BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.03.2021
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.22996, 22999 & 23001 of 2019 and
W.M.P.(MD)Nos.19733, 19736 & 19739 of 2019

Tvl.Mehar Tex,
Rep. by its partner,
C.M.Ahamed Hussain,
S/o.C.K.Mohamed Rasheed,
No.2/719-B, Gomathipuram 9th Street,
Sivagangai Road,
Madurai - 625 020. ... Petitioner in all petitions

Vs.

1. The Commissioner of Central GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai - 625 002.

2. The Assistant Commissioner of GST and Central Excise,
Madurai II Division,
Central Revenue Buildings,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai - 625 002.

3. The Assistant Commissioner(ST),
Thallakulam Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai - 625 020. ... Respondents in all petitions

Prayer in W.P.(MD)No.22996 of 2019 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in V/30/117/2018-GST refund dated 09.07.2019 and quash the same and consequently direct the second respondent to credit the refund of Rs.2,95,118/-.

Prayer in W.P.(MD)No.22999 of 2019 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in V/30/118/2018-GST refund dated 09.07.2019 and quash the same and consequently direct the second respondent to credit the refund of Rs.1,13,947/-.

Prayer in W.P.(MD)No.23001 of 2019 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in V/30/119/2018-GST refund dated 09.07.2019 and quash the same and consequently direct the second respondent to credit the refund of Rs.5,02,599/-.

(in all W.Ps.)

For Petitioner : Mr.B.Rooban,
for Mr.Raja. Karthikeyan.

For R-1 & R-2 : Ms.S.Ragaventhre,
Junior Panel Counsel.

For R-3 : Mr.G.Arjunan,
Government Advocate.

C O M M O N   O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for respondents 1 and 2 and the learned Government Advocate(Crl. Side) appearing for the third respondent.

2. The petitioner has registered himself with the third respondent and they are also filing monthly returns under the Goods and Service Tax Act. The petitioner's case is that they had made zero rated sales during the months October 2017, November 2017 and February 2018(exports). According to the petitioner, they are therefore entitled to corresponding refund under all the three heads, namely, SGST, CGST and IGST. However, when the refund applications were uploaded, the entire claim got consolidated and figured under the head of SGST alone. While considering the refund applications, the second respondent restricted the refund claim to the extent of the petitioner's liability for the respective months only under the head of SGST under Rule 92 of CGST Rules, 2017 and rejected the refund claims made in respect of the other heads. Questioning the same, these writ petitions came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitions.

4. The respondents have filed a detailed counter affidavit and the learned Standing counsel took me through the averments set out therein.

5. The stand of the respondents is that the respondents cannot be faulted for having passed the impugned orders. The respondents considered the claim of refund made by the petitioner under the head of SGST and finding that the refund claim was available only to a limited extent and granted relief to that extent. If according to the petitioner, there was some technical error due to technical glitches, it was the responsibility of the petitioner to have

brought it to the notice of the concerned authority for taking immediate action. In the case on hand, the petitioner has not done so. Therefore, the learned Standing counsel called upon this Court to sustain the orders impugned in these writ petitions.

6. I carefully considered the rival contentions and went through the materials on record.

7. There is no doubt that the petitioner is an exporter and that he has made zero rated sales during the relevant months, namely, October 2017, November 2017 and February 2018. He was obviously entitled to refund for the month of October 2017 under SGST and under CGST for the month of November 2017, he was entitled to refund and for the month of February 2018, he was entitled to refund under the three heads, namely, IGST, SGST and CGST. In fact in the impugned order, it has been mentioned that supporting invoices furnished by the assessee are found to be in order. It is also mentioned in the impugned order that the documents furnished as proof of exports were verified and they are found to be in order.

8. Therefore, the only question is whether the petitioner's claim for refund on CGST and IGST can be denied on the ground that his claim got consolidated under one head of SGST. The petitioner's specific case is that due to error and new system of software in GST, the entire refund liability of ITC got auto populated under the head of SGST instead of CGST, SGST and IGST. This stand of the petitioner has been rejected by the respondents on the ground that the petitioner has not furnished any documentary proof in support of his claim.

9. When the petitioner has received show cause notice for the rejection of the refund application, the petitioner in his reply dated 24.01.2019 and 14.05.2019, had categorically stated that they filed refund application indicating that the entire refund claim got auto-populated under a single head, namely, SGST. If due to error on the part of any software in GSTN, this had occurred obviously, the petitioner cannot be expected to produce proof for the same. In any event, the petitioner had submitted the refund applications manually also. If the petitioner was otherwise eligible to refund, on the ground of technical glitches and error having occurred due to auto-population, the petitioner ought not to be denied relief. Nothing can be more unfair.

10. Therefore, the orders impugned in these writ petitions are set aside to the extent they reject the refund claim of the petitioner made under CGST and IGST. The matter is remitted to the file of the second respondent. The second respondent will verify if the petitioner is otherwise eligible for refund. If the second respondent is satisfied, refund will be made to the petitioner herein. This exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

11. These writ petitions stand allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

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.

PMU

To:

1. The Commissioner of Central GST
and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai - 625 002.
2. The Assistant Commissioner of GST
and Central Excise,
Madurai II Division,
Central Revenue Buildings,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai - 625 002.
3. The Assistant Commissioner(ST),
Thallakulam Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai - 625 020.

+1 CC to M/s.B.ROOBAN, Advocate (SR-12276[F] dated 18/03/2021)

W.P.(MD)Nos.22996, 22999 & 23001 of 2019
18.03.2021

GS (17.05.2021) 4P 5C