IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26929 of 2021
(Through Video Conferencing)

Twin Disc Power Transmission Pvt. Ltd,
EL Heights, No.3, CMM Street,
Nungambakkam, Chennai - 600 034.
Represented by its Country Manager &
Financial Controller,
Ms.Indira Bongarala. ...Petitioner

Vs

1.The Deputy Commissioner (ST), GST-Appeals,
Zone VI, Chennai.
4th Floor, PJM Building,
Greams Road, Chennai - 06.

2.The State Tax Officer (Circle)/Proper Officer,
Valluvarkottam Assessment Circle,
10, Palaniyappa Maaligai,
Greams Road, Chennai - 600 006.

3.The Assistant Commissioner of GST & Central Excise,
Triplicane Division, Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the second respondent to open the GST Common portal and facilitate the filing of refund applications for the months of February 2019 to December 2019 OR accept the refund applications manually as per the provisions of Rule 97A of the CGST Rules, 2017 and process the same in accordance with law.

For Petitioner : M/s.Aparna Nandakumar
For Respondents: Mr.Richardson Wilson,
Additional Government Pleader

ORDER

This writ petition is disposed at the time of admission after hearing of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2.It is the specific case of the petitioner that the petitioner is engaged in export of services and therefore entitled for refund under Section 54 of the CGST Act, 2017. It is the further case of the petitioner that the 3rd respondent had earlier sanctioned the refund claim of the petitioner for the exports for the month of July and thereafter transfered the file of the petitioner to the 2nd respondent for the refund claims filed for the succeeding period i.e., August 2017 and September 2017 and from August 2018 to January 2019. The refund claims were rejected on the ground that the petitioner had not satisfied the requirements of Section 2 Sub-Section (6)(V) of IGST Act, 2017 and therefore orders came to be passed which are now subject matter of the writ petitions in W.P.Nos.6678, 6687, 6693, 6696, 6700, 14305, 14310, 14313, 14318, 14765 & 23191 of 2021.

3.The learned counsel for the petitioner submits that in view of the deficiency pointed out in the earlier proceedings, the petitioner was unable to upload the refund applications for the period commencing from February 2019 to December 2019 and that the limitation for filing refund claim had expired under Section 54 of the CGST Act, 2017.

4.Under these circumstances, the petitioner has filed a representation dated 10.12.2021 asking the respondents to accept the manual declarations for the purpose of refund claim for the aforesaid period.

5.He further submits that the issue as to whether the petitioner is entitled to file a manual refund claim which has been recently concluded that the Hon'ble Division Bench of the Bombay High Court in its order dated 30.11.2021 in W.P.No.7861 of 2021 in the case of Lakshmi Organic Industries Limited Vs. Union of India and Ors. The learned counsel for the petitioner submits that the Court has examined the provisions and has concluded as follows:-

> 9.Since rule 97A contains a non-obstante clause, it is intended to override rules 89 to 97 of the CGST Rules forming part of Chapter X.

The plain and simple construction of rule 97A is that despite rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X any reference to electronic filing of an application on the common portal shall, in respect of that process or procedure, include manual filing of the said application. If indeed the argument of Mr.Mishra that no application in any form other than online can be received and processed is accepted, rule 97A would be a dead letter and rendered redundant. Rule 97A cannot be construed in a manner so as to defeat the purpose of legislation. We, therefore, conclude that the impugned circular would certainly be applicable to all applications filed electronically on the common portal, but the impugned circular cannot affect or control the statutory rule, i.e, rule 97A of the CGST Rules or derogate from it.

10.The proposition of law laid down in F.S.Enterprise (supra) that officers and all other persons employed in the institutions governed by the CGST Act and the CGST Rules are bound by instructions issued by the Board under Section 168 of the CGST Act admits of no doubt. However, such decision did not lay down the law, as it could never have, that in a given case governed by a statutory rule the tax officers would be at liberty to elect and apply the orders, instructions or directions issued under Section 168 of the CGST Act ignoring such statutory rule framed under Section 164 thereof while discharging public duties entrusted to them. For the reasons we have assigned above, such decision does not advance the case of the respondents.

11.We, therefore, dispose of this writ petition with the following order:-

(i)the impugned circular is clarified and it is observed that its term shall be applicable only to applications filed electronically on the common portal but would have no applicability to an application for refund which is filed manually;

(ii)the letter dated 27th July 2021 issued by the said Superintendent stands set aside;

(iii)the petitioner is permitted to file afresh the application for refund manually within a fortnight from date and on such receipt, the said Superintendent shall process the same and ensure that the application is taken to its logical conclusion in accordance with law as early as possible, preferably within 2 (two) months thereof; and

(iv)should the application be rejected, the order must have the support of reasons but if it succeeds no time shall be wasted to effect refund to the extent the petitioner is found eligible.

12.The writ petition stands allowed on the aforesaid terms. There shall be no order as to costs.

6.The learned Additional Government Pleader for the respondent on the other hand would submit that the petitioner has filed the above mentioned writ petitions and therefore the fate of the refund claims of the petitioner and whether the petitioner is entitled to any other relief for the succeeding period covered by the writ petition can be decided together in the connected writ petition which are otherwise to be heard and disposed on 20.12.2021.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8.Prima facie it appears that the issue is now settled in favour of the petitioner in the light of the decision of the Hon'ble Bombay High Court in Lakshmi Organic Industries Limited Vs. Union of India and Ors referred to supra. The relevant portion which has been extracted above.

9.Though the petitioner is asking for the two alternate reliefs, I am inclined to dispose this writ petition by directing the respondent to consider the petitioner's representation dated 10.12.2021 without expressing any opinion on merits. The representation of the petitioner may also be examined in the light of the order of the Hon'ble Bombay High Court in the above noted case within a period of four weeks from the date of receipt of a copy of this order. Needless to state, the petitioners right to agitate the issue in case adverse orders are passed stands preserved in accordance with law.

10.Accordingly, this writ petition stands disposed of with the above observations. No costs.



Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgm/jas
To
1.The Deputy Commissioner (ST), GST-Appeals,
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4th Floor, PJM Building,
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Triplicane Division, Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

+1 CC to M/s.Aparna Nandakumar, Advocate sr 68060
+1 CC to The Government Pleader sr 67885.

W.P.No.26929 of 2021

SSD(CO)
SP(20/01/2022)