

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20759 of 2018**

M/S RADHESHYAM SPINNING PVT LTD

Versus

UNION OF INDIA

Appearance:

KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1,2

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR DHAVAL D VYAS(3225) for the Respondent(s) No. 3

NOTICE SERVED(4) for the Respondent(s) No. 2,4,5

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 29/01/2021**ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

- (a) That this Honorable Court be pleased to quash and set aside Notification no.26/2017Custom, dated 29.06.2017 annexed as 'Annexure F' to the extent amending Notification no.16/2015Customs, dated 01.04.2015, annexed as 'Annexure - B'; and
- (b) That this Honorable Court be pleased to quash and set aside Trade Notice 11/2018, dated 30.06.2017 issued by the Respondent No.2, annexed as 'Annexure - G', to the extent it is stated therein under Chapter 5 that importers would need to pay IGST; and
- (c) That this Honorable Court be pleased to grant refund of Rs.3,37,79,196/- and interest at the rate of 24% thereon; and
- (d) Ex parte ad-interim relief in term of Prayer 9(c) be granted; and

(e) For Costs; and

(f) That this Honorable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case.

2. It has been fairly conceded by the learned standing counsel appearing for the Union of India as well as by the learned counsel appearing for the respondents nos.2 and 3 that the issue raised in this writ application is squarely covered by the judgment of this Court in the case of M/s. Prince Spintex Pvt. Ltd. Vs. Union of India; Special Civil Application No.10756 of 2018; decided on 03/02/2020. We quote the relevant operative part of the judgment referred to above as under:“

42. In the light of the above discussion, the petition succeeds and is, accordingly, allowed. It is held that the amendment of Notification No.16/2015 Cus. Vide Serial No.1 of Notification No.79/2017 dated 13th October, 2017, would also apply to imports made during the period 1.7.2017 to 13.10.2017. Trade Notice 11/2018 dated 30.6.2017 to the extent it is stated therein that under Chapter 5 importers would need to pay IGST is hereby quashed and set aside. The impugned order in original dated 29.9.2018 is hereby quashed and set aside and it is held that the petitioner is entitled to refund of the amount of Rs.2,38,83,203/paid by it towards IGST with interest at the statutory rate. Rule is made absolute accordingly, with no order as to costs”.

3. However, the controversy does not come to an end over here. After the present writ application was filed on 18th December 2020, Section 49 of the CGST came to be amended w.e.f. 01/02/2019 and new Section 49A and Section 49B were inserted in the said Act. By virtue of power under Section 49B, Rule 88A was inserted w.e.f. 29/03/2019

in the CGST Rules vide Notification No.16/2019CT, dated 29/03/2019. In such circumstances, w.e.f. 01/02/2019, the ITC available on account of IGST has to be first utilized for the payment of GST or CGST or SGST. This provision was amended w.e.f. 01/02/2019, but the GST portal started functioning as per the amended provisions w.e.f. 01/06/2019. Therefore, w.e.f. 01/06/2019, the accumulated ITC of IGST of Rs.3,37,79,196/- (Additional Customs duty paid by the writ applicants, EPCG holder) started getting utilized automatically during the pendency of the petition.

4. In view of the above, the ITC of CGST and SGST started accumulating correspondingly. In such circumstances, as on date on account of such amendment in operation, the writ applicants have Nil balance of IGST in its electronic credit ledger and the IGST balance is converted into CGST and SGST. In other words, the balance of CGST and SGST got artificially inflated as a result of the appropriation of IGST credit.
5. In such circumstances referred to above, this writ application is allowed. The respondents are directed to sanction and pay the refund of Rs.3,37,79,196/- after first reversing the entries of utilization of the subject credit and debiting the said amount from the credit ledger consequently available to the writ applicant. Let this exercise be undertaken within four weeks from the date of the receipt of this order.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

P.S. JOSHI