



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 26.03.2021*

+ **W.P.(C) 2694/2019 & CM No.26556/2020**

TMA INTERNATIONAL PVT. LTD. & ORS. Petitioners
Through: Mr. Samar Bansal with Ms. Sakshi
Singhal, Advs.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Harpreet Singh, Adv. for
Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

1. In this writ petition, the following reliefs have been claimed by the petitioners:

“a) Declare that Paragraph 11(d) read with 12A(a)(ii) of the Notes and Conditions of the Notification No. 131/2016-Cus. (N.T.), dated 31.10.2016 (Annexure P-2) [as amended by Notification No. 59/2017-Cus. (NT) dated 29.06.2017 (Annexure P-3) and Notification No. 73/2017-Cus. (NT) dated 26.07.2017 (Annexure P- 4)] are (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 and Rule 96 of CGST Rules, 2017, & (ii) unconstitutional and violative of Article 14, 19 and 21 of the Constitution of India & Quash the same;

b) Declare that Circular No. 37/2018-CUSTOMS dated 09.10.2018 (Annexure P-7) is (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 and



Rule 96 of CGST Rules, 2017, and (ii) unconstitutional and violative of Article 14, 19 and 21 of the Constitution of India & Quash the same;

c) As a consequence of the above, Direct Respondent Authorities to grant refund of IGST paid on goods exported by the Petitioners during the Transitional Period”.

2. Upon notice being issued, a counter-affidavit has been filed by respondent no.2 (i.e. the contesting respondent) followed by a rejoinder by the petitioners.

3. The record shows that on 26.11.2019, a detailed order was passed by the Court. Via the order dated 26.11.2019, in effect, the Court agreed with the submission of the petitioners, subject to respondent no.2 verifying as to whether duty drawback/CENVAT credit had been availed of by the petitioners, with regard to Central Excise and Service Tax component.

3.1. It is in this background, that thereafter the matter got adjourned on various dates to enable respondent no.2 to verify this fact.

4. The record shows that a compliance-affidavit was filed on behalf of respondent no.2 on 25.02.2021. Thereafter, the matter was taken up on 05.03.2021 when a fresh direction was issued as there was still, not enough clarity, with regard to the core issue, which was, as to whether or not the petitioners had availed of the duty drawback/CENVAT credit with regard to Central Excise and Service Tax component. Accordingly, respondent no.2 vide order dated 05.03.2021 was directed to file an additional affidavit in terms of paragraph 18 of the order dated 26.11.2019. Paragraph 18 of the aforementioned is extracted hereunder:

“18. In case the petitioners would not have availed the benefit of duty drawback/CENVAT credit of Central Excise and Service



Tax component, necessary directions would be issued”.

5. The matter was thereafter taken up by the Court on 15.03.2021 when Mr. Harpreet Singh, learned counsel appearing for respondent no.2, informed the Court that he had received an e-mail dated 11.03.2021 from the concerned officer, which was indicative of the fact that the duty drawback *qua* the Central Excise had not been availed by the petitioners. Thus, the only other aspect which respondent no.2 was required to examine, was, as to whether the petitioners had availed the duty drawback *qua* the Service Tax component.

6. It is in this background that the matter was posted for hearing today i.e. 26.03.2021.

7. Given the directions issued on 15.03.2021, respondent no.2 has filed an affidavit dated 24.03.2021. In paragraph 4 of the affidavit, the affiant has stated the following:

“4. That, accordingly, as per the verification caused by the office of the deponent and the information received from Additional Director General of Systems & Data Management [enclosed as Annexure-I], the deponent most respectfully submits that:

- (i) all the petitioners have availed duty drawback.*
- (ii) none of the petitioners have availed the Cenvat Credit of Central Excise.*
- (iii) out of all the petitioners, only M/s Inter Trade, Kolkata have availed the Cenvat Credit of Service Tax amounting to Rs.1856/-during the Financial Year 2015-16 and Rs.0 (Nil) during the Financial Year 2016-17 & 2017-18 (upto June 2017).”*

7.1. Based on this affidavit, Mr. Singh has stated before us that none of the petitioners have availed of CENVAT credit *qua* central excise; a position



which was made known to us even on 15.03.2021. Furthermore, Mr. Singh says, none of the petitioners have availed of CENVAT credit *qua* service tax component save and except, M/s Inter Trade, Kolkata. The quantum of CENVAT credit *qua* service tax component availed by M/s Inter Trade, Kolkata, according to the affiant, is Rs. 1856/- pertaining to the financial year (in short ‘FY’) 2015-2016.

8. Given this position, Mr. Samar Bansal, who appears for the petitioners, says that insofar as M/s Inter Trade, Kolkata is concerned, in order to hasten the refund of Integrated Goods and Services Tax (in short ‘IGST’), it will give up the ‘input tax credit’ to the extent of Rs. 1856/- *qua* FY 2015-2016.

9. Having regard to the history of the case, we put to Mr. Singh as to the time-frame in which the IGST could be refunded to the petitioners.

9.1. Mr. Singh says that since several Commissionerates are involved, it would take at least four weeks.

9.2. Thus, the only other question left for consideration is: as to whether the petitioners should be paid any interest for delayed remittance of refund on account of IGST?

9.3. Mr. Samar Bansal, who appears on behalf of the petitioners, in support of his plea that the interest should be paid, has cited the judgement dated 27.06.2019, passed by a Division Bench of the Gujarat High Court, in ***M/s Amit Cotton Industries vs. Principal Commissioner of Customs, (2019) 75 GST 33 (Guj)***. In particular, reliance has been placed on paragraph 36 of the said judgment. For the sake of convenience, the observations made in paragraph 36 of the judgment are extracted hereafter:

“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 shipping bills till the date of actual refund."

10. We are in agreement with the principle set forth in the aforesaid paragraph. Therefore, while granting refund to the petitioners, the petitioners will be granted interest at the rate of 7% simple, from the date, when the shipping bills were filed by them, till the date of actual refund, which, in this case, ought not to go beyond 26.04.2021.

10.1 It is ordered accordingly.

11. Accordingly, the writ petition is disposed of with a direction to refund IGST to the petitioners, at the earliest, though not later than 26.04.2021, with interest, for the period indicated in paragraph 10 above.

11.1. The statement made by Mr. Bansal, on behalf of M/s Inter Trade, Kolkata, as recorded in paragraph 8 above, will continue to hold.

11.2. Respondent no.2 will ensure that a copy of the order is served on all concerned Commissionerates so that due compliance is made.

11.3. The concerned officers will act on the basis of a digitally signed copy of the order passed today.

12. Resultantly, the pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 26, 2021/pmc

Click here to check corrigendum, if any