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* **IN THE HIGH COURT OF DELHI AT NEW DELHI** ***Date of Decision: 09.09.2021***

\+ **W.P.(C) 4284/2021**

M/S. UPS INVERTER.COM & ANR. ..... Petitioners
Through Ms.Sakshi Singhal, Adv.

versus

UNION OF INDIA & ANR. ..... Respondents
Through Mr.Satish Kumar, Sr. Standing counsel for R-2.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. The present petition has been filed by the petitioners praying for the following reliefs:

> *"a) Declare that Paragraph 11(d) read with 12A(a)(ii) of the Notes and Conditions of the Notification No.131/2016-Cus. (N.T.) dated 31.10.2016 (**Annexure P-3**) [as amended by Notification No.59/2017-Cus. (NT) dated 29.06.2017 (**Annexure P4**) and Notification No.73/2017-Cus. (NT) 26.07.2017 (**Annexure P-5**)] are (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 and Rule 96 of CGST Rules, 2017 & (ii) unconstitutional and violative of Article 14, 19*

and 21 of the Constitution of India & Quash the same;

b) Declare that Circular No.37/2018-CUSTOMS dated 09.10.2018 ***(Annexure P-9****) is (i) ultra vires Section 16 of the IGST Act, 2017 read with Section 54 of CGST Act, 2017 and Rule 96 of CGST Rules, 2017, and (ii) unconstitutional and violative of Article 14,19 and 21 of the Constitution of India & Quash the same;*

c) Direct Respondent Authorities to grand refund of IGST paid on goods exported by the Petitioners during the Transitional Period, with 6% interest from the date of the shipping bill till the date of actual refund."

2. It is the case of the petitioners that the petitioners are the exporters of invertors, transformers and allied products. In the course of their business, between 01.07.2017 to 30.09.2007 (which is the transitional period between the pre and post GST Regime), they had made various exports falling under Tariff Item 8504 of the Notification No. 13/2016-Cus.(N.T.), dated 31.10.2016 (as amended by Notification No. 41/2017-Cus.(N.T.) dated 26.04.2017) (hereinafter

referred to as 'Drawback Schedule') on the payment of Integrated Goods of Services Tax (IGST). The Drawback Schedule prescribed identical rates of Duty Drawback under Column 'A' as well as Column 'B' for the said Tariff Order.

3. Since there were no guidelines from the GST or Customs department in respect of procedure to be followed in such cases, the petitioners had claimed drawback under Column 'A' instead of under Column 'B'.

4. By the Circular No. 37/2018-Customs dated 09.10.2018, the respondents have denied the refund of IGST on the ground that the exporters having filed the declarations voluntarily, they are deemed to have consciously relinquished their IGST/ITS claims.

5. The learned counsel for the petitioners states that the issue raised in the present petition is squarely covered by the judgment dated 26.11.2019 of this Court in ***TMA International Pvt. Ltd. & Ors.. vs. Union of India & Anr.*** in WP(C) No.2694/2019, wherein this Court in similar circumstance has held as under:

> *"14. Though, the challenge in the present petition is also to the vires of the circulars enumerated above, however, Petitioners are primarily concerned with the refund of IGST paid on goods exported to them during the transitional period. The Respondents' concerned is well founded that the Petitioners should not take undue advantage of the drawback scheme. The purpose behind impugned circular is to ensure that the exporters do not claim AIRs of duty drawback and simultaneously avail tax neutralization under GST as this would amount to exporter availing double benefits of neutralizing of taxes. However, the fact remains that at no point of time, the petitioners declared that they would forego the claim of IGST refund. During the transitional period, Petitioners have inadvertently claimed benefit under the wrong provision, since there was lack of clarity with respect to the refund of IGST. Should we deny the benefit simply for this mistake when the cardinal rule is that taxes should not exported? The concept of zero -rated exports envisaged under GST is designated to achieve this objective. In the current scenario, exporters pay IGST and apply for*

refund. Thus, for wrong input given at the time of claiming drawback should not deprive them of this valuable right. We can't immune to the fact that taxpayers have faced difficulties in understanding the complexity of GST procedures. Its implementation has not been smooth and the Government itself has faced huge challenges. The model of matching of invoices for purchase, as originally envisioned could not be implemented and a truncated version of returns had to be introduced. This also entailed frequent issuance of innumerable circulars and notifications in quick succession, extending deadlines, introduction of fresh procedures and such other measures. As a result taxpayers were reeling under confusion which continues until this day implying that much needs to be done despite the efforts and measures taken by the Government. The situation is not a happy one and has adverse impact on the taxpayers. There has been influx of cases relating to such issues. We are also witnessing many cases relating to transitional provisions. Revenue needs to realise the inefficient implementation of the law has had adverse fallout on the taxpayer. Government would have to embrace initiatives that would help the taxpayers in the transformation to the new regime. This would require understanding the difficulties faced by the industry which would be crucial step for success of GST law. Instant case is one such example where Petitioners have been victim of technical glitches on account of confusion during transitional phase. We are thus of the view that taxpayers like the Petitioners should not be denied the substantive benefit of the IGST paid by them on exports.

15. We find merit in the submission of Mr. Bansal that the exporters would not voluntarily opt for the claim of drawback under Column A at the cost of foregoing IGST paid on exports, where the duty drawback rates under Column A and B were same, the exporters would have received the same amount of drawback even if they would have

> *mentioned "B" in their shipping bills instead of "A" for claiming drawback. Since the condition for not claiming IGST refund is not applicable to cases where duty drawback has been claimed under Column B, exporters would have received IGST refund also on mentioning "B". Therefore, exporters did not have any benefit in claiming drawback under Column A. It is not pointed out by the Respondents that the Petitioners derived any undue advantage by their aforesaid mistake. On the contrary, it would result in causing loss for the value of the IGST paid on exports. By way of illustration, we take note of one such instance as pointed out by Mr. Bansal that if Steel Strips (HSN-7211) are exported then whether duty drawback is claimed under Column A or Column B, the rate is 2%. However, rate of IGST on the said export is 18%. In such a situation under no circumstances it can be assumed that the exporters intentionally decided to claim duty drawback should forego IGST refund. Besides, if the petitioners have claimed and received only the customs duty portion of the drawback and element of IGST (earlier Central Excise Duty and Service Tax) was not included in the drawback rate, granting of IGST refund would not result in double neutralization of input taxes. Respondents have also, in fact, never intended to deny refund of IGST paid on export in cases where only custom component was claimed as drawback."*

6. On the other hand, the learned counsel for the respondents submits that the present petition does not implead the jurisdictional authority who has to verify the claim of the petitioners. He further submits that the petitioners have also not enclosed the relevant documents in the form of shipping bills for which the refund is claimed. He submits that in absence of these documents, the assertions made by the petitioners cannot be verified.

7. As far as the legal issue is concerned, the learned counsel for the respondents does not dispute that the same is covered by the judgment of this Court in ***TMA International*** (supra).

8. We have considered the submissions made by the learned counsels for the parties.

9. As the issue raised in the present petition is otherwise settled by this court in its judgment in ***TMA International*** (supra), we direct the respondents to carry out a verification exercise of the claim made by the petitioners within 12 weeks from today and submit a report to this Court. The petitioners shall be at liberty to file the relevant documents as may be called for by the jurisdictional authority in support of its claim. In case the respondents find the claim of the petitioners to be correct, the refund shall be processed by the respondents without awaiting further orders from this Court in accordance with law.

10. List for reporting compliance on 10th January, 2022.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 9, 2021/*RN*