IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13157 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S JAYSONS EXPORTS
Versus
UNION OF INDIA

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Appearance:
MR D K TRIVEDI(5283) for the Petitioner(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 19/10/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. D.K. Trivedi for the petitioner and learned advocate Mr. Hirak Shah for learned advocate Mr. Nikunt Raval for the respondents.

2. Having regard to the controversy involved in this petition, with the consent of the learned advocates for the respective parties, the petition is taken up for final hearing.

3. Rule returnable forthwith. Learned advocate Mr. Hirak Shah for learned advocate Mr. Nikunt Raval waives service of notice of rule for the respondents.

4. The petitioner has preferred this petition claiming the following reliefs:

> "(a) to issue writ of mandamus or any other appropriate writ directing the respondent authorities to

immediately sanction the refund of IGST aggregating to Rs.2,26,087/- paid in regard to the goods exported to the countries mentioned in the respective shipping bills ie. 'Zero Rated Supplies' made vide aforesaid shipping bills as tabulated in para 5.5 hereinabove;

b. to direct the respondent authorities to pay interest @ 18% to the petitioner herein on the amount of refund of IGST mentioned hereinabove from the date of shipping bill Nos. (01) 7667573 dtd. 28/07/2017, (02) 7928755 dtd. 10/08/2017 and (03) 7975605 dtd. 11/08/2017 respectively up till the date on which the amount of refund is paid to the petitioner.

5. The petitioner is a partnership firm. Petitioner is also registered with the Goods and Service Tax Department and holds GST Registration No. 24AAEFJ3419J1ZH. Petitioner firm was engaged in export of VT pumps, Spindle, Flange, Rubber Busg Nitrile, Impeller etc. to (1) M/s. STE UTIMEX AGRICOLE SARL, MOROCCO, (2) SARL AGRODEEL EQUIPMENT, ALGERIE, (3) D.A.A., CASABLANCA, in the

months of July and August 2017 respectively.

5.1) The goods exported out of India, are to be termed as 'Zero Rated Supply' in accordance with Section 16 of Integrated Goods & Service Tax Act, 2017 (For short "IGST Act,2017").

5.2) According to the said provision, a registered person making 'Zero Rated Supply' has an option to claim refund in accordance with Section 16(3)(b) of the IGST Act in a manner as to, he may supply goods or services or both, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with Section 54 of the Central Goods and Service Tax Act, 2017 (For short "CGST Act, 2017").

5.3) As provided in Rule 96 of the Central Goods and Service Tax Rules, 2017

(For short "the CGST Rules, 2017") 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 the person in charge of conveyance carrying the export of goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the petitioner has furnished a valid return in Form - GSTR-3 or Form GSTR-3B.

5.4) Accordingly, the petitioner had for the purpose of exporting goods out of India issued invoices, Shipping Bills. Export General Manifest and Bill of Lading were also generated by the Shipping Line. Goods exported by the petitioner under invoice on payment of IGST of Rs.2,26,087/- in aggregate

under three shipping bills are as under:

Sr. No.	GST Invoice No. & Date	Shipping Bill no. & Date	Export General Manifest No. & Date	Bill of Lading No & Date	Amt of Drawback claimed by punching 'A' (Higher Rate) (Rs.)	Amt. Of Drawback claimed by Punching 'B' (Lower rate) (Rs.)	Amount of IGST Paid
01	JE/EX/12 27/07/17	7667573 28/07/17	132178 09/08/2017	E1D0192119 03/08/17	41,411 @2%	41,411 @2%	17,424
02	JE/EX/16 09/08/17	7928755 10/08/17	131484 22/08/2017	HLCUMUI 170804317 18/08/17	49,788 @2%& 1.5% respectively	49,788 @2%& 1.5% respectively	1,08,999
03	JE/EX/17 11/08/17	7975605 11/08/17	131484 07/09/2017	HLCUMUI 170805013 18/08/17	47,054 @2% & 1.5% respectively	47,054 @2% & 1.5% respectively	99,664
Total					1,38,253	1,38,253	2,26,087

5.5) As provided in Section 54 of CGST Act, 2017, read with Section 16 of IGST Act, 2017, immediately after the goods were exported, considering the shipping bills as application for refund of IGST paid in regard to the export goods, the respondent authorities were supposed to immediately refund the said amount of IGST to the petitioner.

5.6) Though exports were made by the

petitioner in July and August 2017, but till date, IGST is not refunded and as such, no reason for withholding the amount of refund is assigned by the respondent authorities so far.

5.7) The petitioner also approached respondent Nos. 2 and 3 and requested them to sanction the refund of IGST. However, as refund of IGST was not sanctioned to the petitioner, the CHA of the petitioner Mr. Somesh Landa of M/s. Cargotrans Maritime Agencies Pvt. Ltd. visited the office of respondent No. 2 and made request for crediting refund of IGST in the bank account of the petitioner company at the earliest.

5.8) During personal visits, said CHA of the petitioner was orally informed that while generating shipping bill, petitioner had claimed higher rate of drawback by punching

'A' instead of lower rate of drawback by punching 'B' and that was the only reason why refund of IGST could not be sanctioned.

5.9) The petitioner had also submitted letter dated 10.05.2022 on 12.05.2022 before the respondent No.3 with a request to pay IGST refund, however as per the petitioner neither the refund is paid nor any reply is given by the respondents.

5.10) Subsequently, the petitioner submitted letter dated 18.05.2022 on 24.05.2022 before respondent No. 2 and once again all the required details were given and it was requested to credit the amount of refund of IGST of Rs.2,26,087/- in the bank account of the petitioner.

5.11) Being aggrieved by inaction on part of the respondents, the petitioner has

preferred the present petition.

6. Learned advocate Mr. D.K. Trivedi submitted that there is no embargo on availing drawback at higher rate by punching 'A' instead of 'B' on one hand and availing refund of IGST paid with regard to the 'Zero Rated Supply' i.e. goods exported out of India. It was therefore, submitted that the respondent authorities ought to have sanctioned the refund immediately irrespective of whether 'A' was punched or 'B' was punched in the shipping bills.

6.1) It was further submitted that the approach of the respondent authority is completely illegal and not in accordance with the provisions of the statute inasmuch as the rate of drawback is 2% and 1.5% respectively depending on the product exported irrespective of whether 'A' is punched or 'B'

is punched in the shipping bill. It was therefore, submitted that the petitioner has not received any benefit or higher drawback and therefore, the respondent authority could not have refused to sanction the refund of IGST.

6.2) It was pointed out by learned advocate Mr. Trivedi that the goods were exported out of India in July and August 2017 and considerable long time has passed and hard earned money of the petitioner is unlawfully withheld without any legal basis by the respondent authorities which has resulted into monetary loss to the petitioner.

6.3) Learned advocate Mr. Trivedi therefore, submitted that as per the provisions of section 16(3)(b) of the IGST Act, 2017, the petitioner had an option to

first pay integrated tax with regard to the export supplies and thereafter claim refund of such tax in accordance with the provisions of section 54 of the CGST Act, 2017.

6.4) It was therefore, submitted that as supplies made by the petitioner being 'Zero Rated Supply', refund was required to sanctioned and credited to the bank account of the petitioner at the earliest as per the provisions of section 54 of the CGST Act, 2017.

6.5) It was submitted that under normal circumstances, the proper officer would issue order of refund within six months from the date of receipt of application by crediting the refund to the fund referred to in section 57 read with section 54(5) and section 54(7) of the CGST Act, 2017. However, as provided in section 54(8) of the CGST Act, 2017

instead of crediting the refund amount to the fund, same should be refunded to the petitioner at the earliest because it is a case of refund of tax paid on 'Zero Rated Supply'. Reliance was also placed on Rule 96 of the CGST Rules, 2017 to submit that 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 the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export report covering the number and the date of shipping bills or bills of export. It was pointed out that the applicant has submitted a valid return in Form GSTR-3 or Form GSTR-3B and the documents mentioned in Rule 96 i.e. shipping bill was generated and Export General Manifest was also generated and therefore,

upon filing the valid return in GSTR-3B after paying IGST in the months of July and August, 2017, all necessary requirement under Rule 96(1) was complied with and therefore, no formal refund application was required to be filed by the petitioner.

6.6) It was submitted that the respondent authorities could not have withheld the refund as no circumstances as mentioned in section 54(11) read with Rule 96(4) is existing in the facts of the case and the petitioner was never intimated with regard to the withholding of refund in accordance with Rule 96(5) or any order in Part-B of Form GST RFD-07 was issued by the respondent authorities as required under Rule 96(7) of the CGST Rules, 2017.

6.7) In support of his submissions, learned advocate Mr. Trivedi relied upon the

decision of coordinate Bench of this Court in case of **Amit Cotton Industries v. Principal Commissioner of Customs** (Judgment dated 27.06.2019 in Special Civil Application No.20126 of 2018) wherein in similar situation, this Court had an occasion of testing Circular No.37/2018-Custom dated 9.10.2018 on the basis of which the authorities concerned were not sanctioning the refund on the very same ground as higher rate of drawback was claimed, no refund could be sanctioned. It was pointed out that this Court has observed that the circular was in conflict with the provisions of the statute and therefore, the refund could not have been withheld. It was therefore, prayed that the refund withheld by the respondent authorities is required to be paid along with interest at the rate of 18% to the petitioner from the date of shipping bill till the date of payment.

6.8) In support of his submission to direct the respondents to pay the refund amount with interest, reliance is placed on the decision in case of **M/s. Aim Worldwide Pvt. Ltd. v. Union of India** (order dated 22.12.2021 in Special Civil Application No.15648 of 2020), in case of **M/s. Vimla Food Products v. Union of India** (order dated 22.12.2021 in Special Civil Application No.16028 of 2020), in case of **M/s. Swastik International v. Union of India** (Judgment dated 9.2.2022 in Special Civil Application No.6576 of 2021) and in case of **M/s. Sri APP Enterprises v. Principal Commissioner of Customs** (order dated 11.02.2022 in Special Civil Application No.15431 of 2021) wherein the coordinate Bench of this Court has directed the respondent authorities to pay interest at the rate of 9% to the petitioner from the date of raising the shipping bill

till the actual realisation of the amount of refund.

7. On the other hand, learned advocate Mr. Nikunt Raval appearing for the respondents submitted that the processing of the refund claim is an automatic process by Customs EDI System which has an in-built mechanism to automatically grant refund after validating the shipping bill data available in ICES against the GST return data transmitted by GSTN. It was submitted that if the necessary matching is successful, ICES portal would process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of Export would be electronically credited to the bank account of the petitioner registered with the Customs Authorities.

7.1) It was pointed out that the

petitioner had claimed the drawback by selecting "Category-A" instead of "Category-B" on export of their goods in the month of July, 2017 to August, 2017 at the time of filing subject Shipping Bills. As per EDI System, it has been revealed that the petitioner has filed their Shipping Bills in ICEGATE where higher rate of drawback was obtained voluntarily by adding Suffix 'A' with drawback serial number instead of IGST. It was therefore, submitted that the petitioner has claimed higher drawback and violated condition 11 (d) of the Notification 131/2016 - Customs (N.T) dated 31.10.2016 as amended by Notification 59/2017 dated 29.06.2017 read with Circular No. 37/2018-Customs, dated 09.10.2018 so as to gain unlawful benefits. Therefore, the entire system driven process of sanctioning the IGST refund of the subject Shipping Bills has been withheld by the EDI System and there is

no inbuilt mechanism in Customs ICES to sanction or process IGST paid amount in cases where the petitioner claims higher rate of drawback or where higher rate and lower rate are identical.

7.2) It was submitted that the rationale for not allowing the refund of IGST by the authority is that the higher duty drawback reflects the elements of customs, central excise and service tax taken together, which is confirmed by the Para 7 of the Notification 131/2016-Custom (N.T) dated 31.10.2016 and as higher duty drawback has already been availed then granting the IGST refund would amount to double benefit as the Central Excise and Service Tax has been subsumed in GST. It was therefore, submitted that even though in the facts of the present case the drawback under higher rate and lower rate is identical, the refund of IGST amount

was not processed by the Customs ICES System as the petitioner had availed the higher drawback in "Category A".

8. Having heard the learned advocates for the respective parties and on perusal of the material placed on record, it is an admitted position that the petitioner has exported goods in the month of July and August 2017 by filing the shipping bills on payment of integrated tax. As the goods are exported out of India, same are to be termed as 'Zero rated Supply' as per the provision of section 16 of the IGST Act, 2017 which reads as under:

> "16. Zero rated supply.- (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:--
>
> (a) export of goods or services or both; or
>
> (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone

unit.

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

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

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

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

9. Section 54 of the CGST Act, 2017 provides for refund of IGST of the 'Zero Rated Supply' as

defined in section 16 of the IGST Act, 2017 immediately after the goods are exported. Section 54(1) reads as under:

> "54. Refund of tax.-- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:
>
> Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed."

10. Rule 96 of the CGST Rules, 2017 provides the procedure for processing the refund of IGST paid by the petitioner at the time of export supply. Rule 96 reads as under:

> "Rule 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 a departure manifest or 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-3 or FORM GSTR-3B, as the case may be;

(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 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 GSTR1 for the said tax period.

(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

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

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

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

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

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

(9) The application for refund of

integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/2017- Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II,

> Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017."

11. On conjoint reading of section 16 of the IGST Act 2017, section 154 of the CGST Act, 2017 and Rule 96 of the CGST Rules 2017, for the exports made by the petitioner in the month of July and August 2017, the petitioner was entitled to receive the refund of IGST paid at the time of export supply.

12. The stand of the respondent authorities have withheld refund of IGST of Rs.2,26,087/- in the bank account of the petitioner stating that the petitioner has claimed higher rate of drawback and therefore, the system of the department has not sanctioned the refund of IGST paid by the petitioner in view of Circular No. 37/2018-Customs, dated 09.10.2018 and Notification 131/2016 - Custom (N.T) dated 31.10.2016 as amended by

Notification 59/2017 dated 29.06.2017 is not tenable.

13. Notification No. 131/2016 provides for denial of drawback specified in the schedule which is amended by Notification no.59/2017 on enactment of CGST Act, 2017 which includes exporters claiming refund of integrated goods and service tax on such exports. Notification No.37/2018 provided for denial of refund of IGST, however, such notification was issued subsequent to the date of exports made by the petitioner.

14. Circular No.37/2018 came up for consideration before this Court in case of **Amit Cotton Industries** (supra), wherein after considering the relevant provisions, it was held as under:

> "27. In the aforesaid context, the respondents have fairly conceded

that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writapplicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

28. If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

29. We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

30. Rule 96 is relevant for two

purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies :

(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 subsection (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.

31. Mr.Trivedi invited our attention to two decisions of the Supreme Court as regards the binding nature of the circulars and instructions issued by the Central Government.

32. In the case of Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, reported in 2008(12) S.T.R. 416 (S.C.), the Supreme Court observed as under :

> "4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars

cannot be given primacy over the decisions.

5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should

be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

7. As noted in the order of reference the correct position vis-a-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-avis the circular. It has to be the revenue authority who has to question that. To lay content with the circular would mean that the valuable right of

challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution. ”

33. In the case of J.K.Lakshmi Cement Limited v. Commercial Tax Officer, Pali, reported in 2018(14) G.S.T.L. 497 (S.C.), the Supreme Court observed as under :

“25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March, 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the

notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See : UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal – (1999)4 SCC 599.

26. In Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries – (2008)13 SCC 1, it has been held that circulars and instructions issued by the Board are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the

circulars are not binding on the Court. In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular.

27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994.

28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is

indicative of the meaning prescribed to its words by contemporary opinion. In case of an ancient statute, doctrine of contemporanea exposition is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See : G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344). It has been held in Rohitash Kumar and others v. Om Prakash Sharma and others - (2013)11 SCC 451 that the said doctrine has to be applied with caution and the Rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and clear, it does not admit of two different interpretations.

29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable

> possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000."

34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear.

35. In view of the same, the writ-applicant is entitled to claim the refund of the IGST.

36. In the result, this writ-application succeeds and is hereby allowed. The respondents are

> directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund."

15. The decision of **Amit Cotton Industries** (supra) is followed in other cases in similar facts as relied by the learned advocate Mr.Trivedi for the petitioner for granting refund with interest at the rate of 9% from the date of shipping bill till the date of realisation.

16. Considering the above, the facts of the present case are squarely covered by the decision in case of **Amit Cotton Industries** (supra) wherein reliance is placed upon the decision of Supreme Court in case of **Commissioner v. Ratan Melting and Wire Industries** reported in 2018(12) S.T.R. 416(SC) wherein it is held that circulars and instructions issued by the Board are merely

instructions for understanding of statutory provisions and are not binding on the Court. It was further held that circulars which are contrary to the statutory provisions has no existence in eye of law.

17. Similarly, in case of **J.K. Lakshmi Cement Ltd. v. Commercial Tax Officer, Pali,** reported in 2018 (14) G.S.T.L. 497 (SC), it was held by the Hon'ble Supreme Court that power to issue circulars is for just, proper and efficient management of the work and in public interest and such power for proper administration of fiscal law is utilised for avoiding undue hardship to the assessee.

18. Therefore, in view of the fact that the petitioner was holding valid registration number under the CGST Act, 2017 and was exporter entitled to benefit under the provisions of IGST Act, 2017, the petitioner

is entitled to refund of IGST paid as per the provisions of section 16(3)(b) of the IGST Act, 2017 read with section 54 of the CGST Act, 2017 and Rule 96 of the CGST Rules, 2017 as the shipping bill filed by the petitioner shall be deemed to be an application for refund of IGST integrated tax paid on the goods exported outside India and such application shall be deemed to have been filed as per the procedure prescribed under Rule 96 of CGST Rules, 2017.

19. In view of the foregoing reasons, we find that the petitioner is even otherwise entitled to refund of IGST as envisaged under the relevant provisions of IGST Act, 2017 CGST Act, 2017 and CGST Rules, 2017.

20. The petition accordingly succeeds and the respondent authority is directed to immediately sanction the refund of

Rs.2,26,087/- towards IGST paid in respect of goods exported being 'Zero Rated Supply' made under the shipping bill as referred here in above.

21. In the facts and circumstances of the case, the respondent authority is also directed to pay interest at the rate of 9% per annum from the date of filing of shipping bills till the actual date of realisation of the aforesaid amount of refund.

22. Rule is made absolute to the aforesaid extent with no order as to cost.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR