

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13427 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR.JUSTICE D.N.RAY**

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Approved for Reporting	Yes	No
		No

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KUEHNE PLUS NAGEL PRIVATE LIMITED**Versus****UNION OF INDIA & ORS.**

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Appearance:**MR PRAKASH SHAH, LD.SR.ADV WITH MR DHAVAL SHAH(2354) for the
Petitioner(s) No. 1****MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,4****NOTICE SERVED for the Respondent(s) No. 3**

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR.JUSTICE D.N.RAY****Date : 26/03/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr.Prakash Shah with learned advocate Mr.Dhaval Shah, learned advocate Mr.Mihir Mehta and learned advocate Mr.Suyog Bhavé for the petitioner and learned advocate Mr.Ankit Shah for the respondents.

2. **Rule** returnable forthwith. Leaned advocate Mr.Ankit Shah waives service of notice of rule for and on behalf of the respondents.

3. Having regard to the controversy in narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for hearing.

4. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

“a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof

be pleased to quash and set aside the impugned order dated 10.06.2024 passed by the Respondent No. 3 (ANNEXURE "A");

(b) this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to forthwith sanction the refund of Rs.1,82,99,406 as claimed by the Petitioner along with the appropriate interest;

(c) pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents by an interim order and injunction to forthwith deposit an amount of Rs. 1,82,99,406 in this Hon'ble Court with a liberty to the

Petitioner to withdraw the same, without prejudice to the Petitioner's right of refund of the actual amount along with appropriate interest;

(d) for interim relief in terms of prayer (c) above; and

(e) for costs of the Petition;

(f) for such further and other reliefs, as this Hon'ble High Court may deem fit and proper in the nature and circumstances of the case."

5. The brief facts of the case are as under :

5.1. The petitioner is a company incorporated and registered under the Companies Act, 1956 and is engaged in the business of providing services with regard to international and domestic transportation of customer's goods, clearance, warehousing and allied services.

5.2. The said services, when supplied by the petitioner to customers outside India, qualifies as export of services in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 and considering the business model of the assessee, the RBI has granted permission to operate on a clearing account basis with its other offices worldwide and an in-principal approval to the petitioner both Sea and Air Cargo consolidation through the petitioner's clearing system on a monthly basis at pan-India level meaning thereby that the RBI has permitted the petitioner to receive foreign currency on exports after netting off any payments in foreign currency on a monthly basis on the following conditions:

(i) In case of a shortfall in the

minimum credit balance i.e. Rs.12 lakhs, in favour of the petitioner, their Hamburg office will have to replenish it immediately, as also the discrepant amount, if any found by the bankers and/or Reserve Bank will have to be repatriated to India.

(ii) The petitioner will have to submit No Objection Certificate from the Income Tax Authorities on a monthly basis, in respect of the amounts payable which, though not remitted, are duly accounted for by the Petitioner.

5.3. It is the case of the petitioner that the petitioner has duly complied with the above conditions and the aforesaid fact of the approval/permission by the RBI is also not in dispute and also admitted at paragraphs 7(ii)

and 8 of the impugned order.

5.4. The mechanism of receipt of foreign currency by the petitioner in compliance with the above RBI approval is summarized below:

(i) The petitioner has a receivable of export proceeds from its group entities across the globe and also has payable of forex payments to its group entities across the globe.

(ii) Therefore, the petitioner's worldwide group follows a common clearing mechanism since the year 1997.

(iii) Through the said common clearing mechanism, the petitioner receives the consideration in foreign currency net of the payments required to be made by the petitioner to its overseas group

entities on a pan-India level.

(iv) The RBI has accorded its approvals dated 30.09.1997 and 24.12.1997 to the said common clearing mechanism.

(v) For example, if during a month the petitioner has a receivable of USD 1,000 and payable of USD 800, in terms of the RBI approval, the petitioner is allowed to set off the amount payable with the amounts receivable and bring into India a remittance of USD 200.

(vi) Accordingly, though on a pan-India level the receipt is USD 1000, the petitioner actually brings in a foreign currency of USD 200 only which also reflects in the EEFC bank account statement and the petitioner receives Inward Payment Customer Advice from its

Bank for USD 200 received in India.

(vii) The net amount received by the petitioner is also certified by an independent Chartered Accountant post verification of the underlying documents on a monthly basis and the petitioner is required to submit the said certificate to authorized bank on behalf of RBI on a monthly basis.

5.5. In the normal course of business, the petitioner exports services without payment of GST under the cover of Letter of Undertaking and consequently, the ITC pertaining to inputs and input services procured and utilized in the export of services remains unutilized. Accordingly, in terms of Section 54 of the Central Goods and Services Tax Act, 2017 (for short 'the GST Act') read with Section 9 of the

Integrated goods and Service Tax Act, 2017 (for short 'the IGST Act') and Rule 89 of the Central Goods and Services Tax Rules, 2017 (for short 'the GST Rules'), the petitioner is eligible for refund of the said unutilized ITC.

5.6. It is the case of the petitioner that for the period from April 2021 to June 2021, the petitioner filed a refund application claiming refund of Rs.1,82,99,406 of the unutilized ITC on 03.03.2023 on the GST common portal under ARN No.AA240323012029U along with all requisite documents.

5.7. Vide Acknowledgment dated 17.03.2023 issued in Form RFD-02, the respondent No.4 acknowledged the receipt of the refund application filed by the petitioner along with all documents. Subsequently, the respondent

no.4 directed the petitioner to furnish copies of certain input invoices and a reconciliation of the turnover figures as per Form GSTR-1 vis-a-vis Form GSTR-3B as disclosed by the petitioner in Statement 3.

5.8. Vide Emails dated 24.03.2023 and 12.04.2023, the petitioner submitted the said documents/ information sought for by the respondent No.4.

5.9. Subsequently, vide show-cause notice dated 26.04.2023 issued in Form GST RFD-08, the petitioner was called upon to show cause as to why the refund claim of Rs.1,82,99,406 should not be rejected owing to certain alleged discrepancies referred therein.

5.10. It is the case of the petitioner that the petitioner is unable to access Form GST RFD-08 on the GST common portal and only the

Annexure to GST RFD-08 is available.

5.11. On 01.05.2023, the petitioner filed its detailed response to the show-cause notice in Form GST RFD-09 on the GST common portal along with the relevant documents. As regards the requirement of FIRCs, the petitioner pointed out that in terms of the RBI approval, it was receiving foreign currency on monthly net off basis at pan-India level and due to the said clearing mechanism, the FIRAs received and submitted by the petitioner displayed the net amounts received by the petitioner on a pan-India level.

5.12. It is further the case of the petitioner that during personal hearing on 02.05.2023, the petitioner submitted another Certificate from an independent Chartered Accountant certifying the quantum of foreign currency

received for the State of Gujarat for the relevant period as a part of the common clearing mechanism. However, vide Order bearing Ref. No.ZG2405230109575 dated 08.05.2023 issued in Form GST RFD-06, the respondent No. 4 rejected the refund claim of Rs.1,82,99,406/- filed by the petitioner for the period from April, 2021 to June, 2021 and held that the petitioner had not submitted FIRC's relevant to the export invoices in terms of Rule 89(2)(c) of the CGST Rules and that the Petitioner has submitted the Chartered Accountant Certificate providing details of the foreign currency received in respect of export of services from Gujarat without submitting the supporting documents and therefore, the petitioner submitted another Certificate from an independent Chartered Accountant with a detailed reconciliation of

the forex receivable and forex payable for pan-India level for the relevant period in order to substantiate that the export invoices issued from the State of Gujarat form a part of the clearing amount received by the petitioner along with list of the export invoices.

5.13. Being aggrieved by the aforesaid order, the petitioner preferred an Appeal in Form GST APL-01 before the respondent No.3 on 13.07.2023 under Section 107 of the CGST Act.

5.14. On 31.10.2023, a personal hearing was granted to the petitioner which was attended by the authorized representatives of the petitioner, who explained the facts and reiterated the submissions made in the Appeal and submitted that the petitioner had received foreign remittances on a net-off basis in

terms of the approval accorded by the RBI to its common clearing mechanism and further submitted that the Chartered Accountant Certificates submitted by the petitioner sufficiently prove the receipt of foreign currency in respect of the export of services from the State of Gujarat.

5.15. It is the case of the petitioner that vide letters dated 02.11.2023 and 16.01.2024, the petitioner made additional written submissions in support of the contention that refund is admissible even in case of receipt of foreign remittances on net-off basis and subsequently, on 24.01.2024, another personal hearing was conducted by the respondent No.3, which was attended by the authorised representatives of the petitioner who explained the facts and reiterated the submissions made in the Appeal. It is the case

of the petitioner that during the course of the said hearing, the respondent No.3 directed the petitioner to provide a confirmation / certificate from the bank that the foreign exchange in respect of the subject export invoices has been received by the Petitioner and vide Email and letter dated 07.02.2024, the petitioner filed additional written submissions in support of its Appeal. The petitioner also furnished the certificate from Bank certifying that the petitioner had received the convertible foreign exchange equivalent to Rs.95,66,94,717 in April to June 2021 after netting off on a pan-India level and that the said amount included receipts towards exported invoices issued from the State of Gujarat, however, the respondent No.3 passed the impugned order dated 10.06.2024. Being aggrieved and dis-satisfied with the

impugned order, the petitioner preferred this petition.

6.1. Learned Senior Advocate Mr.Prakash Shah for the petitioner submitted that the petitioner has fulfilled all the conditions for eligibility of the refund claim and therefore, both the authorities below could not have rejected the same on the ground of procedure.

6.2. It was submitted that the petitioner was entitled to the refund as the petitioner has realised the net foreign exchange after net-off of the amount to be received from import of the foreign services and accordingly, the petitioner qualifies for the refund for supply of export of services as defined in Section 2(6) of the IGTS Act.

6.3. It was further submitted that the

respondent-Authorities have not disputed that the petitioner has fulfilled the substantial conditions under the law and only on the ground that the petitioner failed to produce Foreign Invert Remittance Certificate (FIRC) and has submitted only the foreign inward receipt issued by the Standard Chartered Bank, the refund claim of the petitioner was rejected.

6.4. It was therefore submitted that when the factum of export of services is not disputed and petitioner has complied with all the norms and requirements of the refund and the refund application is filed without receiving any deficiency memo, the respondent-Authority could not have rejected the refund claim only on the technical and procedural ground relying upon the Circular No.125/44/2019 issued by the Central Board of Indirect Taxes and Customs

(for short 'the CBIC'). It was further submitted that as per the terms of Section 2(6)(iv) of the IGST Act, the condition of export of service is that such service has been received by the supplier of service in convertible foreign exchange and there is no dispute that the petitioner has received the convertible foreign exchange.

6.5. Reliance was placed on the Certificate issued by the Reserve Bank of India for netting off of the receipts and payments in foreign exchange by the petitioner and to operate on a clearing account on monthly basis with the other worldwide offices of the petitioner-Company. It was submitted that in-principal approval granted by the RBI to the petitioner for both Sea and Air Cargo Consolidation through the clearing system of the petitioner on monthly basis at pan-India

level is not disputed by the respondent-Authorities and therefore, the respondent-Authorities have committed an error in rejecting the refund claim of the petitioner.

6.6. It was submitted that the petitioner in the facts of the case has received the entire consideration and then remitted the part of the same outside India and in such circumstances, the respondents would not have any objections as the FIRC in such cases would have been received, however, when the petitioner has received the net foreign exchange by netting off of the payment and receipt on a clearing account basis, the respondent-Authorities were bound to consider the Chartered Accountant Certificate certifying such transactions of the net receipt of the foreign exchange by the petitioner-Company.

6.7. It was further submitted that the refund ought not to have been denied only on the ground of non-submission of FIRC corresponding the value of export of services reflected in the invoices in the facts of the case.

6.8. It was therefore submitted that the impugned order passed by the respondent-Authority rejecting the refund claimed by the petitioner by literal reading of the Circular No.125/44/2019 dated 18.11.2019 issued by the CBIC is liable to be quashed and set aside and respondent-Authorities may be directing to process the refund application of the petitioner in accordance with law.

7.1. On the other hand, learned advocate Mr.Ankit Shah submitted that the respondent-Authorities have rejected the refund claim relying mainly on the Circular No.125/44/2019

issued by the CBIC under which the petitioner was required to enclose FIRC with refund claim. It was pointed out that it is an admitted fact that the petitioner has not provided the FIRC to the respondent-Authority and to the either of the Adjudicating Authority and has not taken the cognizance of the essential condition and filed the refund claim of the huge amount without complete documents and therefore, in absence of the requisite documents as required under the Circular 125/44/2019 issued by the CBIC, the refund claim was rightly rejected.

7.2. It was further submitted that the petitioner has remained careless in compliance of the requisite requirement of submitting the documents in form of FIRC and therefore, the claim made by the petitioner without providing the requisite documents is rejected. It was

pointed out that the Appellate Authority has also taken into consideration the documents and the submissions made by the petitioner and thereafter, considering the same has passed the detailed reasoned order to reject the claim of the petitioner relying upon the circular NO.125/44/2019 wherein, it is mentioned that all applications for refund should be accompanied with the documents/statements/undertakings/certificates as details vide Annexure A of the said Circular.

7.3. It was submitted that on perusal of the Annexure A of the Circular, it appears that Serial No.1 provides for the details of the type of refund, declaration/statement/undertaking/certificate to be submitted online and BRC/FIRC in case of the export of services. It was therefore pointed out that

the petitioner has failed to provide the prescribed documents required in terms of the CBIC Circular and therefore, reliance placed on the Certificate of the Chartered Accountant is rightly not accepted by the respondent-Authorities.

7.4. It was therefore submitted that in absence of the requisite documents submitted by the petitioner, no interference may be made in the impugned orders passed by the respondent-Authority rejecting the refund claim of the petitioner.

8. Having heard the learned advocates for the respective parties and considering the facts of the case as well as the material placed on record, it appears that the Reserve Bank of India by letter December 24, 1997 has granted the for both Sea and Air Cargo consolidation

through clearing system of the pan-India Basis to the petitioner. It also appears that the petitioner has provided the following documents along with the refund claim :

Annexure	Particulars
A	ARN and Form GST RFD-01 generated online
B	Table for computation of Export Turnover i.e. Statement 3 as per Rule 89(4) of CGST Rules
C	Statement of input tax credit availed during the Relevant period (as per the format prescribed in Circular No 135/05/2020-GST dated 31 March 2020)
D	Copy of System Generated Excel Sheet of GSTR 2A
E, F, G, H	<ul style="list-style-type: none"> • Approval from Reserve Bank of India • Below mentioned documents on a monthly basis • A certificate from a Chartered Accountant provided to RBI certifying the net amount to be received by KN India on a monthly basis; • Extract of EEFC bank statement reflecting the receipt of the amount mentioned in the CA certificate

	<ul style="list-style-type: none">• FIRCs for the above amount received during April to June 2021
I	Input tax credit considered for GST Refund post excluding ITC on Capital Goods

9. The above documents were filed along with the refund claim application, however, both the Adjudicating Authority and the Appellate Authority have discarded the same only on the ground that the petitioner did not submit the Foreign Exchange Inward remittance Certificate (FIRC) as required by the Circular No.125/44/2019 which reads as under :

“3. With effect from 26.09.2019, the applications for the following types of refunds shall be fled in FORM GST RED 01 on the common portal and the same shall be processed electronically:

a. Refund of unutilized input tax credit (ITC) on account of exports

without payment of

b. Refund of tax paid on export of services with payment of tax;

c. Refund of unutilized ITC on account of supplies made to SEZ. Unit/SEZ Developer without payment of tax;

d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;

e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

f. Refund to supplier of tax paid on deemed export supplies;

g. Refund to recipient of tax paid on deemed export supplies;

h. Refund of excess balance in the electronic cash ledger;

i. Refund of excess payment of tax;

j. Refund of tax paid on intra-

State supply which is subsequently held to be inter-State supply and vice versa;

k. Refund on account of assessment/provisional assessment/appeal/any other order;

l. Refund on account of "any other" ground or reason.

4. The following modalities shall be followed for all refund applications filed in FORM GST RFD-01 on the common portal with effect from 26.09.2019:

a. FORM GST RFD-01 shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above. This shall entail filing of statements/ declarations/ undertakings which are part of FORM GST RFD-01 itself, and also

uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list-of such documents is provided at Annexure-A and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall be available on the common portal where four documents, each of maximum SMB, may be uploaded along with the refund application. Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the

jurisdictional proper officer.

b. The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking/statements/ invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

c. As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be

deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application (FORM GST RFD-02) or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

d. If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.

e. It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officers) authorized by him."

10. It appears that Annexure A referred to in

the aforesaid paragraph requires statement-3 under the Rule 89(4) of the CGST Rules along with supporting documents to be additionally uploaded containing the BRC/FIRC in case of the export of services. The petitioner along with the refund application dated 16th February, 2023 has also submitted the Statement-3 for the period from April, 2021 to June, 2021 giving all invoice details and the BRC details which runs from page Nos.58 to 165 of the paper book.

11. The respondent-Authorities have rejected the aforesaid information and the details and documents submitted by the petitioner and only on the ground that the petitioner has not filed FIRC, and rejected the refund claim of the petitioner.

12. The Hon'ble Supreme Court in case of

Union of India Versus Mangal Textile Mills Private Limited reported in ***2011 (269) E.L.T. 3 (S.C.)*** has held that the Certificate issued by the Chartered Accountant is required to be considered by the Authority as an authentic document and in the facts of the case when the Chartered Accountant has issued the Certificate, the respondent-Authorities bound to take into consideration the same. The Certificate issued by the Chartered Accountant dated 21.06.2022 reads as under :

“This is to certify that we have examined the Books of accounts of M/s Kuehne + Nagel Private Limited, B-1/1018, Vasant Kunj, New Delhi-110070 and all other relevant records for receivable amount EUR 1,41,15,369.25 and payable EUR 89,56,472.45 for the month of March 2021 as per KN Clearing system and having fully satisfied our

self we confirm that our client has received EUR 51,58,896.80 after net off amount and the same is covered under RBI approval No. EC.CO.EPD /27/21.04.02 (00) 97-98 dt 30.09.97 and subsequent amendment EC.CO.EDP/579/21.04.02 (00)/97-98 dt 24.12.97.

This is further to certify that the said receivable and payable amount has been verifier with reference to copy of prepaid Master Airway Bill Master Bill of lading together with original relative house Airway Bill/House Bill of lading (charge collect basis as cargo manifests, invoices from overseas consolidators and importer declaration on DIC certificate and has been found correct."

13. On perusal of the above certificate, it is clear that the petitioner has received the

convertible foreign exchange for the export of the services and therefore, only on the ground that the petitioner has submitted the FIRC as required by the Circular No.125/44/2019 issued by the CBIC, the respondent Authorities were not justified in rejecting the refund claim.

14. In view of the foregoing reason, the petition succeeds and accordingly, allowed. The impugned order dated 10.06.2024 is hereby quashed and set aside. The respondent-Authorities are directed to process the refund claim of the petitioner filed on 16th February, 2023 in accordance with law without insisting for FIRC as required by the Circular No.125/44/2019 and accepting the Certificate issued by the Chartered Accountant for receipt of the net foreign exchange received by the petitioner as per the in-principal approval granted by the Reserve Bank of India to the

petitioner for realisation of foreign exchange for export of services.

15. Such exercise shall be completed within a period of twelve weeks from the date of receipt of the copy of this order. Rule is made absolute to the aforesaid extent with no orders as to cost.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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