IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5072 OF 2022

Venus Jewel … Petitioner

Versus

1. Union of India, through its Department of Revenue
2. Central Board of Indirect Taxes and Customs
3. Chief Commissioner of GST & Central Excise, Mumbai
4. Deputy Commissioner, Div.IV CGST & Central Excise
5. Commissioner of Customs, Mumbai
6. Deputy Commissioner of Customs …Respondents

Ms. Parisha Shah a/w. Rajesh Shah i/b. Mr. Arsil Shah for the petitioner.
Mr. Jitendra B. Mishra a/w. Mr. Dhananjay B. Deshmukh for the respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
Reserved on: 31 January, 2024
Pronounced on: 8 April, 2024

Judgment (Per G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.

2. By this petition under Article 226 of Constitution of India, the petitioner assails the refusal of the respondents-GST authorities to grant to the petitioner refund of Integrated Goods and Service Tax (for short "IGST") paid by the petitioner, in respect of confirmed exports to the tune of Rs.5,26,80,126/- between the period of July, 2017 to December, 2018 (for

short "the said period"). The petitioner's application for refund has been rejected by the impugned order dated 11 July, 2022, which according to the petitioner, is *per se* illegal on several counts. Further even the refund application filed by the petitioner under Section 54 of the Central Goods and Services Tax Act, 2017 (for short, **"CGST Act"**) being rejected by respondent no.4 is assailed by the petitioner.

3. It is the case of the petitioner that the IGST amount has been wrongly withheld by the respondent due to non-alignment of export data between the ICEGATE Portal maintained by the Customs Department and the Common Portal (the Goods and Services Tax Electronic Portal maintained under section 146 of the CGST Act). The petitioner, in these circumstances, also assails the legality of Circular dated 18 July, 2019 titled "Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion". The substantive prayers as made in the petition are prayer clauses (a) to (e) which read thus:

> "A. Declare that the impugned circular dated 18 July, 2019 being Reference No. CBEC-20/06/03/2019-GST and titled "Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion – reg. (Exhibit B) are ultra vires the Constitution of India and ultra vires the provisions of the Central Goods and Service Tax Act, 2017, the Integrated Goods and Service Tax Act, 2017, and is illegal and without jurisdiction and consequently strike down the same;
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> B. This Hon'ble Court be pleased to issue a Writ of Certiorari, or any other Writ, Order or direction in the nature of Certiorari *inter alia* calling for the records and proceedings in the matter of the impugned order, viz. Order for rejection for application of refund dated 11 July,

2022 (Exhibit A hereto) and 5 August, 2022 (Exhibit A2 hereto) issued to the petitioner and after considering the legality, validity and proprietary thereof, be pleased to quash and set aside the same.

C. This Hon'ble Court be pleased to issue a Writ of Certiorari, or any other Writ, Order or direction in the nature of Certiorari *inter alia* calling for the records and proceedings in the matter of the impugned notice viz. Notice for Rejection for Application of refund dated 15 June, 2022 (Exhibit "A1" hereto), issued to the petitioner and after considering the legality, validity, and proprietary thereof, be pleased to quash and set aside the same.

D. That this Hon'ble Court be pleased to issue Writ of Certiorari or any other Writ, Order or direction in the nature of Writ of Certiorari, calling for the papers and proceedings in the matter of the IGST paid by the petitioner between the periods July, 2017 to December, 2018 and after considering the validity, legality and propriety thereof be pleased to declare that the retention by the respondents of the amount of Rs.5,26,80,126/- (Rupees Five Crores Twenty Six Lakhs Eighty Thousand One Hundred and Twenty-Six) is unconscionable, arbitrary and bad in law.

E. This Hon'ble Court be pleased to issue Writ of Mandamus or any other Writ, Order or direction in the nature of Writ of Mandamus ordering and directing Respondent to issue the refund to the petitioner along with the interest accrued thereon."

4. The factual conspectus the writ petition would set out can be briefly noted:

The petitioner is a partnership firm registered under the Partnership Act, 1932 and is a 'registered person' within the meaning of Section 2(94) of the CGST Act. It is engaged *inter alia* in the business of trading and export of 'rough diamonds' and 'cut and polished diamonds' (for short "**said goods")**. Its trading operations are conducted from Mumbai and manufacturing operations from Gujarat, since past several years. It also enjoys a status of a Four Star Export House under the Foreign Trade Policy 2015-2020 (**FTP**). The exports of the goods are undertaken by the petitioner on "Consignment/Approval/

Exhibition basis" as contemplated under paragraph 4.53 of the FTP, which provides for the export of diamonds on consignment basis subject to the compliances and procedures as laid down in the Handbook of Procedures and Customs Rules and Regulations issued by the Ministry of Commerce and Industry, Government of India and more particularly as provided for in paragraph 4.93 of the Handbook.

5. In the context in hand, the statutory mechanism, which the petitioner describes to be relevant for its trade, is to the effect that, the goods in question were being exported by the petitioner on "Consignment basis and Exhibition basis" to a foreign consignee, along with the issuance of a Shipping bill which provided the details of the goods so exported. Once such goods so exported crystallize wholly or partly into export sales, which is after a certain period of time from the date of its physical export, i.e., after the goods are approved by the foreign consignee, a 'final invoice' is generated for the portion of goods so approved which contain the specifications and quantity of the confirmed goods.

6. The remaining portion of the goods so exported on consignment basis, that are not approved are re-imported back to India ("Re-imported goods"). Once the re-imported goods reach the ports of the Indian Territory, the custom authorities at the respective port, verifies the stock of re-imported goods to

ensure that the goods returned are from the original exported goods as exported on consignment/approval basis. Upon completion of such verification process, the Customs Department issues Bills of Entries. As per the Customs Notification No. 45/2017 dated 30 June, 2017 at serial no. 5, the re-imported goods are not subject to custom duty, as the petitioner contends.

7. In regard to payment of the Integrated Goods and Services Tax (the **"IGST"**), the IGST Act provides with two options being Export without payment of the IGST upon furnishing a Letter of Undertaking (**"LUT"**) or a Bond or Export upon payment of IGST.

8. In regard to export of goods on 'consignment basis', the confirmed goods under export, upon payment of IGST, are declared by the exporter on the common Portal of the GST department. It is contended that the said Notification (No. 50/2017 dated 30 June 2017) in Para (b) thereof, provides that the re-imported goods which were originally exported on consignment basis are exempt from payment of IGST. The exporter of the confirmed goods then becomes entitled to the refund of the IGST paid by him as per Rules 96 and 96A of the IGST Rules, 2017. For refund, the shipping bills issued by the exporter along with the amendments in the final quantity of exports is considered to be an application for refund, as contemplated in Sub-Rule 1 of Rule 96 and Rule 96A of the GST Rules. The statutory scheme also is clear that exports under the IGST regime are included within the ambit of *"Zero*

rated Supply", under Section 16(1) of the IGST Act to which the petitioner states that it would become entitled.

9. As per the prevalent mechanism, the petitioner opted for the export of 'Consignment Basis' on subsequent payment of the IGST made on confirmed goods. The petitioner had accordingly exported goods to various foreign consignees between the period July, 2017 to December, 2018 and the corresponding shipping bills were raised for each such export consignment.

10. On the approval of the goods sent on consignment basis, the petitioner from time to time and regularly declared such confirmation on the 'Common Portal' and paid the proportionate amount of IGST thereon through credit available to the petitioner. Forms GSTR-3B and GSTR-1 which contain details of such confirmed sales were also filled and uploaded on the Common Portal on a regular basis. Accordingly, for the said period (July 2017 to December, 2018) the petitioner has paid IGST to the tune of Rs.5,26,80,126/- the details of which are set out in a chart at Exhibit "G" to the petition.

11. The petitioner contends that once the re-imported goods entered the territory of India, the same were declared and examined by the Customs Department and the relevant Bills of Entry were prepared of such re-imported goods. The petitioner states that it had diligently ensured all the compliances with all the relevant provisions concerning Customs and Goods and Service

Tax, and had ensured that it had all the relevant documentary evidence to substantiate its claim for refund.

12. It is the petitioner's case that as per the provisions of the IGST Act read with Rules 96 and 96A of the CGST Rules, the petitioner was entitled to seek a refund of the IGST paid by the petitioner. Accordingly, the petitioner approached the Customs Department to carry out necessary amendment in the corresponding shipping bills of the exported goods on consignment basis, to reflect the final quantum of Confirmed Goods on which the IGST was paid. The petitioner accordingly approached the Customs department with copies of the shipping bills and the corresponding bills of entry, which would clearly indicate the actual exports i.e. the quantum of Confirmed goods.

13. The petitioner has contended that it was quite a shock to the petitioner in the Custom Department communicating to the petitioner that such amendment was not permitted under the customs practices and for such reason it refused to entertain the petitioner's refund application. This, despite the fact that the petitioner apprised the Customs Department that under the GST regime i.e. under Rule 96 of the CGST Rules a shipping bill is to be considered as an application for refund and in the absence of such amendments being granted, the entire amount of IGST paid by the petitioner through credit facility would be stuck. The petitioner also offered to show the relevant IGST receipts of the taxes paid by the petitioner. It is stated that the concerned

officers of the department, however, expressed their inability and advised the petitioner to approach the customs and the Chief Commissioner of GST, stating that the issues did not fall within their jurisdiction.

14. The petitioner accordingly approached the Chief Commissioner of GST, however, the petitioner was told that as per the IGST Rules, since the shipping bill/refund application was not in consonance with the GST returns that were uploaded by the petitioner, on the common portal, the refund application could not be accepted. It is contended that the common portal maintained by the GST Department, also was not accepting the shipping bill to be uploaded with the date which was prior to the date of invoice. However, it is a fact that the common portal did not provide for or contemplated a situation that in respect of exports on consignment basis, quite obviously and in the general course of business, the invoice on confirmed goods, would be of a date subsequent to the date of the shipping bill (being the date of the export of goods on consignment basis) as well the Export General Manifesto (EGM) Data, maintained by the Custom Department. The petitioner contends that it was hence being deprived of making an application for refund of IGST.

15. The petitioner would further contend that neither the amount of IGST paid to the respondents was disputed by the respondents, nor the actual quantum of exports made were being disputed by respondent nos.5 and 6. However, due to mere non-coordination of data between the two authorities,

the petitioner was subjected to unnecessary ordeal in getting the refunds. The petitioner has contended that the entire process of refund of IGST is based on the coordination of data between the two systems i.e. GST Common Portal and the ICEGATE Portal. It is contended that hence, withholding of the refund legitimately entitled to the petitioner due to such confusion was clearly in violation of the petitioner's legal rights to avail the refund as well as of the procedure recognized by law. This more particularly as sub-rule (2) of Rule 96 and 96A of the IGST rules which governed the process for the refund of the IGST amount was being overlooked and/or breached by the department in not refunding the IGST paid on the re-imported goods.

16. In such context, the petitioner has referred to the case of **M/s. Star Rays v/s. Union of India & Ors.**[1] filed before this Court. This writ petition was disposed of by an order dated 22 October, 2018 passed by a co-ordinate bench of this Court, whereby the Court recorded a statement as made on behalf of the department that the glitch in the portal (similar to the one the petitioner complained) had been rectified, and accordingly the payment of refund shall be made to the petitioner therein. The petitioner also had undertook the process of the rectification in the GSTR-1 and GSTR 3B, in accordance with the updated shipping bills and invoices between July-September, 2018. After completing such exercise, the petitioner being under a legitimate and bonafide

1 Writ Petition No.2483 of 2018

belief, that the transactions undertaken by the petitioner being 'zero rated supplies', within the meaning of section 16 of the IGST Act, 2017, hence, the updated shipping bills itself would be treated as refund applications, as provided in Rule 96 and 96A of the CGST Rules. Also there was no other order, circular or rule within the framework of the said Act requiring any other compliances for refund of the IGST, paid by the petitioner on such re-imports. However, even after updating the shipping bills, no order for rejection of refund application was communicated to the petitioner till July, 2022. It is contended that despite having followed up the issue with the Department since 2017, no reply was furnished till 03 February, 2022.

17. The petitioner has contended that the petitioner was lawfully and reasonably awaiting its refund as the shipping bills were appropriately transmitted. In these circumstances, the petitioner had made representations to several authorities of the Government, copies of which are annexed as Exhibit 'I', however, no response was received by the petitioner.

18. On the above backdrop, the petitioner was informed that on 18 July, 2019, the GST policy wing of respondent no.2 had issued a Circular (reference No. CBEC-20/06/03/2019-GST) titled as "*Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion – reg.*". Such circular provided that the goods sent by exporters on 'exhibition/consignment' basis would not be considered as 'zero rated supply'

as the tax was paid on such goods, after the issuance of the shipping bills. Hence, the IGST paid by the petitioner on the confirmed goods would not be eligible for refund by submission of refund bills.

19. It is the petitioner's case that for the first time the respondents had issued such instructions/norms as prior to this, the petitioner was under a genuine and bonafide impression, that the shipping bill itself would be considered as an application for refund. The petitioner has stated that the said circular indicated that only those exports which were not confirmed within six months from the date of the shipping bill were not eligible for benefit as "zero rated supply".

20. The petitioner hence contends that the circular was illegal as it narrowed down and limited the scope of Section 16 and the provisions of the Act and the rules made thereunder. It is contended that even the Act does not contemplate or provide any such limitations, hence the circular could not limit the application of the Act. For such reason, such circular ought not to bind the assessee. It is next contended that the circular was also not brought to the notice of the petitioner by the respondents in response to any of the representations made by it till March 2020. Also the circular was not published in the Official Gazette and there was no reason for the petitioner to have such knowledge of the said circular, and that too for the retrospective period.

21. The petitioner, in these circumstances, without any delay made a representation to the respondents seeking guidance in regard to the method to adopt and the system to be followed to seek the modalities on its refund claim. It was stated that the GST regime as also the electronic portal, being the new and alien concepts, the assessees were facing difficulties in adapting to such mechanism, hence, an assistance from the department was expected on the method and manner the assessee needs to approach such situation. Such letter was addressed by the petitioner on 18 March, 2020 and immediately thereafter, lock-down was imposed in the country on the outbreak of the Covid-19 pandemic, which continued thereafter for a substantial period.

22. In response to the petitioner's representations, the petitioner received two letters dated 25 October, 2021 and 26 October, 2021 from respondent no.6-Deputy Commissioner of Customs, that the refund of IGST was indeed granted in a similar case of *Star Rays vs. Union of India* (supra). On the basis of such letter, the petitioner approached respondent nos.1 to 5, however, there was no response. The department was also aware that in and around February 2020 respondent no.4 had made a statement before the Court that the refund in the case of *M/s. Star Rays vs. Union of India* (supra) was sanctioned as recorded in the orders passed by this Court in its writ petition (supra).

23. The petitioner has contended that due to Covid restrictions, the petitioner was reasonably prevented from visiting and personally following up

with the offices of the respondents. The petitioner was carrying on its business from Mumbai as well as, Surat and Gujarat.

24. In reply to the petitioner's letters dated 01 November, 2021 and 21 January,2022, the petitioner received a reply from respondent no.4-Deputy Commissioner, Div-IV CGST & Central Excise dated 03 February, 2022 rejecting the petitioner's contention that the transactions undertaken by the petitioner fell within the scope of 'zero rated supply' and further advised the petitioner to file an appropriate application for refund under Section 54 of the CGST Act.

25. In the above circumstances, the petitioner being helpless and without prejudice to its rights and contentions and having collected and collated all the documents from its offices in Mumbai and Surat preferred an application for refund on 28 February, 2022. Also a Deficiency Memo dated 12 March, 2022 was communicated to the petitioner. Such defects were also rectified and the refund applications were filed afresh on 30 April, 2022.

26. To the petitioner's surprise, a communication dated 15 June, 2022 was received by the petitioner from respondent no.4 recording that the claim of the petitioner for refund of IGST could not be made under Section 54 and hence, the same was rejected. Further respondent no.4 also claimed that the claim of the IGST paid by the petitioner to the tune of Rs. 72,21,150/- was rejected as

time barred. It is thus contended by the petitioner that a substantial sum of money i.e. Rs. 5,26,80,126/- paid towards IGST was entitled to be refunded, the retention of such refund amounts by respondent no.2 was illegal, and was a result of a clear mischief in the internal procedures. It is stated that this was creating a negative impact on the unblemished reputation and goodwill that the petitioner enjoyed in the export market, which also threatened credibility of the petitioner in the diamond market.

27. The petitioner has contended that in the circumstances, the petitioner also offered various alternatives of submitting necessary undertakings to the respondents so as to facilitate the release of its refund, however, despite extending the fullest cooperation and compliances, even a partial amount was not refunded to the petitioner. This despite the sterling fact that at no stage, the respondents had raised any objection as to non-compliance of any provisions of the law, by the petitioner.

28. It is also the petitioner's case that several other registered persons had raised grievances of a similar nature and the issues were escalated to the GST Policy Wing of respondent no.2, which issued circular dated 18 July, 2019, as noted above, purportedly issuing a clarification. Clause 9 of the said circular provided that in the event there was a discrepancy in the figures of the shipping bill and the GST invoices as raised, the two documents must be compared and the refund must be issued for an amount which was lower amongst the said

two documents, inasmuch as invoice under Section 46 of the CGST Act is raised as per the rate of taxable supply under Section 15 of the IGST Act. Even acting on such circular, the petitioner's refund was not being processed for over a year, on the grounds of misalignment of data between the respondents.

29. It is thus, the petitioner's case that once the discrepancies and limitations of the system were stated to be removed, for a period of one year no circular was issued as regards the applicability of the transactions on consignment/ exhibition basis as zero rated supply. The petitioner hence contends that the transactions undertaken by the petitioner being 'zero rated supply' and merely because the final invoices were raised after the issuance of shipping bills, the same did not alter the characteristics of the transactions. It is stated that also under the previous indirect tax regime, it was an accepted practice that indirect taxes would be paid on such transactions and later refunded to the petitioner. It is hence the petitioner's case that admittedly, the petitioner had paid IGST on such transactions exercising an option provided by the respondents, on which IGST was not payable, thereby becoming entitled for refund of the said amounts. Also the respondents had accepted such IGST and since almost last five years, refund was not being processed.

30. The petitioner has also contended that it is not the case of the respondents that the petitioner was liable to pay the sum of Rs.5,26,80,126/- as IGST or that any sum was payable by it with respect to the said invoices.

However, under one pretext or the other, citing mechanism errors having applied under the incorrect category, the refund amounts payable to the petitioner were being withheld unlawfully, and without any reason acceptable in law. It is contended by the petitioner that the impugned action of the respondents is in the teeth of the provisions of Article 265 of the Constitution of India. It is on such backdrop, the present petition has been filed praying for the reliefs as noted by us above.

31. Learned counsel for the petitioner has made detailed submissions on the case of the petitioner which we have noted hereinabove to contend that the impugned action on the part of the respondents is patently illegal and not supported by any of the provisions of the CGST Act / IGST Act. It is submitted that the impugned actions of the respondents is *ex facie* violative of the petitioner's right under Articles 14, 19, 21 and 300A of the Constitution of India. It is also contended that the impugned circular dated 18 July, 2019 limited and narrowed down the scope of the parent statute, was also illegal and would be required to be struck down. Learned counsel for the petitioner has also referred to the circulars no.05/2018, 08/2018, 15/2018, 22/2018, 40/2018, 26/2019 and 22/2020 issued by the Custom Department to contend that an alternate mechanism with an official interface to resolve invoice mismatches was provided to resolve such issues, however, it was rendered of no consequence in the petitioner's case. It is also submitted that the Board has

issued instructions from time to time to resolve all discrepancies so that the refund as payable to the taxpayers are not withheld. Learned counsel for the petitioner has also referred to the orders passed by the Supreme Court in the proceedings of Suo-motu Writ Petition (C) No.3 of 2020 and the order dated 10 January, 2022 passed therein in regard to the extension of period of limitation. Reliance is also placed on the order dated 12 January, 2022 passed by this Court in the case of ***Saiher Supply Chain Consulting Private Limited Vs. Union of India & Ors.*** which states that the extension provided by the Supreme Court shall also extend to applications for refund made under Section 54 of the CGST Act. In support of such contentions, reliance is also placed on the decision of Delhi High Court in ***Delhi Metro Rail Corporation Ltd. V/s. The Additional Commissioner, Central Goods and Services Tax, Appeals II & Ors.***[2] as also on the decision in ***M/s. Vimla Food Products v/s. Union of India & Ors.***[3] rendered by High Court of Gujarat on the petitioner's entitlement on interest.

32. Reply affidavit on behalf of respondent nos. 1 to 4 is filed by Mr. Ajinkya Hari Katkar, Deputy Commissioner of Central Goods and Services Tax, Mumbai East Commissionerate. It is not disputed in the reply that the petitioner has made applications for refund of Rs.5,26,80,126/-. It is stated that the petitioner's application for refund as filed on 30 April, 2022 was time

2. Writ Petition (C) No.6793 of 2023] decided on 18 September, 2023

3R/S Special Civil Application No. 16028 of 2020 dated 21.12.2021

barred, even considering the Covid relaxation. It is contended that as per the Circular dated 15 November, 2017, the Deputy Commissioner was empowered to sanction refund under Section 54(3) of CGST Act. It is next contended that in view of the provisions of sub-section (10) of Section 54, a registered person may claim refund of any unutilized input tax credit at the end of any tax period subject to sub-sections (1) and (2). In such context, it is contended that the petitioner having exported the goods on payment of duty, the refund cannot be processed under section 54 of the CGST Act but would be covered under Rule 96A of the CGST Rules, 2017 which has to be dealt with by the customs authorities. It is thus contended that the Deputy Commissioner, CGST and Central Excise is not the refund sanctioning authority, as the export has been made with payment of duty. However, it is not denied that the refund applications of the petitioner were rejected by the Deputy Commissioner, Division-IV on the ground of being time barred for the reason Section 54(1) of CGST Act permits refund applications to be filed within two years of the relevant date, hence, it is stated that the rejection was as per law.

33. The reply affidavit does not dispute that the petitioner is involved in clearing goods on a consignment/exhibition basis and that under such arrangement, the goods first leave India which are cleared under a delivery challan, details of which are mentioned in the shipping bill. It is also admitted that the sale is finalized subsequently and invoices are raised, on which the

claimants are stated to have discharged the GST liability. It is also not disputed that subsequently the petitioner applied for refund to the jurisdictional customs authorities, for refund on the ground that exports were undertaken with payment of IGST and on the re-import of the goods (which were not sold), a request for refund of IGST was denied. However, it is contended that the refund applications were time barred, as Section 54(1) allows for refund applications to be filed within two years of the relevant date. It is thus submitted that on such reasoning, the petition ought not to be entertained.

34. There is a reply affidavit filed on behalf of respondent nos. 5 and 6 by Mr. Mahendra Rathod, Assistant Commissioner of Customs. It is stated that the petitioner has an alternate remedy to challenge the order passed by respondent no. 4 by filing an appeal. Hence, the petition ought not to be entertained. It is stated that insofar as the role of respondent no. 6 (Deputy Commissioner of Customs) is concerned, it is to generate only scroll number of already sanctioned IGST refund. It is stated that the process of IGST refund is completely automatic and system based. It is stated that once the data is transmitted by GSTN/Common-Portal to ICEGATE Portal by the Competent authority, the same is validated and on generation of scroll, the amount is sanctioned and credited to the exporter's account. It is stated that in the instant case, initially the IGST was pending due to technical errors in the light of non-

tallying of invoice particulars with GST Returns. It is stated that thereafter on the basis of Circular dated 18 July, 2019 issued by CBIC, respondent no. 4 issued a notice to the petitioner and after considering the details of the petitioner's case, an order dated 11July, 2022 was issued rejecting IGST refund to the petitioner, on the ground that the refund claim/application was time barred. It is, hence, submitted that respondent no. 6 has no role to play in the sanctioning or rejecting of the IGST refund. It is stated that respondent no. 6 is not the Competent authority to sanction or reject the IGST claim. It is reiterated that respondent no. 4 had rejected the IGST refund on the ground that the date of filing IGST refund claim application of the petitioner was beyond the prescribed limitation of two years. It is hence contended that for such reasons the petition needs to be dismissed.

35. Mr. Jitendra Mishra, learned counsel for the respondents, has made submissions referring to the reply affidavits. He would submit that the action of the department ought not to be faulted and for the reasons as set out in the reply affidavit(s), the petitioner is not entitled for the refund amount. He has placed reliance on the decision of this Court in *M/s. Cummins Technologies India Private Limited vs. Union of India & Ors.*[4] to contend that in the said case the Court had not entertained the proceedings and in similar situation had held that the petition was barred by limitation, as the party cannot approach

4 Writ Petition No. 4193 of 2022 dated 28 August, 2023

the Writ Court after the limitation has expired and the proper remedy was to file a claim to maintain a refund application within limitation as per the provisions of Section 27 of the Customs Act. It is, therefore, submitted that the petition be not entertained.

36. We have heard learned counsel for the parties on 2 January, 2024 when considering the submissions as made on behalf of the petitioner and relying on the order passed in the case of *Star Rays (supra)* we had passed the following order:

> "*1. We have heard Ms. Parisha Shah, learned counsel for the petitioner quite extensively as also Mr. Mishra, learned counsel for the respondents. We have also perused two reply affidavits which are filed on behalf of respondent nos.1 to 4 and respondent nos.5 & 6 respectively.*
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> *2. Learned counsel for the petitioner has also drawn our attention to the orders which were passed in case of Star Rays v/s. Union of India & Ors., which according to the petitioner, as also pointed out to the Department, was identically situated. In fact, to this effect, our attention is also drawn to a letter dated 26 October, 2021 as addressed by the Deputy Commissioner of Customs to the petitioner which states that the case of the petitioner was identically placed as in the case of M/s. Star Rays, wherein the said assessee was granted a refund by an order dated 08 February, 2020, a copy of which is placed on record. In our opinion, it appears that in the impugned order, the case of the petitioner relying on the refund order in M/s. Star Rays has not been appropriately dealt with.*
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> *3. Considering the aforesaid facts, Mr. Mishra has fairly stated that instructions can be taken as to whether the petitioner could be similarly treated as M/s. Star Rays. Let appropriate instructions be taken by Mr. Mishra. Accordingly, stand over to* ***09 January, 2024 (H.O.B.)****."*

37. Thereafter on 15 January, 2024, at the request of the learned counsel for the respondents, to enable him to file an affidavit to state whether the

proceedings would stand covered by the decision of *Star Rays* (supra), the proceedings were adjourned to 22 January, 2024. However, in the intervening period, one of the refund applications came to be rejected by respondent no. 6 as pointed out to the Court. The petitioner was hence granted leave to amend the petition to assail the said order on the same grounds as already raised in the petition to challenge other orders rejecting the refund applications.

38. It is on the above backdrop we have heard learned counsel for the parties. We have also perused the record.

39. The question which arises for consideration in the present proceedings is as to whether the petitioner at the relevant time, on presentation of the shipping bills in regard to the confirmed sales, was entitled to refund of the IGST amounts, paid on the goods in question, subject matter of the exports as undertaken by the petitioner for the period July 2017 to December, 2018, which is stated to be an amount of Rs,5,26,80,126/- along with interest.

40. Some of the undisputed facts are required to be noted:

It is not in dispute that for the period July, 2017 to December, 2018, the petitioner on 'consignment basis/exhibition basis', had exported the goods in question. The petitioner had exported goods to various foreign consignees during the said period and the corresponding shipping bills were raised for each such consignment sent. It also appears to be not in dispute that upon the

subsequent approval of the goods exported from time to time, the petitioner had declared such confirmation on the Common Portal and had also paid thereon appropriate amount of IGST, through the credit available with the petitioner. It is also not in dispute that the details of the confirmed sales which are contained in Forms GSTR-3B and GSTR-1, were filled and uploaded on the common portal on a regular basis. It is also not in dispute that for the period July, 2017 to December, 2018, the petitioner had paid IGST to the tune of Rs.5,26,80,126/-. The export data along with the corresponding details of the consignees, shipping bill details, final invoice details, value of export sales and the IGST paid thereon was submitted to respondent no. 6 from time to time. The respondent has also not disputed that the re-imported goods were declared by the petitioner and were examined by the Customs Department and the relevant Bills of Entry were prepared of such re-imported goods thereby complying with all the provisions of the Customs Act as also the GST Act.

41. As per the provisions of the IGST Act, read with Rule 96 and 96A, the petitioner was entitled to seek refund of the amount of IGST paid by it. Pursuant thereto, the petitioner had also approached the Customs Department to carry out necessary amendment in the corresponding Shipping Bills of the exported goods on consignment basis to reflect the final quantum of confirmed goods on which the IGST was paid. However, the petitioner was not permitted to undertake such amendment. This, despite the fact that under Rule 96 of the

CGST Rules, the shipping bill is required to be considered as an application for refund and in the absence of such amendment, the entire amount of IGST paid through credit available with the petitioner would be stuck.

42. We find that in a situation as in hand, there is a interplay of two regimes, namely, a regime under the Customs Act when it comes to exports being undertaken by the petitioner on consignment/exhibition basis. It is only after the foreign consignee confirms retaining of part of the exported goods, the sale of the goods gets confirmed and the remaining goods in respect of which sale is not completed are re-imported. Such re-imported goods are permitted to be cleared by the petitioner on filing bills of entry in that regard.

43. At this juncture, there is a verification of the credentials of these re-imports. It appears that all such details were provided and entered by the petitioner on the common portal and proportionate amount of IGST through the credit available with the petitioner was paid. Also Forms GSTR-3B and GSTR-1 which contain the details of such confirmed sales were also filled and uploaded on common portal on regular basis. All such details clearly indicate that the petitioner had paid an amount of Rs.5,26,80,126 for the period July, 2017 to December, 2018.

44. Thus, it is not in dispute that the re-imported goods, when they entered the territory of India, the same were declared and examined by the Customs

Department and the relevant bills of entry were prepared of such re-imported goods. In regard to such exported and re-imported goods, all the provisions of Customs Act as also the Goods and Service Tax were followed and the petitioner had ensured that it had all relevant documentary evidence to substantiate its claim for refund. This more particularly for the reason that Rule 96 and Rule 96A entitled the petitioner to seek refund of the amount of IGST paid by it, as such rules ordain that the shipping bills itself would be treated as refund application.

45. Hence, the aforesaid factual position and the consequences Rule 96 and Rule 96A would bring about, certainly provides an impetus to the contentions as urged on behalf of the petitioner that there was no reason for the respondents to detain the refund and it was in fact an obligation on the part of the respondents considering the mandate of Rule 96 and Rule 96A to process the shipping bills, which itself were refund applications as per the clear provisions of these rules. It would be appropriate to extract the relevant part of Rule 96 and 96A, which reads thus:

> 96. **Refund of integrated tax paid on goods [or services] exported out of India.**-(1) The shipping bill filed by an exporter of goods 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 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-3B;

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in Form GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect fo the said shipping bill is rectified by the exporter;

c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10-B;

(2) The details of the relevant export invoices in respect of export of goods 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 6-A 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-B 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, or

(c) The Commissioner in the Board or an officer authorized by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

(5-A) ….

(5-B) ….

(**emphasis supplied**)

96A. **Export of goods or services under bond or Letter of Undertaking:**

(1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in Form GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —

(a) fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

(2) The details of the export invoices contained in Form GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

> 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) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
>
> (4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.
>
> (5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
>
> (6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax."

46. Thus, there cannot be a denial that Rule 96 read with Rule 96-A would be applicable to the facts of the present case, namely that the shipping bills as filed by the petitioner, who is the exporter of the goods, would be deemed to be an application for refund of IGST paid on the goods exported by the petitioner out of India. There is no dispute in regard to all the relevant compliances as mandated by such rules on the part of the petitioner. Neither it is the case of

the respondents that the said rules are not applicable in the petitioner's case qua the refund in question. Also there is no question of applicability of sub-rule(4) of Rule 96 for refund to be withheld for the reasons which are contemplated in clauses (a), (b) or (c) of sub-rule (4).

47. In this view of the matter, when appropriate compliances were already made by the petitioner merely because of non-compatibility of the data between the two authorities, namely, Customs Department and the GST Department, as also for the reason of non-compatibility with the electronic portals as prevalent under the GST regime, cannot be a ground for the petitioner being denied the refund. Even assuming that the petitioner *de hors* the requirement of Rule 96 and Rule 96-A of the GST Rules was made to file a fresh refund application,the same could not have been rendered being barred by limitation, as the filing of the shipping bills, which were filed at the appropriate time and which has not been disputed, could not have been overlooked to be valid refund applications. Thus, mere filing of supporting applications, only to make the same compatible with the subsequent clarifications/circulars issued, would not take away the entitlement of the petitioner for the refund claim as per the provisions of the said Rules. In the facts of the case, there is no dispute that the shipping bills were presented by the petitioner in accordance with law and there was no issue of limitation in that regard.

48. Respondent nos. 2 to 4, hence, could not have denied/refused the petitioner's refund claim, which in fact stood approved by respondent nos. 5 and 6. It is clear that as the GST Common Portal and ICEGATE Portal did not make a provision to cater to the situation, as in the case of the petitioner, namely of exports on consignment / exhibit basis, the petitioner cannot be made to suffer by denial of the refund of the IGST amounts, which the department had no authority to retain, as the sales in respect of such goods stood confirmed as also verified and certified by the Customs department. This was no fault of the petitioner as the denial of refund was wholly attributable to the non-compatibility of the electronic portals/system to confer to such specific requirements. Further, it also cannot be expected that merely because the electronic portals did not make appropriate provisions, the entitlement of the petitioner to receive the refund being an entitlement under the IGST Act, (considering that the transaction undertaken by the petitioner were "zero rated supplies" within the meaning of Section 16 of IGST Act) could be defeated. There was no dispute in regard to the updating of the shipping bills by the petitioner.

49. The petitioner would also be correct in its contention that the impugned circular could not have been foisted in the petitioner's case, inasmuch as the same was not in existence in regard to the period in which the petitioner had undertaken exports, i.e. the period from July, 2017 to December, 2018. Even

otherwise it could not be that the circular would override the provisions of the substantive rules framed under the CGST Act as discussed in the foregoing paragraphs. We find that in fact the department had taken appropriate stand, when a similar issue had reached this Court in the case of *Star Rays (supra),* who was ultimately paid the amount considering the stand taken by the respondent before the Court in the said proceedings. The order dated 22 October, 2018 passed by the co-ordinate Bench of this Court in the case of ***Star Rays*** (supra) reads thus:

> *"1. This petition under Article 226 of the Constitution of India seeks a refund of integrated goods and service tax paid in respect of the goods which have been exported. The refund short is aggregates to an amount of Rs.8.42 crores and covers the period from July, 2017 to January, 2018.*
>
> *2. **Mr. Kantharia, learned counsel appearing for the respondents, on instructions, states that in view of the technical difficulties, the reconciliation of the shipping bills and the invoices was not possible. However, the systems has now been rectified and the petitioner can carry out the necessary modifications in Form GSTR-1 and GSTR-3B.***
>
> *3. Mr. Shah, learned counsel for the petitioners, on instructions, states that the necessary modifications will be carried out within a period of one week from today.*
>
> *4. Mr. Kantharia, on instructions, states that the refund applications would be disposed of within a period of 8 weeks from the date the petitioners carry out the necessary modifications in the GSTR-1 and GSTR-3B forms and communicating it to the respondents.*
>
> *5. Petition is disposed of in the above terms."*
>
> (emphasis supplied)

50. In our opinion, the petitioner is correct in its contention that as to what was followed by the respondent in the case of *Star Rays* also needs to be followed in the case of the petitioner and accordingly the petitioner would

become entitled to maintain its refund applications and grant of the refund amounts. The refund due and payable to the petitioner has been retained for no fault of the petitioner.

51. It may also be observed that the obvious implication as brought about by Rules 96 and 96A as may be applicable and the statutory Scheme which permitted the petitioner to make payment of IGST after the exports were undertaken, has been completely overlooked by respondent Nos.3 and 4. Once confirmation of the sale was evident from the shipping bills as presented by the petitioner, which were in relation to the goods on which IGST was paid, and the confirmed sales admittedly being zero rated supplies, there was no question of respondent Nos.3 and 4 retaining the IGST amounts paid on such confirmed sales. The presentation of shipping bills as per the requirement of Rules 96 / 96A, which were squarely applicable, itself entitled the petitioner to refund of the IGST amount based on the principles of "zero rated supplies" as recognized under Section 16 of the IGST Act. In these circumstances, there was no question of the circular dated 18 July 2019 being made applicable to the petitioner and/or confining the petitioner to a procedure of refund application to be filed under Section 54. Hence to compel the petitioner to file the refund application at a belated stage and after a long period of the shipping bills being presented by the petitioner (being itself a refund application) and thereafter, to hold that the refund application filed under Section 54 is time barred, was

wholly illegal and unwarranted in the facts and circumstances of the case.

52. Thus, the entire approach of respondent Nos.3 and 4, not only in denying the refund to the petitioner, but also compelling the petitioner to apply for a refund under the said circular which was issued subsequent to the shipping bills being presented, was a patent illegality. This more particularly when respondent Nos. 5 and 6 (Custom Authorities) had clearly confirmed the export and re-imports thereby confirming the sales to the foreign parties, in respect of which respondent Nos.3 and 4 have not raised any dispute. It is also not conceivable that, even if the said circular is to be valid, it would become applicable to the refund in question for the reason that, at the time when the petitioner sought refund, the petitioner had already crossed the stage of export and stood in a subsequent position, namely not only of the sales being confirmed but also the IGST being paid on the said goods and accepted by the department. Hence, even applying the circular, the situation in hand was completely falling within the purview of Section 7 of the CGST read with Section 16 of the IGST Act. Even otherwise, the circular does not prohibit a situation as in the present case that, when the export stands confirmed, invoices are issued and such shipping bills are presented and accepted by the Customs, in such circumstances, the authorities cannot refuse to recognise the supply as a 'zero rated supply' and grant refund of the IGST to the petitioner. If such approach of respondent Nos. 3 and 4 is to be attributed to the supply and the

tax paid thereon, it would clearly render nugatory the provisions of law as discussed above, as also lead to an absurdity. Also qua the situation in hand, it would amount to reading something alien into the provisions of the CGST and the IGST Act, which is not recognized in such provisions and the relevant rules.

53. Thus, looked at from any angle, the contention of the department in refusing refund claim of the petitioner, cannot be accepted. On the above backdrop, the stand of respondent nos.1 to 4 in holding respondent nos.5 and 6 responsible is apparent. There is a direct conflict between the versions of both these respondents from reply affidavits which we have discussed *in extenso*. In the reply affidavit filed on behalf of respondent nos.1 to 4 of Mr. Ajinkya Hari Katkar, Deputy Commissioner of Central Goods and Services Tax, Mumbai East Commissionerate, there is a clear contention that the petitioner having exported the goods on payment of duty, the refund cannot be processed under Section 54 the CGST Act but would be covered under Rule 96A of the CGST Rules, 2017 which is required to be dealt with by the Customs authorities. It is further contended that the Deputy Commissioner, CGST and Central Excise, is not the refund sanctioning authority, as the export has been made with payment of duty. Such a stand was taken despite the petitioner being called upon to file a refund application under Section 54 and rejecting the same on the ground that it was time barred. Further what is

astonishing is that respondent nos.5 and 6 (customs authorities) in the reply affidavit filed by Mr. Mahendra Rathod, Assistant Commissioner of Customs have taken a contrary stand and stated that respondent no.6-Deputy Commissioner has no role to play in the sanctioning or rejecting of the IGST refund. It is stated that respondent no. 6 is not the competent authority to sanction or reject the IGST claim. It is, hence, clear that both the authorities are disowning their obligation and/or authority to refund the IGST as paid by the petitioner while not denying that the petitioner was entitled to the refund. The position is something which is not only disturbing but a shocking state of affairs in the authorities *inter se* not resolving such issues. We also do not find that any attempt was made to resolve the issues by both the parties. Any internal or departmental conflicts cannot cause prejudice to the assessee. Such approach on the part of the authorities is certainly not conducive to international trade and commerce. Considering the clear position in law in the present case, the petitioner was entitled to the refund of the IGST amounts.

54. In ***Star Engineers (I) Pvt. Ltd. Vs. Union of India & Ors.***[5] this Court was confronted with a similar issue where technical glitches had prevented the petitioner therein to rectify the relevant forms, and for no fault of the petitioner, what was legitimately entitled to the petitioner to rectify the GST record, was being denied. In such context, a Division Bench of this Court of

5 Writ Petition No. 15368 of 2023

which one of us (G. S. Kulkarni, J.) was a member, observed that the provisions of law are required to be alive to several considerations and the new systems which are implemented under the GST laws, which the registered persons were required to follow and adopt. It was observed that in these circumstances, certainly freeplay in the joints was required. This is not a different case where both the departments itself were required to be alive, to such conflicting stand being taken by each of these departments even in the reply affidavits. In this situation the higher authorities ought to have resolved the issues. The stands which are taken by the respondents *inter se,* apart from being conflicting, have clearly amounted to nullifying the petitioner's right and entitlement to the refund. In these circumstances, we are also of the opinion that in cases where exports involving payment of IGST are concerned, in which refund applications are made, a special mechanism is required to be devised so that both electronic portals are compatible, and refund of duties, which could not be retained, are processed expeditiously and the assessees do not suffer on account of ineffective systems being followed by the CGST as also the Customs Authorities. Although some circulars are issued to clarify the position, however, no effective steps are being taken to appreciate the core issues as involved in each of such cases and refunds are not being processed. The present case is a clear example of such confusion. Unless the loose ends on such issues are tied up and a robust mechanism is immediately created and implemented, trade and commerce would continue to suffer.

55. There is another fundamental issue namely that this is a clear case where refund of the IGST has been retained by the respondents without authority in law. This would be completely opposed to the regime which Article 265 of the Constitution would prescribe namely that the respondents would not have any authority in law to levy, retain and collect tax. In the present case, IGST was not payable on such goods and therefore, legitimately it was required to be refunded. In these circumstances, it was a patent error on the part of the respondents to drag the petitioner into the proceedings of refund application under Section 54 of the CGST Act which itself in the present circumstances was not applicable. Once IGST itself was not leviable, there was no question of the same being retained by the respondent. Any retention of such amounts would be without authority in law. (**See:** The Hongkong and Shanghai Banking Corporation Ltd. v/s. The Union of India & Anr., Writ Petition (L.) No. 24184 of 2023). The petitioner in such context, is also justified in relying upon the decision of the Division Bench of the Delhi High Court in the case of **Delhi Metro Rail Corporation Ltd. Vs. the Additional Commissioner, Central Goods and Services Tax, Appeals II & Ors.** (supra).

56. We are, thus, not in agreement with Mr. Mishra's submissions also when he supports the action of the department, including referring to the decision in ***Cummins Technologies PVT. Ltd.****(supra),* as the said decision is not applicable in the facts of the case. This was not a case which related to the implication of

Rule 96 and 96A and the consequences such statutory regime would bring about in considering shipping bills to be refund applications. Thus, the reliance on decision in *Cummins Technologies Pvt. Ltd. (supra)* when it upheld the rejection of the refund application in the said case by applying the provisions of Section 27 of the Customs Act, in holding that the refund applications are barred by limitation, is not well founded.

57. In so far as the petitioner's prayer on interest are concerned, in facts of the case, certainly the petitioner would be entitled to interest as the amount has been illegally retained by the respondents without authority in law. In a similar situation, the Division Bench of Gujarat High Court in **M/s. Vimla Food Products vs. Union of India & Ors.** (supra) and concerning a supply which was "zero rated supply" referring to the decision in **Amit Cotton Industries Vs. Principal Commissioner of Customs**[6] as also to the relevant circulars and notifications and the decisions of the Court in that regard, had held that the petitioner was entitled to interest at the rate of 9% from the date on which the bills for refund of IGST were raised by the petitioner, till its actual payment, and in the event the authorities fail to release such amount within a period of eight weeks from the date of receipt of the orders of the Court, in that event petitioners were held entitled for realization of further interest at the rate of 9% till its actual payment. The relevant observations of the Court are required to

6 (2019) 107 taxmann.com 167 (Gujarat)

be noted which read thus:-

> "16. So far as prayer of the petitioners to grant interest @ 18% on the amount of refund of IGST is concerned, we have carefully gone through the decisions relied upon by the petitioners in the case Jagdamba Polymers Ltd. (Supra) and Purnima Advertising Agency Pvt. Ltd. (Supra). In both the aforesaid decisions, the issue with regard to entitlement of the interest at appropriate rate for delay in not paying the refund and also for paying interest on interest was under consideration. In the aforesaid decisions, the facts indicate that the petitioners therein have prayed for refund prior to insertion of Section 11BB in the Central Excise Act, 1944, which had been inserted w.e.f. 26.05.1995 thereby providing for interest on delayed refund. In the present matter, the issue relates to inaction of the respondent Authorities in not taking decision with regard to the refund of IGST with regard to the goods exported i.e. at "Zero Rated Supplies". Akin provisions in form of Section 56 of the CGST Act, 2017, is incorporated, which deals with the interest on delayed refund. Before adverting to the issue of interest, it would be appropriate to reproduce Section 56 of the CGST Act, which reads as under:
>
> > "Interest on delayed refunds:
> > Section 56: If any tax ordered to be refunded under sub- section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:
> >
> > Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, Interest at such rate not exceeding nine per cent, as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date Immediately after the expiry of sixty days from the date of receipt of application till the date of refund.
> >
> > Explanation: For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)."

On bare perusal of the aforesaid Section, it is explicitly made clear that if the applicant is not refunded the tax amount within 60 days from the date of receipt of the application under Sub-Section 1 of Section 54 then interest at such rate not exceeding 6% as may be specified in the Notification, which may be issued by the Government is payable in respect of such refund from the date immediately after expiry of 60 days from the date of receipt of such application till refund amount is received. The records reveals that the petitioners have raised the refund of IGST immediately within prescribed time and had also made payment of differential amount which has been realized by the respondent Authorities. Thereafter, the petitioners have also made various representations, which are placed on record. In fact, the issue with regard to withholding of refund of IGST in connection with the goods exported i.e. "Zero Rated Supplies" vis-a-vis wrong drawback claim has been settled in view of the case of Amit Cotton Industries (Supra) decided on 22.07.2019. The aforesaid decision was further challenged by the respondent Authorities by way of filing appeal being Special Leave Petition (Civil) Diary No.5502 of 2021 before the Hon'ble Supreme Court, which came to be dismissed vide order dated 22.03.2021. Thus, there is a direct binding decision of this Court, which is rendered in favour of the assessee holding the assessee entitled to the refund of IGST. Despite the aforesaid decision of this Court in the case of Amit Cotton Industries (Supra), for the reasons best known to the adjudicating authority, the adjudicating authority has failed to abide by the aforesaid decision and has chosen not to take decision with regard to the refund of IGST. At this stage, it would be worth to refer to the ratio laid down by this Court in the case of E.I. Dupont India (P) Ltd. Vs. Union of India reported in 2014(305) ELT 282 (Guj), whereby this Court after relying upon the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Kamlakshi Finance Corporation Ltd. reported in 1991(55) ELT 433 has strongly disapproved such arbitrary act of the adjudicating authority in ignoring binding decisions / orders passed by the higher Appellate Authorities / Courts. This Court in clear and unequivocal message rendered by pronouncement of the decision of the Hon'ble Supreme Court as well as this Court has cautioned the State Authorities to abide by the decision of the higher Appellate Authorities / Courts. To repeat, on going through entire record, the stand of the respondent Authority to withhold IGST based on non-consideration of Judicial pronouncement is equally irrational and arbitrary.

17. In view of the aforesaid settled legal position, the present petition succeeds. We hereby direct the respondent Authorities to immediately sanction the refund towards IGST paid in respect of goods exported "Zero Rated Supplies" made under the shipping bill as referred hereinabove.

In peculiar facts and circumstances of the case, we further direct respondent authorities to grant interest @ 9% from the date when the bills for refund of IGST were raised by the petitioner, till its actual payment. The amount of refund of IGST along with interest so

> determined shall be paid within a period of 8 (eight) weeks from the date of receipt of this order. In case the respondent Authorities fail to release such amount, then the petitioners shall be entitled for realization of further interest @ 9% till its actual payment."

58. In ***Sunlight Cable Industries v/s. The Commissioner of Customs NS II And 2 Ors.***[7], a Division Bench of this Court of which one of us (G. S. Kulkarni, J.) was a member, had taken a similar view and referring to the several decisions in the facts of the case, awarded simple interest at the rate of 7% p.a.

59. The common thread which runs through all these decisions as discussed hereinabove would be total inaction on the part of the authorities to refund the amount, which was retained without authority in law and which certainly, considering the position in law as prescribed under the GST Laws and the constitutional principles as evolved in several decisions, the assessees were held to have become entitled to alongwith appropriate interest.

60. In the light of the aforesaid discussion, in our opinion, the petition needs to succeed. It is accordingly allowed in terms of the following order:

> (i) The impugned Circular dated 18 July, 2019 is declared to be not applicable to the petitioner's refund applications / claim;

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7 Writ Petition No. 284 of 2021

(ii) The petition stands allowed in terms of prayer clauses (b), (c), (d) and (e).

(iii) The rejection of the refund applications by the impugned orders dated 5 August 2022 is declared to be illegal.

(iv) The amounts be refunded to the petitioner within a period of three weeks from today along with simple interest at the rate of 9% p.a., failing which the petitioner shall be entitled for realization of further interest at the rate of 9% till its actual payment.

61. Rule is made absolute in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)