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WPO/1053/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GRIHAM FOOD AND HOTEL PVT LTD
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 19th July, 2023.

Appearance:
Mr. Arif Ali, Adv.
Mr. S. Bhattacharjee, Adv.
. . .for the petitioner.

Mr. Bhaskar Prosad Banerjee, Adv.
Ms. Ekta Sinha, Adv.
. . .for the respondent.

Mr. Akash Dutta, Adv.
. . .for the IRCTC.

The Court: The writ petitioner had entered into a contract with the IRCTC. Subsequently, an early and honourable exit was obtained by the petitioner from the contract on mutual agreement.

The petitioner duly applied before the Group General Manager, IRCTC, Eastern Zone, Kolkata for refund of GST, pursuant to cancellation of the licence by mutual agreement.

No forfeiture or debarment was imposed on the petitioner.

Subsequently, however, the respondent IRCTC sat tight over the matter, for which the previous writ petition was filed by the petitioner, giving rise to WPO 1732 of 2022. A coordinate Bench of this Court, vide order dated April 5, 2022, disposed of the said writ petition, inter alia observing that the refusal by the IRCTC was completely devoid of reasons. In that view of the matter, the Group General Manager, IRCTC, Eastern Zone, Kolkata was directed to consider the petitioner's representation and furnish appropriate reasons on the question of refund of the aforesaid GST component.

While dealing with the petitioner's representation, the Court observed, the respondent shall not be bound by the refusal already on record.

Subsequently, however, the IRCTC reiterated the refusal to refund the GST upon which the present writ petition has been taken out.

At earlier stages of hearing of the present writ petition, the IRCTC contended that it was agreeable to refund the GST component to the petitioner, subject to a complementary refund by the GST authorities to the IRCTC.

According to the requirement put forward by the IRCTC, the petitioner has already filed an affidavit indicating that the petitioner has not availed the input credit of GST. As such, there cannot be any further impediment in the GST component being refunded to the petitioner.

Insofar as the entitlement of the IRCTC to get a complementary refund from the GST authorities, the same cannot be mandated in a blanket fashion by Court direction, simply because the IRCTC has failed to justify its delay in sitting tight over the application of the petitioner for refund of GST component, which was made by the petitioner in due time.

Such complementary refund to the IRCTC shall be considered by the GST authorities in accordance with law. However, there cannot be any doubt that the petitioner is entitled to a refund of the GST component from the IRCTC.

Accordingly, WPO 1053 of 2023 is disposed of by directing the IRCTC to refund the GST component to the petitioner, in view of the cancellation of the licence between the parties by mutual agreement, as expeditiously as possible, positively within three weeks from date.

It is made clear, however, that the IRCTC shall be at liberty to apply for a complementary refund in due course of law from the GST authorities. If so applied for, the GST authorities shall process such application in due course of law and grant such complementary refund, if in the opinion of the GST authorities, the IRCTC authorities are otherwise entitled in law to get such refund.

Affidavit of service filed in Court be taken on record.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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