
**Javick Implex P Limited, Plot No. 26, Road No. 1 Vs Commercial Tax
Officer, Basheerbagh**

Writ Petition No. 15035 Of 2007

Court: High Court For The State Of Telangana:: At Hyderabad

Date of Decision: July 15, 2021

Acts Referred:

Constitution Of India, 1950 " Article 14#Andhra Pradesh Value Added Tax Rules, 2005 " Rule 35, 35(6), 35(6)(a)(ii)#Customs Act, 1962 " Section 82#Andhra Pradesh Value Added Tax Act, 2005 " Section 38(1), 39

Hon'ble Judges: M.S.Ramachandra Rao, J; T. Vinod Kumar, J

Bench: Division Bench

Advocate: S Chakrapani

Final Decision: Allowed

Judgement

1. The petitioner is a dealer carrying on business in the sale of Cellular Phones. For the period April to October,2005 the petitioner was held entitled to

refund of Rs.4,71,347/- and for the month of November, 2005, it was held entitled to refund of Rs.1,67,377/- under the Telangana VAT Act,2005.

2. For the months of April to October, 2005 and also November,2005 , the petitioner filed VAT returns in Form " VAT 200 before the relevant due

dates claiming refund of input tax credit on the purchase turnover corresponding to export sales caused by the petitioner enclosing the following

documents in order to substantiate its claim for refund under Rule 35 of the APVAT Rules:

- (a) Copy of order from foreign buyer.
- (b) Copy of label/declaration accompanying the speed post parcel.
- (c) Copy of invoice issued to foreign purchaser.
- (d) Copy of Postal Department receipt.
- (e) Evidence of payment from foreign buyer i.e., Bank Credit Advice.

3. However, the petitioner could not produce copy of customs clearance certificate mentioned in Rule 35(6)(a)(ii) of the APVAT Rules as there was

no such certificate being issued under the provisions of the Customs Act, Rules or Notifications issued thereunder.

4. The 1st respondent denied to the petitioner refund of VAT of Rs.4,71,347/- vide order dt.05.12.2005 only on the ground that the petitioner failed to

produce documentary evidence prescribed under Rule 35(6)(a)(ii) of the APVAT Rules, i.e., copy of customs clearance certificate.

5. Challenging the same, the petitioner preferred an Appeal to the Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad.

6. The said Appeal was allowed on 18.04.2006 accepting the petitioner's contention that its claim for refund ought to have been allowed by

examination of other relevant documentary evidence, such as shipping bill, postal receipt/declaration, as the case may be, since the customs clearance

certificate was not being issued for postal exports.

The Appellate Authority accepted the contention of the petitioner that there is other documentary evidence which can be taken into consideration; and

held that when there is no scope to produce customs clearance certificate at all, and the same is not being issued under statutes relating to the

Customs Act, it would be absurd for the Assessing Authority to compel the petitioner to produce customs clearance certificate (which is not being

issued and cannot be issued by Customs Authorities); and the Assessing Authority can examine other evidence, such as purchase orders placed by the

foreign buyer, evidence about realization of the consideration paid in terms of foreign currency, banker's certificate, etc., as alternative evidence

including label or declaration accompanying the goods as contemplated under Section 82 of the Customs Act in lieu of shipping bill, and grant refund to

the petitioner according to law.

7. In spite of this order of the Appellate Authority, the 1st respondent again passed an order on 21.08.2006 rejecting the petitioner's claim for

refund from April, 2005 to November, 2005 on the ground that the petitioner did not file exclusive evidence of export documents as per Rule 35(6) of

APVAT Rules, and further directed the petitioner to claim refund after March, 2007.

8. Assailing this order, the Writ Petition has been filed seeking refund of Rs.6,38,724/- with interest @ 12% per annum in terms of Section 33(2) of the

APVAT Act.

9. Counsel for the petitioner contended that this impugned order passed by the 1st respondent is contrary to the order dt.18.04.2006 of the Appellate

Deputy Commissioner (CT), Punjagutta Division, Hyderabad and practically amounts to contempt of the said order.

He also placed reliance on the proceedings dt.05.06.2007 issued by the Commissioner of Customs and Central Excise, Hyderabad-II Commissionerate

to the effect that Customs Department in India does not issue any certificate called "customs clearance certificate" for exports made out of

India by land, sea, air, courier or posts, to all exporters; and for exports made by post, Customs Department does not issue any document called

shipping bill, and that as per Customs Rules and Regulations for baggage, courier, postal articles and stores as provided in Section 82 of the Customs

Act, 1962, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry

for import or export, as the case may be, for the purpose of this Act.

10. We find considerable force in the said submissions.

11. The Special Government Pleader appearing for the respondents does not dispute the binding nature of proceedings dt.05.06.2007 issued by the

Commissioner of Customs and Central Excise, Hyderabad-II Commissionerate. He is unable to explain why in the impugned order, the 1st respondent

had again chosen to reject the petitioner's application for refund on 21.08.2006 on the pretext that customs clearance certificate was not produced

by the petitioner.

12. Admittedly, under Section 38(1) of the APVAT Act, 2005, refund due to an exporter has to be made within 90 days from the date of VAT return,

and so the 1st respondent who is presumed to be aware of the said provision, could not have rejected the refund due to the petitioner.

13. More importantly, on 28.04.2006, after remand by the Appellate Deputy Commissioner on 18.04.2006, it is the 1st respondent who had issued

advice to the petitioner referring to the petitioner's application for refund of Rs.4,71,347/- stating that the said refund claim was accepted.

14. We also fail to understand how in the impugned order the 1st respondent could simultaneously (i) reject the claim of the petitioner for refund and

(ii) contradict himself by advising the petitioner to claim refund after March, 2007.

15. There is no denial in the counter-affidavit of the petitioner's contention that claims for refund to the tune of Rs.400.00 Crores were made in

the financial years 2005-06 and 2006-07 without insisting on customs clearance certificate by merely accepting invoice, airway bills, declaration, LC

copies, etc., by the Commercial Tax Department. This indicates that only the petitioner's claim for refund is being objected to in a discriminatory

fashion without any legal basis.

16. In the counter-affidavit, a new plea is raised that the requirement of producing customs clearance certificate was omitted when Rule 35(6) of the

APVAT Rules was amended with effect from 15.6.2007 w.e.f 1.1.2005, and so it was necessary for the petitioner to produce proof of exports

certified by the Customs Department.

17. How the petitioner can be asked to comply with this new requirement which was introduced after his request for refund was accepted by the

Appellate Deputy Commissioner on 18.04.2006 much prior to the amendment, is not explained in the counter-affidavit. The respondents cannot sustain

the impugned order dt.21.8.2006 refusing refund to the petitioner on basis of new pleas not contained in the said order, and on events which happened

after the said order was passed.

18. It is not in dispute that the petitioner's application for refund enclosed the documents referred to above in the 2nd paragraph except the

customs clearance certificate which was not being issued by the Customs Authority.

19. The petitioner had also admittedly produced label / customs declaration furnished to the postal authorities to evidence export proper as the goods

were exported by post by it. The petitioner had also produced the certificate issued by the Postal Department of Government of India confirming and

corroborating delivery of postal consignments to the consignees outside the country with relevant details, such as place of destination, date of delivery,

etc. It had also produced other documents referred to in Rule 35(6) other than the customs clearance certificate.

20. In this view of the matter, we are of the considered opinion that the action of the 1st respondent in denying refund to the petitioner is violative of

Article 14 of the Constitution of India, perverse and in contempt of the order dt.18.04.2006 of the Appellate Deputy Commissioner (CT), Punjagutta

Division, Hyderabad.

21. Accordingly, the Writ Petition is allowed and; the action of the 1st respondent in rejecting the petitioner's claim for refund vide communication

dt.21.08.2006 is declared as arbitrary, illegal and without jurisdiction; and the 1st respondent is directed to refund the sum of Rs.6,38,724/-

(Rs.4,71,347/- and Rs.1,67,377/-) by crediting the above said amount to the petitioner's bank account, within fifteen (15) days from the date of

receipt of a copy of this order, along with interest due thereon at the rate of 1% per month, as provided under Section 39 of the Act, from the date on

which the Form VAT 200 was filed by the petitioner till the date of credit of the said amount.

22. The 1st respondent shall also pay costs of Rs.25,000/- to the petitioner within four (04) weeks.

23. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.