

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14649 of 2022

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AARTOS INTERNATIONAL LLP (FORMERLY AZUVI INTERNATIONAL LLP)
Versus
DEPUTY COMMISSIONER (CUSTOMS)

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Appearance:

MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 02/12/2022

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This petition is preferred seeking to question the action of the respondent authority in non-issuance of the refund of Integrated Goods and Services Tax ('the IGST' hereinafter) along with the interest.

2. The petitioner is a Limited Liability Partnership Firm having LLP No.AAM-1202 and is engaged in trading of Ceramics and

Tiles. Assessee was formerly known as Azuvi International LLP and has changed its name to Aartos International LLP from 08.04.2019. The name updation was intimated to the Bank and all the relevant government departments including GST, Income Tax, ROC and Customs.

3. The petitioner exported the goods in the month of February and March 2020 and shipping bills along with GSTR-3B and GSTR-1 for substantiation of this averment are forming the part of the record. It is averred by the petitioner that out of three export invoices, the refund has been received of IGST paid at the time of export of Rs.20.45 Lakh (rounded of). On three invoices being invoice Nos.E54/2019-20,

E67/2019-20 and E68/2019-20 dated 08.03.2020 and the duty drawback of all the three invoices also had been received on 27.02.2020 and 04.04.2020.

3.1 The petitioner since did not receive the refund of the IGST paid on export invoice No.E54/2019-20 dated 06.02.2020 of Rs.19,94,994/-, it had attempted to approach the department. As there is a portal of Department of Administrative Reforms and Public Grievance ('the CPGRAMS' hereinafter) on 14.02.2022, however for two months, there was no response. The matter was disposed on 13.05.2022.

4. In view of the direction received from PFMS, Customs Mundra has forwarded various emails requesting ICEGATE (System) to push the said shipping bills in Scroll PC menu so that same can be processed as per ICES advisory

18/2020(IGST Refunds). Further, Customs Mundra is in touch with the NIC team and requesting them to look into the matter and resolve the matter at the earliest.

5. In addition to this, the exporter is also advised to contact ICEGATE at the Helpdesk No.1800-3010-1000 or icegatehelpdesk@icegate.gov.in requesting ICEGATE (System) to push the said shipping bills in Scroll PC menu.

In view of above, the grievance stands disposed of.”

The communication received thereafter from the CPGRAMS.

4. It is the say of the petitioner that the provision of Sections 16 and 54 of the IGST Act and Rule 96 of the CGST Rules if are considered, then the amount claimed as refund would become due to the petitioner and an order need to be passed by the respondent sanctioning 90% of the amount claimed in Form RFD-04 within a period of

not exceeding 07 days from the date of acknowledgment received. The refund applications as per Rule 96 of the CGST Rule, 2017 are the payment of tax and shipping bills once the goods are imported with payment of tax. However, the respondent had not issued the order and hence, this petition with the following prayers:

“5...

a. A Writ of Certiorari or any other Writ, order or direction in the nature of Certiorari directing the respondent to issue the refund of IGST paid for the amount of Rs.19,94,994/- along with interest u/s 56 of the CGST Act, 2017 @ 6% p.a. till payment of refund amount on export of goods having Shipping Bill number 1218425 dated 06.02.2020;

b. Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;

c. Any other and further relief deemed just and proper be granted in the interest of justice;

d. To provide for the cost of this petition."

5. We have issued the notice to the other side.

6. Affidavit-in-reply on behalf of the respondent is indicative of the fact that the processing of the refund claim is the automatic process. Indian Customs EDI System ('the ICES' hereinafter) has an in built mechanism to automatically grant refund after validating the shipping bill data available in ICES against the GST Returns data transmitted by the GSTN. If the necessary matching is successful, then ICES shall process the claim for refund and relevant amount of IGST paid with respect to each shipping bill or bill of export

shall be electronically credited to the petitioner's Bank account registered with the customs authority in accordance with Rule 96 of the CGST Rules, 2017.

6.1 It is the say of the respondent that so far the shipping bill No.1218425 dated 06.02.2020 is concerned, the petitioner M/s.Aartos International having IEC No.ABLFA3460C wherein the petitioner has stated that they have not received the IGST refund and the shipping bill was processed that INMUNI for payment of IGST and IGST refund was scrolled out vide IGST Scroll No.22323 of 2020 dated 11.04.2020. However, the said shipping bill was showing as "Permanent Cancellation by PAO for transaction" as per ICEGATE Scroll status.

The same appears to have not been paid by HDFC Bank on account of mismatch in the name of the petitioner's firm.

6.2 It is further the say of the respondent that the procedure for sanction of such refund has been made electronic as per the ICES advisory 18/20 (IGST refunds) wherein it is stated that certain payments of IGST refunds, while having scrolled out by the customs officer and successfully transmitted to Bank by PFMS (Public Financial Management System) may get rejected at the Bank, these are called 'Failed after Success' cases. Such cases are transmitted back by PFMS as permanently cancelled should be available in 'SCROLL_PC' menu for reprocessing. The same

shipping bill was reprocessed as per ICES advisory on 01.07.2020 and PC Scroll No.24693/2020 dated 01.07.2020 was generated for the account No.259898092843. However, it was informed that the petitioner still had not received the IGST Refund Scroll in the said Bank Account.

6.3 It is the say of the respondent that *“since the process of sanction of refund claim is automatic and system driven, as and when the Shipping Bill will be available again in Scroll PC; the same will be taken up for processing for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of Export shall be electronically credited to the petitioner’s Bank account.”*

7. We have heard the learned advocates on both the sides. What could be gathered from the entire detail is that out of three

export invoice Nos. E54/2019-20, E67/2019-20 and E68/2019-20, the refund of IGST paid on the export invoice for the two of them had been received already for the month of February and March 2020. It is not disputed that the petitioner had exported the goods, the invoice copies and the shipping bills along with GSTR-3B and GSTR-1 have been tendered. It is also the case of the petitioner that he has received the refund for E67/2019-20 and E68/2019-20 in his official Bank whereas the refund of IGST paid on export invoice E54/2019-20 dated 06.02.2020 to the tune of Rs.19.94 Lakh (rounded of) has not been received.

7.1 The affidavit-in-reply does not dispute anything except the fact that there could a

possibility of time change in the name however, for the very time period when two of the invoices have been processed and the refund has been received in the very Bank account by the petitioner, there is no reason as to why because of the change in the name which had been communicated to the department in the month of April 2019, this particular refund is missed out.

7.1 It also emerges from the affidavit-in-reply that there is an in built mechanism to automatically grant refund after validating the shipping bill data available in ICES against the GST returns data transmitted by GSTN. According to the respondent, the ICES is being processed after the necessary matching is found

successful and the relevant amount of IGST paid with respect to each shipping bill or the bill of export is electronically credited to the petitioner's Bank account registered with the customs authority in accordance with Rule 96 of the CGST Rules.

7.2 Apt would be to refer to the provision of Sections 15 and 16 of IGST along with Rule 96 of the CGST Rules, 2017:

“Section 15: The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed. Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Section 16: (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:--

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Rule 96: Refund of integrated tax paid on goods [or services]¹⁷⁶exported out of India.-(1) The shipping bill filed by [an exporter of goods]¹⁷⁷ shall be deemed to be an

application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:- (a) the person in charge of the conveyance carrying the export goods duly files [a departure manifest or]178 an export manifest or an export report covering the number and the date of shipping bills or bills of export; and (b) the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR3B, as the case may be;

(2) The details of the [relevant export invoices in respect of export of goods]179 contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

[Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished

under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.]

(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, [the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the

applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

[(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89]

[[[(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017- Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export

Promotion Capital Goods Scheme.]

[Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.]”

8. It is quite clear from this that when Section 54(6) of the CGST read with Section 91(2) of the CGST Rules, the amount is required to be refunded and it is the respondent's obligation to make an order sanctioning 90% of the amount claimed in Form RFD-04 within a period of seven days from the date of acknowledgment received. There are no separate applications for the refund. The shipping bills are deemed to be refund applications when the goods are exported with payment of tax.

9. Admittedly, in the present case, it appears to be the difficulty at the end of the GST network or some error in the software itself which would require a cure. When nothing is being disputed and for two of the tax invoices the refund has already been credited in the account of the petitioner, this appears to be a short coming of the software itself. Everything since is being done electronically and this automatically grant of refund after validating the shipping bill data available in ICS against the GST returns, data transmitted by GSTN, if there is any difficulty at the level of the mismatch or the processing of the claim of the refund, it becomes a duty of the GSTN to look into the same. Finding fault with the officer

concerned also will not help as they are largely dependent on the network. It is good to be driven through the machines in this electronic age and this automatic grant of refund which is system driven rather than the officer driven at the same time unless there is a constant vigil on the part of the GSTN and also an endeavor to rectify the mismatch or the shortcomings of the software, the issues are bound to multiply.

10. We are constrained to observe this as in many of the matters we notice that on one hand there is laudable objectives of making it all system driven and on the other hand the limitations of the system which are otherwise required to be

addressed to at the level of the GSTN. There is some kind of apathy. We, would, therefore, also recommend that if the authority concerned deems it appropriate, let there be a direct communication also with the GSTN in the portal itself which could be also response based. Therefore, instead of the individual department pleading through their senior through the GSTN, the Assessee of those consultants and others could communicate with the GSTN on portal if a feature like **"MAY I HELP YOU"** is created by the authority on due deliberation or through the **"Grievance Reddresal Mechanism"**. Essentially, this is for the purpose of lessening the Court work also as per such details the Assesseees are not to be dragged to the Court when in fact

there is nothing for the Court to adjudicate except pointing out to the limitation of the software of the respondent department.

11. With this direction, the petition is **ALLOWED**. Let the refund of IGST be paid for the amount of Rs.19,94,994/- with interest at the rate of 6% and with all consequential benefits within a period of two weeks from the date of receipt of a copy of this order.

12. Over and above the regular mode of service, direct service through e-mode on official email address is also permitted.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

M.M.MIRZA