

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5438 OF 2022

Sai Kripa Confectioneries

... Petitioner

Vs.

The Union of India & Ors.

... Respondents

Mr. Bharat Raichandani a/w Mr. Rishabh Jain i/by UBR Legal Advocates for Petitioner.

Mr. Karan Adik a/w Mr. Siddharth Chandrashekhar for Respondent Nos.1 to 3, 6 and 7.

Ms. Shehnaz V. Bharucha a/w Ms. Ruju Thakkar for Respondent No.8.

Mr. Vinayak Azaad, Commissioner GST, Audit, Guntur present.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.**

DATED : 07th SEPTEMBER 2022

PC. :

1. Mr. Adik tenders an Affidavit of Vinayak Azaad, affirmed on 7th September 2022, in which Affidavit, said Mr. Vinayak Azaad, who was the Commissioner, who had passed the impugned orders, has been graceful enough to admit that there was an error in the judgment on his part and has tendered unconditional apology. We accept the same.

2. By the said Affidavit, it is also mentioned that two provisional attachments, both dated 3rd February 2022, have been raised and suitable

communication has been addressed to Axis Bank and Standard Chartered Bank on 29th August 2022 and 6th September 2022, respectively.

3. It is also stated in the said Affidavit of Vinayak Azaad that a communication has been addressed on 29th August 2022 to the Joint Commissioner of State GST, Maharashtra to unblock the ITC of Rs.24,26,371/- of Petitioner. Mrs. Vyas, who is present in Court, expressed her inability to give answers as the State of Maharashtra is not a party to this Petition. At the same time, we would have expected the Joint Commissioner, State GST, Maharashtra to have taken prompt steps upon receiving letter dated 29th August 2022 to unblock the ITC credit. Mrs. Vyas is requested to communicate to concerned authority, and non-availability of this order will not be an excuse, to unblock the ITC credit of Rs.24,26,371/- within 24 hours from now, i.e., by 15.15 Hr. on 8th September 2022.

4. Petitioner has also raised a grievance that the action of Respondent No.1 has resulted even in the Customs Authorities not processing Petitioner's refund application.

5. In the Affidavit of Mr.N.V. Kulkarni, Principal Commissioner of Customs (NS-II), affirmed on 25th July 2022, it is stated that the refund application has not been processed because of an “Alert” inserted in the system and Respondent No.7 has identified Petitioner as risky exporters on the basis of extensive data analytics and adverse verification report received from the CGST field information, i.e., CGST Thane Rural. Since, CGST Thane Rural has, pursuant to the Affidavit of Vinayak Azaad, affirmed on 7th September 2022, withdrawn the order of provisional attachments, etc., certainly the insertion of “Alert” could also be deemed to be withdrawn. The Customs Authorities are, therefore, directed to process the refund application of Petitioner within two weeks from today and pass such orders as they may deem fit in accordance with law. We clarify that we are not making any observations on the merits of the refund application.

6. We have also to note that in Paragraph 5 of the Affidavit of Vinayak Azaad, affirmed on 7th September 2022, there is an averment that credible intelligence exist on file and Petitioner has availed illegal and ineligible input credit from its vendors and one such vendor had also been arrested by the CGST, Delhi, North Commissionerate.

7. Mr. Raichandani states that since the copy of the Affidavit has been handed over to him in the Court when the matter was called out, there has been no time to file Affidavit of Petitioner denying these allegations. At the same time, Mr. Raichandani, on instructions, states that Petitioner has not availed of any illegal and ineligible input credit from any vendors. Mr. Raichandani states that the entry from the vendor Vikram Goel has been reversed by Petitioner at a great loss to Petitioner under protest and, therefore, it should be a non issue. We clarify that we are not going into these details. It is open to Respondents to investigate Petitioner, but certainly that can be done in accordance with law and by following due process. Arbitrary actions should not be taken and if it is done, this Court will interfere in such matter.

8. Petition accordingly disposed. No order as to costs.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)

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