

**W.P.(MD)No.20504 of 2019**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

**W.P.(MD)No.20504 of 2019**

M/s.Precot Meridian Limited,

737, Green Fields, Puliakulam Road,

Coimbatore-641 045,

Through Shri A.P.Unnikrishnan,

Senior Manager - Accounts and Administration. : Petitioner

Vs.

1.The Commissioner of Customs,

Custom House, New Harbour Estate,

Tuticorin-628 004.

2.The Assistant Commissioner of Customs,

(Draw Back Section),

Custom House/St.John ICD,

New Harbour Estate,

Tuticorin-628 004. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the second respondent to sanction and to refund the amount of Rs.4,80,355/- [Rupees Four Lakhs and Eighty Thousand and Three Hundred and Fifty Five only] of IGST paid by the petitioner for the goods exported from India, i.e. 'Zero Rated Supplies' made vide shipping bills mentioned hereinabove.

For Petitioner : Mr.Avinash Poddar

For Respondents : Mr.B.Vijay Karthikeyan

<http://www.judis.nic.in>

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## **ORDER**

The present Writ Petition has been filed seeking for a Writ of Mandamus, directing the second respondent to sanction and to refund the amount of Rs.4,80,355/- [Rupees Four Lakhs and Eighty Thousand and Three Hundred and Fifty Five only] of IGST paid by the petitioner for the goods exported from India, i.e. 'Zero Rated Supplies'.

2. The petitioner is an exporter of cotton. During September, 2017, he exported cotton by way of seven shipping bills and paid Rs. 4,80,355/- towards IGST.

3. Sub-Section (3) of Section 16 of the Integrated Goods and Services Tax Act, 2017 [for brevity, 'IGST Act'], prescribes that, 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 unutilized 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.

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4. Insofar as the petitioner is concerned, he exported after paying the tax and as such, he is entitled to refund of input tax credit.

5. Section 54 of the Central Goods and Services Tax Act, 2017, specifies that subject to the provisions of Sub-Section (10), a registered person may claim refund at the end of any tax period.

6. In the instant case, the petitioner has wrongly availed the higher duty drawback to the tune of Rs.75,454/- on 02.03.2018.

Thereafter, he rectified the mistake by repaying it along with interest to the tune of Rs.81,891/- and sought for refund of IGST paid by him.

7. The respondents, relying on the circular issued by the Government vide Circular No.37/2018-Customs, dated 09.10.2018, would contend that a person, who has made request consciously for refund of duty draw back, is not entitled to IGST/ITC claims and treated that exporter has consciously relinquished the same. Further, the learned Standing Counsel appearing for the respondents would vehemently contend that the petitioner has wrongly claimed higher duty drawback and thereafter, on his own volition, but, without any sanction from the department, has paid it back. Having relinquished his right to get refund

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of IGST, he is not entitled to refund. Further, the entire refund is system-managed and it cannot be manually operated. Once the exporter draws higher duty drawback, the system automatically scrolls out IGST refund. Therefore, the petitioner is not entitled to refund.

8. I have heard the submissions.

9. It is not in dispute that the petitioner exported cotton through seven shipping bills and paid a sum of Rs.4,80,355/- towards IGST. It is also not in dispute that the statute provides for refund of IGST on export of materials. The only condition is that if the export is made after payment of tax, he is entitled to get refund. According to the petitioner, he has complied with the requirements of Sub-Clauses (a) and (b) of Sub-Rule (1) of Rule 96 of CGST Rules, 2017. Accordingly, he is entitled for refund and it cannot be ignored by citing the circular.

10. The Hon'ble Supreme Court, in a similar circumstance, in the case of **Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries [2008(12) S.T.R. 416 (S.C.)]**, has held as follows:

**"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**

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**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."**

11. It is held that circulars cannot prevail over the statute.

Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision. In that circumstance, it is clear that the explanation of provisions of drawback has nothing to do with the IGST refund. In view of that matter, Circular No.37/18-Customs, dated 09.10.2018 cannot have an application in the present case.

Paragraph 2.5 reads as under:

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**"By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims."**

12. When the above circular was dealt with by the Hon'ble Division Bench of Gujarat High Court at Ahmedabad in **M/s.Amit Cotton Industries Through Partner, Veljibhai Virjibhai Ranipa vs. Principal Commissioner of Customs, in R/Special Civil Application No.20126 of 2018**, dated **27.06.2019**, the Division Bench has held that it has nothing to do with the IGST refund and it is incumbent on the respondents to refund the IGST as claimed by the petitioner therein. The respondents have already passed a circular when they were facing lot of problems because of the fact that the refunds are completely system-managed and they have taken a conscious decision to refund the amount vide Circular No.40/2018-Customs, dated 24.10.2018.

13. In view of the above discussion, the respondents are directed to refund the amount of Rs.4,80,355/- [Rupees Four Lakhs and Eighty Thousand and Three Hundred and Fifty Five only] of IGST paid by the petitioner for the goods exported from India which are zero rated supplies, within a period of six weeks from the date of receipt of a copy of this order.

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14. The Writ Petition is allowed accordingly. No costs.

**19.11.2019** Index : Yes / No

Internet : Yes / No

Note to office:

**Issue order copy on 19.12.2019.**

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**M.GOVINDARAJ, J.**

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Order made in

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**Dated: 19.11.2019**

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