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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1532/2019 & CM APPL. 7100/2019

NETWEB TECHNOLOGIES INDIA PVT LTD & ANR. ..... Petitioners

Through : Mr. S.B. Upadhyay, Sr. Adv. with Mr. Rana. S. Biswas and Mr. Sunil Kumar Sharma, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through : Mr. Ravi Prakash, CGSC with Mr. Farman Ali, Mr. Akash Mohan and Mr. Kunal Bhargava, Advs. for R-1.

Mr.Amit Bansal, Adv.for R-2 & 4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **15.02.2019**

1. Issue notice to the respondents.

2. Mr. Ravi Prakash, Central Government Standing Counsel accepts notice on behalf of the respondent no.1. Mr. Amit Bansal, Advocate accepts notice on behalf of the respondent nos.2 and 4.

3. The petitioners are aggrieved by the inaction on the part of the respondents, especially the Assistant Commissioner of Goods and Services Tax (GST) in failing to process its refund claims for imports, in respect of GST RFD-01A refund applications filed for the period May, 2018 till date. The petitioner *inter alia* imports computer components and effects onwards supply of finished goods to the various institutions. At the stage of importation, it is subjected to *inter alia* 18% IGST. In terms of the structure

created under the Integrated Goods and Services Tax Act, the petitioners have to suffer an impost (i.e. GST levy) at the stage of importation; it is however, entitled to claim the differential between the actual rate levied upon the final product and the amounts paid at the stage of importation. The petitioners submit that their refund claims submitted online have not been processed and relies upon its various screen shots filed along with the proceedings in respect of several bills of entry which indicate that *"GSTIN of the Supplier cannot be same as the GSTIN of the Refund Applicant (Inward Invoice)"*. It is further stated that the Revenue's position is that there is some error in the system and that till pending its rectifications, the petitioner's applications cannot be processed.

4. Learned counsel for the respondents submit that the concerned authorities are seized of the issue with respect to the malfunctioning or deficiency in the system and consequently, some time may be granted in this regard.

5. During the hearing, learned counsel for the petitioners has relied upon Rules 89 and 97 which requires the GSTIN applications to be furnished online. Under Rule 97A – beginning with *non-obstante* terms, mandates relief to the concerned party/parties from the obligation of going the online route for filing the refund application (GST RFD-01A). Rule 97A reads as follows :

> *"97A. Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."*

6. It is evident that the Central Goods and Services Tax (CGST) Rules 2017, framed under the Goods and Services Tax Act, which have been made applicable for transactions such as the present one (i.e. IGST and customs levy) envision an alternative path that an assessee can adopt while claiming refund. Rule 97A which is in imperative terms, also begins with a *non obstante* clause and enables an assessee/importer to apply manually. In this case, the petitioners assert that their applications may be processed manually.

7. Given the fact that the petitioner's GST RFD-01A applications are pending and are not processed on the ground of technical error or deficiency attributed to it, from May, 2018 onwards, this court is of the opinion that the manual applications shall be filed by the petitioners under Rule 97A, which should be accepted and processed and appropriate orders consequently, of refund with interest, if any, in accordance with law and Rules, shall be made as expeditiously as possible and in any event, not later than three weeks from such filing of manual applications.

8. In the meanwhile, it is open to the respondents to indicate to the petitioners if the online system is upgraded to enable them to file the details and resubmit the GST RFD-01A forms. In such event too, however, the processing shall be completed within the said three weeks period.

9. This writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 15, 2019

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