NEUTRAL CITATION
2023:GUJHC:37264-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 647 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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TAGROS CHEMICALS INDIA PVT. LTD.
Versus
UNION OF INDIA

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Appearance:
MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1
NOTICE UNSERVED for the Respondent(s) No. 1
PRIYANK P LODHA(7852) for the Respondent(s) No. 2,3

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CORAM:**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 13/07/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. Looking to the issue involved in the present petition, learned advocates for the parties have jointly requested for taking up this matter for final hearing

NEUTRAL CITATION
2023:GUJHC:37264-DB

at admission stage and, hence, this petition is taken for for final disposal at admission stage.

2. Rule. Learned Standing Counsel, Mr. Prinank Lodha waives service of notice of rule for respondents.

3. This petition is filed under Article 226 of the Constitution of India, in which, the petitioner has prayed that the order dated 22.06.2021 passed by the respondent no.1 be quashed and set aside and thereby the respondent be directed to refund an amount of Rs.23,09,100/- with interest and with consequential benefit.

4. The brief facts leading to the filing of the present petition are as under:

4.1 It is stated that the petitioner no.1 is holding GST Registration from the beginning of the introduction of CGST. It is stated that the

NEUTRAL CITATION
2023:GUJHC:37264-DB

petitioner had received purchase order from registered exporter viz., Quality Biz Chem India Pvt. Ltd., Mumbai to supply the goods at the concessional rate of IGST at the rate of 0.1% in terms of Notification No.41/2017 - Integrated Tax (Rate) dated 23.10.2017 as they intended to export the goods. On the basis of the purchased order, the petitioner had supplied the goods to the buyer on payment of full duty (under an error) of IGST at the rate of 18% instead of concessional rate of 0.1% in terms of Notification No.41/2017 – Integrated Tax (Rate) dated 23.10.2017. The petitioner raised Tax Invoice dated 30.06.2019 for the taxable value of Rs.1,29,00,000/- and IGST amount of Rs.23,22,000/- was charged in the said tax invoice under an error. The effect of the said tax invoice was shown in GSTR-1 and GSTR-3B for the relevant month.

NEUTRAL CITATION
2023:GUJHC:37264-DB

4.2 It is also stated that the buyer, Quality Biz Chem India Pvt. Ltd., Mumbai has exported the goods under shipping bill dated 06.07.2019, which bears the details of the petitioner's GSTIN and tax invoice. Thereafter, the petitioner found out in the month of March, 2020 that under a mistake, they had paid the full rate of 18% duty instead of 0.1%, therefore, the petitioner issued credit note dated 16.03.2020 for the excess amount of tax to the buyer. The details of credit note were duly mentioned in GSTR-1 return for the month of March, 2020, however, the petitioner could not reduce the turnover and GST liability as there were no outward supplies during the said month and subsequent month.

4.3 The petitioner, therefore, filed refund claim on 03.09.2020 as prescribed under the Integrated Goods and Service Tax Rules, 2017. The petitioner filed a refund claim of Rs.23,09,100/-

NEUTRAL CITATION
2023:GUJHC:37264-DB

for the amount paid in excess as IGST in terms of the clarification issued under Circular dated 13.04.2020. Thereafter, the respondent issued deficiency memo, to which, the petitioner filed all relevant documents and uploaded claim through GST portal.

4.4 It is further stated that the respondent did not accept the explanation furnished by the petitioner and issued show cause notice dated 15.04.2021 as to why the refund claim of Rs.23,09.100/- should not be rejected. The petitioner submitted its explanation, however, without recording proper finding on each submission, the respondent confirmed the proposal to the notice by passing an order in original dated 07.05.2021. The petitioner has, therefore, preferred present petition.

5. Heard learned advocate, Mr. Dhaval Shah for the

NEUTRAL CITATION
2023:GUJHC:37264-DB

petitioner and learned Standing Counsel, Mr. Priyank Lodha for the respondents.

6. Learned advocate for the petitioner mainly contended that the respondents have committed an error in denying the benefit of concessional rate of duty as provided under notification No.41 of 2017 – Integrated Tax (Rate) on the inter-State supply of taxable goods, which were ultimately exported on the basis that the conditions prescribed under Notification No.41 of 2017 – Integrated Tax were to comply before the export takes place, whereas the language of the said Notification does not provide such condition. Clause – 2 of the said Notification provides a specific bar in claiming the benefit of the notification if the goods are not exported within a period of 90 days from the date of issue of tax invoice. Thus in absence of such situation, the respondent authority has no authority and jurisdiction to deny the benefit of concessional rate of

NEUTRAL CITATION
2023:GUJHC:37264-DB

duty for any reason.

7. It is also submitted that the respondent could not have denied the refund on technical/ procedural default if any. Learned advocate submits that it is settled law that substantial benefit cannot be denied on the ground of technicalities or procedural lapses.

8. Learned advocate has placed reliance upon the decision upon the decision rendered by the Hon'ble Supreme Court in case of **Share Medical Care Vs. Union of India & Ors.**, reported in **(2007) 4 SCC 573** as well as in case of **Bonanzo Engineering & Chemical Pvt. Ltd. Vs. Commissioner of Central Excise**, reported in **(2012) 4 SCC 771**.

9. On the other hand, learned Standing Counsel, Mr. Priyank Lodha appearing for the respondents has opposed this petition and referred to the averments made in the affidavit-in-reply filed on behalf of the

NEUTRAL CITATION
2023:GUJHC:37264-DB

respondent no.3. Learned Standing Counsel would mainly contend that the Assistant Commissioner has denied the refund claim on legal ground as the petitioner has filed refund claim claiming that they have supplied the goods to the Merchant Exporter under Notification No.41/2017 – Integrated Tax (Rate) dated 23.10.2017 but they have not fulfilled the condition as laid down in the said Notification. As per the said Notification, the petitioner was entitled to pay GST at the concessional rate of 0.1% subject to the fulfillment of the conditions as prescribed under the said Notification for supplying the goods to the Merchant Exporter for export purpose. The said refund claim has been rejected on the basis of non-submission of documents by the petitioner which were required as per relevant condition no. (v) to (ix) as mentioned in the Notification No.41/2017. It is further submitted that Condition No.(v) of the said Notification mentions that the registered recipient shall place an order on registered supplier for

NEUTRAL CITATION
2023:GUJHC:37264-DB

procuring goods at concessional rate and copy of same shall also be provided to the jurisdictional tax officer and the registered supplier. In the present case, the petitioner has submitted a copy of letter dated 07.04.2021 written by M/s. Quality Biz Chem Pvt. Ltd., Mumbai (the recipient) addressed to the jurisdictional tax officer and the registered supplier. In the said letter, the said party has intimated that they had raised purchased order dated 20.06.2019 and purchased the goods from the claimant on 30.06.2019. It is further submitted that the petitioner also did not comply with the said condition and, therefore, the respondent authority has rightly rejected the refund claim of the petitioner. Learned advocate, therefore, urged that this petition be dismissed.

10. We have considered the submissions canvassed by learned advocates appearing for the parties. We have also gone through material placed on record.

NEUTRAL CITATION
2023:GUJHC:37264-DB

11. On perusal of the notification no.41/2017 integrated tax (rate) which has been placed on record by the petitioner, it pertains to the benefits to be availed on fulfillment of the conditions mentioned therein. There are in all 9 conditions in the said notification. Condition no.(ii) which reads as under:

> *"(ii) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier."*

12. Thus, the duty is cast upon the registered recipient to export the goods within a period of 90 days from the date of issue of tax invoice by the registered supplier. In the present case, the petitioner has placed on record the invoice which is of 30.6.2019 and thereafter the buyer i.e. Quality Biz Chem India Pvt.

NEUTRAL CITATION
2023:GUJHC:37264-DB

Ltd., Mumbai has exported the goods under shipping bill dated 6.7.2019. Hence, the condition no.(ii) as mentioned hereinabove has been fulfilled. The conditions mentioned in the aforesaid notification clearly envisages that all the conditions are not to be fulfilled or complied with by the petitioner but the conditions are to be complied with by the exporter. The petitioner uploaded the refund claim on 12.3.2021 however, the respondent on a technical ground did not grant the refund and passed the impugned order dated 22.6.2021.

13. At this juncture, a reference of ***Bonanzo Engineering & Chemical Pvt. Ltd. v. Commissioner of Central Excise reported in 2012(4) SCC 771*** is material and in the said decision, the Hon'ble Apex Court in paragraph Nos.11 and 14 has observed as under:

> *"11. The sum and substance of the reasoning of the Tribunal appears to be*

NEUTRAL CITATION
2023:GUJHC:37264-DB

that merely because the assessee has paid the excess duty on those items which he was not supposed to pay in view of the exemption notification dated 1.3.1988 and merely because the assessee has not claimed the refund of the excess duty paid, that amount paid by him under the Notification dated 1.3.1988 requires to be taken for the purpose of computing the aggregate value of the clearances under the notification No.175/86-CE. In our view, merely because the assessee, maybe, by mistake pays duty on the goods which are exempted from such payment, does not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the assessee has not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the Notification No.175/86-CE dated 1.3.86."

14. In view of the above, we cannot sustain the judgment and order passed by the Tribunal in Appeal No.E/1352/2002-B, dated 25.10.2002."

NEUTRAL CITATION
2023:GUJHC:37264-DB

14. Thus, the Hon'ble Apex Court has taken a view that merely because by mistake, the assessee paid duties on the goods which are exempted from payment does not mean that the goods would become goods liable for the duty under the Act.

15. In the case of ***Share Medical Care v. Union of India reported in 2007(4) SCC, 573***, paragraph Nos.10 and 15 are reproduced hereunder:

> *"10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. It is, no doubt, true that initially the appellant claimed exemption under category 2 of exemption notification which was granted. That, however, does not mean that the appellant could not claim exemption under category 3. So far as cancellation of exemption under category 2 is concerned, we are not called upon to decide legality or otherwise of the said*

decision as it has not been challenged before us in the present proceedings. The short question which we have to answer is whether the appellant could claim exemption under category 3 and non-consideration of the said application by the Deputy Director General (Medical) is in consonance with law. Our reply is in the negative. And we are supported in our view by the decisions of this Court.

15. From the above decisions, it is clear that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage."

16. Thus, in view of the aforesaid view taken by the Hon'ble Apex Court, the petition deserves to be allowed and the same is *allowed.* The order dated 22.6.2021 passed by the respondents is hereby quashed and set aside and the respondents are directed to refund the amount of 23,09,100/- with interest applicable as per law within reasonable time

NEUTRAL CITATION
2023:GUJHC:37264-DB

from the date of receipt of copy of this judgment. Rule is made absolute. No order as to costs. Direct service is permitted.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI,J)

VATSAL