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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.222 OF 2023

VERGO PHARMA RESEARCH
LABORATORIES PVT. LTD.

a Company incorporated under
the Companies Act, 1956 and
having its registered office at
1st Floor, Keni Building,
Dr. Dada Vaidya Road, Panaji,
Goa – 403 001, represented herein
by its Director-Finance,
Mr. Amol Borkar, aged 48 yrs.

... Petitioner

Versus

1. COMMISSIONER OF CENTRAL TAX,
CGST, Division IV, Goa Commissionerate,
4th Floor, Blessing Pioneer
Commercial Complex,
Opposite Session District
Judge Court, Margao,
South Goa – 403 601;

2. ASSISTANT / DEPUTY COMMISSIONER OF
CENTRAL TAX,
CGST, Division IV, Goa Commissionerate,
4th Floor, Blessing Pioneer Commercial
Complex, Opposite Session District
Judge Court, Margao,
South Goa – 403 601.

3. ASSISTANT COMMISSIONER OF CENTRAL
TAX,
GST Bhavan, EDC Complex,
Patto, Panaji, Goa – 403 001.

4. COMMISSIONER OF CUSTOMS,
Jawaharlal Nehru Custom House,
Nhava Sheva, Dist, Raigad,
Maharashtra – 400 707.

[Amended vide
order dt.03.07.23]

5. COMMISSIONER OF CUSTOMS,
Sahar Air Cargo Complex,
Andheri Mumbai, Maharashtra – 400 099.

... Respondents

Mr Yogesh Nadkarni with Ms S. Khadilkar, Advocates *for the Petitioner*.
Ms Priyanka Kamat, Standing Counsel *for Respondent Nos.1, 2 and 3*.
Ms Asha Desai, Senior Standing Counsel *for Respondent Nos.4 and 5*.

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 16th January 2024

ORAL JUDGMENT (Per M.S. Sonak, J):

1. Heard Mr Nadkarni who appears with Ms Khadilkar for the Petitioner. Ms Priyanka Kamat, Standing Counsel, appears for Respondent Nos.1, 2 and 3, and Ms Asha Desai, Senior Standing Counsel, appears for Respondent Nos.4 and 5.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. The Petitioner seeks a writ of mandamus to the Respondents to forthwith process the undisputed IGST refund claims made by the Petitioner and to release the amount of ₹5,14,22,051/- (Rupees Five Crores

Fourteen Lakhs Twenty-Two Thousand & Fifty-One) in the Petitioner's bank account. In response, it was submitted that there was an alert reflected in the automated system that processes the claims for such refunds. It was pointed out that the refunds of IGST were not processed due to this alert.

4. Orders were made from time to time in this petition, and reference is necessary to the order dated 06.11.2023, which reads as follows:-

“1. Heard Mr Yogesh Nadkarni for the Petitioner, Ms Priyanka Kamat for Respondents No.1 to 3 and Ms Asha Desai, learned Senior Standing Counsel for Respondents No.4 and 5.

2. Ms Desai refers to the affidavit filed on behalf of respondent no.5 including in particular paragraphs 7 and 8 in relation to the IGST refunds to the tune of Rs.79,52,630/-, which the petitioner claims is payable to them for the period between 2017-2023. Paragraphs 7 and 8 read as follows:

“7. I say that, in this case of an alert was introduced against M/s. Vergo Pharma Research Laboratories Private Limited in the ICES on the recommendation DGGI Goa Regional Unit letter File No. 01/MISC/DGGI/GRU/2020-21/1159 Dated 09/02/2021 for the ongoing case against M/s. Vergo Pharma Research Laboratories Private Limited, in such circumstances the IGST refund is stopped by default till the alert has been removed.

8. I say that this office vide letter dated 17.10.2023 addressed to Principal ADG, DGGI, Pune Zonal Unit (Exhibit-A), Commissioner Central Tax, Goa (Exhibit-B) and Commissioner State Tax, Goa (Exhibit-C) has requested to please inform whether the alert against the exporter can be revoked which will result in crediting of the entire pending

IGST refund amount to the exporter.”

3. Considering the above response we think that the authorities referred to in paragraph 8 above must respond to the communication dated 17.10.2023 at the earliest. The authorities must respond within fifteen days from today so that if the IGST refunds are indeed due to the petitioner, they are not unreasonably withheld or their payment is not unduly delayed.

4. Respondent No.5 must immediately forward an authenticated copy of today's order to the authorities referred to in paragraph 8 of the affidavit. The authorities must take cognizance of this order and clarify their position within fifteen days. Ultimately, if refunds are indeed due, the same cannot be withheld or delayed simply because the correspondence in this regard is not promptly addressed or answered.

5. Ms Desai is granted leave to file a copy of the respondent no.5's affidavit on record since she submits that the original has been dispatched by post. The Registry to accept the copy based on Ms Desai's undertaking that the original will be filed no sooner the same is received.

6. We post this matter on 12.12.2023.”

5. From the above order and paragraphs 7 and 8 of the affidavit filed on behalf of the 5th Respondent, it was quite clear that the 5th Respondent had addressed a communication dated 17.10.2023 to the Commissioner Central Tax, Goa and the Commissioner State Tax, Goa, requesting them to inform the 5th Respondent whether the alert against the Petitioner could be revoked which would result in crediting of the entire pending IGST refund in the Petitioner's bank account.

6. On 12.12.2023, Ms Desai, based on instructions that were imparted to her, made a statement that the alert concerning the Petitioner had already been lifted and an affidavit would be filed regarding the issue of refund. This was noted in our order dated 12.12.2023, which reads as follows:-

“At the request of Ms. Asha Desai, stand over to 20.12.2023. Ms. Desai states that an affidavit will be positively filed by the said date. Ms. Desai, on instructions, states that the alert concerning the Petitioner has already been lifted. Ms. Desai states that an affidavit will be filed regards the issue of refund.

2. Stand over to 20.12.2023.”

7. Mr Nadkarni learned Counsel for the Petitioner, now submits that the statement about the alert being lifted was not altogether accurate. He states that based upon the lifting of the alert by the 4th Respondent, an amount of approximately ₹4 crores towards IGST refunds was credited to the Petitioner's bank account. However, balance refunds of above ₹90,21,320/- remain. Further, he points out the online status concerning the Petitioner (on page 97 of the paper book) to submit that the alert continues to be reflected despite the statement made and recorded.

8. Ms Desai explains that the statement made by her and recorded by us in our order dated 12.12.2023 was based on the instructions imparted to her by the incumbent officer then holding the position of the 5th Respondent. She says that the said officer has since been transferred, and there is a new incumbent in his place. Further, on instructions, she states that this new incumbent insists upon clarification from the State GST officials as to whether they require the alert against the Petitioner to continue. She refers to the State GST response dated 06.12.2023 (on pages

77 and 78 of the paper book) to submit that this response, according to the present incumbent, does not categorically state that the alert may be removed or that the State GST officials have no objection to the removal of the alert. She submits that the incumbent officer will now once again approach the State GST and seek a categorical response. Depending upon the response, a decision will be taken on the issue of lifting the alert and the refund of the balance of IGST.

9. Ms Priyanka Kamat, the learned Standing Counsel on behalf of Respondent Nos.1, 2 and 3, on instructions (vide email dated 05.12.2023), states that the Central GST officials do not need any alert and have intimated this fact to Respondent No.5. Further, she points out that since the IGST refund in the present case concern exports, the State GST officials are neither involved nor concerned with this issue. Even Mr Nadkarni, the learned Counsel for the Petitioner, submits that the State GST officials are not at all concerned with this issue, and therefore, the incumbent officer must not delay the refund any further.

10. The communication dated 06.12.2023 addressed by the State GST officials nowhere state that they want the alert to continue against the Petitioner. This was in response to the query whether they wanted the alert to continue. Instead, they have left the matter to the Customs Department to take the necessary decision. In other words, even the State GST officials have stated that they are not directly concerned with this issue of IGST refund because, primarily, that is a matter between the Central GST officials, the Customs officials and the 5th Respondent. Based upon this communication, in all probabilities, the earlier incumbent holding the

position of the 5th Respondent gave instructions to the learned Senior Standing Counsel about lifting the alert against the Petitioner. This is the statement which was made and recorded in our order dated 12.12.2023.

11. Now, merely because there has been a change in the incumbent, we do not think that it is proper that the new incumbent again insists upon further clarification from the State GST officials as a precondition for lifting the alert. As it is, the Petitioners have had to take out these proceedings to secure the IGST refund, which was found due and payable to them. Upon lifting of the alert by the 4th Respondent, refunds to the tune of almost ₹4 crores were immediately credited to the Petitioner's account. There appears to be no justification to further delay the credit of the balance refund to the tune of ₹90,21,320/- in the Petitioner's account now that Respondent Nos.1, 2 and 3 have categorically stated that they do not wish the alert to continue against the Petitioner.

12. If the State GST wanted the alert to continue, they would have said so in their communication dated 06.12.2023. Besides, as submitted by Mr Nadkarni and supported by Ms Priyanka Kamat, these are matters of IGST refund on account of exports. Therefore, at least *prima facie*, the State GST officials would not have any role to play concerning these refunds. In times when efforts are on to promote the ease of doing business and to minimise official discretion, withholding refunds due to *prima facie* red tape should not be encouraged. Neither should the taxpayers nor the exchequer suffer for avoidable delays in such matters.

13. For all the above reasons, we direct the 5th Respondent to ensure forthwith that the alerts are removed consistent with the statement which was made by the learned Senior Standing Counsel and recorded by us in our order dated 12.12.2023. The 5th Respondent must also take necessary steps to ensure that the balance amount of Rs.90,21,320/- is processed in terms of the law and refunded/ credited into the Petitioner's bank account within a maximum of seven days from today. If this is not done, then the liability to pay interest on this amount will have to be saddled on the incumbent now holding the position of the 5th Respondent.

14. The Rule is made absolute in the above terms only as the rest of the amount is already received by the Petitioner in terms of the statement now made by Mr Nadkarni. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by
JOSE FRANCISCO
DSOUZA
DN: cn=JOSE FRANCISCO
DSOUZA, o=JUDGE