



W.A.(MD)No.1559 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.1559 of 2021

and

C.M.P(MD)No.6439 of 2021

1.The Assistant Commissioner of Customs,
Customs House,
IGST Section,
New Harbour Estate,
Tuticorin – 628 004.

2.Union of India,
Ministry of Finance,
Parliament Street,
Central Secretariat,
North Block,
New Delhi – 110 001.

... Appellants /
Respondents 1 & 2

Vs.

M/s.Modern India Products,
Represented by its Managing Partner,
S.Uma Maheswaran,
314, Thiruvalluvar Street,
Rajapalayam,
Tamil Nadu – 626 117.

... Respondent /
Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 17.04.2021 made in W.P(MD)No.9796 of 2020.



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For Appellants : Mr.R.Nandakumar

For Respondent : Mr.N.Sudalai Muthu

JUDGMENT

Heard both sides.

2.The writ petitioner is an exporter of goods known as “absorbent gauze roll”. The export was made on 26.09.2017. The goods were valued at Rs.12,72,827/- and the writ petitioner paid a sum of Rs.2,54,449/- towards Integrated Goods and Service Tax (IGST). The case of the writ petitioner is that the exports would come under what is known as zero rated supply and they are entitled to refund of the said IGST amount in terms of Sections 16 and 54 of the IGST Act read with Rule 96 of CGST Rules. When the petitioner applied for refund, it was not acted upon. Hence the petitioner filed W.P(MD)No.9796 of 2020. The writ petition was allowed by the learned single Judge on 17.04.2021. Questioning the same, this intra-Court appeal has been filed.

3.The learned Standing Counsel relied on Circular No.37 / 2018 - Customs dated 09.10.2018 which states that if duty drawback is claimed, refund of IGST amount cannot be sought. Paragraph Nos.2.4, 2.5 and 3 of the said circular read as follows:



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“2.4 The declarations required in terms of above Notes and Conditions and provisions of the Drawback Rules are made electronically in the ED! System. When composite drawback rate was claimed (by declaring suffix A or C with Drawback serial number), exporter was required to tick DBK002 and DBK003 declarations in the shipping bills. In fact, for period 1.7.2017 to 26.7.2017, a manual declaration was also required to be given as the changes made on 26.7.2017 were made applicable for exports made from 1.7.2017 onwards.

2.5 By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGSTIITC claims.

3. It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IOST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage.”

The Hon'ble Division Bench of Gujarat High Court in the decision reported in **2019 (7) TMI 472 (M/s.Amit Cotton Industries Through Partner, Veljibhai Virjibhai Ranipa Vs Principal Commissioner of**



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Customs) had categorically held that the aforesaid circular cannot prevail over Rule 96. The Hon'ble Division Bench observed that the circular will not save the situation for the Department. This decision was followed by the Madras High Court in the decision reported in **2020 (1) TMI 90 (M/s.Precot Meridian Limited Vs The Commissioner of Customs, The Assistant Commissioner of Customs)**. We are also informed that several other High Courts have also taken the very same view. Since the learned single Judge granted relief to the writ petitioner only by following the existing legal position, interference with the said order is not warranted.

4.This Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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AND

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