

GIB/GUJ/AMIT COTTON/27-06-2019/HC-80**High Court Category :** Export**State :** Gujarat**Order No.:** GIB/GUJ/AMIT COTTON/27-06-2019/HC-80**Name of Entry :**

Amit Cotton Industries

Date : 27-06-2019**Breif Issue :****Issue & Fact of the Case:**

The petitioner M/s Amit Cotton Industries is a Cotton Ginning Mill registered under GST. They are engaged in a business Of procuring raw cotton from farmers, ginning the same, pressing the same, carrying out necessary process, converting it into bales and then exporting these cotton bales out of India. Since the goods are exported out of India, the same are to be termed as 'Zero Rated Supply' in accordance with Section 16 of the IGST Act. The petitioner has filed a writ-application to seek refund of the IGST as according to writ applicant, without any valid reason the refund of INR 19,05,121 has been withheld.

The petitioner had for the purpose of exporting goods out of India issued Commercial Invoice, Export Invoice and Shipping Bills. Export General Manifest and Bill of Lading were also generated by the shipping line. As provided in Section 54 of CGST Act ,2017 read with Section 16 of IGST Act,2017, immediately after the goods are exported, considering shipping bill as application for refund of IGST paid in regard to the export goods, the authorities are supposed to immediately refund the said amount of IGST to the petitioner.

In this case export of goods were made in July 2017 but till date, IGST is not refunded. The authority had informed the petitioner that only because the petitioner had claimed drawback @1% and not @0.15%, refund of IGST would not be sanctioned. Since the petitioner was suffering from cash crunch and was in dire need of the refund amount, they have given away the balance 0.85% (1%-0.15%) along with interest. The petitioner had also written a letter to the Deputy Commissioner of Customs informing about the same return of excess drawback claim and claiming for refund of IGST. The Authority in its emailed letter stated further that the only reason for withholding refund is that the petitioner had first claimed more rate of drawback. Authority quoted **Circular No.37/2018-Customs**, dated 9.10.2018 justifying no IGST refund after initially claiming the benefit of higher drawback and **N.T. 131/2016-Cus** dated 31.10.2016 as amended by **Notification 59/2017** dated 29.06.2017 in its reference.

The applicant gave reference of Section 16 of IGST Act, 2017, Section 54 of the CGST Act, 2017 and Rule 96 of the CGST Rule, 2017 for which the petitioner has fulfilled all the conditions and stated that IGST refund can be withheld only as per provisions of Sub Rule (4) of Rule 96.

Decision of Advance Ruling Authority :

Decision:

The authority is directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. “Zero Rated Supplies”, with 7% simple interest from the date of the shipping bills till the date of actual refund .

The court took notice of two things so far as the circular (**Circular No.37/2018**) is concerned the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the Authority. The court took the view that Rule 96 of the Rules, 2017, is very clear. In view of the same, the writ-applicant is entitled to claim the refund of the IGST. In the result, this writ-application succeeds and is hereby allowed.