

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.9860 of 2020

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APEX FORMULATIONS PVT LTD

Versus

UNION OF INDIA

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Appearance :

UCHIT N SHETH for the Petitioner.

MR ANKIT SHAH for the Respondent No.1

PRIYANK P LODHA for the Respondent Nos.2,3

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CORAM: HONOURABLE MR. JUSTICE A.J.DESAI

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 22/02/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A. J. DESAI)

1. Rule. Learned advocate Mr. Priyank P. Lodha waives service of rule on behalf of respondents. With the consent of learned advocates appearing for the respective parties, the matter is taken up for final hearing today itself.

2. By way of the present petition under Articles 14 and 226 of the Constitution of India, the petitioner has prayed for the following reliefs :-

"A. This Hon'ble Court may be pleased to quash and set aside appellate order dated 1.5.2020 (annexed at Annexure A) passed by the Joint Commissioner of Central Tax (Appeals) and the original refund sanction order dated 26.3.2019 passed by the Assistant Commissioner, Central GST

may be restored;

B. It may please be held that refund was rightly sanctioned to the Petitioner by the Assistant Commissioner, Central GST;

C. In any case it may please be held that the petitioner is not liable to any interest under the GST Acts;

D. Pending notice, admission and final hearing of the petition, this Hon'ble Court may be pleased to restrain the Respondents from coercively recovering refund amount already released to the petitioner and interest thereon;"

3. In response to the notice issued by this Court, the respondents have filed affidavit-in-reply and opposed the grant of prayers as prayed for by the petitioner.

4. The short facts arise from the case are as under :-

5. That the petitioner is a Private Limited Company engaged in the manufacture and sale of medicines. The petitioner Company purchases raw material such as Ibrufen IP, Ciprofloxacin HCL IP, etc. on which the applicable tax rate under the GST Acts is 18%. The finished goods sold by the petitioner attracts tax rate of 12%. Further the petitioner also sells goods to exporters for which concessional rate of tax of 0.1% is applicable under Notification No.40/2017-CGST (Rate) and Notification No.41/2017-IGST (Rate)

dated 23.10.2017. Thus, the output tax rate of the petitioner is lower than the tax rate on inputs and the petitioner falls under inverted duty structure.

6. The petitioner exported certain goods through valid Exporter and, therefore, applied for refund under Rule 89(5) of the Central/Gujarat Goods and Service Tax Rules, 2017 in the prescribed format. The petitioner also submitted documents in support of the refund claim. The said application was sanctioned by an order dated 26.3.2019 sanctioning the refund of the petitioner. However, the CGST department being dissatisfied with the said refund order preferred an appeal against the said order on the ground that the Exporter had not mentioned the name and GST Identification Number of the present petitioner and was not mentioned in the shipping bill which was an essential condition of the aforesaid Notification. The said appeal came to be accepted vide order dated 1.5.2020.

7. Hence the present petition.

8. Mr. Uchit N. Sheth, learned advocate appearing for the petitioner would submit that it is true that through bonafide mistake, the Exporter to whom the goods were sold by the petitioner had not mentioned the name and GST Identification Number of the petitioner. However, subsequently, upon a request made by the petitioner, revised form was submitted by the Exporter. Therefore, the petitioner would be entitled for the refund granted by the Authority. He would further submit that though it was specifically brought to the notice of the Appellate Authority, the same has not been considered and, therefore, the matter is

required to be decided afresh by the Appellate Authority. He, therefore, would submit that the impugned order may be quashed and set aside and the matter may be remanded to the Appellate Authority.

9. On the other hand, Mr. Priyank P. Lodha, learned advocate appearing for the respondents has opposed this petition. He would submit that it is an undisputed fact that initially, the Exporter had not mentioned the name and GST Identification Number of the petitioner. Therefore, the lower Authority ought not to have granted refund in favour of the petitioner. He, therefore, would submit that the petition be dismissed.

10. We have heard learned advocates appearing for the respective parties. It is true that initially, the Exporter to whom the petitioner has sold the goods had not mentioned the name and GST Identification Number of the petitioner. However, the authority granted refund considering the factual aspect of the matter i.e. details about the goods sold by the petitioner to the Exporter and further transferred by the Exporter to the third party. It is also true that subsequently, at the request of the petitioner, correct form was submitted by the Exporter to the authority and, therefore, this aspect was required to be considered by the Appellate Authority which is essentially not done in the present case. Hence, we are of the opinion that the impugned order is required to be quashed and set aside.

11. Accordingly, the present petition stands allowed in terms of prayer 19 (A). The appeal filed by the CGST is revived. It would be open for the petitioner to file additional documents, if

any, along with an affidavit in support of its claim of refund before the Appellate Authority. The Appellate Authority shall decide the appeal afresh, without being influenced by the earlier order as well as by this order and decide the appeal after examining all the documents on record and giving an opportunity of hearing to the parties concerned. All issues are kept open before the Appellate Authority and the Appellate Authority shall decide all issues. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A. J. DESAI, J)

(NISHA M. THAKORE,J)

SAVARIYA

