

**GIB/DL/PITAMBRA/21-01-2020/HC-119****High Court Category :** REFUND**State :** Delhi**Order No.:** GIB/DL/PITAMBRA/21-01-2020/HC-119**Name of Entry :**

PITAMBRA BOOKS PVT. LTD. VERSUS UNION OF INDIA &amp; OTHERS

**Date :** 21-01-2020**Breif Issue :****Fact of the Case:**

The petitioner is engaged in the business of manufacturing and trading of books, is registered under the Goods and Service Tax Act . The business involves procuring raw materials and allied goods from the domestic market for manufacture of final product through its in-house manufacturing facility, which is then exported to markets in Sudan, Russia, Ethiopia, Guinea and other African/Asian countries etc. The export activity of the petitioner is categorised as zero-rated supplies as defined under Section 16(1)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “the IGST Act”).

The petition is filed on the following grounds:

The restrictions imposed in the Circular No.37/11/2018-GST dated 15.03. 2018 and Circular No. 125/44/19-GST dated 18.11.2019 Petitioner has been deprived of the benefit of availing refund claim of the unutilised input tax credit for the period from April, 2018 to June, 2018. This is causing serious financial hardship as more than Rs.30 crores of accrued and unutilised input tax credit, that is eligible for refund is now lying stuck. The implementation of the aforesaid circulars on the GSTN portal has occasioned the disablement of the option for filing the refund of tax.

**REFER CASE:-**PIONEER INDIA ELECTRONICS (P) LTD. VERSUS UNION OF INDIA  
[\(GIB/DL/PIONEER INDIA/13-09-2013/HC-120\)](#)

&

RATAN MELTING & WIRE INDUSTRIES  
[\(GIB/DL/RATAN MELTING/14-10-2008/SC-8\)](#)

**Decision of Advance Ruling Authority :**

**Decision :**

By way of the impugned circulars, though the respondents recognise the difficulties faced by the exporters and have permitted them to file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters, yet the restriction pertaining to the spread of refund claim across different financial years is arbitrary. There is no rationale or justification for such a constraint. In the instant case, where exports are not made in the same financial year, question arises as to whether Respondents can restrict the filing of the refund for tax periods spread across two financial years and deprive the petitioner of its valuable right accrued in his favour. In exports, availability of the rotation of funds is essential for the business to thrive. Moreover, businesses do not run according to the whims of the executive authorities. The business world cannot be told when to place orders for exports; when to manufacture the goods for export; and; when to actually undertake the exports. Respondents' impugned circulars have thus blocked the capital of the petitioner and the unutilised ITC and it has accumulated huge amount of unutilised ITC to the tune of ₹ 30 crores. Merely because the petitioner made exports in the month of June, 2018, we do not see any justification to deny the refund of the ITC which have accumulated in the previous financial years.`

The Respondents cannot, artificially by acting contrary to the fundamental spirit and object of the law, contrive ways to deny the benefit, which the substantive provisions of the law confer on the tax payers. Thus, the petitioner has a strong prima facie case, and we cannot deny the petitioner of its right to claim refund which is visible from the mechanism provided under the Act. The impugned circulars take away the vested right of the taxpayer that has accrued in the relevant period.

Respondents are directed to process the petitioner's claim in accordance with law once the tax refund is filed - petition allowed by way of remand.