BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **10.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.17471 of 2020
(Through the Video Conferencing)

M/s. World Home Textiles Inc
represented by its Proprietor,
Mr.P.Ramasamy ... Petitioner

Vs

1.The Additional Commissioner (Appeals),
No.1, Williams Road Cantonment, Tiruchirappalli-620 001.

2.The Assistant Commissioner of GST and Central Excise,
Karur Division, No.15, Gowripuram Extension Area,
Anna Nagar Main Road,
Karur-639 002. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order-in-appeal No.03/2020 TRY (GST) dated 20.08.2020 and quash the same and further direct the second respondent to sanction the refund as claimed by the petitioner in their revised refund claim dated 27.03.2019 along with applicable interest within the reasonable time frame to be fixed by this Court.

For Petitioner : Mr.Derrick Sam
for Mr.Hari Radhakrishnan
For Respondents : Mr.R.Aravindan
Senior Panel counsel

ORDER

This writ petition has been filed challenging the Order in Appeal, dated 20.08.2020 passed by the first respondent, confirming the order, dated 27.03.2019 passed by the second respondent, rejecting the petitioner's application for refund under the Central Goods and Services Tax Rules, 2017.

2. Heard Mr.Derrick Sam, learned counsel representing Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.R.Aravindan, learned Senior Panel counsel for the respondents.

3. The learned counsel for the petitioner would submit that under Rule 92(3) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"), the petitioner ought to have been heard by the second respondent before rejecting his application for refund of CGST. Referring to the impugned order dated 27.03.2019 passed by the second respondent, the learned counsel for the petitioner would point out that, without affording sufficient opportunity of hearing to the petitioner, the said order has been passed rejecting the petitioner's application for refund.

4. The learned counsel for the petitioner drew the attention of this Court to the impugned order dated 20.08.2020 passed by the first respondent in the appeal and would point out that even though the Appellate Authority has confirmed that no hearing was granted to the petitioner by the second respondent, has failed to remand the matter back to the second respondent for fresh consideration. But, instead has confirmed the findings of the second respondent which according to him is not in accordance with Rule 92(2) of the CGST Rules, 2017.

5. Admittedly, no hearing was afforded to the petitioner by the second respondent before passing of the impugned order dated 27.03.2019 rejecting the petitioner's application for refund. Rule 92(3) of the Central Goods and Services Tax Rules, 2017, reads as follows:-

> "*92.(1)..*
>
> *92.(2)..*
>
> *92.(3).Where the proper office is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said fund claim and the said order shall be made available to the applicant electronically and the provisions of Sub-Rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:*
>
> *provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."*

6. As seen from the aforesaid Rule, it is clear that any application for refund can be rejected only after affording sufficient opportunity of hearing to the party, who seeks for refund. The first respondent in the impugned order dated 20.08.2020 has also confirmed that no hearing was afforded to the petitioner by the second respondent and despite the same, has dismissed the appeal erroneously. The operative portion of the order of the first respondent dated 20.08.2020 reads as follows:-

"7.*The appellant also argued that principles of natural justice has not been followed in their case inasmuch as they were not put under notice before the claim was rejected. Though the appellant has valid argument, that alone would not rescue the appellant's cause on merit in view of the fact that they had not complied the instructions as provided under the Board's Circular dated 15.03.2018 discussed as above resulting in rejection of their refund claim by the RSA. Thus, the appellant miserably failed in their appeal. Accordingly, I pass the following order:*

ORDER

Appeal No.02/2019-TRY(GST) filed by M/s. World Home Textiles INC, Karur is rejected and the Rejection Order No.70/KAR/2019-20 dated 10.05.2019 passed by the Assistant Commissioner of GST and Central Excise, Karur Division is upheld."

7. When Rule 92(3) of the CGST Rules, 2017, makes it clear that hearing is mandatory before rejecting any application for refund, the second respondent as well as the first respondent in their respective impugned orders have arbitrarily and by total non application of mind to the said Rule has rejected the petitioner's application for refund. Therefore, the refund application submitted by the petitioner will have to be considered afresh on merits and in accordance with law after giving sufficient opportunity of hearing to the petitioner by the second respondent.

8. For the foregoing reasons, the impugned order dated 27.03.2019 passed by the second respondent as well as the impugned order dated 20.08.2020 passed by the first respondent are hereby quashed and the matters are remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on the refund application dated 27.03.2019 submitted by the petitioner on merits and in accordance with law after affording a fair hearing to the petitioner including granting them the right of personal hearing within a period of twelve weeks from the date of receipt a copy of this order.

9. With the aforesaid direction, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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