IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2663 OF 2023

Sweta Distributors Pvt. Ltd. ...Petitioner
Versus
The Union of India,
Through Revenue Secretary & Ors. ...Respondents

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Mr. Parth Badheka a/w Ms. Nikita Badheka for the Petitioner.
Ms. Bhakti Date a/w Ms. Mamta Omle for the Respondents.

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CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

Date : 4th DECEMBER, 2023.

P.C.

. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the Order-In-Original (O-I-O) dated 30th December 2021 rejecting the refund application filed by the petitioner and the Order-In-Appeal (O-I-A) dated 4th May, 2022 dismissing the appeal filed against the order rejecting the refund.

2. On 1st November 2021, the petitioner made an application for refund in Form GST-RFD-01 for an amount of Rs.10,49,562/- tax paid on export of services for the period August 2021. On 20th December 2021, respondents issued a notice for rejection of application for refund on the ground that there is no nexus between input and output supply.

Such notice was made returnable on 24th December 2021. The show cause notice was replied by the petitioner by uploading its submissions on 23rd December 2021. It was petitioner's contention that no nexus is required to be established to claim the input credit, and the only condition is that the input tax should be used in the course of business. On 17th January 2022, the petitioner uploaded various documents namely proof of foreign remittance invoice, etc. However, the respondents had by then, on 30th December 2021, uploaded the order rejecting the refund which came to the notice of the petitioner in January 2022. The said Order in Original did not contain any reason for rejection of the refund application.

3. The petitioner challenged the said order by filing an appeal on 15th February 2022. The Appellate Authority vide order dated 4th May 2022 rejected the appeal of the petitioner by relying on Rule 89 of the Central Goods and Services Tax Rules, 2017, on the ground that the petitioner has not provided invoices of the exports, among other documents.

4. Although an appeal is provided against the Order in Appeal in the absence of the GST Tribunal being constituted, the petitioner has approached this Court by the present proceedings assailing the Order in Original dated 30th December 2021 and the Order in Appeal dated 4th May, 2022.

5. It is the petitioner's case that the Order in Original was passed in haste as although the petitioner had uploaded the documents relating to proof of foreign remittance, export invoice, etc. on 17th January 2022, however, by that which time the respondent had already passed O-I-O. The petitioner further submitted that the Appellate Authority neither call for any explanation on which the appeal was rejected namely on Rule 89 of CGST Rules nor any such reason formed the basis of the Order in Original. The petitioner, therefore, contends that the impugned orders are passed in violation of the principles of natural justice, hence, the issue requires to be remanded back to the original authority for fresh adjudication.

6. Per contra, the respondents submitted that the petitioner is required to prove the nexus since the input tax credit is on the goods whereas the refund is claimed on the export of services. However, the respondents have not disputed that the order has been passed without considering such issues and that the respondents would not have an objection if the proceedings are remanded back to the original authority.

7. We have heard learned counsel for the petitioner and learned counsel for the respondents, and with their assistance have perused the records of the petition.

8. In our view, there appears to be an apparent violation of the principle of natural justice, inasmuch as the Order in Original was passed dated 30th December 2021 was passed without giving the petitioner adequate opportunity to file the documents which the petitioner had uploaded on 17th January 2022 by which time the Order in Original was already passed. The Order in Original dated 30th December 2021 does not contain any reason for rejection of the refund application. The Order in Appeal relies on Rule 89 of the CGST Rules which is not part of the show cause notice nor the same was put forth to the petitioner. Furthermore, the Appellate Authority had not called for the details on the basis of which he has rejected the appeal. Therefore, in the interest of justice, the Order in Original dated 30th December 2021 and Order in Appeal dated 4th May, 2022 is required to be set aside on the ground of the same being passed without considering such material. We therefore pass the following order :

ORDER

(i) The Order in Original dated 30th December 2021 and Order in Appeal dated 4th May 2022 is quashed and set aside.

(ii) The refund application filed on 1st November 2021 is restored to the file of respondent no.3 for fresh adjudication.

(iii) Respondent No.3 shall give a notice of hearing to the petitioner so as to seek explanation on the ground on which the respondent seeks to reject the refund application.

(iv) The respondent no.3 shall pass a speaking order deciding the refund application within a period of 4 months from the date of personal hearing of the petitioner.

(v) All contentions of the parties are expressly kept open.

(vi) Writ Petition is disposed of in above terms. No order as to costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**