

IN THE HIGH COURT OF KERALA

AT ERNAKULAM

WP(C) No.12288 of 2020 (I)

**ABDUL SALEEM A I
PROPRIETOR, M/s ADAMS INTERNATIONAL IMPORTS AND
EXPORTS, 226, PIPE LINE ROAD, HMT COLONY P O
KALAMASSERY, ERNAKULAM-683503**

Vs

**STATE TAX OFFICER
1ST CIRCLE, STATE GOODS AND SERVICE TAX
DEPARTMENT, KALAMASSERY AND OTHERS**

Amit Rawal, J

Dated: June 23, 2020

Appellant Rep by: Sri P S Soman, Adv.

Respondents Rep by: Dr Thushara James, GP, for R1 and 4, Sri Thomas Mathew
Nellimootil Sr SC for R3 and 5

GST - Petitioner, instead of availing alternative remedy of appeal *qua* limiting the claim of refund has approached this Court under Article 226 of the Constitution of India - It is settled law that in order to bring the case within the realm of judicial review, it is imperative for the petitioner to make out a case of gross illegality, irregularity and without jurisdiction or against the principles of natural justice - reason assigned for rejection of refund was that the petitioner had availed duty drawback on export of the goods @1% of FOB Value and this does not call for interference under writ jurisdiction - Bench refrains from commenting further with regard to the eligibility or otherwise *qua* claim of refund on IGST and CGST, as it would be in the domain of the appellate authority to examine issue, in case the petitioner chooses to avail the remedy, in accordance with law - Petition is without merit, hence rejected: High Court [para 1, 4]

Petition rejected

JUDGEMENT

Per: Amit Rawal:

Petitioner, instead of availing alternative remedy of appeal *qua* limiting the claim of refund has approached this Court under Article 226 of the constitution of India. It is settled law that in order to bring the case within the realm of judicial review, it is imperative for the petitioner to make out a case of gross illegality, irregularity and without jurisdiction or against the principles of natural justice. However, no such material has been placed on record to form opinion.

2. The facts in brief are the petitioner being an exporter of fresh fruits and vegetables registered under the GST Act, having issued registration No.GSTIN 32AHLPA4281D1ZU, Ext.P1. It is submitted that the supplies made from the premises

of the petitioner in respect of fruits and vegetables are exempted item and used to file returns in time. Goods exported out of India, termed as 'Zero Rated Supply' in view of the provisions of Section 16 of the Integrated Goods and Service Tax **Act, 2017** (IGST Act). According to the provision, a registered person making zero rated supplies even though such supply is an exempted supply have two options; either to claim refund in accordance with Section 16(3)(a) or under Section 16(3)(b) on payment of integrated tax and claim refund of unutilized Input Tax Credit as to supply goods or services or both, in accordance with, Section 54 of the Central Goods and Service Tax **Act, 2017** (CGST Act). As per the provisions of sub-Section (3) of Section 54 of the CGST Act 'no refund of Input Tax Credit' shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. Though the goods exported by the petitioner does not attract tax as it is an exempted goods, the petitioner has purchased packing materials for packing the fresh fruits and vegetables for export. The aforementioned packing materials was purchased within the State of Kerala and also from outside the State and in this regard petitioner had paid the applicable SGST & IGST. The petitioner is eligible and entitled to get refund of the said amount after the close of the concerned return period and for the export of the goods the petitioner has to incur freight charges and the petitioner has to pay 18% CGST.

3. During the month of July, 2017 and September 2017 the petitioner had at his credit ledger as reflected in para 7 of the writ petition, also reflected in the GSTR-3B for the month of July, 2017 and September, 2017 vide Exts.P2 and P2(a). In the month of July 2017, vide Ext.P3, petitioner approached the first respondent for refund of the amount by submitting an application. Similarly, Ext.P3(a) was also filed for the month of August. Along the aforementioned applications, the petitioner filed lists of Export invoices, Air Cargo Bills and Air Way Bills. All the aforementioned documents were verified by the first respondent. On verification of the documents, the claim of the petitioner for refund in respect of IGST and CGST portion was rejected vide Ext.P6. The only reason for rejecting was on verification of Shipping Bill, is that the dealer availed duty drawback on export of goods (@ 1% of FOB value). The petitioner filed a proper reply to Exts.P6 and P6(a) pointing out the legal position and the clarifications vide Ext.P7. Despite that, the first respondent was not prepared to release the fund in respect of the IGST and CGST but limited the refund to the SGST portion. It is in these circumstances, an extra ordinary jurisdiction of this Court has been invoked.

4. I have heard the learned counsel for the parties, appraised the paper book and of the view that the reason assigned for rejection of refund was that the petitioner had availed duty drawback on export of the goods @1% of FOB Value do not vcall for interference under writ jurisdiction. It is on that account the request for refund qua CGST and IGST was inadmissible. The authority found that the refund of Input Tax Credit on export of goods and services was without payment of tax for the period August 2017. In fact, the assessee had availed duty drawback at the rate specified in column 4. All these facts were in the mind of the officer to deny the refund. I would be refraining myself for commenting further with regard to the eligibility or otherwise qua claim of refund on IGST and CGST, as it would be in the domain of the appellate authority to examine issue, in case the petitioner chooses to avail the remedy, in accordance with law.

In view of what has been noticed above, no ground for interference is made out. Writ petition sans merit and accordingly dismissed.