of the impugned order reads as under:-

> 7. The appellant is an SEZ unit. The above provisions of law clearly exhibit as to how supplies to an SEZ unit are to be treated and the necessary stipulations for filing of refund. A plain reading of Section 16(1) of the IGST Act, 2017 makes it clear that the term 'zero rated supplies' includes exports of goods and services as well as supply of goods and services to an SEZ developer or an SEZ unit. Section 16(3) of the IGST Act, 2017 makes it evident that zero rated supplies are either eligible for refund of unutilized input tax credit where the integrated tax is not paid or refund of such tax when integrated tax has been paid subject to being in accordance with provisions of Section 54 of the CGST Act, 2017, wherein the conditions and procedure for refund are stipulated.

8. Rule 89(1) of the CGST Rules, 2017 makes it explicitly obvious that only the supplier of goods or services can file the refund claim after due endorsement by the Specified Officer of the SEZ for receipt of goods in full / receipt of services with evidence, for authorized operations. Rule 89(4) of the CGST Rules, 2017 merely stipulates the formula for calculation of refund amount.

9. Sections 16(1) and 16(3) of the IGST Act, 2017 makes it abundantly clear that the provisions of zero rating primarily apply to an exporter of service and additionally to a supplier to a SEZ. It is clear from the provisions of law cited above that the registered person can claim either refund of unutilized input tax credit or refund of tax paid on goods or services or both subject to being in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder. A clear reading of the provisions of Section 54 of the CGST Act, 2017 and Rule 89 of the Central Goods and Services Tax Rules do not support the contentions of the appellant regarding eligibility for claiming refund in the present issue. Proviso to Section 54(3) of the CGST Act, 2017 stipulates that *"no refund of input service tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies"*.

10. In this context, it is imperative to draw reference to Section 26(d) of the SEZ Act, 2005. The said section provides that every developer and entrepreneur shall be entitled to drawback on goods brought from the DTA into an SEZ. Further Rule 24 of the SEZ Rules, 2006 stipulates that the triplicate copy of the the assessed Bill of export shall be

treated as the drawback claim and processed accordingly in the customs section of the SEZ. Also Rule 30(5) of the SEZ Rules, 2006 provides that in case of procurement of goods from DTA where Bill of Export has been filed under a claim of drawback, the unit or developer shall claim the same and in case the unit or the developer do not intend to claim the entitled drawback, a disclaimer to this effect shall be given to the DTA supplier for claiming such benefit. It is only to curtail the dual benefit of drawback as well as refund, the Government has consciously stipulated the conditions under proviso to Rule 89(1) making it incumbent that only the supplier of goods or services shall file the refund claim after due endorsement by the Specified Officer of the SEZ for receipt of goods in full / receipt of services with evidence, for authorized operations.

11. From the foregoing, it is observed that the contentions of the appellant seeking eligibility for refund against the zero-rated supplies received by them, is found to be untenable. Further, the case laws adduced by the appellant are not relevant to the issue in hand. A reading of the above provisions undoubtedly point towards a conclusion that SEZ unit / developers shall not claim any refund against the ITC involved in supplies received by them from suppliers. The Act facilitates eligibility for refund of unutilized input tax-credit only where the integrated tax is not paid or refund of such tax when integrated tax has been paid for refund claim, only to the suppliers who made supplies to SEZ unit / developers. Towards this end, I am guided by the decision of Hon'ble Supreme Court of India in the case of M/s. Punjable Tractors Ltd. [2005 (181) ELT 380 (SC)] wherein the Hon'ble Apex Court has emphasized the need on adherence to the provisions of law. The Lower Adjudicating Authority has adhered to the provision of law and rightly rejected

the refund claim. I, therefore, refrain from interfering with the order of the Lower Adjudicating Authority.

12. Accordingly, the Appeals filed by, the appellant is disposed by passing the following order:

ORDER

The appeal A.No.35/2020-ST, filed by M/s.ATC Tires Private Ltd., Gangaikondan, Tirunelveli is rejected and the Order-in-Original No.GST/02/2020 dated 28.05.2020 passed by the Assistant Commissioner of GST and Central Excise, Tirunelveli Division is upheld.

33. The petitioner's Head Office, at Mumbai has purchased certain common services for its Head office, SEZ and EOU. The proportionate input tax credit was in turn transferred to the petitioner SEZ unit by the petitioner's Head office at Mumbai as an input service distributor. The said expression is defined in Section 2(61) of the Central Goods and Service Tax Act, 2017 as under:-

*"**2.Definitions:-***
(1).....
(2).....
.....
(61) "Input Service Distributor" means an office of the supplier goods or services or both which receives tax invoices issued under Section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing

the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office."

34. The petitioner's SEZ unit in turn has taken such credit and has claimed zero rated supply within the meaning of Section 2(23) of the IGST ACT r/w Section 16(3)(a) of the IGST Act. The said expression reads as under:-

"Section 2.-Definitions.-

In this Act, unless the context otherwise requires,—

(23) "zero-rated supply" shall have the meaning assigned to it in Section 16;

35. For a easy reference, Section 16 Chapter VII of the IGST Act, 2017 is reproduced below:-

Zero Rated supply:

Section 16.(1):"Zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3)A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a)** he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, **without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder."

36. There is no doubt that the petitioner while exporting goods out of the country had made a zero rated supply. There is also no doubt that the petitioner was entitled to avail credit of tax which was distributed by the petitioner's head office.

37. Section 54 of the Central Goods and Services Tax Act, 2017 deals with refund of tax. It reads as under:-

Section 54 – Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by —

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in Section 33 as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) 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 shall be credited to the Fund referred to in Section 57

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead

of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export exports of goods or services or both or on inputs or input services used in making such"export" and "exports";

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of Section 77

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-

resident taxable person under sub-section (2) of Section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

38. Rule 89 of Central Goods and Service Tax Rules deals with the application for refund of tax, interest, penalty, fee or any other amount. It reads as under:-

"89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1)Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund:

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of Section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the

incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Explanation.– *For the purposes of this rule-*

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) X Net ITC ÷Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advance received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding- (i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, Notification No. 48/2017- Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of

other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017 Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No.79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017, the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) X Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:-For the purposes of this sub-rule, the expressions –

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both; and

(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4)"

39. On the supply of common service to the petitioner's Head office, the supplier of such common services could not have claimed any refund either under 16(3)(b) of the IGST Act, 2017 as such a supply did not qualify as a "zero rated supply" within the meaning of Section 2(23) of the IGST Act, 2017.

40. Therefore, there is no question of the supplier claiming refund under Section 16(3)(a) or (b) of the IGST Act, 2017. The suppliers of these input service also could not haveavailed refund under Section 54

(3) of the Central Goods and Service Tax Act, 2017 r/w Rule 89 of Central Goods and Service Tax Rules, 2017.

41. To avail such refund to the supplier should also have filed a declaration to that effect, incident of tax has not been passed on to the SEZ. The supplier also could not have claimed any exemption as the supply was for a common service and the invoice was raised on the petitioner's Head Office at Mumbai.

42. The purpose of granting refund on zero rated supply is to ensure that the exports are competitive in the international market and such transactions are not burdened with taxes.

43. The export by the petitioner from its SEZ unit in Tirunelveli is a zero rated supply within a meaning of Section 2 (23) of the IGST Act, 2017 r/w Section 16of the IGST Act, 2017. Once, it is concluded that it was a zero rated supply, refund in terms of Section 16 (3)(a) of the IGST Act, 2017 cannot be denied. Sub Section (3) and (10) of Section 54 of the Central Goods and Services Tax Act, 2017 complement Section 16 of the IGST, 2017.

44. Section 54 of the Central Goods and Service Tax, 2017 allows the refund of tax and includes refund in case of zero rated supply made without payment of tax. Proviso to Section 54 (3) of the Central Goods and Service Tax Act, 2017 allows refund of unutilized input tax credit of zero-rated supplies made without payment of tax.

45. No refund of input tax credit is allowed only if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. This is admittedly not the case here.

46. The petitioners export specifically falls under such category in proviso to Section 54(2) of the Act. Proviso to Rule 89(1) is only an exception to Rule 89 (1) of the Central Goods and Service Tax Rules, 2017. There is no bar under Rule 89 (1) of the Central Goods and Service Tax Rules, 2017 for refund of unutilized input tax credit.

47. As mentioned above, a very purpose of granting this refund is only to give incentive for exports and to reduce the burden of tax to make the exports more competitive in the international markets.

48. Rule is not intended to deny the legitimate benefit available to an exported effecting zero rated supplies. In this connection, reference is made to the decision of the Hon'ble Supreme Court in **Unichem Laboratory Vs Collector of Central Excise, Bombay** reported in **2002 (145) ELT 502 (SC)**, wherein the Hon'ble Supreme Court held as follows:-

> **12.** *For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law — no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.*

49. The impugned order proceeds on the assumption that application for refund in respect of supplies to a Special Economic Zone or a Special Economic Zone Developer, can be filed only by a supplier of the goods or services in terms of second proviso to Rule 89 (1) of Central Goods and Service Tax Rules, 2017.

C.SARAVANAN, J.
sn

50. Therefore, there is no merit in the impugned order passed by the respondent denying the benefit of refund of unutilized input tax credit of zero rated supplies effected by the petitioner.

51. I am therefore inclined to allow this writ petition together with consequential relief to the petitioner. The Writ petition thus stands allowed with the above observations. No costs.

08.03.2022

Index : Yes / No
Internet : Yes/ No
sn / jen

To
1.Joint Commissioner GST & Central Excise (Appeals),
Coimbatore, Circuit Office, Madurai,
4, Lal Bahadur Shashtri Marg,
C.R.Buildings, Madurai – 625 002.

2.Assistant Commissioner of CGST
and Central Excise,
Tirunelveli Division,
Central Revenue Building,
Tractor Road, Ngo 'A' Colony,
Tirunelveli – 627 007.