

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4655 OF 2023

M/s.Sine Automation and Integration Pvt.Ltd. .. Petitioner
Versus
Union of India & Ors. .. Respondents

Mr.Dinesh M.Tambade a/w Ms.Chaitali Raul for the petitioner.
Mr.VijayH. Kantharia a/w Mr.Siddharth Chandrashekhar for the
respondents.

**CORAM : G.S.KULKARNI &
JITENDRA JAIN, JJ.
DATE : 29th November 2023**

P.C.:-

1. By this petition filed under Article 226 of the Constitution of India , the petitioner assails an Order-in-Appeal dated 18 September 2020 passed by the Commissioner of CGST & Central Excise Appeals, Thane, Mumbai Zone. The appeal was filed by the respondent department, against an order dated 6 December 2018 passed by the Deputy Commissioner, CGST and Central Excise, Division-I, Bhiwandi Commissionerate, by which the petitioner was granted refund of the Input Tax Credit (ITC).

2. The petitioner had made an application for refund dated 29 August 2018 *inter alia* praying for refund of the unutilized ITC amounting

to Rs.1,30,30,548/- under Section 54(3) of the CGST Act, 2017 on export of goods under Letter of Undertaking (LOU). Such order dated 11 October 2018, was passed on the petitioner's refund application, whereby the petitioner was granted 90% of its refund claim as a provisional refund under Section 54(3) of the CGST Act, of an amount of Rs.1,17,27,495/-. Soon thereafter, the petitioner was issued a show cause notice dated 26 November 2018 in regard to the rejection of refund to the tune of Rs.21,690/-. A refund sanction order came to be issued in the petitioner's favour on 6 December 2018 and after scrutiny, a refund of Rs.1,30,08,858/- was sanctioned, which according to the petitioner, was an appropriate amount.

3. The department, however challenged the order dated 11 October 2018 passed on the petitioner's refund application in an appeal before the Commissioner of CGST, on which the impugned order has been passed directing the petitioner to pay back the refund of an amount of Rs.1,07,08,504/-, which was already sanctioned, along with interest at an appropriate rate under Section 50 of the CGST Act, 2017 and the Rules made thereunder.

4. The petitioner in the aforesaid circumstances is before the

Court assailing the order passed by the Appellate Authority. Although there are other reliefs prayed for by the petitioner, however, what was argued before us was the legality of the order passed by the Commissioner on the department's appeal.

5. The primary ground of challenge as urged on behalf of the petitioner is that the Appellate Authority has erroneously proceeded to apply Circular dated 18 November 2019, which provides that the refund claim filed could not be spread across different financial years. On behalf of the petitioner, it is submitted that the refund claim which has been made by the petitioner was completely in consonance with the provisions of Rule 89 of the CGST Rules, 2017 and more particularly sub-rule (4) of Rule 89.

6. Our attention has been drawn to the said provisions of Rule 89(4) of the CGST Rules. The relevant extract of such provision reads thus:-

“89. Application for refund of tax, interest, penalty, fees or any other amount

(1)

(2)

(3)

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following

formula –

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) —"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;]

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) —Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

((b) the turnover of zero-rated supply of services

determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed."

7. It is submitted that the 'relevant period' in question of which the petitioner had claimed credit was the period from 1 April 2018 to July 2019, and in such application the petitioner's electronic ledger had indicated the credit available to the petitioner, even for the financial year 2017-18. Such credit being available, it is the petitioner's contention that the petitioner's refund application was completely in consonance with Rule 89(4) of the CGST Rules. However, the Appellate Authority referring to Circular dated 18 November 2019 (Circular No.125/44/2019-GST) formed an opinion that it was not permissible for the petitioner to club both the periods i.e. period prior to 1 April 2018 which pertains to financial year 2017-18 and the subsequent period which falls in financial year 2018-19. According to the petitioner such view of the appellate authority was neither in accordance with Rule 89 nor in accordance with the subsequent Circular dated 31 March 2020,

which issued as a clarification on refund related issues clarifying the earlier Circular dated 18 November 2019.

8. It is the petitioner's contention that in the proceedings of the appeal, the petitioner had categorically pleaded and brought to the attention of the Appellate Authority that Circular dated 31 March 2020 was in fact a clarification to the Circular dated 18 November 2019 hence a view contrary to the same could not have been taken by the Appellate Authority. On such contentions, it is submitted by the learned counsel for the petitioner that the impugned order passed by the Appellate authority is required to be declared to be bad and illegal.

9. On the other hand, Mr.Kantharia, learned counsel for the respondents supports the impugned order. He submits that the Circular dated 18 November 2019 had rightly been applied by the Appellate Authority in adjudicating the department's appeal, however, Mr.Kantharia does not dispute that the Circular dated 31 March 2020 clarifies the Circular dated 18 November 2019.

10. Having heard learned counsel for the parties and having perused the record, we find much substance in the contentions as urged on behalf of the petitioner. It appears to be an admitted position that the

petitioner had filed refund application under Section 54 (3) of the CGST Act for the “relevant period” which is defined under Rule 89(4) of the CGST Rules.

11. In the statutory pattern, the electronic ledger is required to be maintained, it was permissible for the petitioner to club the ITC credit available to the petitioner for the prior period. As the credit which was available for the period prior to 1 April 2018 pertained to the financial year 2017-18 the same was certainly available to the petitioner in its electronic ledger in the form of a running account. We therefore wonder as to how the Appellate Authority could form a view contrary to Rule 89 and more particularly when the same was clarified by subsequent Circular dated 31st March 2020 and to that effect, the Circular dated 18 November 2019 stood diluted. It is quite clear that the petitioner had canvassed the position that it was permissible for the petitioner to club both the periods and it was also so permissible under the Circular dated 31 March 2020. However, from the reading of the impugned order, it appears to be quite clear that such aspect of the matter has been overlooked and / or not addressed in so far as to what has been clarified by the department itself, so as to bring the interpretation as held by Circular dated 31 March 2020 to be in consonance with what has been provided by Rule 89(4) of the

CGST Rules. It was neither permissible for the Appellate Authority to overlook the Rule as it stands nor disregard the Circular dated 31 March 2020. The appellate authority ought to have recorded a finding on such issue.

12. In the aforesaid circumstances, we find that the order passed by the Appellate Authority cannot be sustained and would be required to be set aside. We are accordingly, inclined to allow the petition by the following order :-

- (i) The impugned order dated 18 September 2020 passed by the Appellate Authority is quashed and set aside.
- (ii) Appeal filed by the Department is restored to the file of the Appellate Authority, to be decided afresh in the light of our observations and more particularly considering the effect of the Circular dated 31 March 2020.
- (iii) All contentions of the parties in the Appeal Proceedings are expressly kept open.
- (iv) The appeal be decided as expeditiously as possible and within a period of four months from the date the copy of the order is presented before the Appellate Authority.
- (v) Till the Appellate Authority decides the petitioner's appeal afresh, the department is directed not to take any

coercive action on the basis of the subsequent order dated 18 October 2022 passed by the Deputy Commissioner, CGST & Central Excise, Division I, Bhiwandi Commissionerate and the order, as may be passed by the Appellate Authority, shall govern the order dated 18 October 2022.

13. Disposed of in the above terms. No costs.

(JITENDRA JAIN, J.)

(G.S.KULKARNI , J.)