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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 83 OF 2022**

AMN Life Science Pvt. Ltd. ... Petitioner

vs.

The Union of India and Ors. ... Respondents

Mr Rahul Thakkar i/b. Mr. C.B. Thakkar for the Petitioner.

Mr Karan Adik with Mr Ram Ochani for the Respondent Nos.3
and 4.

**CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.**

DATE : 30 NOVEMBER 2022

P.C.:

The Petitioner received a notice from the Office of the Commissioner, Central Goods and Service Tax on 30 June 2021 wherein it was stated that the authorities had noticed that Petitioner's have made export under the payment of Integrated Goods and Service Tax with an intent to claim refund on duty paid, at the same time Petitioner availed of full exemption of Integrated Goods and Service Tax in the course of import of raw materials which have been imported for use in the manufacture of export

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goods. The notice also stated that when exemption of Integrated Goods and Service Tax was being availed, there was no question of taking refund of Integrated Goods and Service Tax paid on such exported goods under Advance Authorizations/EOU Scheme. According to the authorities the Petitioner availed double benefits. The Petitioner was thereafter called upon to furnish documents such as the balance sheet, details of the goods imported, details of goods manufactured and exported from the goods imported, manufacture details of import goods procured locally etc. The Petitioner responded to the notices.

2. We have heard Mr Rahul Thakkar, learned counsel for the Petitioner and Mr Karan Adik, learned counsel for the Respondent Nos. 3 and 4.

3. While the action pursuant to the show cause notice issued to the Petitioner is pending, the Petitioner has filed this Petition seeking various declarations of law. Firstly, Petitioner has sought to declare that Rule 96(10) of the Central Goods and Service Tax Rules, 2017 as amended is ultra vires of Integrated Goods and Service Tax Act, 2017 and illegal and violative of Article 14 and Article 19(1)(g) of the Constitution of India. Further declarations are sought with clarifications provided in paragraph 7 of Circular No. 45/19/2018-GST dated 30 May 2018, Para 5 of C.B.I. & C. Circular No. 59/33/2018-GST dated 4 September 2018, Para 3 of

Circular No. 70/44/2018-GST dated 26 October 2018, Para 51 of Circular No. 125/44/2019-GST dated 18 November 2019 as being ultra vires Section 16(3)(b) of the IGST Act, 2017 and Article 14 and 19(1)(g) of the Constitution of India. Further Writ of Mandamus to declare and hold that provisions of Rule 96(10) shall not apply where the refund claimed also includes ITC on capital goods and Writ of Mandamus to the Respondent for directing them that their withholding of refund of Integrated Goods and Service Tax in the tune of Rs.1,69,56,924/- and Rs.81,09,926/- as per the instructions of Respondent No. 4 is arbitrary, illegal and contrary to law.

4. Since the Petitioner has referred to the communication dated 30 June 2021 of Respondent No. 4 in prayer clause(d) of the Petition, we asked the learned counsel for the Petitioner as to the relevant communication, which is tendered across the bar today. By this communication the Commissioner, Central Goods and Service Tax has written to the Customs Authorities putting them to notice that enquiry regarding incorrect availment of double benefit of Integrated Goods and Service Tax is proposed and Office of the Commissioner, Central Goods and Service Tax has received letter from the Directorate of Revenue Intelligence, Kolkata on 3 June 2021. The authorities have thereafter written to the Customs Authorities not to sanction any refund or provide any other benefits to safeguard the Government revenue.

5. In the enquiry pursuant to the notice, various factual aspects arise such as whether the Petitioner's products are entirely made from imported raw material or not, whether they are manufacturing products made partly out of imported raw material, partly out of domestically procured raw material and whether the Petitioner is purchasing packing material locally would be ascertained and whether petitioner then is entitled to input tax credit on the said purchase locally. This enquiry as regards entitlement of the Petitioner to receive any refund is already under way. Letters have been issued to the Petitioner, which the Petitioner has responded. In these circumstances to give declarations of law as sought by the Petitioner would be not only academic but also premature.

6. Learned counsel for the Petitioner then sought to contend that assuming that inquiry is proposed, the Respondent CGST Authorities have no power to issue instructions to the Customs Authorities not to sanction Refund and Customs Draw Back. However, neither the communication dated 30 June 2021, which is referred to in the prayer clause is placed on record nor there is a challenge to this communication. Even the communication is being tendered across the bar today.

7. Learned counsel for the Petitioner states that on the limited aspect regarding the power of the Respondent CGST Authorities to issue instructions dated 30 June 2021 to Customs Authorities,

Petitioner will file a separate Writ Petition and the other challenges raised by the Petitioner would be raised at the appropriate time.

8. In the light of this above position and the statement made by the Petitioner as above indicating the future course of action that Petitioner intends to take, the Petition is disposed of.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)