

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3653 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

I-TECH PLAST INDIA PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

MS VAIBHAVI K PARIKH, ADVOCATE for the Petitioner(s) No. 1

MR UTKARSH R SHARMA, AGP for the Respondent(s) No. 3,4

NOTICE SERVED for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 07/04/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:

“...this Hon’ble court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to :

- (a) direct the Respondent authorities, more particularly the Respondent No.2, to re-credit / restore the ITC of Rs.1,39,49,810/- in the electronic credit ledger along with interest;*
- (b) pending the admission, hearing and final disposal of this petition, direct the Respondent authorities, more particularly the Respondent No.2, to re-credit/ restore the ITC of Rs.1,39,49,810/- in the electronic credit ledger along with interest;*
- (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.”*

2. The facts giving rise to the present writ-application may be summarised as under :

2(1) The writ-applicant is a Company registered under the provisions of the Companies Act, 1956 (for short, the ‘Act 1956’). The writ-applicant is engaged in the business of manufacturing various types of toys. The writ-applicant is duly registered under the provisions of the Goods and Services Tax Act (for short, the ‘GST Act’) and it has been issued ‘advance license’, whereby the writ-applicant is permitted duty free import of its raw material,

i.e. import without payment of any import duty. Thus, the writ-applicant is importing its raw material by availing the benefit of the Notification No.79/2017-Customs dated 13.10.17 issued by the Government of India, Ministry of Finance, New Delhi. The raw material so imported is used in the manufacturing of its products which, in turn, are exported by the writ applicant.

2(2) During the period in question, i.e. Financial Year 2017-18 to Financial Year 2020-2021, the writ-applicant, inadvertently and due to oversight, cleared and exported its finished goods (produced using material imported under the advance license) upon payment of the Integrated Goods and Services Tax (for short, the 'IGST') instead of exporting it under the 'Letter of Undertaking' (LoU). Since the exports were made upon the payment of the IGST, the writ-applicant periodically received auto-refund of the IGST paid at the time of exports. Upon realizing this inadvertent mistake, the writ-applicant voluntarily paid the requisite IGST along with the interest to the department for the period in question and filed the statutory forms GST DRC – 03 on 13.08.2020 for the period in question. The aforesaid fact was also brought to the notice of the GST Department vide letter dated 13.08.2020. The details of the IGST and the interest paid by the writ-applicant for the period in question are as follows:

Financial Year	IGST	Interest
2017-18	Rs.9,23,702/-	Rs.3,67,608/-
2018-19	Rs.72,48,590/-	Rs.21,30,594/-
2019-20	Rs.44,24,930/-	Rs.5,75,390/-
2020-21	Rs.13,52,588/-	Rs.13,959/-
Total	Rs.1,39,49,810/-	Rs.30,87,551/-

2(3) The writ-applicant, vide letter dated 24.08.2020, further brought the following facts to the notice of the respondent authorities :

(a) That the writ-applicant holds an advance license for duty free importation of raw material and export goods produced from the same under the advance license. Thus, the writ-applicant is availing the benefit of the Notification No.79/2017-Customs dated 13.10.17 issued by the Government of India, Ministry of Finance;

(b) With effect from 23.10.17, sub-rule (10) of rule 96 of the Central Goods and Service Tax Rules, 2017, has been inserted by the Notification No.53/2018 – C.T. dated 09.10.2018 which seeks to prevent an exporter availing the benefit under the specified notifications from exporting goods under the payment of the integrated tax. This is basically to ensure that an exporter, who has availed the benefit under the specified notifications (which includes the Notification No.79/2017-Customs dated 13.10.17), does not utilize the ITC availed on other domestic supplies for making the payment of the IGST on the export of the goods.

(c) Since the writ-applicant is availing the benefit under the Notification No.79/2017-Customs dated 13.10.17, the restriction imposed by sub-rule (10) of rule 96 of the CGST Rules is applicable to the writ-applicant.

(d) Owing to lack of knowledge of the Notification No.53/2018

– C.T. dated 09.10.2018 under which sub-rule (9) of rule 10 has been inserted, the writ- applicant exported its finished goods produced from raw-material imported under the advance license on payment of the IGST by utilizing the accumulated ITC;

(e) The writ-applicant realized that it cannot utilize the ITC for payment of the IGST on export of the goods produced from raw-material imported under the advance license in view of sub-rule 10 of rule 96 of the CGST Rules. Hence, the writ-applicant voluntarily paid an aggregate IGST of Rs.1,39,49,810/- with interest of Rs.30,87,551/- by filing the statutory Form GST DRC – 03 for the period in question. The working of the aforesaid IGST and interest thereon was also furnished;

(f) Thus, the amount of refund of the IGST received by the writ-applicant from time to time has been voluntarily paid by the writ-applicant as an honest tax payer;

2(4) In view of the above, the writ-applicant requested the authorities to re-credit/restore the ITC credit to the tune of Rs.1,39,49,810/- in the electronic credit ledger which was, inadvertently, utilized for payment of the IGST at the time of exports of the goods produced using raw-material imported under the advance license. The details of such ITC to be restored in the electronic credit ledger were also furnished.

2(5) The writ applicant, thereafter met various officers of the GST department at Bhavnagar and Ahmedabad offices

respectively for re-credit of the ITC debited towards the IGST, which were separately paid by the writ-applicant along with interest.

2(6) The writ-applicant, thereafter, vide letter dated 16.10.2020, brought the aforesaid facts to the notice of the Chief Commissioner of the SGST. The writ-applicant also sent an email dated 23.10.2020 to the Commissioner of State Tax to bring out this peculiar aspect of the matter. Despite these repeated attempts, when the ITC was not restored as requested, the writ-applicant preferred the present petition.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT :

3. Mr.Tushar Hemani, the learned senior counsel assisted by Ms.Vaibhavi Parikh, the learned advocate appearing for the writ-applicant made the following submissions:

(a) Since the writ-applicant has voluntarily paid the IGST on exports with interest, the corresponding ITC (which was initially utilized for payment of such IGST on exports) must be recredited/restored in the electronic credit ledger with interest;

(b) Despite the repeated oral as well as written representations by the writ-applicant, the ITC is not being re-credited/restored on the count that there is no such mechanism whereby the ITC can be recredited/restored upon voluntary payment of the IGST;

- (c) An honest taxpayer like the writ-applicant must not suffer owing to lack of appropriate mechanism;
- (d) The action of the respondent in not recrediting/restoring the ITC in question is also not at all in consonance with Article 265 as well as Article 300-A of the Constitution of India, 1950;

SUBMISSIONS ON BEHALF OF THE RESPONDENT :

4. On the other hand, Mr.Utkarsh Sharma, the learned AGP vehemently opposed the present writ-application. Mr.Sharma submitted that the writ-application is not maintainable as the writ-applicant is not at all entitled to claim the refund. He relied upon paragraph 18 of the affidavit-in-reply to buttress his point that once an amount in question is paid in the Form-DRC-03 voluntarily, the same cannot be refunded.

5. In such circumstances referred to above, Mr.Sharma, prays that there being no merit in the present writ-application, the same may be rejected.

ANALYSIS :

6. Under the scheme of the IGST Act, 2017, a registered person having an advance license shall be eligible for importing raw material without payment of import duty. As per Section 16(1)(a) of the IGST Act, export of goods or services or both falls within the ambit of 'zero rated supply', i.e. no IGST is applicable on exports of goods. As per Section 16(3) of the IGST Act, a

registered person making 'zero rated supply' shall be eligible to claim refund under either of the following options:

- i. A registered person may supply goods or services of both under 'bond' or 'Letter of Undertaking' without payment of IGST and claim refund of unutilized tax credit;

OR

- ii. A registered person may supply goods or services of both on payment of IGST and thereafter claim refund of tax so paid;

7. As per Rule 96(10) of the CGST Rules, a registered person importing raw-material without payment of import duty under the advance license shall not be eligible for utilizing accumulated ITC for payment of IGST on exports of goods or services.

8. On the case on hand, the writ-applicant is importing raw-material under the advance license without payment of the import duty. The finished goods produced using the raw-material so imported have been exported by the writ-applicant. The writ-applicant opted for the second route, i.e. payment of IGST on exports, and thereafter claimed refund of such IGST on exports instead of opting for the first route, i.e. exports under the Letter of Undertaking. However, inadvertently, the writ-applicant utilized the ITC for payment of the IGST on exports (instead of paying the IGST separately) which, in turn, was automatically refunded. In view of rule 96(10), the writ-applicant could not have utilized the ITC for payment of the IGST on exports. Upon realizing the aforesaid mistake, the writ-applicant separately

paid the requisite IGST (which was refunded in past) along with the interest thereon.

9. In so far as the erroneous grant of refund and return of such refund amount together with interest by the writ-applicant is concerned, the same is undisputed. That being the case, the first part of the transaction is nullified inasmuch as the amount erroneously refunded has already been repaid by the writ-applicant along with interest. However, once both these transactions are taken out from the equation, what survives is the reduction of the ITC originally effected from the electronic credit ledger of the writ-applicant. The respondent authorities are of the view that the writ-applicant is not entitled to such a refund of the ITC at all. According to Mr.Sharma, the learned AGP, such a refund is not permissible under sub-rule (10) of rule 96 of the CGST Rules. However, in the present case, refund as contemplated under sub-rule (10) of rule 96 of the CGST Rules is not at all an issue. Here, the simple issue is one of restoration of the ITC, which was erroneously refunded and subsequently recovered. If the authorities have accepted that there was an error and resultantly, accepted repayment of the erroneous refund, as a corollary, the credit of the ITC must be restored. It cannot be that for the purpose of repayment, there was an error, and for the purpose of restoration of the ITC, there was no error. There is no question of any refund of the ITC at all. The question is one of restoration of the ITC in the electronic credit ledger and not a refund thereof. Hence, any reference to sub-rule (10) of rule 96 of the CGST Rules is completely misconceived and not tenable.

10. In such circumstances, We direct the respondent authorities to re-credit/restore the ITC to the tune of Rs.1,39,49,810/- in the electronic tax ledger of the writ-applicant.

11. As regards the submissions of Mr.Sharma that the writ-applicant is not entitled to any refund, we make it clear that we have not gone into the merits or the eligibility of the claim of refund of the writ-applicant. We have directed only with respect to restoration of ITC in the sum of Rs.1,39,49,810/- in the electronic credit ledger of the writ-applicant. This is the sum that was erroneously refunded by reducing the ITC from the electronic credit ledger. However, as noted earlier, the same has already been repaid by the writ-applicant along with interest in DRC-03. Once such an amount is repaid by the writ-applicant to the GST department, the original debit of the ITC must be re-credited/restored. Otherwise, the same would amount to double taxation, which is not permissible in law.

12. We, therefore, direct the respondent authorities to restore/re-credit the Input Tax Credit of Rs.1,39,49,810/- in the electronic credit ledger of the writ-applicant within a period of two weeks from the date of receipt of this order.

13. With the aforesaid, this writ-application stands disposed of. Direct service is permitted.

(J. B. PARDIWALA, J.)

(NISHA M. THAKORE, J.)

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