

## HC: Procedural irregularity cannot bar legitimate export incentives; Quashes IGST refund-denial

Jul 17, 2024

Shobikaa Impex Pvt Ltd vs. Union of India & ors. [TS-425-HC(MAD)-2024-GST]

### Conclusion

Madras HC, upon observing that, refund of IGST paid on exports was availed by Assessee claimed under Rule 96(10) instead of Rule 89, holds that, "*procedural irregularity*" committed by the Assessee shouldn't come in "*the legitimate way of grant of export incentives*" as admittedly exports were made and refund claims were itself based on the shipping bills (SBs); Directs Revenue to consider the refund claim by taking "*note of the amendments to Rule 96 (5A) of the CGST Rules, 2017 read with [Instruction](#)*"; Assessee, an 100% Export Oriented Unit [EOU] exported goods out of country and by mistake, wrongly claimed refund under Rule 96 of CGST Rules, 2017 on the IGST paid on capital goods/inputs utilized for export of goods instead of Rule 89; Assessee submitted that at the time of SCN issuance, there was no machinery provided for reversing the excess amount claimed as refund which was sanctioned by Dept. periodically as and when the refund claims were filed under Rule 96; HC determines that, Assessee is entitled to exemption under Rule 89 of the CGST Rules, 2017, as it received inputs under CBEC Notification No.48/2017-Central Tax and Notification No.78/2017-Cus (Tariff), amending Notification No.52/2003-Cus (Tariff); Relies on the decision of Apex Court in Commissioner of Sales Tax vs. Auriaya Chamber of Commerce wherein, it has been held that the rules or procedures are hand-maids of justice not its mistress; HC observes that the legitimate export incentives ought to be granted as an exporter competes in the international market and accordingly, remits the matter to the adjudicating authority to pass fresh order by examining the exports made by the Assessee for grant of refund under Rule 89 of the CGST Rules in terms of Section 16(3) of the IGST Act, 2017:HC MAD

### Decision Summary

The order was passed by Justice C. Saravanan.

Advocate S. Durairaj appeared on behalf of the Assessee, whereas Revenue was represented by Senior Standing Counsel N. Dilipkumar and Advocate V. Malaiyendran (CGSC).

Writ was filed against Order-in-Original confirming IGST demand proposed in the SCN towards the ineligible refund of IGST paid on exports availed by it during the period from January, 2019 to September, 2020, made u/s 74(1) of CGST Act r/w Section 20 of the IGST Act, 2017 along with penalty.

Assessee is a 100% Export Oriented Unit [EOU] and had exported goods out of country and that by mistake, it had wrongly claimed refund under Rule 96 of the CGST Rules, 2017 on the IGST paid by it on capital goods and inputs utilized for export of goods instead of Rule 89 of the CGST Rules.

Assessee submitted that at the time when the SCN was issued there was no machinery provided for reversing the excess amount claimed as refund by the Assessee, which was sanctioned by Revenue periodically as and when the refund claims were filed by the Assessee under Rule 96 of the CGST Rules.

Assessee stated that the total amount of refund claim that was ordered during the period is Rs.22,50,53,102/- and that after the admission of this Writ Petition, it had reversed the proportionate amount of Rs.1,15,00,000/- and further sum of Rs.49,59,000/- towards interest and the amount has been remitted by debiting the Electronic Cash Register which was possible only in view of the amendment to Rule 96 of the CGST Rules, 2017, vide Notification No.14/2022-Central Tax, dated July 05, 2022, which replaced Sub-Rule 5A, 5B and 5C therefore, the liability has been squared up and therefore, the impugned order be quashed.

### HC observations:

HC determined that perhaps the Assessee is entitled to exemption under Rule 89 of the CGST Rules, 2017, as the Assessee has received inputs under CBEC Notification No.48/2017-Central Tax, dated October 18, 2017, and under Notification No.78/2017-Cus (Tariff) dated October 13, 2017, amending Notification No.52/2003-Cus (Tariff) dated March 31, 2003.

HC observed that the procedural irregularity committed by the Assessee shouldn't come in the legitimate way of grant of export incentives as admittedly exports were made and the refund claims were itself based on the shipping bills.

On this aspect, HC relied on the decision of Apex Court in Commissioner of Sales Tax vs. Auriaya Chamber of Commerce wherein, it has been held that the rules or procedures are hand-maids of justice not its mistress.

HC held that the legitimate export incentives ought to be granted as an exporter competes in the international market thus, set aside the order and remitted the matter to pass fresh order by examining the exports made by the Assessee for grant of refund under Rule 89 of the CGST Rules in terms of Section 16(3) of the IGST Act, 2017.

HC directed the Authority to pass the order by taking note of the amendments to Rule 96 (5A) of the CGST Rules, 2017 read with Instruction No.04/2022-GST dated November 28, 2022, issued by CBIC within a period of 3 months and disposed of the writ.

## Case Law Information

### Appellant/Applicant/Complainant Name

- Shobikaa Impex Private Limited

### Respondent Name

- Union of India & Ors

### Counsel of Appellant/Applicant/Petitioner

- S. Durairaj

### Respondent Counsel

- V. Malaiyendran

### Authority Level & Location

- High Court Madras

### Appeal Number

- W.P.(MD) No.13263 of 2022 and W.M.P.(MD) No. 9414 of 2022

### Date of Pronouncement

- 2024-07-01

### Ruling in favour of

- Petitioner

### Judges

- Justice C. Saravanan