PMB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3793 OF 2021

Evertime Overseas Private Limited .. Petitioner
Vs.
Union of India and ors. .. Respondents

Mr. Prithwiraj Choudhuri i/b. Aansh Prashant Desai for petitioner.

Mr. Ashutosh Misra for respondent no.1-UOI.

Mr. Jitendra Mishra a/w Mr. Satyaprakash Sharma for respondent nos.2 to 4.

C0RAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: OCTOBER 8, 2021

P.C. :

1. The petitioner claimed that he is entitled to refund under the provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (hereafter "the IGST Act" for short). It is the case of learned counsel that in respect of the goods that have been supplied, the petitioner is entitled to claim the refund under sub-section 3(b) of section 16 of the said Act. It is submitted that the claim for refund is not

being processed by respondent no.4 on the ground that the investigation is pending against the petitioner.

2. Learned counsel for the petitioner invited our attention to the provisions of sub-section 10 of section 54 of the Central Goods and Services Tax Act, 2017 (hereafter "the CGST Act" for short). Sub-section 10 of section 54 of the CGST Act reads thus :-

> "(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-
>
> (a) Withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
>
> (b) Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law."

3. Learned counsel submits that in the teeth of the provisions of sub-section 10 of section 54 of the CGST Act,

the action on the part of the respondents refusing to process the refund on the ground that the investigation is pending is untenable. Our attention is invited to one such application made on May 18, 2021 which is at page 92 of the petition seeking release of the outstanding amount of drawback and IGST refund.

4. Mr. Mishra, learned counsel appearing on behalf of the respondent Nos.2 to 4 submitted that the department is justified in not processing the application on the count of a pending investigation to secure the interest of the revenue.

5. In our opinion and having regard to the facts of the present case, it would be appropriate if the claim for the refund is processed by the respondents in accordance with law. We find that there is no order or decision on record on the application claiming refund. In this view of the matter, it would be appropriate to direct the respondent No.4 to process the application made by the petitioner for refund and pass a reasoned order upon hearing the petitioner. The claim for refund be decided as expeditiously as possible on its own merits and preferably within a period of eight weeks

from today. The petitioner to appear before the Competent Authority on October 21, 2021 at 11.00 a.m.

6. All contentions are kept open.

7. The writ petition is disposed of. There shall be no order as to costs.

(M.S. KARNIK, J.) **(CHIEF JUSTICE)**

PRADNYA MAKARAND BHOGALE

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Date: 2021.10.08 18:04:25 +0530