

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(T) No. 213 of 2021**

- M/s Radhemani And Sons (A Proprietorship Firm) Having Its Office At 82/17, Radhemani Tower, Infront Of DTDC Courier, Opposite Deshbandhu Press, Nagar Nigam Colony, Agrasen Chowk, Raipur 492001 Through Its Sole Proprietor Namely Ashwani Kumar Agrawal S/o Radheshyam Agrawal Aged About 62 Years R/o A-25, North Avenue Road, Choubey Colony, Raipur Chhattisgarh Pin 492001

---- Petitioner**Versus**

1. Additional Commissioner (Appeals) Cgst And Central Excise GST Bhawan, Tikrapara, Pachpedinaka, Raipur Chhattisgarh
2. Deputy Commissioner CGST And Central Excise, Divisio-II, Central Revenue Building Civil Line Raipur Chhattisgarh
3. Union Of India Through The Secretary, Ministry Of Finance, Department Of Revenue, Central Board Of Indirect Taxes And Customs, North Block Central Secretariat, New Delhi 110001
4. State Of Chhattisgarh Through The Secretary, Department Of Commercial Taxes, North Block Sector-19, Atal Nagar, Naya Raipur Chhattisgarh

---- Respondents

For Petitioner:	Shri Hari Agrawal, Advocate.
For Respondents No.1 & 2:	Shri Maneesh Sharma, Advocate.
For State/Respondent No.4:	Shri Avinash K. Mishra, Govt. Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****07.12.2021**

1. Challenge to this petition is the order dated 25.06.2021 (Annexure P-1) passed by Additional Commissioner (Appeals), CGST and Central Excise, Raipur (C.G.), whereby the appeal preferred by the Petitioner against the order dated 23.04.2020 (Annexure P-2) passed by the Deputy Commissioner has been dismissed.
2. Briefly stated the facts of the case are that the Petitioner-M/s Radhemani And Sons (A Proprietorship Firm) had filed a refund claim of

Rs.12,69,255/- (Rupees Twelve Lacs Sixty Nine Thousand Two Hundred and Fifty Five only) as per the provisions prescribed under Rule 89 (1) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules, 2017') on account of "Excess payment of IGST in February, 2018 in GSTR 3B Return" for the tax period February, 2018 in RFD-01. The said application was filed by the Petitioner on 18.03.2020 and after considering the said application, a show cause notice dated 31.03.2020 (Annexure P-5) was issued by the Deputy Commissioner in Form GST-RFD-08 and since the Petitioner has failed to submit any reply with regard to the said show cause notice, the Deputy Commissioner-cum-Adjudicating Authority has, therefore, rejected the said application of the Petitioner as made under the said provision vide order dated 23.04.2020 (Annexure P-2).

3. Being aggrieved with the aforesaid order of the Adjudicating Authority, an appeal was preferred by the Petitioner before the Additional Commissioner (Appeals) CGST and Central Excise, Raipur as per the provisions prescribed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act, 2017"), who, in turn, while considering the provisions prescribed under Section 77 of the CGST Act, 2017 and Section 19 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act, 2017"), observed that a refund in terms of Section 77 of CGST Act, 2017 and Section 19 of the IGST Act, 2017 would arise only when a supply considered as intra-State supply is so held by any authority as inter-State supply or where a supply considered inter-State by a supplier is so held by any authority as intra-State supply. It, thus, held that the refund under these provisions would not arise suo motu and accordingly, the appellate authority has rejected the appeal while affirming the order of the

Adjudicating Authority as passed on 23.04.2020 (Annexure P-2).

4. Aggrieved therewith, the Petitioner has filed this petition and learned counsel for the Petitioner, while inviting attention to the Circular (Annexure P-8), which was issued by Respondent No.3 on 25th September, 2021, submits that the word “subsequently held” as depicted from the provisions prescribed under Section 77 of the CGST Act, 2017 and Section 19 of IGST Act, 2017 was clarified by interpreting as under”-

3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

5. While referring to the aforesaid circular which is clarificatory in nature of the word “subsequently held”, it is contended by learned counsel for the Petitioner that since the said word referred to the aforesaid provisions of Section 77 of the CGST Act, 2017 read with Section 19 of IGST Act, 2017, has been interpreted by observing *inter alia* that the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer,

is subsequently found by taxpayer himself as intra-State and inter-State respectively, therefore, the matter may be remitted to the concerned appellate authority for the consideration of his claim/application made under sub-rule (1) of Rule 89 of the Rules, 2017 for refund of Rs.12,69,255/- (Rupees Twelve Lacs Sixty Nine Thousand Two Hundred and Fifty Five only) afresh in the interest of justice.

6. Considering the aforesaid contention of the Petitioner, vis-a-vis, the circular dated 25.09.2021 interpreting and/or clarifying the word “subsequently held”, it would, therefore, be appropriate to remit the matter back to the concerned appellate authority. The order impugned is accordingly set aside and the matter is remitted back to the concerned appellate authority with a direction to decide the same afresh in the light of the circular issued on 25th September, 2021 in accordance with law. It is made clear that while disposing of this petition, I have not expressed any opinion on merits of the case and the concerned appellate authority shall decide the same in accordance with law.

7. With the aforesaid observation, the petition stands disposed of.

Sd/-

(Sanjay S. Agrawal)
JUDGE