

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-8108-2021 (O&M)

Decided on : October 08, 2021

SBI Cards & Payment Services Limited

....Petitioner

VS

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN**

Present :- Mr. Arvind Datar, Senior Advocate with
Mr. Tushar Jarwal, Advocate with
Mr. Deepak Thackur, Advocate with
Mr. Amit Jit Singh Narang, Advocate and
Mr. Vrinda Bagaria, Advocate for the petitioner.

Mr. Sunish Bindlish, Advocate
Sr. Standing counsel with
Mr. Gagandeep Singh Malhotra, Advocate for the respondents.

AJAY TEWARI, J.(Oral)

1. By this petition the petitioner has challenged the order dated 19.02.2021 (Annexure P-1) issued by Additional Commissioner (Appeals) whereby the prayer for refund of CGST & SGST amounting to Rs. 108 crores approximately wrongly paid on 5.4.2019 (for the disputed period i.e. from April 2018 to December 2018) in excess of the tax due under Section 77 of the Central Goods and Services Tax Act, 2017 (For short 'the CGST Act') has been declined.

2. Brief facts of the case are that the petitioner is a joint venture with State Bank of India (hereinafter referred to as 'SBI') wherein SBI holds

69.39% shares. SBI is a nationalized Bank and one of the largest Public

Sector undertakings in India. The petitioner is engaged in the business of issuing credit cards to its customers (cardholder) and is duly registered with the Reserve Bank of India under Section 451 A of the Reserve Bank of India, Act 1934 as a non-deposit taking and non-banking financial company.

3. The petitioner (like many other banks) issues credit cards to the public and is a member of the Card Association which is essentially under the control of two global corporations called Visa and Master Card. A person who has a credit card issued by the petitioner at place 'A' can go to place 'B' and make some purchases where the vender is affiliated to some other banks and the moment that purchase is logged, the other bank is bound to make the payment to that vender and then to claim the same from the petitioner (who had issued the credit card to that person). It has to be appreciated that there may be hundreds and thousands of such transactions taking place on daily basis and that entire data is collated, sieved and then netted off by the servers of aforesaid Visa and Master Card which are located in Singapore. On a daily basis the balance is sent to all the member banks of the Card Association requiring them to make the necessary payments to those other members with whom they have a debit relationship on that date.

4. At the time before the GST regime had kicked in, the petitioner had one registration number for the erstwhile Service Tax which continued for the initial period under the new GST regime and thereafter the petitioner obtained separate registration in all the 28 states. However, during the initial stage the complete break up of individual transactions was not available to the petitioner and in the absence thereof for the period April

2018 to December 2018 the petitioner paid Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) of about Rs.108 crores approximately considering the transactions to be intra-state sales. The supply was reported under GSTR 1 and 3 B as a Business to Customer (B2C) supply as GST registration number of the acquiring banks were not known.

5. It is further the case of the petitioner, that the Card Association provides a monthly report for transactions with each Acquiring Bank, however, the report did not contain GSTIN, place of registration and other details. The monthly report is stated not to have matched the Daily Settlement Report and hence as was being done in the pre-GST regime the petitioner paid the tax on the basis of details received in the Daily Settlement Report.

6. It later transpired that those transactions (for which the amount of Rs.108 crores approximately had been paid as on the basis of them intra-state sales) were actually inter-state transactions. It was in those circumstances that the petitioner applied for refund of the amount wrongly paid on the basis that these transactions were intra-state transactions. At that stage, the respondents required it to first make the payment under the right head IGST and then the prayer for refund would be considered. The petitioner hence deposited another amount of Rs.108 cores approximately as tax which was due on the inter-state transactions. Even then its plea for refund was rejected by the impugned order, primarily on the ground that the phrase 'subsequently held' in Section 77 of the CGST Act could only apply in a case where an adjudicating

authority had actually held whether a transaction was inter-state or intra-state. It may be mentioned here that the core issue i.e. the amount of tax which was paid by the petitioner has not been disputed by the GST Department. There is no claim that any tax is due from the petitioner. It has been brought to our notice that primarily because of this problem the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes issued Circular bearing No. F.No.CBIC-20001/8/2021-GST dated 25.9.2021 paragraph 2 and 3 of which are relevant and are to the following effect :-

2.1 Section 77 of the CGST Act, 2017 reads as follows :

“77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed.**

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of the IGST Act, 2017 reads as follows :

“19. Tax wrongfully collected and paid to Central Government or State Government-----(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject**

to such conditions as may be prescribed.

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”*

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.

7. Today, learned Senior Counsel appearing for the petitioner has argued that in view of this clarification there can be no dispute that at least

one amount of Rs.108 crores approximately has to be refunded to the petitioner and consequently, prays this petition be allowed and respondents be directed to refund the amount of Rs.108 crores along with applicable interest.

8. On the other hand, the contention of learned Standing counsel for the respondents is that there is a condition in para 3.2 to the effect that the refund would be available only if the petitioner has paid the required amount of tax under the correct head and consequently, this matter should be remanded back to the respondent No.2 to re-decide the issue in view of the above-said circular.

9. In our considered opinion, in normal case this may have been an appropriate order to pass but in the present case it cannot be lost sight of that there is no dispute about the amount of tax, rather it was on the requirement of the respondents that the petitioner paid an additional amount of Rs.108 crores approximately. Had this amount not been paid, of course, what Mr. Bindlish, the learned Standing Counsel is arguing would have been applicable but once the petitioner paid that extra amount on asking of the respondents under the IGST the liability of the respondents to refund an amount of Rs.108 crores odd wrongly deposited under CGST & SGST cannot be disputed. We cannot also lose sight of the fact that the money has now lain with the respondents for the past two and a half years.

10. Consequently, the petition is allowed and respondents are directed to fund Rs.108 crores approximately which was deposited earlier by the petitioner towards CGST and SGST along with applicable interest within a period of one month.

11. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

October 08, 2021
anuradha

Whether speaking	-	Yes
Whether reportable	-	No