

230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3329-2022(O&M)
Date of Decision: 18.08.2022

Xchanging Technology Services India Pvt. Ltd.Petitioner

versus

Principal Commissioner, Gurugram and others Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Amrinder Singh, Advocate
for the petitioner.

Mr. Rishabh Kapoor, Senior Standing Counsel
for the respondents.

TEJINDER SINGH DHINDSA, J. (ORAL)

Mr. Rishabh Kapoor, learned Senior Standing Counsel for the respondents has filed in Court today a written statement. The same is taken on record. Copy already stood furnished to counsel opposite.

With the consent of counsel for the parties, the main writ petition is taken up for disposal today itself.

Challenge in the instant petition is to the order dated 15.05.2020 (Annexure P-2) passed by the Adjudicating Authority/respondent No.2 herein rejecting the refund claim that had been set up by the petitioner.

Further challenge is to the order dated 14.12.2021 (Annexure P-1) passed by the Appellate Authority affirming the order of the Adjudicating Authority.

Having heard counsel for the parties and having perused the pleadings on record we are of the considered view that there would be no requirement of delving into the merits of the case as a clear case for remand back to the Adjudicating Authority has been made out. Reasons for taking such a view are as follows.

The brief factual matrix which would be necessary is that the petitioner is an exporter of services and avails input tax credit on input services used in providing the output export services against a letter of undertaking without payment of tax as per applicable provisions and procedures under the GST law. Petitioner filed a refund claim for the period April, 2018 to March, 2019 on 16.01.2020. On 22.04.2020, RFD-02 was issued acknowledging the refund claim. However, on 23.04.2020 respondent No.2 issued a show cause notice for rejection of the refund. Petitioner responded in terms of a communication dated 28.04.2020 at Annexure P-6 seeking extension for purposes of submitting a reply till 30.06.2020 citing the Covid-19 situation/pandemic. In such communication the petitioner placed reliance upon a CGST Notification No.35/2020-Central Tax issued by the Government on 03.04.2020 and as per which extension was envisaged even for purposes of filing a reply up to 30.06.2020. However, vide order dated 15.05.2020 (Annexure P-2) the Adjudicating Authority rejected the refund claim without even dealing with the request of the petitioner seeking extension of time for purposes of filing a reply to the show cause notice. Petitioner then preferred an appeal which stands dealt with vide impugned order dated 14.12.2021 (Annexure P-1) passed by the

3rd respondent i.e. Joint Commissioner (Appeals), Gurugram.

It is against such brief backdrop that the petitioner has approached this Court by way of filing of the instant petition.

Perusal of the order passed by the Appellate Authority at Annexure P-1 would reveal that a view has been taken that there was a time frame of 15 days to have responded to the show cause notice and there was no deviation permissible therefrom.

Even though the grounds of appeal taken by the petitioner stand enumerated in the order itself and the Notification dated 03.04.2020 vide which the time limit for undertaking all the compliances falling between 20.03.2020 to 29.06.2020 to be extended up to 30.06.2020 had been taken note of but the same have not been dealt with at all.

It is not the view taken by the Appellate Authority as may be discernible from the impugned order at Annexure P-1 that such Notification is not applicable to the facts of the case. The Appellate Authority rather has chosen to completely ignore the Notification.

However, in the reply that has been filed in Court today a unique stand has been taken. It is stated that the extension Notification had extended the period of limitation to obviate difficulties on account of Covid-19 virus for ensuring that taxable person/tax professionals, lawyers/litigants do not have to come physically to file proceedings before the authorities. As such as per stand taken by the respondents the extension Notification dated 03.04.2020 is applicable only where the taxable person has to make compliances physically or join proceedings in a physical manner. The second contention raised by Mr. Rishabh Kapoor is that every refund application has to be disposed of within a period of 60 days from the receipt

of application in terms of Section 54 (7) of the CGST Act, 2017 and if any tax that were to be refunded, is not refunded within 60 days from the date of receipt of the application, interest at the rate of 6% on the refund amount would become due and payable. It is submitted that in the light of such time frame the extension that had been sought by the petitioner was not feasible.

We find the submissions advanced by counsel representing the respondents to be misconceived and not well founded.

The distinction being sought to be drawn in the extension Notification dated 03.04.2020 is not discernible from the plain language of the Notification itself. Even otherwise such distinction does not stand to reason. The extension of time had been granted by virtue of a Notification to cover all situations relating to the Covid-19 pandemic and the difficult circumstances arising therefrom. Even if the reply in the present case to the show cause notice had to be filed online, it goes without saying that certain documents/material had to be collected/collated for the purpose of filing a comprehensive reply. During the period of shut down, the same would not have been possible and as such it does not lie in the mouth of the respondents to take a stand that the extension Notification would apply only in such situations where the compliances had to be made only physically.

Even otherwise it is by now well settled that the validity and legality of an order has to be tested in terms of reasons assigned in the order itself. The distinction that is now sought to be drawn has been taken only at the stage of filing a reply and counter to the writ petition. Such distinction does not find a mention in the impugned order. Rather in the impugned order passed by the Appellate Authority at Annexure P-1, even though the

extension Notification dated 03.04.2020 has been noticed but the same has not been dealt with at all.

The objection raised by counsel for the respondents that every refund application had to be disposed of within a period of 60 days failing which an interest liability would accrue is also without merit. Such situation also stands covered in terms of the extension Notification dated 03.04.2020 at Annexure P-7 whereby the time frame for such purpose also stood extended beyond the period of 60 days and up to 30.06.2020.

For the reasons recorded above, we are of the view that the impugned orders cannot sustain. The authorities were obligated to grant extension in time to the petitioner for submission of a reply to the show cause notice dated 23.04.2020 up to 30.06.2020 and thereafter to deal with the issue on merits.

Writ petition as such is allowed. The impugned orders dated 14.12.2021 (Annexure P-1) and 15.05.2020 (Annexure P-2) are set aside. The matter is remanded back to the Adjudicating Authority. A time frame of three weeks is granted to the petitioner for the purposes of filing a reply. In the eventuality of the petitioner doing so, the matter as regards the refund claim would then be considered on merits and a reasoned and speaking order would then be passed by dealing with all the contentions and submissions that may be raised in the reply that is to be filed. It would be appreciated if prior to the passing of the final order a personal hearing to the authorised representative of the petitioner is afforded.

Writ petition is disposed of in the aforesaid terms.

It is clarified that we have not examined the issue on merits and have set aside the impugned orders on the short ground of having not

permitted the petitioner the opportunity of filing a reply to the show cause notice within the extended time frame up to 30.06.2022.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

18.08.2022
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No