

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

WRIT PETITION NO. 7476 OF 2022

1. Adisan Laboratories Pvt. Ltd.
Plot 17, 19, S. No. 297,
At Post Ambervet Datta Mandir,
Taluka- Mulshi,
Pune- 412 115.
2. Aditya Ramesh Devadhar,
Shareholder & Managing Director,
Adisan Laboratories Pvt. Ltd. ... Petitioners

Versus

1. Union of India
Through the Revenue Secretary,
Department of Revenue, Ministry of
Finance having its office at
128-A/ North Block, New Delhi.
2. The Commissioner,
Central Goods and Services Tax,
Pune- I Commissionerate,
GST Bhavan, Opp. Wadia College,
Sassoon Road, Pune- 411 001.
3. The Assistant Commissioner,
Central Goods and Services Tax,
Division -II (Pimpri), Pune -1
Commissionerate Excise Bhavan
Near Akurdi Railway Station,
Akurdi, Pune ... Respondents

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Mr.Makrand Joshi i/b. Max Legal for the Petitioners.

Mr.Karan Adik with Mr. Ram Ochani for the Respondents.

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**CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.**

DATE : 21 NOVEMBER 2022

ORAL JUDGMENT (Per: Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. The Petitioners have challenged the order passed by the Assistant Commissioner, Central Tax, Pune -1 Commissionerate, Pune dated 31 May 2022 rejecting the claim of the Petitioners for refund due to account of Input Tax Credit accumulated due to inverted duty structure.

3. Petitioner no.1 is a private limited company. Petitioner no.2 is shareholder and managing director of the Petitioner No.1, Respondent no.2 is the Commissioner of Central Goods and Services Tax, Pune and Respondent No.3 is the Assistant Commissioner of Central Goods and Services Tax, Pune.

4. On 30 March 2022, the Petitioners filed a claim for refund. The Petitioners had claimed refund to the tune of Rs. 14,90,629/- for the period from April 2019 to March 2020 for the Input Tax Credit. The Petitioners received an email from the Respondents on 4

March 2022 that a notice has been issued to the Petitioners in respect of its refund claim and the Petitioners were advised to access noting by logging to GSTN portal. The Petitioners on 17 May 2022 wrote to Respondent No.4 that notice is not served neither it is available on GSTN portal. Thereafter, the Petitioners received the impugned order on 27 May 2022 at 5.55 pm. rejecting the claim of the Petitioners for refund. Challenging this order, the Petitioners are before us.

5. Main contention of the Petitioners is that the Petitioners were not given any opportunity as required under the Rules nor any notice was given to the Petitioners and therefore, the impugned order is bad in law.

6. The procedure for seeking refund is provided under chapter XI section 54 of the Central Goods and Services Tax Act, 2017 thereof. Section 54 (3) of the Act of 2017 provides for refund and states that a registered person may claim refund of any unutilised Input Tax Credit at the end of any tax period, except two categories stated therein no refund shall be allowed. According to the Petitioners, the Petitioners were in the category where credit is accumulated on the ground of rate of tax on inputs being higher than the rate of output supplies. The methodology in respect of dealing with the application for refund is provided under the Rules framed under the Act of 2017.

7. Rule 92 of the Central Goods and Services Tax Rules, 2017 lays down the methodology for processing the application. Rule 92 (3) of the Rules of 2017 states that if the proper Officer is satisfied, for reasons to be recorded in writing, the refund is not payable either in part or in full, notice in form of GST RFD-08 is to be issued to the Applicant and reply has to be given within 15 days. Rule 92 (3) of the Rules of 2017 contains proviso that no application for refund shall be rejected without giving the Applicant an opportunity of being heard. Therefore, issuance of the notice under Rule 92 (3) of the Rules of 2017 is not a formality but it is in aid of provision giving an opportunity to the Applicant to demonstrate that the refund is payable.

8. In the present case, the Petitioners have not only asserted that notice was not received by the Petitioners nor it was available on GSTN portal in the petition, but before passing the impugned order, the Petitioners had communicated to the Respondents that notice was not received nor it was available on portal. These facts have gone uncontroverted. Proceeding on the basis that the notice was neither received by the Petitioners nor it was made available on GSTN portal, it will have to be held that the opportunity of hearing to the Petitioners as envisaged under Rule 92 of the Rules of 2017 was impaired.

9. In light of the above, the impugned order will have to be quashed and set aside, and the application of the Petitioners needs to

be restored directing the Respondents to follow methodology under Rule 92 of the Rules of 2017.

10. Accordingly, Rule is made absolute in terms of prayer clause (a). Application of the Petitioners is restored to file.

11. Considering the fact that the delay has occurred due to above circumstances, further procedure be completed by the Respondents within a period of 8 weeks from the date the order is uploaded.

12. We make it clear that we have quashed and set aside the impugned order on the above ground and not on merits, and the authority will decide the claim of the Petitioners for refund on its own merits.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)

TRUPTI
SADANAND
BAMNE

Digitally signed by
TRUPTI SADANAND
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Date: 2022.12.06
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