



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2310 OF 2024

Rika Global Impex Limited ...Petitioner  
Versus  
Union Of India And Ors ...Respondents

WITH  
WRIT PETITION NO. 2493 OF 2026

Shree Renuka Sugars Ltd And Anr ...Petitioners  
Versus  
Union Of India Thru Secretary And Ors ...Respondents

WITH  
WRIT PETITION NO. 3678 OF 2024

K.S. Commodities Private Limited ...Petitioner  
Versus  
Union Of India And Ors ...Respondents

WITH  
WRIT PETITION NO. 8744 OF 2024

M/s. Uma Exports Limited ...Petitioner  
Versus  
Union Of India Through The Joint Secretary & Ors ...Respondents

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Mr. Abhishek Rastogi with Ms. Pooja M. Rastogi with Meenal Songire with Ms. Aarya More & Mr. Chayank Bohra, for Petitioner in WP/2310/2024 & WP/3678/2024.

Mr. Janay Jain with Mr. Sansha Garud with Ms. Dhvani Parekh i/b. Jayker and Partners, for the Petitioner in WP/8744/2024.

Mr. Darius Shroff, Senior Advocate with Mr. Rahul P. Jain i/b. Alpha Chambers, for the Petitioner in WP/2493/2026.

Ms. Jaymal Ostwal, for Respondent No.4 in WP/2310/2024.

Mr. Jitendra B. Mishra with Mr. Ashutosh Mishra with Mr. Rupesh Dubey with Mr. Vikas Salgia, for Respondent No.2 in WP/2310/2024 & WP 8744/2024.

Ms. Shehnaz V. Bharucha with Mr. Vikas Salgia with Mr. Dhanesh Shah, for Respondent Nos.1 and 2 in WP/2493/2026, WP 3678/2024.

Mr. Yogendra Mishra with Ms. Jaimala Ostwal with Ms. Ruju Thakkar with Ms. Sangeeta Yadav, for Customs Department/Respondent No.3 in WP 2310/2024, WP 2493/2026 and WP 8744/2024, for Respondent Nos.4,5,7 in WP 3678/2024.

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CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

RESERVED ON : 25 MARCH 2026  
PRONOUNCED ON : 20 APRIL 2026

**JUDGMENT (Per G. S. Kulkarni, J.).**

1. Rule returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. As this batch of petitions raise common issues of law and involve similar facts, the same are being disposed of by this common judgment.
3. The petitioners seeks relief that the petitioners are entitled to the export Rebate under the Remission of Duties and Taxes on Export Products Scheme (RoDTEP) for exports of white refined sugar for different periods as set out in memos of these petitions.
4. The petitioners in these petitions are *inter alia* engaged in the export of “white sugar (crystal)” stated to be bearing ITC(HS) Code 17011490. The petitioners have contended that RoDTEP was promulgated vide Notification dated 17 August 2021 issued by the Government of India, retrospectively amending paragraph 4.01 of Chapter 4 of Foreign Trade Policy by inserting sub-para (e) and added paragraph 4.54 to 4.59 in Chapter 4 to enable remission of

duties and taxes on exported products. The petitioners were claiming/utilizing refund under RoDTEP on export of sugar bearing the said tariff item.

5. On 23 September 2021, Notification No.75/2021- Customs (N.T.) was issued *inter alia* prescribing guidelines qua the location, wherein duty credit under RoDTEP will be deposited / maintained to be used by eligible exporter. Another Notification No.76/2021 -Customs (N.T.) was issued *inter alia* in regard to manner of issuance, utilization and transfer of such duty being regulated.

6. Thereafter, Notification No.10/2015-20 dated 24 May 2022 was issued wherein export policy of sugar was revised from “free” to “restricted”. The said notification, however, permitted export of restricted sugar under specific permission from Directorate of Sugar, Department of Food and Public Distribution (DFPD). In such context, comprehensive guidelines are notified by the Directorate of Sugar, for obtaining specific permission *inter alia* stating that free export of sugar for shipping bills filed on and/or before 31 May 2022 and for which export vessel has been allocated rotation number.

7. By a Notification No.40/2015-20 dated 28 May 2022 the revised export policy of sugar was extended till 31 October 2023. Also on 5 November 2022 the Directorate of Sugar prescribed permissible quantum for export sugar which would not require specific permission save or otherwise provided in the said letter.

8. We do not intend to advert to the facts of the individual cases of the petitioners. Suffice it to observe that the common grievance of the petitioners is

that they have been arbitrarily deprived of the benefits of the duty credit under RoDTEP on the exports made, in that context of what has been prescribed in Paragraph 4.55(iv) (Chapter 4 of the Foreign Trade Policy), whereunder ineligible supply of item categorized under the Scheme are provided *inter alia* being item namely “*products which are restricted for export*” under Schedule 2 of the Export Policy in ITC(HS) as contained in Notification No.19/2015-2020 dated 17 August 2021 being the Scheme Guidelines for RoDTEP.

9. It is the petitioners’ case that indisputedly the petitioners were exporting White Crystal Sugar bearing ITC(HS) Code 17011490, during the relevant period. They were also availing and utilizing duty credit under RoDTEP during the relevant period subject to fulfillment of all conditions including realization of sale proceeds for export made. By Notification No.76/2021-Customs (NT) dated 23 September 2021 issued in exercise of powers under sub-section (1) of Section 51B of the Customs Act, the Central Government has notified the manner in which the duty credit for goods exported under RoDTEP Scheme be availed, subject to the conditions and restrictions as specified thereunder, in accordance with paragraph 4.01(e) of the Foreign Trade Policy. It was provided that the duty credit shall be subject to the conditions *inter alia* that the export categories or sectors listed in Table 1 annexed to the said notification, shall not be eligible for duty credit under the Scheme. In the said Schedule Item No.1 provided for the goods which are restricted or prohibited for export under Schedule 2 of Export Policy in ITC-HS. Also by subsequent Notification No.10/2015-20 dated 24 May 2022 amendment was made in the export policy

for sugar, in order to maintain domestic availability and price stability of sugar, thereby restricting the export of sugar in terms of the said notification. The said notification reads thus:

**“Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Foreign Trade  
Udyog Bhawan, New Delhi**

**Notification No. 10/2015-20**

**Dated: 24 May, 2022**

**Subject:-Amendment in Export Policy of sugar.**

S.0 (B) In order to maintain domestic availability and price stability of sugar, Central Government in exercise of powers conferred by Section 3 read with Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends export policy of sugar under S.No.93 of Chapter 17 of ITC (HS), Schedule-II as under:

S.N o	ITC (HS) Code	Description	Existing Policy	Revised Policy	Policy condition
93	1701 14 90 1701 9990	Sugur (Raw Sugar Refined Sugar and White Sugar)	Free	Restricted	(i) With effect from 1st June, 2022 upto 31st October, 2022 or until further orders, whichever is earlier, (export of sugar is allowed only with specific permission from Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food & Public Distribution.  (ii) Detailed procedure for issue of necessary permissions for export of sugar will be notified separately by Department of Food and Public Distribution (DFPD).

2. This restriction is not applicable to Sugar being exported to EU and USA under CXI. and TRQ quota as per prescribed procedure in the respective Public Notices.

**3. Effect of this Notification:**

Export of Sugar (Raw, Refined and White sugar) is placed under 'Restricted' category from 1st June, 2022 onwards (except fixed quantity of sugar being exported under CXL and TRQ quota to EU and USA). Export after 01.06.2022 will be allowed on production of specific permission (as per the procedure to be notified separately by DFPD) from Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food & Public Distribution. 2022.

(Santosh Kumar Sarangi)  
 Director General of Foreign Trade  
 Ex-Officio Additional Secretary, Govt. of India  
 E-mail: deh@nic.in

10. The Government of India issued a Combined Export Release Order for Exporters dated 5 June 2022 thereby granting permission to exporters to export a total quantity of 10LMT of sugar within 90 days from the date of the said order as per the application of the exporter, details of which are set out in Annexure I (application wise) and Annexure II (exporter wise), in relation to the sugar season 2021-22. All the petitioners figured in the said list as notified, with the appropriate quantity of export being permitted to them. It is the petitioners' case that accordingly the export application was discharged by the petitioners.

11. However, what has transpired thereafter is that having undertaken the export, benefit of RoDTEP was denied to the petitioners on the ground that it was a restricted export in view of the Notification No. 10/2015-2020 dated 24 May 2022.

12. There is some background litigation in regard to the grievance of the petitioners being asserted in these petitions. One of the petitioners in the present batch of petitions namely Shree Renuka Sugars Ltd. being aggrieved by denial of

the benefits under RoDTEP, had approached the High Court of Gujarat in the proceedings of Special Civil Application No.2186 of 2023. In regard to the said proceedings, the situation was to the effect that as Shree Renuka Sugars Ltd. has taken benefit of RoDTEP, coercive action of recovery was initiated against Shree Renuka Sugars Ltd. for export benefits allowed from 1 June 2022 to November 2022 under the RoDTEP Scheme. The Division Bench of the High Court of Gujarat considering the rival contentions in the context of the action of the department denying the RoDTEP benefit, by way of recovery, against Shree Renuka Sugars Ltd., allowed the said proceedings in terms of the following operative order:

“5. As the controversy unfolds as above, the court is of the view that the following directions would serve the ends of justice. Accordingly it is provided that,

(i) The petitioner shall be entitled to claim the RoCITEP Scheme benefit in respect of the exports of white refined sugar at the rate permissible. Even if such benefit is not claimed or mentioned in the shipping bills, the petitioner is permitted to make necessary application seeking such benefit in respect of the consignments concerned.

(ii) The passage of time in making such applications which would occur as amount would not be mentioned in the shipping bills, would not render the claim of the petitioner time barred.

(iii) The non-mentioning of the claim of the benefit in the shipping bill by the petitioner shall also not be treated as waiver on part of the petitioner by the authorities.

(iv) The authority shall process the claim of the petitioner for RODTEP Scheme benefit Irrespective of the fact that the same was not mentioned or lodged along with the shipping bill concerned.

(v) If any adjudicatory proceedings are require to be undertaken by the authorities in respect of the claim of the petitioner for the benefit, the respondent Nos.3- The Commissioner of Customs, Kandla and respondent No.4-The Assistant Commissioner of Customs, (OBK), Kandla, shall while deciding the claim, extend opportunity of hearing to the petitioner and shall act in accordance with Section 28 of the Customs Act.”

13. Similar view was taken by a Co-ordinate Bench of the High Court of Gujarat in the case **M/s.Satyendra Packaging Ltd. vs. Union of India**<sup>1</sup>. The

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<sup>1</sup> 2023-VIL-851-GUJ-CU, dt. 29/11/2023

relevant observations as made by the Division Bench which followed the decision in **Shree Renuka Sugars Ltd.** (supra) read thus:

“9. Having heard the learned advocates for the respective parties and having considered the facts of the case which are identical to the case of M/s. Shree Renuka Sugars Ltd. (supra), we are of the opinion that the respondents could not have denied the benefit of rebate under the RoDTEP scheme to the petitioners, more particularly, when the petitioners have exported product after fulfilling the conditions as prescribed by the Directorate of Sugar as well as the Notifications issued by the Central Government from time to time. The Coordinate Bench of this Court has also passed the order permitting rebate to the petitioner of the said case.

10. In the facts of the case, vide Notification dated 24th May 2022, the category of sugar (raw sugar, white sugar and refined sugar) is changed from free to restricted category with policy conditions, which are as under:

*"(i) With effect from 1 June, 2022 upto 31" October 2022 or until further orders, whichever is earlier, export of sugar is allowed only with specific permission from Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food & Public Distribution.*

*(ii) Detailed procedure for issue of necessary permissions for export of sugar will be notified separately by Department of Food and Public Distribution (DFPD)."*

11. As per the Government circular dated 5th November 2022, the schedule quantity of sugar for export in Sugar Season for 2022-23 was also issued with various conditions, whereby the quantity for export of sugar to various mills was also quantified.

12. By Notification dated 21 October 2022, the Government has also issued export release order for sugar from Somalia.

13. In view of the above Notifications issued by the Government from time to time permitting export of sugar, the basic objective of the RODTEP scheme is to grant benefit of rebate to the exporter as an incentive or exporting product.

14. In view of the facts and foregoing reasons, both the petitions are allowed. Prayers 32(a) and 36(a) in respective petitions are granted. The respondents are directed to grant benefit of rebate under the RODTEP scheme to the petitioners who have exported sugar with specific permission under the specific condition prescribed by the Directorate of Sugar as per Notification No.19/2015-20 dated 17th August 2021 and Clause 3 of paragraph 2 of the Notification No.76/2021-Customs (N.T.) dated 23rd September 2021. Rule is made absolute to the aforesaid extent. No order as to costs.”

14. At this juncture it is required to be noted that the common orders passed in **M/s.Satyendra Packaging Ltd.** (supra) were assailed by the Department before

the Supreme Court in the proceedings of Special Leave Petition (civil) Diary No.16262 of 2024, which was dismissed by an order dated 26 April 2024. In such context, the Deputy Commissioner (Export), Customs House, Mundra, with the approval of the Principal Commissioner of Customs addressed a Communication dated 28 August 2024 to the Deputy Director, Reward Scheme (RoDTEP), Directorate General of Foreign Trade, New Delhi, *inter alia* regarding grant of benefit of RoDTEP Scheme to M/s. Shree Renuka Sugars Ltd. and M/s. HRMM Agro Overseas Pvt. Ltd. *inter alia* recording dismissal of SLP as also the decision to file a review petition before the Supreme Court being not approved on an opinion as sought. The said letter is placed on record in these petitions. The relevant extract of which is required to be noted, which reads thus:-

“F. No.CUS/ASS/MISC/971/2024-EA

Dated: 28.08.2024

To, The Deputy Director,  
Reward Scheme (RODTEP)  
Directorate General of Foreign Trade,  
Vanijya Bhawan, 'A' Wing, 16 Akbar Road,  
New Delhi-110011.

Sir.

Sub: Grant of benefit of RoDTEP Scheme -M/ Reg.

Kindly refer to SCA No.2186 of 2023 was filed by M/s Shree Renuka Sugars before the Hon'ble High Court of Gujarat in the matter of RODTEP on Export of Sugar wherein one of the respondents is DGFT.

2. The Hon'ble High Court vide order dated 13.04.2023 in SCA No.2186 of 2023 filed by M/s Shree Renuka Sugars is reproduced as under:

5. As the controversy unfolds as above, the court is of the view that the following directions would serve the ends of justice. Accordingly it is provided that,

(i) The petitioner shall be entitled to claim the RoDTEP Scheme benefit in respect of the exports of white refined sugar at the rate permissible. Even if such benefit is not claimed or mentioned in the shipping bills, the petitioner

is permitted to make necessary application seeking such benefit in respect of the consignments concerned.

(ii) The passage of time in making such applications which would occur as amount would not be mentioned in the shipping bills, would not render the claim of the petitioner time barred.

(iii) The non-mentioning of the claim of the benefit in the shipping bill by the petitioner shall also not be treated as waiver on part of the petitioner by the authorities.

(iv) The authority shall process the claim of the petitioner for RODTEP Scheme benefit irrespective of the fact that the same was not mentioned or lodged along with the shipping bill concerned.

(v) If any adjudicatory proceedings are require to be undertaken by the authorities in respect of the claim of the petitioner for the benefit, the respondent Nos.3- The Commissioner of Customs, Kandla and respondent No.4- The Assistant Commissioner of Customs, (DBK), Kandla, shall while deciding the claim, extend opportunity of hearing to the petitioner and shall act in accordance with Section 28 of the Customs Act.

6. Except giving the above directions, the court has not gone into any other aspect in the subject matter including the extent of exports which may be allowed by customs authorities under the export policy.

3. In a similar matter, in Special Civil Application No.3085 of 2023 filed by M/s HRMM Agro Overseas Pvt. Ltd. and Special Civil Application No.3084 of 2023 filed by M/s Satyendra Packaging Ltd. before the Hon'ble High Court of Gujarat., the Hon'ble High Court of Gujarat vide Order dated 29.11.2023 passed the following order:

"The respondents are directed to grant benefit of rebate under the RODTEP scheme to the petitioners who have exported sugar with specific permission under the specific condition prescribed by the Directorate of Sugar as per Notification No.10/2015-20 dated 17th August 2021 and Clause 3 of paragraph 2 of the Notification No.76/2021-Customs (N.T.) dated 23rd September 2021. Rule is made absolute to the aforesaid extent".

4. The Hon'ble High Court in the above order which is similar to the present case, has granted the benefit of the RODTEP to the petitioners who have exported sugar with specific permission under the specific condition prescribed by the Directorate of Sugar.

5. Against the above High Court order dated 29.11.2023, the department filed Special Leave Petition (CIVIL) Diary No.16262/2024 before the Hon'ble Supreme Court of India which was dismissed vide order dated 26.04.2024 as detailed under:

**We are not inclined to interfere in the matter. The Special Leave Petition is hence dismissed.**

6. The department on direction of DGFT has preferred to file Review Petition in respect of the above Hon'ble Supreme Court of India order dated 09.07.2024. However, Under Secretary (Legal) vide letter dated 30.07.2024

informed that after the approval from Board, the proposal approval from Board, the proposal was referred to the Department of Legal Affairs for seeking opinion of Ld. Law Officer, regarding feasibility of filing Review Petition. In this matter, Shri N. Venkataraman, Id. ASG, has opined as under:

"Review Petition is not recommended. The Supreme Court is less likely to interfere as ultimately it was a Central Government Litigation. The grounds pointed out only shows that the appeal could have been drafted better but does not indicate any error apparent on the face of the record requiring the SC to invoke its review jurisdiction."

7. In view of the above, the matter has attained the finality. therefore, the applicant; M/s Shree Renuka Sugars is eligible for RODTEP benefit in light of the Hon'ble High Court Order as discussed in paras supra.

8. This office has no facility in ICES EDI System to convert the Scheme change for RoDTEP Scheme "No" to "Yes" in the Shipping Bills. Therefore, it is requested to take necessary action at your end for granting the benefit of RoDTEP Scheme in compliance of the above Hon'ble High Court order.

This is issued with the approval of the Hon'ble Pr. Commissioner of Customs, Customs House, Mundra."

15. Another letter was addressed by the Office of the Commissioner of Customs, Custom House, Kandla to the Deputy Director, Reward Scheme (RoDTEP), Director General of Foreign Trade, New Delhi, dated 3 March 2025 recording that the matter had attained finality and benefit of RoDTEP would be required to be granted to M/s. Shree Renuka Sugars Ltd. The said letter was issued with the approval of the Commissioner of Customs, Customs House, Kandla.

16. Thus, referring to the aforesaid letters, the contention as urged on behalf of the petitioners is that the Revenue has accepted the orders passed by the High Court of Gujarat in M/s. Shree Renuka Sugars (supra), hence, insofar as the petitioners are concerned, the said benefit cannot be deprived. Our attention is also drawn to a recent communication dated 20 January 2025 addressed to all Sugar Mills on the subject 'Sugar mill-wise Export Quantity of sugar for export in

Sugar Season 2024-25-reg', in regard to decision of the Government of India to allocate export quota of 10 LMT of sugar for season 2024-25, to contend that the RoDTEP is being validly implemented even for the subsequent period.

17. In the aforesaid circumstances, Mr. Darius Shroff, learned Senior Counsel, Mr. Abhishek Rastogi and Mr. Janay Jain, learned Counsel appearing for the petitioners, would submit that it is arbitrary for the respondents to deny the benefit to the petitioners of RoDTEP, inasmuch as, once the policy has been in vogue and the same was accepted and actions are taken thereunder by the petitioners, merely in view of the notification No.10/2015-2020 dated 24 May 2022 imposing restriction, it cannot be considered that the export of sugar as undertaken by the petitioners can be categorized as prohibited exports, and not eligible for RoDTEP benefits, inasmuch as all such exports have been permitted on specific permission that has been granted by the Directorate of Sugar, Department of Food and Public Distribution (DFPD) and in the manner as notified, in regard to the quota of export allocated to each of these petitioners.

18. It is thus submitted that a legitimate benefit which was otherwise entitled to the petitioners was denied on a patent arbitrary consideration and on a misreading of the Notification dated 24 May 2022. It is submitted that there is no justification whatsoever for such benefits to be denied to the petitioners and/or any actions for recovery being taken against some of the petitioners on the ground that the benefit of RoDTEP was arbitrarily availed on behalf of the petitioners. It is therefore, submitted that, in any event, the decisions of the High Court of Gujarat in **Shree Renuka Sugars Ltd.** (supra) and **M/s.Satyendra Packaging**

**Ltd.** (supra), have attained finality in view of the Special Leave Petition being dismissed by the Supreme Court, as also the department accepting, that such orders had attained finality and benefit being already granted to Shree Renuka Sugars Ltd. as also M/s. Satyendra Packaging Ltd. It is, however, stated that although benefits were granted, the interest was not granted and for which independent proceedings were filed before the High Court of Gujarat and the same are pending in such cases.

19. On the other hand Ms. Bharucha, learned counsel for Revenue has opposed this petition. She has justified the impugned action, primarily relying on the Notification No.76/2021 dated 23 September 2021, by which in terms of paragraph 2(3) thereof, '*sugar*' was placed in the category of ineligible for duty credit in terms of Item (1) "Goods which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC-HS.

20. However, Ms. Bharucha would not be in a position to dispute that by subsequent Notification No.10/2015-2020 dated 24 May 2022, with effect from 1 June 2022 till 31 October 2023, or until further orders, the export of sugar was allowed with a specific permission from Directorate of sugar, Department of Food and Public Distribution (DFPD). The said notification also specifies the effect of the said notification in terms of paragraph 3 which we have extracted hereinabove.

21. The contentions as urged in the reply affidavit are to the effect that blanketly sugar had become a restricted item of export and an item of total

restriction, which is not the correct position as contended on behalf of the petitioners, considering the policy conditions as set out in the Notification dated 24 May 2022. Ms. Bharucha is also not in a position to dispute that in identical circumstances the High Court of Gujarat has allowed the proceedings filed by Shree Renuka Sugars Ltd. and M/s.Satyendra Packaging Ltd. and that such orders have attained finality in view of the SLP being dismissed by the Supreme Court.

22. Having heard learned counsel for the parties and having perused the record, we find ourselves in agreement with the petitioners that it would be arbitrary for the respondents to deny the benefits of the RoDTEP to the petitioners. This considering the effect of the notification and the policy of the Government of India on the export of sugar as discussed hereinabove. It would thus be difficult to accept a proposition that at the material time, the sugar could be considered to be a totally restricted/prohibited item for export so as to deprive the petitioners to the benefit of RoDTEP. No doubt that the export of sugar considering domestic need ought to be regulated, however the regulation is in terms of the notifications which certainly permit export of appropriate quota as may be approved by the Directorate of Sugar. If this is held to be an accepted position by the department, then certainly the benefits of the scheme cannot be denied to the petitioners, who have acted upon the scheme and have undertaken exports which certainly are conducive to the national interest and integral to the foreign trade policy.

23. In any event, the issue needs to be held to be concluded in view of the decision of the High Court of Gujarat in **Shree Renuka Sugars Ltd.** (supra) and **M/s.Satyendra Packaging Ltd.** (supra), which have attained finality in view of the Supreme Court dismissing the SLPs.

24. There is substance in the contention of Mr. Jain, learned counsel for the petitioners, that once the department has accepted the decision of the High Court of Gujarat in **Shree Renuka Sugars Ltd.** (supra) and **M/s.Satyendra Packaging Ltd.** (supra) where necessarily the principles of law as laid down in the decision of the Division Bench of this Court in **Maneklal Chunilal & Sons Ltd. Vs. The Commissioner of Income Tax (Central) Bombay**<sup>2</sup> ought to apply. Chief Justice Mr. Chagla speaking for the Bench had observed that as a matter of uniform policy whatever view the Court may have, the view taken by another High Court on the interpretation of the section of a statute which is an all-India statute, needs to be accepted. The said decision was followed in the subsequent decision in **Commissioner of Income Tax, Bombay City-II vs. Jayantilal Ramanlal & Co.**<sup>3</sup> wherein the Division Bench of this Court, following the decision in **Maneklal Chunilal & Sons Ltd.** (supra) has made the following observations:

“15. ... .. In our opinion, therefore, the point is directly covered by the Full Bench decision of the Kerala High Court in Viswambharan's case [1973] 91 ITR 588, which was followed subsequently by the Division Bench of the Punjab and Haryana High Court. It is well-settled practice of this High Court, at least as far as income-tax law is concerned, that decisions of other High Courts ought to be followed for the sake of uniformity. In **Maneklal Chunilal & Sons Ltd. v. CIT** [1953] 24 ITR 375 (Bom), at p. 385, Chagla C.J., has enunciated the uniform policy pursued by the Bombay High Court in such matters where the Division Bench followed the view of a Special Bench of the

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**2** AIR 1954 Bom 135

**3** (1982) 137 ITR 257

Madras High Court, and it is pertinent to note that that view was followed although the opposite view favourable to the assessee appealed more to the Division Bench. Observations to the same effect are to be found in CIT v. Chimanlal J. Dalal & Co. [1965] 57 ITR 285 (Bom). In the latter case the judgment of the Gujarat High Court in CIT v. Kantilal Nathuchand [1964] 53 ITR 420 was doubted but still followed for the sake of uniformity. We are aware that the practice is not uniform among the High Courts, but nevertheless we are of opinion that it is desirable one. Unless the judgment of another High Court dealing with an identical or comparable provision can be regarded as *per incuriam*, it should ordinarily be followed. . . . . “

25. In our opinion, the wisdom of the above observations of Chief Justice Chagla, as followed in **Jayantilal Ramanlal & Co.** (supra), certainly needs to guide the department in the present times, more particularly considering the scores of matters being filed on the same issue before different High Courts, once the issue has attained finality, qua the department in view of an authoritative pronouncement by a High Court, similar contended issues ought not to be agitated by the department before the other High Courts. The situation further worsens by the department asserting a contrary position before such different High Courts, thereby inviting different interpretations and orders leading to judicial chaos. Such an issue certainly needs to be addressed by the Government of India either in the National Litigation Policy, so that uniform policy in respect of such issues is followed in proceedings before different High Courts in relation to Central Legislations and more particularly in tax matters. However, this certainly with the only exception, as observed in **Maneklal Chunilal & Sons Ltd.** (supra) qua a judgment of a High Court dealing with identical or comparable provisions, if it is regarded as *per incuriam*.

26. In the light of the above discussion, in our opinion, the petitioners would become entitled to the benefits of the RoDTEP, wherever not granted, and in those cases where the benefit was granted and recovery was initiated, *status quo ante* would be required to be maintained by granting the petitioners a refund of the said amount along with an appropriate rate of interest.

27. As a consequence of the above discussion, the petitions are accordingly allowed in terms of the following order:

### ORDER

(i) It is held that the petitioners are entitled for the benefit of the RoDTEP.

(ii) The respondents are directed to grant benefit of rebate under the RoDTEP Scheme to the petitioners, who have exported sugar with specific permission under the conditions prescribed by the Directorate of Sugar as per the Notification No.19/2015-2020 dated 17 August 2021 and Clause 3 of paragraph 2 of the Notification No.76/2021-Customs (N.T.) dated 23 September 2021, and who have not been granted such benefit.

(iii) In relation to the benefits which were already granted, and the same were taken away/withdrawn from the petitioners, requiring them to re-deposit the benefits as taken, such petitioners be granted refund of the

amounts so returned, within a period of four weeks from today, alongwith the interest at the rate of 6% p.a.

(iv) As a consequence of the aforesaid orders, the respondents shall not take any coercive action for any recovery in those cases where benefit is granted.

28. Rule is made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)