



W.P.No.3773 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.11.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.3773 of 2020

Abi Egg Traders,
Represented by its Proprietrix Panneerselvam Thatsayini,
No.5/190/2, Samy Nagar, 1st Cross, Mohanur Road,
Namakkal-637 002.

... Petitioner

Vs

Assistant Commissioner, Salem II Division,
O/o.the Assistant Commissioner of Goods and
Services Tax Central Excise,
GST Bhavan, No.1, Foulkes Compound,
Anaimeedu, Salem - 636 001.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Sanction Order No.119/2019-20 (CGST) dated 19.11.2019 passed by the respondent in C.No.V/18/18/2019-GST(RF) and quash the same as arbitrary and illegal and to direct the respondent to refund the amount.

For Petitioner : Mr.Joseph Prabhakar

For Respondent : Ms.Lydia
for Mr.Rajnish Pathiyil
Senior Panel Counsel

ORDER

The petitioner is a sole proprietary engaged in the export of eggs. There is no liability to tax on the export of eggs since the commodity is 'nil' rated. Hence, the petitioner was entitled to the Input Tax Credit (in short 'ITC') that had



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accumulated on the exports. The period in question is 01.08.2017 - 31.03.2018

in respect of which a return in form GSTR-3B was filed in May, 2018.

2. Inter alia, the petitioner states that a mistake had crept in insofar as the petitioner had, in stead of opting for exports '*without payment of tax*', had opted for the column '*with payment of tax*'. As on 31.03.2018, the ITC available in the Electronic Credit Ledger (in short 'ECL') was a sum of Rs.7,04,851/-, whereas, according to the petitioner, on filing of the return, the ITC stood enhanced to a sum of Rs.11,63,200/-.

3. No documentary evidence has been provided to substantiate the enhanced figure of ITC available as on date of filing of the return in May, 2018. A claim for refund of ITC of an amount of Rs.11,63,200/- as on date of filing of return was made on 12.08.2019, under Section 54(3) of the Central Goods and Service Tax Act, 2017 (in short 'CGST') read with Section 16(3) of the Integrated Goods and Service Tax Act, 2017 (in short 'IGST').

4. A notice of deficiency had been issued on 05.09.2019 wherein the officer points out the error that had crept in to the filing of the refund application. To be noted that, a refund application requires the assessee to stipulate the grounds on which the refund was claimed and the grounds in column 7 are as follows:



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7.	Grounds of Refund Claim (select from drop down)	(a)	Excess balance in Electronic Cash Ledger					
		(b)	Exports of services - with payment of tax					
		(c)	Exports of goods/services - without payment of tax (accumulated ITC)					
		(d)	ITC accumulated due to inverted tax structure [under clause (ii) of first proviso to Section 54(3)]					
		(e)	On account of supplies made to SEZ unit/SEZ developer (with payment of tax)					
		(f)	On account of supplies made to SEZ unit/SEZ developer (without payment of tax)					
		(g)	Receipient of deemed export supplies / Supplier of deemed export supplies					
		(h)	On account of order					
			Sl.No.	Type of order	Order No.	Order date	Order issuing authority	Payment reference no., if any
			1.	Assessment				
			2.	Finalization of provisional assessment				
			3.	Appeal				
			4.	Any other order (specify)				
		(i)	Tax paid on an intra-state supply which is subsequently held to be inter-state supply and vice versa (change of POS)					
		(j)	Excess payment of tax, if any					
		(k)	Any other (specify)					

5. According to the petitioner what is applicable in the present case is ground 7(b) being 'export of services – without payment of tax'. However, this ground was unavailable since the refund application, when correlated with the



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return filed under Section GSTR-3B did not permit the assessee to take a stand contrary to that taken in that return.

6.Thus, the petitioner was constrained to opt for ground (k) being the residuary ground. This was cited as a reason for the rejection of the refund application. The officer also points out that the credit balance as on 31.03.2018 was only a sum of Rs.7,04,851/- whereas the petitioner had claimed a refund for a sum of Rs.11,63,200/-.

7.The petitioner responded on 09.10.2019 explaining the reasons under which it had been constrained to opt for the residuary clause and not for clause 7(b). As regards the alleged discrepancy in the quantum of ITC, the petitioner submitted that it was entitled for refund for the credit in the ECL as on the date of refund application being 19.05.2019 and not the credit as on 31.03.2018.

8.The petitioner pointed out that the return in GSTR-3B had itself been filed only in May, 2018 and it is only at that juncture that the balance in ECL would stand enhanced from a sum of Rs.7.04 lakhs to Rs.11.63 lakhs. This was followed by an exchange of communications and show cause notices primarily on the same issues as discussed in the preceding paragraphs.

9.An order of rejection came to be passed by the officer wherein the petitioner's response with regard to the quantum of ITC appears to have been accepted though he does not say so in as many words. In conclusion, he



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reiterates the objection raised by him in regard to the categorization of the services pointing out that the petitioner's entitlement fails since it was made only under the residuary category. This is the sole ground upon which the claim has been rejected.

10. A counter has been filed by the respondent. Nowhere in the counter nor in the course of the oral arguments before me, does Ms.Lydia, learned standing counsel dispute the entitlement of the petitioner to the refund. In fact, she would fairly accede to the position that the error is bonafide and reiterate that the petitioner is, in fact, entitled to the refund of ITC seeing as the export was not liable to tax.

11. In such circumstances, I am of the considered view that rejecting the refund solely on the inadvertent error that had transpired would be hypothetical and the conclusion of the officer to this effect is thus set aside. Incidentally, the petitioner has also circulated an order passed by the same respondent officer in the case of another assessee by name '*Shri Shakti Exports*' wherein refund, as sought in similar circumstances has been granted, the officer, taking a lenient view.

12. In light of the discussion as aforesaid, the impugned order is set aside. The officer shall issue the refund within a period of eight (8) weeks from



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today after satisfying himself in regard to the quantum of refund as on the date
of refund of application.

13. This writ petition is allowed as above. No costs.

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Index : Yes
Speaking Order

To

Assistant Commissioner, Salem II Division,
O/o.the Assistant Commissioner of Goods and
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Dr.ANITA SUMANTH, J.

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