

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

245

CWP-19850-2024

Reserved on:01.09.2026

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*Whether only the operative part of the judgment is pronounced or
Whether the full judgment is pronounced : **Full***

ERNST AND YOUNG LLP

.....PETITIONER

Vs.

UNION OF INDIA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH GAUR**

Argued by: Mr. Kamal Sawhney, Advocate,
Mr. Deepak Thakur, Advocate (Through VC) and
Mr. Rishab Singla, Advocate for the petitioner.

Mr. Ajay Kalra, Sr. Standing Counsel with
Ms. Isha Janjua, Advocate for the respondents-CBIC.

RAJESH GAUR, J.

1. This writ petition has been filed by the petitioner, Ernst and young LLP, seeking quashing of the order dated 28.02.2023 passed by the Appellate Authority, i.e., Additional Commissioner (Appeals), Gurugram, to the extent that it rejects the petitioner's claim for refund of interest paid under Rule 96A of the Central Goods and Services Tax Rules, 2017 ("the Rules"). The petitioner has further sought a declaration that Paragraph 4.6 of the Circular No.197/09/2023 GST dated 17.07.2023 is ultra vires the



provisions of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), to the extent that it provides that a supplier is not entitled to seek refund of interest paid under Rule 96A of the Rules.

2. The facts of the case, which are largely undisputed, may be noticed as under.

2.1 The petitioner is engaged in the export of professional services to clients located outside India. In respect of the exports in question, the petitioner did not pay Integrated Goods and Services Tax (IGST) at the time of supply, having furnished a Letter of Undertaking (LUT) under Rule 96A of the Central Goods and Services Tax Rules, 2017 (for short, "the CGST Rules"). The said Rule permits an exporter to export goods or services without upfront payment of tax, subject to fulfilment of the conditions prescribed thereunder.

Rule 96A(1)(b) of the CGST Rules, as applicable to the case of the petitioner, required the payment for export of services to be realised in convertible foreign exchange within a period of one year from the date of the invoice. In the event of failure to realise such payment within the stipulated period, the exporter was required to pay the tax which would otherwise have been payable on such export, along with interest under Section 50 of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act") for the period of delay.

3. In the present case, the petitioner could not realise the export consideration within the stipulated period of one year and, accordingly, deposited the tax along with interest in terms of Rule 96A of the CGST



Rules. It is not in dispute that the export consideration was subsequently realised by the petitioner, though after expiry of the aforesaid period.

Upon receipt of the foreign remittance, the petitioner sought refund of both the tax as well as the interest deposited by it. The refund of the tax component was allowed. The claim for refund of interest, however, was declined. The petitioner carried the said rejection in appeal, but without success. The rejection of refund of interest came to be affirmed by the Appellate Authority vide the impugned order dated 28.02.2023, *inter alia*, by placing reliance upon paragraph 4.6 of Circular No. 197/09/2023-GST dated 17.07.2023.

4. The short question that, therefore, arises for consideration is whether, once the tax deposited by the petitioner under Rule 96A of the CGST Rules has been refunded upon subsequent realisation of the export proceeds, the interest paid along with such tax can still be retained by the Revenue solely on the strength of paragraph 4.6 of Circular No. 197/09/2023-GST dated 17.07.2023, which provides that no refund of the interest paid in compliance with Rule 96A(1) shall be admissible.

5. Learned counsel for the petitioner submits that the expression "export of services" is defined under Section 2(6) of the Integrated Goods and Services Tax Act, 2017. Clause (iv) thereof requires that the payment for such service be received by the supplier in convertible foreign exchange, but the Act itself does not prescribe any time limit within which such payment is to be received. The period of one year finds mention only in Rule 96A of the CGST Rules, which is in the nature of subordinate legislation prescribing the conditions and safeguards for export without payment of tax.



It is, thus, contended that a condition prescribed by the Rules cannot be construed so as to curtail or alter what the principal enactment itself recognises as an "export of services".

6. In support of the aforesaid contention, reliance is placed upon the judgment of the *Gujarat High Court in Zenith Spinners v. Union of India, 2015 (326) E.L.T. 97 (Guj.)*, which was affirmed by the Supreme Court in *Union of India v. Zenith Spinners, 2015 (326) E.L.T. 23 (S.C.)*. On the strength of the aforesaid decisions, it is contended that the power to prescribe conditions, safeguards and procedures in respect of a facility conferred by the statute cannot be exercised in a manner which has the effect of curtailing or restricting the substantive benefit granted by the statute itself.

7. Learned counsel for the petitioner further submits, with reference to paragraphs 4.5 to 4.7 of Circular No. 197/09/2023-GST dated 17.07.2023, that the Circular itself recognises that where the export proceeds are realised beyond the period prescribed under Rule 96A, the benefit of zero-rated supply would not be denied and the tax earlier deposited may be refunded as "excess payment of tax". Once the export proceeds have been realised and the tax deposited on account of delay in such realisation has itself been refunded, it is contended that the Revenue cannot retain the interest paid on that very tax by treating the tax liability as having subsisted during the intervening period.

8. The argument is carried further with reference to Section 50 of the CGST Act. Interest under the said provision, according to learned counsel, is compensatory in character and is dependent upon the principal



liability to tax. Once the transaction is accepted as a zero-rated supply and the tax paid under Rule 96A is refunded, the interest paid thereon cannot survive independently. Reliance for this proposition is placed upon ***Pratibha Processors v. Union of India, (1996) 11 SCC 101; Commissioner of Customs v. Jayathi Krishna, 2002 (119) E.L.T. 4 (S.C.); and Commissioner of Central Excise and Service Tax, LTU, Bangalore v. Bill Forge Pvt. Ltd., 2012 (279) E.L.T. 209 (Kar.)***.

9. Learned counsel also assails paragraph 4.6 of the Circular insofar as it provides that the interest paid in compliance with Rule 96A(1) would not be refundable. It is urged that neither Section 16 of the IGST Act nor Rule 96A of the CGST Rules authorises retention of such interest after the underlying tax itself has been refunded. A departmental circular, it is submitted, cannot create a liability or impose a restriction which is not contemplated by the statute or the Rules. Reliance in this regard is placed upon the Constitution Bench judgment of the Supreme Court in ***Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries, 2008 (231) E.L.T. 22 (S.C.)***, as also upon ***Ambe Wire Pvt. Ltd. v. Union of India, W.P.(C) No. 4066/2021***.

10. Lastly, an alternative submission is made that even if the amount is not held refundable as interest under Section 50 of the CGST Act, its refund would nevertheless be available under Section 54(1) of the Act read with Rule 89(2)(k) of the CGST Rules. Learned counsel draws attention to the language of Section 54(1), which permits refund not only of tax and interest paid thereon but also of "any other amount paid". It is, accordingly, submitted that where the Revenue has no authority in law to retain the



amount, refund thereof cannot be denied merely because it was originally deposited as interest under Rule 96A.

11. *Per contra*, learned Senior Standing Counsel appearing for the respondents opposes the petition and submits that Rule 96A(1)(b) of the CGST Rules is a machinery provision intended to give effect to the requirement under Section 2(6) (iv) of the IGST Act that payment for export of services be received in convertible foreign exchange. Failure to realise the export proceeds within the prescribed period attracts the liability to tax along with interest, and subsequent realisation of such proceeds does not wipe out the interest liability which had already arisen for the period of default.

12. It is further contended that interest under Section 50 of the CGST Act is compensatory in nature and is payable for the period during which the Revenue remained deprived of the tax. Subsequent realisation of the export proceeds cannot undo that period of default. Reliance is placed upon *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota, (1981) 4 SCC 578. Pratibha Processors v. Union of India, 1996 (88) E.L.T. 12 (S.C.)*, and the decisions following it are sought to be distinguished on the ground that they arose in a different statutory setting where the underlying duty itself ceased to be payable.

13. Learned Senior Standing Counsel also draws support from Rule 96B of the CGST Rules relating to export of goods, which contemplates refund of tax upon subsequent realisation of export proceeds but makes no corresponding provision for refund of interest. This, according to him, is consistent with paragraph 4.6 of the Circular, which permits refund of tax but not of the interest paid for the period of default.



14. The alternative claim under Section 54 of the CGST Act is also resisted on the ground that refund is governed by the statutory scheme and Section 54 cannot be construed as creating an independent right to refund interest which is otherwise not refundable under Rule 96A read with the Circular. Reliance is placed upon *Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536*, and *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co., (2018) 9 SCC 1*.

15. Lastly, the plea based on Article 14 is opposed by contending that an exporter who realises the export proceeds within the prescribed period cannot be equated with one who does so after the stipulated period. Reliance is placed upon *R.K. Garg v. Union of India, (1981) 4 SCC 675*, for the latitude available to legislation dealing with economic and fiscal matters.

16. We have heard learned counsel for the parties and, with their assistance, perused the record.

17. Before dealing with the rival submissions, it would be useful to notice Section 54(1) of the CGST Act, which provides for refund and reads as under:-

"(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under Section 39 in such manner as may be prescribed."



18. Section 54(1) expressly contemplates refund not only of tax but also of interest, if any, paid on such tax, besides "any other amount" paid by a person. The provision, therefore, is wide enough to encompass a claim for refund of interest paid along with the tax, subject, of course, to the other requirements of the Act and the Rules.

19. Rule 96A(1) (b) requires an exporter of services, who has exported without payment of tax under an LUT, to realise the export proceeds within the prescribed period. On failure to do so, the tax becomes payable along with interest under Section 50. The Rule, however, does not provide for the consequence where the export proceeds are subsequently realised and the tax so deposited is refunded. More particularly, it does not provide that the interest paid along with such tax shall nevertheless be retained. The restriction against refund of interest is found in paragraph 4.6 of the Circular.

20. In the present case, there is no dispute that the export proceeds were eventually realised in convertible foreign exchange. It is equally undisputed that, upon such realisation, the respondents refunded the tax deposited by the petitioner under Rule 96A. The dispute survives only in respect of the interest paid on that tax.

21. The refund of the tax is significant. Having accepted the subsequent realisation of the export proceeds and refunded the tax paid under Rule 96A, the Revenue cannot justify retention of the interest merely by relying upon paragraph 4.6 of the Circular. Whether such interest can be retained must ultimately be tested on the provisions of the Act and the Rules.

22. Paragraph 4.6 of Circular No. 197/09/2023-GST dated



17.07.2023 reads as under:-

"It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible."

23. The Circular thus permits refund of the tax upon subsequent realisation of the export proceeds, but denies refund of the interest paid on such tax. The difficulty is that neither Rule 96A nor Section 54 contains any corresponding stipulation that the interest must continue to be retained even after the tax has been refunded. On the contrary, Section 54(1) expressly refers to a claim for refund of "tax and interest, if any, paid on such tax". The denial of refund of interest under paragraph 4.6 must, therefore, have support in the statute or the Rules and cannot rest upon the Circular alone.

24. It is settled principle that a circular issued by the Board may clarify the manner in which a statutory provision is to be administered, but cannot override or alter the statute. The Constitution Bench in ***Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries, 2008 (231) E.L.T. 22 (S.C.)***, reiterated that a circular contrary to the statutory provisions cannot prevail. Paragraph 4.6 of the Circular must, therefore, yield of its prohibition against refund of interest, which travels



beyond the Act or the Rules.

25. We may now deal with the submissions advanced on behalf of the respondents.

26. The first submission is that the liability to interest on tax crystallised when the petitioner failed to realise the export proceeds within the prescribed period and that subsequent realisation cannot undo the default. We are unable to accept the submission in the absolute form in which it is advanced. The Circular itself recognises the consequence of subsequent realisation and permits refund of the tax paid under Rule 96A. Once the tax is refunded, retention of the interest paid thereon must have an independent statutory basis. No such provision has been pointed out to us except paragraph 4.6 of the Circular.

27. The reliance upon *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* (supra) also does not carry the matter further. There can be no dispute with the general proposition that tax, interest and penalty are distinct concepts. The question here, however, is narrower: whether interest paid on a tax subsequently refunded can nevertheless be retained when the statute and the Rules do not expressly provide for such retention. The said decision does not answer this question.

28. The respondents have also sought to distinguish *Pratibha Processors* (supra) and *Jayathi Krishna* (supra). The distinction does not persuade us. The principle relevant for the present purpose is that interest is compensatory and ordinarily follows the principal amount on which it is levied. Once the tax deposited under Rule 96A has been refunded upon subsequent realisation of the export proceeds, the Revenue must demonstrate



the statutory basis for retaining the interest independently of that tax. ***Bill Forge Pvt. Ltd.*** (supra), though rendered in a different factual context, also recognises the compensatory character of interest.

29. The reliance upon Rule 96B is equally misplaced. Rule 96B operates in a different field and deals with recovery of refund already granted in respect of export of goods where the sale proceeds are not realised, and restoration of the refund upon subsequent realisation. Its silence regarding refund of interest cannot be imported into Rule 96A so as to create a restriction which is not expressly found there. Much less can such silence restrict the scope of Section 54(1) of the Act.

30. ***Mafatlal Industries Ltd.*** (supra) does not advance the case of the respondents either. The proposition that a claim for refund must be governed by the statute is unexceptionable. The petitioner, however, rests its claim upon Section 54(1) itself, which expressly refers to refund of tax and interest paid thereon. Similarly, the principle stated in ***Dilip Kumar & Co.*** (supra) concerning strict construction of exemption provisions cannot permit an executive circular to introduce a restriction which is not found in the statutory provision governing the claim.

31. The argument founded upon Article 14 also need not detain us. The question before us is not on an identical footing. The question is whether, after the tax paid under Rule 96A has been refunded upon subsequent realisation of the export proceeds, the interest can continue to be retained without statutory authority. The validity of such retention must be determined by the Act and the Rules and not by drawing a comparison between the two classes of exporters. The reliance upon ***R.K. Garg v. Union***



of India (supra), therefore, does not alter the position.

32. In view of the above, we are of the considered opinion that paragraph 4.6 of Circular No. 197/09/2023-GST dated 17.07.2023, insofar as it provides that no refund of interest paid under Rule 96A(1) shall be admissible even where the tax deposited under the said Rule is subsequently refunded, cannot be sustained. Neither Rule 96A nor the provisions of the Act provide for retention of such interest in these circumstances, whereas Section 54(1) expressly contemplates a claim for refund of tax and interest paid thereon. A circular cannot impose a restriction which does not find place in the Act or the Rules. To that extent, paragraph 4.6 of the Circular must yield to the statutory provisions.

Conclusion

33. For the reasons recorded above, the petition is allowed, without any order as to costs, in following terms:

(a) Paragraph 4.6 of Circular No. 197/09/2023-GST, dated 17.07.2023 is declared bad in law and is hereby quashed, to the extent that it provides that no refund of interest paid in compliance of Sub-Rule (1) of Rule 96A of the Rules shall be admissible where the tax paid along with such interest has subsequently been refunded upon realization of the export proceeds.

(b) The order dated 28.02.2023 passed by the Additional Commissioner (Appeals), CGST, Gurugram is hereby set aside to the extent that it rejects the petitioner's claim for refund of interest paid under Rule 96(C) of the Rules. The respondents are accordingly directed to refund to the



petitioner interest paid under Rule 96(A), corresponding to the tax already refunded vide Order in Original No.ZR0604220172351 dated 13.04.2022 and, No. ZT0604220158439 dated 12.04.2022, within a period of eight weeks from the date of receipt of the certified copy of this order.

(c) In the event that the refund is not made within the aforesaid period, the amount payable shall carry interest under Section 56 of the Act, calculated from the date of expiry of the said period until the date of actual payment.

Pending application(s), if any, shall stands disposed of.

(ASHWANI KUMAR MISHRA)
CHIEF JUSTICE

(RAJESH GAUR)
JUDGE

30.09.2026
pry

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No