IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10865 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No

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ABN INDUSTRIES
Versus
UNION OF INDIA & ORS.

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Appearance:
MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 4,5
SERVED BY RPAD (N) for the Respondent(s) No. 1,2,3

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

Date : 13/03/2025

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE D.N.RAY)

1. Heard learned advocate Mr. Hardik V. Vora for the Petitioner and learned advocate Ms. Hetvi Sancheti for the Respondents No. 4 and 5.

2. Rule returnable forthwith. Learned advocate Ms. Hetvi Sancheti waives service of notice of rule for the Respondent Nos. 4 and 5. With the consent of learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is very short.

3. The petition has been filed under Article 226 of the Constitution of India with the following prayers :-

> "a. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to strike down and declare Circular No. 125/44/2019-GST dated 18.11.2019 to the extent it denies the refund of unutilized ITC on account of supplies made to SEZ units without payment of tax as arbitrary, discriminatory and contrary to provisions of CGST Act (Annexure-A);
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> b. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to quash the order dated 29.11.2022 issued by the respondent no.4 rejecting the refund application (Annexure-B);
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> c. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to quash the appellate order dated 04.05.2023 issued by the respondent no.5 rejecting the refund application (Annexure-C);
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> d. Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;
>
> e. Any other and further relief deemed just and proper be granted in the interest of justice;
>
> f. To provide for the cost of this petition."

4. The brief facts of the case are as follows:

4.1 The Petitioner is a partnership firm, inter-alia, engaged in the business of chemical trading. In May 2022, the Petitioner supplied goods to Special Economic Zone (SEZ) Units without paying taxes. On 04.08.2022, the Petitioner filed a Refund Application, requesting

a refund. In response, the Respondent No. 4 approved the refund of ITC through RFD-06 Order No.ZC240822055533, dated 23.08.2022.

4.2 However, 5 purchase bills were unintentionally omitted during the refund calculation. As a result, the Petitioner made an error in claiming the Input Tax Credit (ITC) of IGST amounting to Rs.12,62,088/-.

4.3 Subsequently, the Petitioner submitted a Refund Application dated 19.10.2022 under the category "Any Other (Specify)", since the Refund Application under the category "Supply to SEZ Unit without payment of Taxes" can only be claimed only once, as per the Board Circular No. 125/44/2019 – GST dated 18.11.2019.

4.4 A Show Cause Notice was issued on 01.11.2022, notifying the Petitioner to explain why their refund application should not be rejected for violating paragraph No. 8 of Circular No. 125/44/2019 dated 18.11.2019.

4.5 In response, the Petitioner submitted a detailed reply on 07.11.2022, primarily arguing that due to an inadvertent error, 5 bills for supplies to the SEZ Unit were missed while calculating the ITC of IGST claimed in the previous Refund Application. However, Respondent No. 4 issued an order on 29.11.2022 rejecting the refund on the grounds that it was not permissible under Circular No. 125/44/2019 – GST dated 18.11.2019.

4.6 Dissatisfied with the order issued by Respondent No. 4, the Petitioner filed Appeal No. APL-01/209/2022-23 on 01.12.2022.

4.7 The Petitioner submitted a detailed explanation regarding the difficulty encountered by the petitioner, as the GST Portal did not allow the selection of the “Supply to SEZ unit without payment of taxes” category, since a refund had already been claimed under that very category. The Respondent No.5 however, rejected the Petitioner’s appeal through the order in GST APL-4.

5. Mr. Hardik Vora, learned advocate for the petitioner, has submitted that once the statute provides for the refund of tax, then the Circular cannot prevail over the statute. He further submitted that it is not in dispute that the petitioner's claim to the refund is genuine. Merely because the portal does not permit the further claim to be lodged under one head, the petitioner should not be left remediless and the Department be permitted to be unjustly enriched.

6. On the other-hand, Ms.Hetvi Sancheti, learned advocate appearing for the respondents, submitted that the petitioner itself is to be blamed for not being careful with its refund application by failing to include the entire claim for refund and instead claiming piecemeal refund and therefore, the department has correctly applied the Board Circular No. 125/44/2019-GST dated 18.11.2019, which permits the petitioner to claim refund, but once.

7. **DISCUSSION & FINDINGS :-**

7.1 On perusal of the affidavit-in-reply on behalf of the respondent No.4 and 5 we find that the respondents have not contended that the

petitioner is not entitled to the quantum of refund claimed in the second refund application. The respondents have specifically contended as under:-

> *"6. In view of the above factual position, this officer was not in a position to sanction again the refund claim of Rs.12,62,088/- filed by the petitioner for the tax period May-2022 in the category of "Any other (Specify)". As there is no specific provision/formula framed by the Central Board of Indirect Taxes, New Delhi for sanction such type of refund i.e. again for the same period. Therefore, the guidelines adopted by the refund sanctioning authority as prescribed in the Board's Circular No.125/44/2019-GST dated 18.11.2019 were followed and rejected the refund accordingly.*
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> *7. It is submitted that the petitioner was required to file their refund claim under the category of Supplies made to SEZ Unit/SEZ Developer without payment of Tax instead of "Any other (Specify)". Therefore, the refund claim was correctly rejected by this office as the correct category for claiming the refund is Supplies made to SEZ Unit/SEZ Developer without payment of Tax instead "Any other (Specify)".*

8. This Court has held in **Shree Renuka Sugars Ltd. Vs. State of Gujarat** reported in **[2023] 152 taxmann.com 550 (Gujarat)** :-

> *"14. "Keeping in view the aforesaid decisions, it is settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. As discussed hereinabove, the petitioner has no option but to upload the supplementary application under "any other" category for the refund of the left out amount, which was due to an arithmetical error committed by the employee of the petitioner. We are of the view that the said claim of the petitioner for refund of the left out amount of Rs. 10,20,28,733/-cannot be rejected outright merely on technicality and that too when the substantive conditions are*

satisfied without scrutiny by the respondent in accordance with law. Thus, the petition deserves to be allowed."

8.1 In **Pee Gee Fabrics Private Limited Vs.Union of India** reported in **2023 SCC OnLine Guj.3044**, this Court has held as under:-

"32. It is also pertinent to note that the respondent authorities cannot dispute claim of the petitioner's eligibility the of refund of Rs.22,78,798/- for the month of August 2018 calculated as per Notification No.20/2018 read with Rule 89 of the CGST Rules, 2017. It is also not in dispute that the said claim of the petitioners was restricted to Rs.14,71,946/- by GST Portal in view of reversal of wrongly claimed credit of Rs.10,12,188/-on capital goods by petitioner company. authorities consideration ought that eligible for balance the Therefore, respondent to the have taken petitioners amount into were of refund of Rs. 8,06,852/- which could not have been denied on hyper-technical ground as stated in the impugned orders. Reasoning given by respondent no.3 for rejecting the legitimate claim of the petitioner company that reversal of ITC on capital goods in Form GSTR-3B amounting to Rs.10,12,189/- is binding on the petitioner company and therefore, the petitioner company is not eligible for claim of refund as per Circular No.94/2019 dated 28.03.2019 cannot be accepted. Circular No.94/2019 permited a one time measure for availing refund of ITC on account of inverted duty structure tax as per Notification No.20/2018 read with Circular No.56/2018 as the assessees were not able to claim refund of the accumulated ITC to the extent to which they were eligbile. Therefore, it was clarified by Circular No. 94/2019 that when the assessee was not eligible to claim the refund then ITC is required to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A for the same tax period in which said reversal has been made. The petitioners taking benefit of such circular preferred Second refund application dated 08.08.2019 for balance amount of ITC on account of accumulated Inverted duty tax structure amounting to Rs.8,06,852/-, Thus the respondent authorities have by adopting such a pedantic approach could not

have rejected the legitimate claim of the petitioner company for balance amount of refund claim."

9. In view of the above position, this Court is of the view that once the respondents admit the entitlement of the petitioner to the quantum of refund, then this Court has ample powers and the jurisdiction to direct the respondents to grant the petitioner, the said refund. In the opinion of this Court, the failure so to do would tantamount to a stamp of approval by this Court to the unjust enrichment on the part of the Department to the excess tax collected by it from the petitioner, which it did not have authority to collect under Article 265 of the Constitution of India. Circulars of the Board are undoubtedly important to follow for both the Assessee and the Department.

10. Today, the operation of Tax Laws in India is largely procedural and based on interaction of the Assessee with the respective Departments, through the respective portals. In the context of GST, Excise, Customs etc., Acts, the supply, movement, claim of drawback, refund, Input Tax Credit etc., and the filing of the returns are to be uploaded on the portal strictly as per the

prescribed Forms with strict adherence to the respective tax calendars. In all the cases, the Department is right in contending that when the procedure has been laid down, the same has to be followed in the manner prescribed, or not at all. However, in certain cases, owing to situations beyond the control of the parties including the Department at times, the performance of the duties of the Assessee often become impossible. In our view ,this is the point of inflection where insistence on the procedure or the rigorous implementation of a certain Circular would defeat the substantive rights of the Assessee, thereby causing miscarriage of justice.

11. Therefore, the adherence to the same cannot be extended to the point that the procedure followed in the Circular completely overpowers and extinguishes the substantive rights of the Assessee under the Act. It is precisely in this domain that the writ of this Court will issue. Thus, in genuine cases of refund, once the conscience of the Court is satisfied that the petitioner has the substantive right to refund, in appropriate cases, it becomes necessary in the interest of justice to exercise the jurisdiction under

Articles 226 and 227 of the Constitution of India to hold that the procedure, being a hand-maiden of substantive justice, does not edge out the substantive rights of the petitioner. Otherwise, it would tantamount to throwing the baby out with the bath-water.

12. In such view of the matter, the present petition succeeds and impugned order dated 29.11.2022 issued by the respondent no.4 and order dated 04.05.2023 issued by the respondent No.5 rejecting the petitioner's appeal are hereby quashed and set aside. The respondents are directed to process the refund application dated 19.10.2022 afresh in the light of this judgment. The said exercise may be carried out within a period of Twelve (12) weeks from the date of receipt of copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH