

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 23798 of 2022**

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M/S. CHOKSI EXPORTS
Versus
UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
NOTICE SERVED for the Respondent(s) No. 1,2,7
PRIYANK P LODHA(7852) for the Respondent(s) No. 3,4
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 5,6
MR CB GUPTA(1685) for the Respondent(s) No. 8,9

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 03/02/2023

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)

1. This petition is filed under Article 226 of the Constitution of India, wherein, this Court, initially on 24.11.2022 issued the notice. After service of notice pursuant to the said order, learned advocates filed appearance on behalf of respondent nos.3,4,5,6,8 and 9. Though served, no appearance is filed for respondent nos.1,2 and 7.

2. Thereafter, on 18.1.2023, this Court passed the following order:

“1. Petitioner under Article 226 of the Constitution of India is seeking direction of the respondent to release the refund of IGST amounting to Rs.14,80,27,927.67/-, which is allegedly withheld illegally violating the provisions of section 54(6) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 read with Rule 91(1) of the Central Goods and Services Tax Rules, 2017 and Gujarat Goods and Services Tax Rules, 2017.

2. Petitioner is a partnership firm having its registered office in the State of Gujarat, which is engaged in the business of manufacturing and exporting of Organic pigments and is registered under the GST law.

3. The petitioner had been marked as “risky exporters”. On 10.12.2021, respondent No.9 visited the premises of the petitioner for physical verification. The petitioner has submitted all information as prescribed under Circular No.131/1/2020-GST dated 23.01.2020, vide email dated 17.01.2022. There are other compliance to be made, which have already been done and eventually the grievance of the petitioner was moved by way of a Grievance Application dated 15.06.2022.

4. Due to the pendency of the refund, the petitioner is facing huge financial crises and, hence, is before this Court

seeking following reliefs:

“25. In the aforesaid circumstances, the Petitioner most humbly pray before your Lordship:

(a) To issue the writ of mandamus or any other appropriate writ in the nature of mandamus writ, order or direction directing the respondents to disburse the refund of IGST along with applicable interest @ 9% p.a.

(b) Pending admission, hearing and till final disposal of this petition, as ad ad-interim relief, Your Lordships may be pleased to direct the respondents to grant provisional refund of 90% of refund amount claimed.

(c) To issue the writ of mandamus or any other appropriate writ in the nature of mandamus writ, order or direction directing the respondents to remove the tag of risky exporters.

(d) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

(e) To award Costs of and incidental to this application be paid by the Respondents;”

5. We notice that the affidavit-in-reply is filed on behalf of respondents No.5 and 6 indicating that the inquiry was initiated after the exporter had been suspended on

25.10.2021 as per the RMCC instruction. On his having been identified as “risky exporter” for grant of IGST refund, the same had been kept in abeyance, as is usually being done. Again, Level-1 inquiry had been conducted and that had also been cleared. The report also has been given to respondents No.8 and 9.

6. Issuance of the refund will be by Assistant Commissioner of Customs, respondent No.6 herein. The matter is pending with Respondent No.7, Director General, DGARM for issuance of no objection certificate. Learned counsel appearing for the respondent had requested for short time to seek instructions in this regard from respondents No.3 and 4. Let the same be filed on 25.01.2023.

7. Matter to be posted on 01.02.2023.”

3. Today, when the matter is called out, learned advocate Mr.Poddar for the petitioner, learned advocate Mr.Lodha for respondent nos.3 and 4, learned advocate Mr.Raval for respondent nos.5 and 6 and learned advocate Mr.Gupta for respondent nos.8 and 9 appeared and put up their submissions.

4. Learned advocate Mr.Poddar for the petitioner

submitted that inspite of various letters and reverting ITC along with interest and penalty, neither the respondent no.7 has replied back to the petitioner nor the name of the petitioner was removed from the list of risky exporters. He submitted that earlier the firm has exported various goods and had duly received the refund of IGST on those exports. However, since the firm has been marked as Risky Exporter by respondent no.7, the firm is not in receipt of the refund of IGST. He further submitted that because of the inaction on behalf of the respondents for refund, the working capital of the business is blocked and therefore the business is on the verge of shutting down its operations. He also submitted that the firm is suffering is financial loss of more than Rs.11 lacs per month as the petitioner has to pay interest for the working capital borrowings from the bank due to blockage of working capital on account of delay in receiving the IGST refunds.

4.1 Referring to the relevant provisions of the Central Goods and Services Tax Act ('CGST' for short), he submitted that the refund of ISGT amounting to Rs.14,80,27,927.67 ps. which is withheld is in violation of

provisions of Section 54(6) of the CGST Act and GGST Act read with Rule 91(1) of the CGST Rules and the GGST Rules. He submitted that Section 54(6) of the CGST Act and Rule 91(1) of the CGST Rules proclaims that the respondents are bound to issue the refund of 90% of the amount claimed by the registered person within 7 days from the date of acknowledgment of refund application except in the case where the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees. He submitted that in the present case, the petitioner has filed shipping bills for all the exports and the petitioner is not prosecuted for any offence under the Act under any existing law and therefore, the concerned officer has to issue 90% of refund within seven days from the date of shipping bill, however, the same has not been done and more than one year has elapsed in some exports.

4.2 He further referred to Rule 96(4) of the CGST

Rules and submitted that the refund can be withheld by the respondents only if a request has been received from the jurisdictional Commissioner of central tax and export of goods or services due to the person claiming refund in accordance with the provisions of Section 54(10) or 54(11) of the CGST Act or if the proper officer of the customs determine that the goods were exported by the registered person violating the provisions of the Customs Act, 1961. Learned advocate for the petitioner submitted that though the case of the petitioner does not fall under any of the above Sections 54(10) or 54(11) of the CGST Act, the refund is withheld by the respondents, which action is arbitrary in nature.

4.3 Learned advocate has further referred to the Circular No.131/1/2020-GST dated 23.1.2020 issued by the respondent no.2 which prescribes the procedure to be followed by the exporters as Risky exporters and as a part of that, the petitioner already submitted few details and documents on 17.1.2022 and the report should have been furnished to the Chief Commissioner of Central Tax within 30 days who will forward the same to RMCC within five days i.e. the report should have been

furnished on or before 17.2.2022. However, in the present case, as mentioned under the reply of the CPGARM, report has been forwarded on 12.4.2022. He submitted that the respondent no.7 should have refunded the IGST withheld on receipt of the report. However, the respondent no.7 has not refunded the same and violated the norms of the circular as well.

4.4 Lastly, he relied on the decision of the Telangana High Court in the case of Bhagyanagar Copper Private Limited V/s The Central Board of Indirect Tax & Customs & Ors. In W.P.No.15804 of 2021, more particularly, on paragraph 21 of the same and submitted that in similar facts, the Telangana High Court has passed the order of refunding the IGST withheld of the petitioner therein. He, therefore, prayed to allow this petition and direct the respondents-authorities to refund the IGST withheld by them.

5. *Per Contra*, learned advocates Mr.Raval referred to the affidavit-in-reply filed on behalf of respondent nos.5 and 6 and submitted that the inquiry

was initiated against the exporter had been suspended on 25.10.2021 as per the RMCC instruction. He submitted that on the petitioner being identified as 'risky exporter' for grant of IGST refund, the same has been kept in abeyance. He submitted that again Level-1 inquiry was conducted and that has also been cleared and the report is already given to respondent nos.8 and 9 herein. He further submits that on the basis of the verification report of the jurisdictional CGST officer, the DGARM issued NOC and the office of respondent nos.5 and 6 can revoke the suspension only after the receipt of NOC from DGARM, New Delhi-respondent no.7 herein and after the suspension is revoked, the Customs Automated Systems will automatically disburse all the pending IGST refund of the exporter.

6. Learned advocate Mr.Gupta for respondent nos.8 and 9 referred to the affidavit-in-reply filed by respondent nos.8 and 9 and submitted that the name of the petitioner was forwarded by respondent no.7 for verification of credentials. After following the procedure of verification in terms of the relevant circular, initially negative verification report was sent to respondent no.7

on 15.2.2022. Thereafter, after detailed verification along with the supporting documents, as the petitioner paid the Input Tax Credit along with interest and penalty and the investigation was concluded, a positive verification report was sent to respondent no.7 on 12.4.2022. Thereafter, again the name of the petitioner appeared as 'risky exporter' and a positive verification report was sent to respondent no.7 on 7.7.2022. Thereafter, on an e-mail sent by respondent no.7 along with the representation made by the petitioner indicating that the petitioner has voluntarily reversed Input Tax Credit of Rs.11,55,726/- along with interest and penalty, the same was verified and a positive report was sent on 12.10.2022 to the respondent no.7. Learned advocate Mr.Gupta submitted that as the petitioner has availed wrong Input Tax Credit, his refund is withheld and therefore this petition be dismissed.

7. Though served, no appearance is filed on behalf of respondent no.7.

8. We have considered the submissions canvassed

by learned advocates for the parties and having gone through the documents produced on record. The petitioner purchased the goods from Sayan Greemochem Private Limited who had purchased goods from Prince Chemicals, who is placed in the list of L2 risky supplier and therefore the IGST refund of the petitioner was withheld on the ground of availing of wrong ITC by the petitioner. It is, however, found from the record that the petitioner has reversed the Input Tax Credit of Rs.11,55,726/- along with penalty and interest towards the said goods purchased. Further, none of the provisions of the CGST Act and the IGST Act mandate the petitioner to verify the genuineness of the suppliers of the supplier, even though safeguards is provided to recover the taxes, if not paid or wrongly availed by the petitioner's supplier or supplier's supplier. In this case, the supplier's supplier is placed in the list of L2 risky supplier and even then, with a hope to get the IGST refund, the petitioner has paid the ITC, but still the refund is not processed and given to the petitioner.

9. Further, the respondents ought to have granted the provisiosnl refund to the extent of 90% as provided

under Section 54(6) of the CGST Act read with Rule 91 of the CGST Rules, which the respondents failed to do so. Even after submission of the positive verification report to the respondent no.7, the respondent no.7 herein has not issued the NOC for issuing the refund and even after issuance of notice and adjourning the matter on some occasions, there is no representation on behalf of respondent no.7. In this case, the petitioner has filed shipping bills for all the exports and the petitioner is not prosecuted for any offence under the Act or under the existing law and has also reversed the ITC, therefore, there is no point for the respondents herein to withheld the refund.

10. In the case of *Bhagyanagar Copper Private Limited* (supra), the Telangana High Court has observed in paragraph 21 as under:

“21. Even if the claim of the respondents as to non-completion of verification of suppliers of the petitioner up to two levels is to be accepted, since, the proportion of such suspicious suppliers, the respondents ought to have granted provisional refund to the extent of 90% as provided under

Section 54(6) read with Rule 91 of the CGST Rules, which the respondents failed to do. Further, it is also to be seen that in the verification report submitted with regard to L1 suppliers submitted by the jurisdictional authorities to the 5th respondent, none of the L1 suppliers of the petitioner, from whom it had purchased goods by paying applicable taxes under the GST law, are found to be suspicious. If the suppliers of the petitioner are found to be genuine, the petitioner is entitled to claim credit of the taxes paid on such purchases effected.”

11. Considering the provisions of law and the judgment referred to above of the Telangana High Court in connection with the facts of the present case, we allow this petition partly. The respondents-authorities are directed to grant the amount of IGST refund to the petitioner, as claimed by the petitioner as provided under Section 54(6) of the CGST Act r/w Rule 91 of the CGST Rules and credit such amount to the petitioner's account within a period of three weeks from the date of receipt of copy of this order.

(SONIA GOKANI, J)

(SANDEEP N. BHATT,J)

SRILATHA