

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY ONE**

PRESENT

**THE HONOURABLE THE ACTING CHIEF JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T. VINOD KUMAR**

WRIT PETITION NO: 15804 OF 2021

Between:

Bhagyanagar Copper Private Limited, Sy. No.98 to 105, 107, 111, 230, 231, 232, 234
Shabashpalle Village, Shivampet Mandal, Narasapur Taluk, Medak District, Telangana-
505402.

...PETITIONER

AND

1. The Central Board of Indirect Tax and Customs, Ministry of Finance, Department of Revenue, New Delhi.
2. The Principal Commissioner of Central Tax, GST Bhavan, L.B. Stadium Road, Secunderabad GST Commissionerate, Basheerbagh, Hyderabad - 500 004.
3. The Principal Commissioner of Customs, Hyderabad Customs Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004
4. The Joint Commissioner of Customs, Office of the Principal Commissioner of Customs, Hyderabad Customs Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004
5. The Director-General Analytics and Risk Management, 10th Floor, Tower-II, Jeevan Bharti Building, 124-Connaught Circus, New Delhi - 110001
6. Union of India, Through the Secretary, Ministry of Finance, North Block, New Delhi - 110001

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS

a) Directing the Respondent No.2 to grant the IGST refund of Rs.14,78,99,959/- along with applicable rate of interest under Section 56 of the CGST Act for the period of February, 21 to May, 21;

b) Directing the Respondent No. 4 to grant All Industry drawback of Rs.1,10,10,580/- and brand rate drawback of Rs.2,15,28,420/- for which orders fixing drawback were along with applicable rate of interest in terms of Section 75 A of the Customs Act, 1962;

c) Directing the Respondent No.5 to remove the system alert and issue NOC for exports made by the Petitioner;

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to comply with the Circular and forthwith grant the provisional IGST refund of 90% & provisional drawback of 1.3% of FOB value along with applicable rate of interest to the Petitioner.

IA NO: 2 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite the hearing of writ petition by fixing an early date of hearing of the W.P. No. 15804 of 2021.

Counsel for the Petitioner: SRI. LAKSHMI KUMARAN AND SRIDHARAN

Counsel for the Respondent Nos.1 to 4: SRI B. NARASIMHA SARMA

**Counsel for the Respondent Nos.5 & 6: SRI NAMAVARAPU RAJESHWAR RAO,
ASSISTANT SOLICITOR GENERAL**

The Court made the following: ORDER

THE HON'BLE THE ACTING CHIEF JUSTICE SRI M.S.RAMACHANDRA RAO
AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.15804 of 2021

ORDER: (per Hon'ble Sri Justice T.Vinod Kumar)

This Writ Petition is filed for issue of a *Writ of Mandamus* directing the 2nd respondent - Principal Commissioner of Central Tax, GST Bhavan, Secunderabad,, to grant the IGST refund of Rs.14,78,99,959/- along with applicable rate of interest under Section 56 of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act'), for the period - February, 2021 to May, 2021; directing the 4th respondent - Joint Commissioner of Customs, O/o the Principal Commissioner of Customs, Hyderabad, to grant All Industry Drawback of Rs.1,10,10,580/- and brand rate drawback of Rs.2,15,28,420/- by fixing drawback along with applicable rate of interest in terms of Section 75 A of the Customs Act, 1962; and directing the 5th respondent – Director-General Analytics and Risk Management, New Delhi, to remove system alert and issue No Objection Certificate for exports made by the petitioner.

2. The petitioner contends that it is an MSME unit in the manufacturing and exporting of products, like Copper Rods, Copper Billet/ Ingot/Bus Bars, Paper Insulated Copper Conductor, Field Coil, Copper Nuggets, Copper Tube and pipe, Copper Wire etc. and is registered under the GST law and is under the jurisdiction of the State GST Department.

3. It is contended that during the period - February, 2021 to May, 2021, the petitioner had exported Copper Billets to China through Integrated Customs Depot, Sanathnagar, Hyderabad (ICD), on payment of Integrated Goods and Service Tax (IGST), in terms of the provisions of

Integrated Goods and Service Tax Act, 2017 (for short, 'the IGST Act'); that as per Section 54 of the CGST Act read with Rule 96 of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules'), it is entitled for refund in IGST paid on goods exported out of India.

4. It is further contended that the shipping bills filed by the exporter shall be deemed to be an application for grant of refund of integrated tax paid on the goods exported, once both the export general manifest and valid return in Form GSTR - 3 or Form GSTR - 3B, as the case may be, has been filed; that in terms of Rule 91 of the CGST Rules, a provisional refund to the extent of 90% of the amount claimed on account of zero rated supplies had to be given within seven days from the date of acknowledgment of complete application claiming refund, unless and until the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim of refund relates, been prosecuted for any offence under the CGST Act.

5. It is also contended that on petitioner filing Shipping Bill No.9221484, dt.09.03.2021, the Deputy Commissioner of Customs, ICD, Sanathnagar, Hyderabad, issued letter dt.10.03.2021 informing the petitioner that the system has given an alert for 100% examination for their export of goods to China and the refund scroll is suspended; that the petitioner was intimated to submit Annexure - A with relevant information to the jurisdictional CGST authorities for further necessary action; that in compliance of the above letter, petitioner submitted details to the jurisdictional CGST authorities, *vide* its letter, dt.24.03.2021, which was initially submitted to the Deputy Commissioner (CGST), Ramgopalpet Range, due to wrong mapping of the petitioner and was forwarded to Begumpet-I Range on remapping, for submission of verification report.

6. The petitioner further contends that as per the Standard Operating Procedure (SOP) issued by the GST policy wing, *vide* CBIC Circular No.16/2019-Customs dt.17.06.2019, wherever exporters are identified as risky, alerts shall be inserted in the system and 100% mandatory examination of export consignment would be followed; that the said circular also provided for suspension of IGST refunds and provided for verification in accordance with the SOP to be issued by the GST policy wing; and that a report to the respective Chief Commissioner of Central Tax is to be furnished within 30 days specifying clearly whether the amount of IGST paid and claimed as refund was in accordance with law or not; that the Chief Commissioner of Central Tax shall compile and forward the report to the concerned customs port of export within five working days thereafter; and that upon receiving the verification report from the Chief Commissioner of Central Tax, the Custom Officer at the port of export shall proceed to process the IGST refund to the extent verified by the GST authorities.

7. The petitioner contends that as the refund and drawback claims of the petitioner were pending in relation to exports made since 15th February, 2021, on issuance of Instruction No.10/21-Customs, dt.13.05.2021 by CBIC, whereunder 'a Special Refund and Drawback Disposal Drive' was initiated, the petitioner addressed letter dt.14.05.2021 to the Chief Commissioner of Central Tax and Customs, for release of pending IGST refund. On seeking processing of refund of IGST, the jurisdictional CGST authorities issued an e-mail dt. 17.05.2021 to the petitioner informing it that certain clarifications were required from the petitioner along with supporting documents as specified thereunder; that

the petitioner by e-mail dt.19.05.2021 provided all the required details and sought to remove system alert and to process the IGST refund.

8. As various communications addressed by the petitioner did not elicit any response from the Chief Commissioner of Central Tax and Customs or the jurisdictional authority, the petitioner had addressed an e-mail on 25.05.2021 to the 5th respondent requesting the said authority to expedite the formalities and remove the system alert and advise the custom authorities to release IGST/Drawback refund, since complete verification was done before the CGST authorities and a verification report was also submitted. The petitioner also brought to the notice of the authorities that it is an MSME unit, and non-grant of refund of IGST paid is causing blockage of working capital resulting in the petitioner facing severe financial constraints.

9. A counter-affidavit has been filed by the 3rd respondent.

10. It is contended by the respondents that the 5th respondent is the Apex Body under the 1st respondent for data analysis and risk management; as large number of cases relating to fake input tax credit (ITC) have been detected since the roll out of GST, among which one most prominent *modus operandi* is to avail fake ITC and seek refund of IGST paid, after export of goods on payment of IGST, measures to safeguard Government revenue have been taken and a risk mitigation strategy has been made to weed out fraudulent exporters from genuine ones; that the said exercise includes identification of risky exporters and the corresponding suppliers, at least up to two levels in the supply chain using data analytics for verification prior to the sanctioning of export benefit; that based on certain parameters, the 5th respondent shares with

the jurisdictional CGST formation, the list of risky suppliers, as classifying them as L1 and L2 and exporters; and that based on the information shared, the jurisdictional CGST formations have to conduct physical and financial verification as envisaged in Circular No.131/1/2020-GST dt.23.01.2020 before granting refund of IGST.

11. The respondents also contend that the petitioner has been identified as a risky exporter by the 5th respondent in his Report No.21AC on the basis of extensive data analytics and the details thereof have been shared with the jurisdictional Commissionerate on 01.03.2021 and an alert has been issued by the Risk Management Centre for Customs under the control of the 5th respondent.

12. It is also contended by the respondents that the Risk Management Centre for Customs has issued an alert in respect of the petitioner stating that it may over value, misclassify, or mis-declare the export consignment to claim higher incentive; that samples may be drawn, in case it is found necessary, and record of the same be made in the column provided for shipping them; that to conduct 100% examination to rule out any mis-declaration of description/value before allowing export; and that to suspend refund scroll till 100% examination is undertaken.

13. The respondents also contend that it is based on such alert issued by the 5th respondent, whereby the petitioner has been identified as risky exporter, detailed analysis of supply chain was conducted for the petitioner, whereby it was found that for the period - April, 2019 to March, 2021, the petitioner availed ITC to the tune of Rs.44.92 crores; that there are 30 suppliers with suspicious GST credentials from whom ITC is flowing out to the petitioner; out of 30 suspicious suppliers, 10 suppliers have

been identified as fake ITC issuers/availleurs and that the total ITC flowing out of these suppliers is of Rs.3,32 crores; and that only on receipt of verification from field formations, NOC can be processed by the 5th respondent; since the said verification/investigation is in progress, further action could not be taken for removing the system alert on the petitioner and also for processing the refund.

14. We have taken note of the submissions made by the learned counsel for the petitioner; the learned Assistant Solicitor General and Sri B.Narasimha Sarma, learned Senior Standing Counsel for Central Taxes.

15. Section 16 of the IGST Act deals with zero rated supply covering export of goods or services or both. Sub-section (2) of Section 16 provides for availing input tax credit for making zero rated supplies. Sub-section (3) of Section 16 provides for a registered person making zero rated supplies eligible to claim refund of integrated tax paid on supply of goods or services, if such supply of goods or services is made on payment of integrated tax; and that such refund of IGST paid is governed by provisions of Section 54 of the CGST Act.

16. In the facts of the present case, it is not in dispute that the petitioner had effected zero rate supplies and would be eligible to claim refund of such Integrated tax paid on goods or services or both under Section 16(3)(b) of the IGST Act.

17. By the counter affidavit filed, the respondents have sought to justify their action of non-refund of IGST paid, on the ground of system alert generated on 01.03.2020, requiring to examine the suppliers of the petitioner up to two levels. However, the contents of the alert insofar as petitioner is concerned, states the reason for such alert, as the petitioner

may be resorting to overvaluing/misclassification or misdeclaration of export consignment to claim higher export incentive. In the said alert, nowhere it has been stated that the suppliers of the petitioner are either fake or non-existing.

18. Further, it is also to be seen that based on system alert generated and the information sought for and obtained from the petitioner, a verification has been conducted and a report was furnished by the jurisdictional authority on 15.04.2021, wherein it has been stated that the Shipping Bill No.9221484 dt.09.03.2021, as received from the office of the Deputy Commissioner of Customs, ICD, Sanathnagar, Hyderabad, for verification of identified risky exporter, has been undertaken in terms of CBIC Circular No.131/1/2020-GST, dt.23.01.2020, and found the same to be in order.

19. Further, by another letter dt.21.04.2021, a verification report has also been given with regard to first stage (L1) and second stage (L2) suppliers and it is stated therein that the credit avallment during the relevant period, is found to be in order in terms of Rule 36(4) of the CGST Rules. Further, by letter dt. 17.05.2021 addressed by the Commissioner of Central Tax and Service Tax to the Chief Commissioner, it has been stated that verification with respect to petitioner identified as L2 supplier/exporter has been completed and report in terms of CBEC SOP dt.23.01.2020 along with check list was forwarded to the 5th respondent on 27.04.2021 and no further action is pending at his end in the matter.

20. All the above communications, emanated from the jurisdictional authority, clearly reveal that not only the export consignment of the petitioner has been verified as per the system alert, but the authorities

also completed verification of the suppliers of the petitioner in L1 and L2 stage. Though in the counter-affidavit it is stated that out of 30 suppliers, 10 suppliers with proportion of ITC of Rs.3.32 crores, out of total ITC availed of Rs.44.92 crores, are identified as suspicious suppliers, the said suppliers and the value of ITC availed is less than 10% of the total ITC availed.

21. Even if the claim of the respondents as to non-completion of verification of suppliers of the petitioner up to two levels is to be accepted, since, the proportion of such suspicious suppliers, the respondents ought to have granted provisional refund to the extent of 90% as provided under Section 54(6) read with Rule 91 of the CGST Rules, which the respondents failed to do. Further, it is also to be seen that in the verification report submitted with regard to L1 suppliers submitted by the jurisdictional authorities to the 5th respondent, none of the L1 suppliers of the petitioner, from whom it had purchased goods by paying applicable taxes under the GST law, are found to be suspicious. If the suppliers of the petitioner are found to be genuine, the petitioner is entitled to claim credit of the taxes paid on such purchases effected.

22. The provisions of the CGST Act and the IGST Act do not mandate the petitioner to verify the genuineness of the suppliers of its supplier, inasmuch as enough safeguards/mechanism are provided under the Act to recover the taxes, if not paid or wrong credit is availed by the petitioner's supplier or supplier's supplier.

23. Inasmuch as no discrepancy has been found with regard to the suppliers of the petitioner, the refund claim by the petitioner cannot be denied to be processed on the ground that verification of the suppliers of

the petitioner's supplier is pending. The reluctance on the part of the respondents in granting of refund to exporters upon completion of exports would result in taking away the incentive to export and would make the exports from the country unviable due to non-flow of funds in the form of refund assured under the Act.

24. Further, the non-committal stand of the respondents in the counter indicating a time frame for completion of the verification in respect of L2 supplier also cannot be countenanced, since it is not the duty of the exporter, like the petitioner, to get such verification done, more so, when there is no such prescription to cause verification by the exporter, like the petitioner, before purchasing any goods from its supplier. The stand of the respondents in not completing the exercise, even if it is required to be undertaken at their end, is contrary to the instructions contained in internal circular No.20/16/07/2020-GST, dt.20.05.2020, issued by the Board wherein the Board had made changes to the SOP dt.23.01.2020 for verification of IGST refunds and specified that in future, all verifications are to be completed and report sent to the 5th respondent within a maximum period of three weeks of receipt of request for verification.

25. In spite of such clear instructions having been issued by the Board for completing verification specifying the maximum period of three weeks and to send a report to the 5th respondent, in the facts of the present case, though more than three months have passed by, the refund application, at least, to the extent admitted to be genuine by the respondents as L1 and L2 suppliers, has not been processed and refund granted. The consequence of inaction on the part of the respondents would result in the provisions of Section 56 of the CGST Act getting

attracted, making the respondents liable to pay interest for such delayed refund either on provisional basis or otherwise.

26. In view of the above, the action of the respondents, and in particular the 2nd respondent, in not granting refund of IGST paid by the petitioner on exports made during the period - 15.02.2021 to 21.05.2021, in a sum of Rs.14,78,99,959/-, cannot be held to be valid and also the non-grant of All Industry Drawback claimed by the 4th respondent, cannot be sustained.

27. Accordingly, the Writ Petition is allowed and a *Writ of Mandamus* is issued directing the 2nd respondent to grant IGST refund on the zero rated supplies effected by the petitioner during the period - 15.02.2021 to 21.05.2021, as claimed, or on provisional basis as provided under Section 54(6) of the CGST Act r/w Rule 91 of the CGST Rules, by crediting such amount to the petitioner's account within three weeks from the date of receipt of a copy of this order; the 4th respondent is also directed to grant All Industry Drawback to the petitioner, if the claim made by the petitioner is otherwise in accordance with the provisions of the Customs Act, 1962, read with the Customs and Central Excise Duties Drawback Rules, 2017.

28. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

//TRUE COPY//

SD/-T.TIRUMALA DEVI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Central Board of Indirect Tax and Customs, Ministry of Finance, Department of Revenue, New Delhi.
2. The Principal Commissioner of Central Tax, GST Bhavan, L.B. Stadium Road, Secunderabad GST Commissionerate, Basheerbagh, Hyderabad - 500 004.

3. The Principal Commissioner of Customs, Hyderabad Customs Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004
4. The Joint Commissioner of Customs, Office of the Principal Commissioner of Customs, Hyderabad Customs Commissionerate, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004
5. The Director-General Analytics and Risk Management, 10th Floor, Tower-II, Jeevan Bharti Building, 124-Connaught Circus, New Delhi - 110001
6. The Secretary, Union of India, Ministry of Finance, North Block, New Delhi - 110001.
7. One CC to Sri Lakshmi Kumaran Advocate [OPUC]
8. One CC to Sri Namavarapu Rajeshwar Rao, Assistant Solicitor General [OPUC]
9. One CC to Sri B. Narasimha Sama, Advocate [OPUC]
10. Two CD Copies
11. One Spare Copy

CHR



HIGH COURT

DATED:28/09/2021

ORDER

W.P.No.15804 of 2021



ALLOWING THE WRIT PETITION
WITHOUT COSTS.

PKK
26/10

(12)