

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 20TH DAY OF JANUARY 2020 / 30TH POUSHA, 1941

WP(C).No.29537 OF 2019(N)

PETITIONER/S:

AKAY FLAVOURS AND AROMATICS PVT. LTD.,
MALAIDAMTHURUTHU P.O., ERNAKULAM, KOCHI- 683561,
KERALA, REPRESENTED BY ITS AUTHORISED SIGNATORY SRI.
JOBY JOSEPH, DEPUTY GENERAL MANAGER, FINANCE AND
ACCOUNTS.

BY ADVS.
SRI.JOHN VARGHESE
SRI.A.L.GEORGE

RESPONDENT/S:

- 1 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT
OF REVENUE, NORTH BLOCK, NEW DELHI- 110001,
REPRESENTED BY ITS CHAIRMAN.
- 2 THE CHIEF COMMISSIONER OF CUSTOMS,
CENTRAL GST AND CENTRAL EXCISE, CENTRAL REVENUE
BUILDING, I.S.PRESS ROAD, ERNAKULAM, KOCHI- 682018.
- 3 COMMISSIONER,
CUSTOMS, CENTRAL GST AND CENTRAL EXCISE, CENTRAL
REVENUE BUILDING, I.S.PRESS ROAD, ERNAKULAM, KOCHI-
682018.
- 4 JOINT COMMISSIONER,
CUSTOMS, CENTRAL GST AND CENTRAL EXCISE, CENTRAL
REVENUE BUILDING, I.S.PRESS ROAD, ERNAKULAM, KOCHI-
682018.
- 5 COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, COCHIN- 682009.
- 6 THE ASSISTANT COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, COCHIN- 682009.
- 7 ADDL.R7 THE ASSISTANT COMMISSIONER,
OFFICE OF ASSISTANT COMMISSIONER OF CENTRAL TAX AND
CENTRAL EXCISE, PERUMBAVOOR DIVISION, THOTTUMKAL
ROAD, PERUMBAVOOR - 683 542.

ADDITIONAL 7TH RESPONDENT IMPEADED AS PER ORDER
DATED 20-01-2020 IN I.A. NO. 02/2019

R1-6 BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CENTRAL
BOARD OF EXCISE & CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P.(C.) No. 29537 of 2020

Dated this the 20th day of January, 2020

JUDGMENT

The prayers in the above W.P.(C.) are as follows :

- (a) *issue a writ of mandamus or any other appropriate writ order or direction, directing the respondents to include the corrected details of Exhibits P6 to P9 through Exhibits P11 and P12 in the EDI system to enable the petitioner to get its refund;*
- (b) *issue a writ of mandamus or any other appropriate writ order or direction directing the respondents to refund the IGST paid with interest from the date of Exhibits P6 to P10 shipping bills forthwith;*
- (c) *Issue any other appropriate writ order or direction as this Hon'ble Court deem fit and necessary in the facts and circumstances of the case ;*
and
- (d) *award costs of these proceedings to the petitioner."*

2. Heard Sri.John Varghese, learned counsel appearing for the petitioner and Sri.Thomas Mathew Nellimoottil, learned Central Government Counsel appearing for the respondents including the additional respondent No.7.

3. Sri.Thomas Mathew Nellimoottil, learned Central Government Counsel appearing for respondents would now submit on the basis of instructions that the Addl.7th respondent (The Asst. Commissioner o/o the Assistant Commissioner of Central Tax & Central Excise, Perumbavoor Division, Thottumkal Road, Perumbavoor - 683542) has now furnished written instructions in his letter No.C.No.VIII/48/218/2019 CCO-V dated

dated 08.01.2020 wherein it has been *interalia* stated that vide the said office letter dated 20.12.2019 Directorate General of Systems and Data Management vide their letter F.No.IV(35)/02/2018 Systems Pt.V. dated 06.01.2020 has clarified that since the party (the petitioner herein) has later filed amendments in the GST returns with IGST amounts, the refunds can be processed through an officer interface option, which is already availed in ICES and that the reference has also been made to the board's circular to the Central Board of Indirect Taxes and Customs, Circular No.08/2018-Customs dated 23.03.2018 and subsequent ICES Advisory No.22/2018 dated 24.05.2018 could be referred for further details on the procedures.

4. Further, it is stated therein that necessary action to sanction IGFT refunds in the instant case could be undertaken by the officers concerned through the office interface as detailed in the procedures provided by the Directorate General of Systems and Data Management.

The abovesaid letter reads as follows :

“Kind attention is invited to this office letter of even number dated 20.12.2019 addressed to Directorate General of Systems and Data Management, New Delhi on the subject matter (copy enclosed).

2. In response to this office letter dated 20.12.2019, the Directorate General of Systems and Data Management, New Delhi vide their letter F No.IV(35)/02/2018 Systems Pt V dated 06.01.2020 clarified that, since the party has later filed amendments in the GST Returns with IGST amounts, the refunds can be processed through an officer interface option which is already

available in ICES. In this regard kind attention is invited to Board's Circular No.08/2018 Customs dated 23.03.2018 and subsequent ICES Advisory No.22/2018 dated 24.05.2018 may be referred to for further details on the procedures.

3. In view of the above, necessary action to sanction IGST refunds in the instant case could be undertaken by the concerned officers through the office interface as detailed in the enclosures provided by the Directorate General of Systems & Data Management.

4. This is for information and further necessary action at your end, so that the facts can be presented before the Hon'ble High Court of Kerala on the next date of hearing (13.01.2020).

This is issued with the approval of Principal Chief Commissioner."

5. Accordingly, it is ordered the competent authority among the respondents 2 to 5 will take necessary steps to process the claim of the petitioner for refund in the light of Ext.P21 and after following the procedure mentioned in the abovesaid letter dated 08.01.2020 and should take necessary consequential steps for honoring the claim of the petitioner for refund, after affording reasonable opportunity of being heard to the petitioner, without much delay, within a period of 4 weeks from the date of production of certified copy of this judgment.

6. The counsel for the petitioner would submits that there is serious delay in effecting the refunds and that the petitioner is entitled for interest. After the abovesaid finalization as aforesaid, it will be open to the petitioner to submit representation before the competent authority among the respondents in the matter of his claim for interest if any and

such claim should also be later considered and decided by competent respondent official concerned within 4 weeks thereafter.

With these observations and directions, the above W.P.(C.) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

SKS

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE INVOICE NO.CE 17-18/404 DATED 26.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P2	TRUE COPY OF THE INVOICE NO.PE 17-18/190 DATED 27.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P3	TRUE COPY OF THE INVOICE NO.PE 17-18/191 DATED 27.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P4	TRUE COPY OF THE INVOICE NO.PE 17-18/192 DATED 29.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P5	TRUE COPY OF THE INVOICE NO.7318300088 DATED 17.09.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P6	TRUE COPY OF THE SHIPPING BILL NO.3895844 DATED 31.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P7	TRUE COPY OF THE SHIPPING BILL NO.3901285 DATED 31.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P8	TRUE COPY OF THE SHIPPING BILL NO.3896552 DATED 31.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P9	TRUE COPY OF THE SHIPPING BILL NO.3896004 DATED 31.03.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P10	TRUE COPY OF THE SHIPPING BILL NO.7630551 DATED 17.09.2018 SUBMITTED BY THE PETITIONER.
EXHIBIT P11	TRUE COPY OF THE GSTR-3B RETURN SUBMITTED BY THE PETITIONER FOR THE MONTH OF MAY, 2018-19.
EXHIBIT P12	TRUE COPY OF THE GSTR-3B RETURN SUBMITTED

BY THE PETITIONER FOR THE MONTH OF JULY,
2018-2019.

- EXHIBIT P13 TRUE COPY OF THE GSTR-3B RETURN SUBMITTED
BY THE PETITIONER FOR THE MONTH OF
SEPTEMBER, 2018-2019.
- EXHIBIT P14 TRUE COPY OF THE CIRCULAR NO.40/2018-
CUSTOMS DATED 24.10.2018 ISSUED BY THE
CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS.
- EXHIBIT P15 TRUE COPY OF THE LETTER DATED 07.03.2019
ISSUED BY THE WEB PORTAL OF CUSTOMS TO THE
PETITIONER.
- EXHIBIT P16 TRUE COPY OF THE LETTER DATED 30.04.2019
ISSUED BY THE PETITIONER TO THE WEB PORTAL
OF CUSTOMS.
- EXHIBIT P17 TRUE COPY OF THE REPRESENTATION DATED
29.07.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.
- EXHIBIT P18 TRUE COPY OF THE REPRESENTATION DATED
29.07.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT.
- EXHIBIT P19 TRUE COPY OF THE GSTR-3B RETURN SUBMITTED
BY THE PETITIONER DURING THE MONTH OF
FEBRUARY, 2017-18
- EXHIBIT P20 TRUE COPY OF THE BANK STATEMENT OF THE
PETITIONER DATED 10/05/2018.
- EXHIBIT P21 TRUE COPY OF THE CIRCULAR NO.125/44/2019-
GST DATED 18/11/2019.
- EXHIBIT P22 TRUE COPY OF THE CIRCULAR NO.17/17/2017-GST
DATED 15/11/2017.