

HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

WPA 2370 of 2023

Vaishnodevi Advisory Pvt. Ltd.

Versus

**Dy. Commissioner Central Goods & Services Tax & Central Excise,
Siliguri Divn. & Ors.**

For the Petitioner : Mr. Boudhayan Bhattacharyya,
Mr. Sougata Banerjee,
Ms. Stuti Bansal,
Mr. Bodhisatya Ghosh
...Advocates

For the Respondents : Mr. Ratan Banik
Mr. Bishwaraj Agarwal
...Advocates

Heard on : 17.10.2023

Judgment on : 24.11.2023

AJAY KUMAR GUPTA, J.:

1. The instant writ petition has been filed by the petitioner against the judgment and order dated 12.12.2022 passed by the Joint Commissioner, CGST and Central Excise, Siliguri Appeals Commissionerate in an appeal

being F. No. GAPPL/ADC/GSTD/227/2021/SLG- Appeal. The said appeal was filed in terms of provisions of Section 107(2) of the GST Act, 2017 by the Assistant Commissioner of CGST & Central Excise, Siliguri Region, respondent no. 2 as an authorised officer, thereby the appellate authority allowed the said appeal in part observing therein that the refund Sanction order bearing no. ZY1906210178152 dated 15.06.2021 informed through form GST RFD-06 being erroneous in considering FOB values of twelve (12) shipping bills were signed and cleared by the Inspector, Custom, who is not the authorised officer in terms of Section 51 of the Customs the Act, 1951 as **“Turnover of Zero-rated supplies”** envisaged in Rule 89 (4) of the CGST Rules, 2017 for the purpose of arriving at the Refund amount. At the same time, appellate authority did not find any infirmity in Order being No. ZY1906210178152 dated 15.06.2021 in considering the FOB values of 03 shipping bills all dated 17.03.2021 for the purpose of arriving **“Turnover of Zero-rated supplies”** envisaged in Rule 89(4) of the CGST Rules, 2017.

2. The case of the petitioner, in short, is that the petitioner is a company incorporated under the Indian Companies Act, 1956 read with Indian Companies Act, 2013 being registered under Central Goods and Services Tax Act, 2017 and under the WBGST Act, 2017 had applied for refund of accumulated Input Tax Credit (ITC) to the tune of Rs. 29, 55,972/- relating to the period January 2021-March 2021 being an exporter on account of export of goods without payment of tax through common portal. The said accumulated ITC was finally sanctioned for refunds vide refund order no. ZY1906210178152 dated 15.06.2021 in Form GST RFD-06 by the adjudicating authority and the same was reflected in the common portal.

The said final sanction of refund order was reviewed by the respondent no. 4 and directed the respondent no. 2 to prefer an appeal against such order of sanctioned by adjudicating authority before the appellate authority as it has been alleged that after examination it is found that uploaded out of 18 shipping bills, 12 shipping bills having total FOB value of Rs. 1,34,39,325/= have been cleared by the Inspector of Customs, Hatisar LCS, who is not authorised to function as “Proper Officer” for the purpose of permitting or allowing exportation of the consignment and at the same time, 3 shipping bill nos. 607101, 607102 and 607105 all dated 17.03.12021 having same FOB value of Rs.13,99,525/= each has been cleared by the Superintendent of Customs, without obtaining any approval from the AC/DC of Customs having jurisdiction over Hatisar LCS since it is mandatory requirement in terms of applicable guidelines as prescribed by the Commissioner of Customs as such these bills cannot be accepted as “valid proof of export for the purpose of refund”.

3. It is further case of the petitioner that the challenge in the said appeal by the respondent no. 2 was in respect of total 15 shipping bills out of 18 shipping bills pertaining to the export transaction on the primary ground that the 12 shipping bills were found cleared by Inspector of Customs, Hatisar LCS, who is not the proper officer to clear from the port for exportation of goods and three shipping bills having an export value of Rs. 13,99,525/- each has been cleared by Superintendent of Customs, without the approval of AC/DC of Customs contravening the provisions prescribed in the Facility Notice issued by the competent authority, applicable for the compounding having FOB value, the threshold limit of Rs. 10 lakhs and

such shipping bills are to be allowed for export only after approval of jurisdictional AC/DC of Customs. Accordingly, the aforementioned shipping bills cannot be considered as valid proof of export and the value of consignment cannot be considered for the purpose of refund and finally it is indicated by the appellant/respondent No. 4 the correct value of “turnover of zero-rated supply” for the purpose of refund should be considered as Rs. 27, 44,875/- instead of Rs. 2, 03, 82,775/- as claimed in form RFD-01.

4. According to the respondent No. 4, the adjudicating authority has been erroneously sanctioned in excess and asked to be recovered from the tax payer along with interest and penalty as applicable in terms of Sections 73 and 50 of the CGST Act, 2017 read with identical provisions of the WBGST Act, 2017.

5. Writ petitioner being the respondent in the said appeal submitted Cross-objection on the “Grounds of Appeals” which is reproduced below:

i. The ground/basis of appeal filed by the Department is based on two procedural errors, if any, triggered by the Customs departmental officers.

ii. The grounds raised by the Department are:

a) 12 Shipping Bills have been cleared by the Inspector of Customs, Hatisar LCS, who is not authorized to function as Proper Officer.

b) 03 Shipping Bills cleared by Superintendent of Customs without obtaining any approval from AC/DC of Customs having jurisdictions over Hatisar LCS.

iii. The important contention is that the procedural errors are not cooked by the Respondent.

iv. The Respondent has no control over the action of Customs Departmental officers and hence cannot be penalized over the fault of the Customs Officers, if any.

v. That the Respondent cannot be asked to do the impossible i.e., ask the officers to sign on certain Government documents or seek approval on behalf of the Superintendent before the AC/DC of Customs having jurisdiction over Hatisar LCS and hence cannot be penalized for the fault of others.

vi. The allegations that the 12 (twelve) Shipping Bills signed by the Inspector and not by the Superintendent calls for introspection by the Department as the same is not signed by the Respondent but by a Customs Officer and therefore penalizing the Respondent is not correct.

vii. Further for non-EDI port sanctioning Authority could have asked for Reports from the respective Land Customs Station before disbursing the refund amount if the Department was not convinced regarding the same.

viii. That the Respondent while filing Refund Application uploaded Quadruplicate copy of the Shipping Bills. However, triplicate copy of the Shipping Bills signed by the Superintendent was handed over to the Disbursing Authority through physical mode. Triplicate copies of the Shipping Bills were signed by the rank of the Superintendent after satisfying the required conditions.

ix. Therefore, it is clear that goods have been correctly exported outside India as such writ petitioner is entitled for the refund of the same.

6. Considering the case of the respondent No. 2/appellant as well as cross objection filed by the Petitioner herein, the appellate authority passed judgment and order dated 12.12.2022, whereby allowed the said appeal partly by observing therein that the refund Sanction order bearing no. ZY1906210178152 dated 15.06.2021 informed through form GST RFD-06 being erroneous in considering FOB values of twelve shipping bills were signed and cleared by the Inspector, Custom, who is not the authorised officer in terms of Section 51 of the Customs the Act, 1951 as **“Turnover of Zero-rated supplies”** envisaged in Rule 89 (4) of the CGST Rules, 2017 for the purpose of arriving at the Refund amount. However, Appellate authority did not find any infirmity regarding 3 shipping bills dated 17.03.2021 for the purpose of arriving **“Turnover of Zero-rated supplies”** envisaged in Rule 89(4) of the CGST Rules, 2017.

7. Feeling aggrieved with the findings of the Appellate authority regarding aforesaid 12 shipping bills, the writ petitioner filed this writ petition as there is no other alternative, since no tribunal constituted, seeking prayer inter-alia for quashing and/or setting aside the impugned order dated 12th December, 2022 passed by the Respondent No. 3 and further direct the respondents to forthwith give effect to the adjudication order dated 15th June, 2021 passed by the Respondent No. 1, allowing the refund of ITC together with interest till final payment.

8. Learned counsel appearing on behalf of the writ petitioner submitted that in view of the circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Tax, Circular No. 125/44/2019-GST dated 18/11/2019, New Delhi, the petitioner filed refund application in Form GST RFD-01 on the common portal seeking refunds of ITC uploading all documents including invoices which is required for refunds of ITC on account of export without payment of tax and after filing the said refund application, the said application and documents uploaded by the petitioner as required by the circular was verified by the appropriate authorities, respondent No. 1 and finally came to conclusion that EDI Shipping bills verification receipt from LCS found proper and finally sanctioned refund order no. ZY1906210178152 dated 15.06.2021 in Form GST RFD-06. But the Respondent No. 4 has challenged the said refund sanctioned order in appeal filed under Section 107(2) of the GST Act before the Appellate Authority though the writ petitioner informed the authority that actually writ petitioner wrongly uploaded the quadruplicate copy of shipping bills signed by Inspector, Custom at the time of uploading. It was a bonafide mistake and for satisfaction and verification, Petitioner again submitted the triplicate copies of shipping bills signed by the Superintendent of Customs physically before the authority but despite of the fact, respondent No. 4 did not consider. It is not the case of respondent No. 4 that the Petitioner had not exported goods. It is the duty of the department of customs to issue clearance of consignment for exportation under Section 51 of the Customs Act, 1962. It is not the obligation of the petitioner to ask the Government Officials of the Customs Department to sign the shipping

bills by the Superintendent or any other officer, when customs officials have already accepted the exits of goods for export and triplicate copy of the shipping bills had been signed by the Superintendent of Customs and quadruplicate part of the same has been countersigned by the Inspector of Customs which itself means clearance was given for export by a proper authority. It cannot be challenged by the another department falls under the same Government under Union of India and it is not the duty of the writ petitioner to clarify who would be the appropriate authority or who would give clearance for export or sign the shipping bills. It is not the look out of the Petitioner with regard to internal procedure of the customs department.

9. It is further submitted that Section 51 only requires getting clearance of goods for exportation and the shipping bills have to be countersigned by the customs officials. The delegation of power under the Customs Act has been made under the above-mentioned notification bearing no. 40/2022-Customs (NT) dated May 02, 2012, where at serial no. 5 laid down in table, the Superintendent of Customs and Central Excise and/or Appraiser can counter-sign such Shipping Bill for the strict purpose of Section 51 of the Customs Act in order to clearance for export and is not relevant for any other purposes.

10. It is further submitted that nowhere in the Circular no. 125/44/2019-GST dated November 18, 2019 under the GST Regime specifies that the shipping bills produced by the reference claim under the relevant GST Act have to be in accordance with the Notification bearing no. 40/2012-Customs (NT) dated May 2, 2012 under the Customs Act, 1962. The Shipping Bills

submitted under a common portal signed by the Inspector and triplicate copies have been countersigned by the Superintendent of Customs are sufficient to prove clearance made from the side of Customs for Export. The CGST Regime and Customs Regime are come under the same Governmental functionaries and under the Central Board of Indirect Tax and both limbs are under Union of India. Accordingly, fault of their officers shall not be prejudiced or suffer financial loss to the writ petitioner. Furthermore, the petitioner cannot compel the officers whether who would sign shipping bills at the time of clearance. Therefore, impugned order passed by the Appellate authority under challenged is required to be set-aside and further direction may be passed directing the respondent to give effect of refund Order being No. ZY1906210178152 dated 15.06.2021 by allowing refunds of ITC together with interest till the final payment.

11. On the other hand, Ld. advocate appearing on behalf of the respondents submitted that the appellate authority has rightly allowed the appeal filed by the respondent No. 2 as those 12 shipping bills were signed and cleared by the Inspector, Custom, who is not the authorised officer in terms of Section 51 of the Customs the Act, 1951 as “Turnover of Zero-rated supplies” envisaged in Rule 89 (4) of the CGST Rules, 2017 for the purpose of arriving at the Refund amount. Accordingly, the writ petition should be dismissed with costs.

12. Heard rival submissions of the parties and on perusal of the records, it appears that there is dispute regarding refunds of ITC as claimed by the writ petitioner through common portal. At the time of submitting refund in

form GST-RFD-01, Petitioner had uploaded required documents including Shipping bills. The same was verified by the Adjudicating officer and found EDI Shipping bills verification receipt from LCS proper and finally passed refund sanctioned order no. ZY1906210178152 dated 15.06.2021 in Form GST RFD-06. Later it was scrutinised by the respondent No. 4 and found some anomalies in 12 shipping Bills regarding counter signature by the Inspector of Customs, Hatisar LCS, who is not authorized to function as Proper Officer and also found 03 Shipping Bills have been cleared by the Superintendent of Customs without obtaining any approval from AC/DC of Customs having jurisdiction over Hatisar LCS when the value of export goods were more than 10 lacks and declared those shipping bills are not valid proof of export for the purpose of refund. So, writ petitioner is not entitled to refund of ITC as claimed by the petitioner but the respondent no. 4 did not verify with regard to whether writ Petitioner has transported the good to its destination or not? Whether those shipping bills were genuine or not? Whether those Shipping bills were signed by the official of the customs. No cross check was made by the officials of the GST for verification from the Customs Department. Straightway came to conclusion that those Shipping bills were not signed by appropriate authorities or obtained sanctioned from higher official as such those shipping bills cannot be accepted as "valid proof of export for the purpose of refund" though these formalities are totally comes under the customs department. Question raised by the GST officials are only internal irregularities of the Customs Department and those irregularities can be verified easily by seeking report from the office of customs but no such exercise done by the officials of the GST and arrived at

a conclusion that the Writ petitioner is not entitled to refund though there is no dispute that the writ petitioner had not exported the goods after getting clearance from the custom Department. However, it is raised a question about the irregularities committed by the Customs Department, which is not under domain of writ petitioner. Signing by the officials of Custom is a mere irregularity from the side of customs department but for such irregularity the writ petition shall not be penalised when he has produced documents through online portal as well as physical mode for clearance of goods exported under Section 51 of the Customs Act, 1962. Which had been received by the petitioner at the time of export and the goods have been actually exported out of India to its destination successfully.

13. The observation has been made that there is a mandatory provision to submit the documents through common portal while filing applications in form GST RFD -01 but that is not reflected in the modalities which was set up in the said circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Tax, Circular No. 125/44/2019-GST dated 18/11/2019, New Delhi. Furthermore, a comprehensive list of documents provided at annexure 'A' of such circular is clarified that no other documents need to be provided by the applicant at the stage of filing of the refund application. Accordingly, the applicant has uploaded the documents which are required by the Circular. Only mistake was made by the petitioner is that he had uploaded the quadruplicate copy of the shipping bills which was countersigned by the Inspector of Customs. Subsequently, when it came to know about the anomalies, the petitioner has submitted the triplicate copy which was countersigned by the

Superintendent of Customs before the Authority for consideration but without considering the same the respondent no. 2, has filed the appeal against the sanctioned order of refund issued by the adjudicating officer without verifying the said shipping bills from the Customs Department. Appellate authority has also not considered all these aspects while coming to a final conclusion. Accordingly, judgement and order dated 12.12.2022 passed by the Appellate Authority under Section 107 (2) of the GST Act is hereby set aside.

14. Respondent No. 4 is directed to reconsider the issue after thorough scrutiny of documents and verification of shipping bills submitted by the writ petitioner and shall take afresh decision within four months from this date after consulting with all other relevant departments concerned. Respondent No. 4 shall also give an opportunity being heard to the petitioner or his authorized representatives. No coercive action shall be taken against the writ petitioner by the respondents concerned till the final decision.

15. It is also relevant to mention that the respondent No. 4, while taking final decision shall act in accordance with law and pass a reasoned and speaking order on merit without being influence by the observations made by this Court.

16. With these observations and directions, the writ petition being **WPA 2370 of 2023** is disposed of.

17. There shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

19. All parties shall act on server copy of this order downloaded from the official website of this Court.

(Ajay Kumar Gupta, J.)

P. Adak