

HIGH COURT OF GUJARAT (D.B.)**INDOFIL INDUSTRIES LTD*****Versus*****UNION OF INDIA & 4****Date of Decision:** 06 November 2017**Citation:** 2017 LawSuit(Guj) 2268**Hon'ble Judges:** [Akil Kureshi](#), [A Y Kogje](#)**Eq. Citations:** 2018 360 ELT 466**Case Type:** Special Civil Application**Case No:** 21683 of 2016**Final Decision:** Petition disposed**Advocates:** [Nanavati Associates](#), [Nisha Thakore](#), [Ankit Shah](#), [Devang Vyas](#)**Cases Referred in (+):** 1**Akil Kureshi, J.**

[1] The petitioner's request for refund of duty paid under protest has got caught in cross fire between two Central Government departments. In the process, despite having succeeded before this court as far back as in 2009, the petitioner is yet to receive the refund.

[2] Brief facts are as under:-

2.1 The petitioner is a company registered under the Companies Act engaged in manufacturing of chemical products and formulation. The petitioner has a unit in SEZ area at Dahej. For erection and commissioning of the said unit, the petitioner had imported material, which included steel items from Domestic Tariff Area. The dispute between the petitioner and the Department arose with respect to payment of duty on such items. The Department directed that supply of steel products on which export duty is payable should be permitted only after payment of prescribed duty. The petitioner cleared the goods by paying duty under protest. A group of petitions, which included the petitioner also being SCA No.9656 of 2008 and connected petitions, came to be filed before the Gujarat High Court challenging

stand of the Department. Division Bench of this Court by judgment dated 04.11.2009 allowed the petitions and declared that the levy of duty on goods supplied through DTA to SEZ is not justified. The petitioner cannot be asked to pay export duty on movement of goods from DTA to SEZ. The Department carried the matter in appeal before the Supreme Court. SLP was dismissed on 12.07.2010. The petitioner thereupon approached the Department for refund of duty paid under protest. The Specified Officer of the Dahej SEZ wrote to the Commissioner of Central Excise and Customs, Surat on 06/07.09.2010 that:-

"Since, M/s.Indofil Chemicals Company, A SEZ unit had paid the said amount against the Export duty under heading of 0037 (Customs Duties) in accounting Collectorate-Surat-I, Customs Division, which falls under the jurisdiction of Surat-I Commissionerate, you are therefore, requested to take necessary action in the matter on priority basis as the case is of time bound nature and arises out of the High Court order. Refund Application alongwith the documents and copy of the court order is enclosed herewith for disposal at your end please."

2.2 On 23.09.2010, the Additional Commissioner, Central Excise & Customs, Surat wrote to the Deputy Commissioner, SEZ, Dahej and conveyed as under:-

"2/- In this connection, it is to inform you that the said refund application pertains to refund of export duty paid by the applicant, M/s.Indofil Chemicals Company. The said refund application has been forwarded top this Commissionerate merely for the reason that the unit had credited the duty amount in the 'C.Ex. account Surat-I Commissionerate' instead of 'Customs account'. At the outset, it was for your office to check at the time of payment of export duty that the duty is credited under the correct head.

3/- Since the matter is for refund of export duty paid by the unit in Dahej SEZ, you are the proper authority to refund the duty to the said unit, by sorting out the matter with the concerned Pay & Accounts Officer. Accordingly, the said refund application along with relevant documents are returned herewith in original for further necessary action at your end."

2.3 Thus, the question of refund of duty remained suspended because of inter-departmental disputes though the petitioner had succeeded before the High Court and the SLP was also dismissed by the Supreme Court. The petitioner therefore filed this petition.

[3] In response to the notice issued, both the Departments have appeared. While confronted with the judgment of this Court in case of [Anita Exports](#), 2015 320 ELT 743, in which in somewhat similar circumstances, it was held that the question of refund of

customs duty will have to be decided by the Customs authorities, learned Advocate Shri Ankit Shah for the Customs authorities stated that the petitioner's refund applications shall be processed and decided in accordance with law. Shri Raval for SEZ authorities, however, submitted that the Department had the Department has preferred review petitions before the Supreme Court against dismissal of the SLP and such petitions are pending.

[4] Mere filing and pendency of the review petitions would not enable the Department to withhold the refund claims of the petitioner, whose writ petition was allowed in the year 2009 and SLP was dismissed in the year 2010. The Department cannot consider such belated development as automatic implementation of the declaration of lay by the High Court. It is always open for the Department to pursue its remedies, but in facts of the present case, must release the refund, if otherwise payable in law, subject to outcome of such proceedings.

[5] The petitioner's refund applications shall be decided latest by 31.12.2017.

[6] The petition is disposed of accordingly.

