

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 61 OF 2023

M/s. Knowledge Capital Services
Private Limited, Having office at A-24,
Station Road, Off Akurli Road,
Kandivali East, Mumbai- 400 101
Through Its Authorised Representative
Mr. Potini Ramakrishna ... Petitioner

Versus

1. Union of India
Through the Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi -110001
2. State of Maharashtra
Through its Additional Chief
Secretary (Finance)
Secretaries Cabin, Main Building,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk
Mumbai – 400 032
3. Assistant Commissioner of State Tax,
SGST, Goregaon East, 605, 'D' Wing
1st Floor, GST Bhavan, Mazgaon,
Mumbai – 400 010 ... Respondents

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Mr. Bharat Raichandani with Mr. Rishabh Jain i/b. UBR Legal
Advocates for the Petitioner.
Mr. Himanshu Takke, AGP for Respondent Nos. 2 and 3- State.

.....

**CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.**

DATE : 29 MARCH 2023

JUDGMENT (*Per : Nitin Jamdar, J.*)

By this petition, the Petitioner has challenged the refund rejection order dated 25 July 2022 issued by Respondent No.3- Assistant Commissioner of State Tax.

2. The Petitioner is engaged in the business of providing information technology-enabled services and is granted a valid registration certificate. The Petitioner had exported its services under a Letter of Undertaking without payment of integrated tax in terms of section 16 (3) of the Integrated Goods and Services Tax (IGST) Act, 2017, which also permits to claim of refund of the unutilised input tax credit on supply of goods or services or both without payment of integrated tax. Accordingly, the Petitioner claimed a refund of accumulated Input Tax Credit (ITC) on account of the export of services amounting to Rs.9,63,033/- from April 2020 to March 2021 in terms of section 16 of the IGST Act of 2017 read with section 54 (3) of the Central Goods and Services Tax (CGST) Act, 2017. The refund application for this period was filed on 1 July 2022, and a receipt of which was acknowledged.

3. Thereafter, Respondent No.3 issued a show cause notice to the Petitioner on 8 July 2022, proposing to reject the refund claim for the reason alleged in the defect sheet. According to the Petitioner, the defect sheet was never received by the Petitioner. Thereafter, Respondent No.3 passed an impugned order on 25 July 2022, rejecting the refund claim. Being aggrieved by the action taken by Respondent No.3, the Petitioner has filed this petition.

4. We have heard Mr. Bharat Raichandani, the learned Advocate for the Petitioner and Mr. Himanshu Takke, the learned AGP for Respondent - State.

5. The main contention of the Petitioner is that the procedure adopted by the Respondents to reject the refund claim is contrary to law and in breach of principles of natural justice, which are embodied in these statutory provisions. It is necessary to briefly elucidate the statutory provisions governing the refund.

6. Section 16 of the IGST Act of 2017 refers to zero-rated supply, defined as the export of goods or services or both or supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit. Section 16 (3) of the IGST Act of 2017 permits a registered person regarding zero-rated supply to claim a refund of the unutilised input tax credit on

the supply of goods or services or both without payment of integrated tax under the Letter of Undertaking. Section 54 (1) of the CGST Act of 2017 provides that any person claiming a refund of any tax or interest to make an application within the limitation specified therein in such form and manner as may be prescribed.

7. Chapter X of the Central Goods and Services Tax (CGST) Rules, 2017 lays down the procedure for refund. Rule 89 of the CGST Rules of 2017 provides that any person claiming a refund may apply electronically in Form GST RFD-01 through the common portal either directly or through a facilitation centre notified by the Commissioner. Under Rule 89 (1) of the CGST Rules of 2017, the application has to be accompanied with documentary evidence as specified in Annexure 1 to Form GST RFD- 01. Form GST RFD-01, prescribed under Rule 89 (1), provides various statements, declarations and undertakings.

8. Rule 90 of the CGST Rules of 2017 outlines the process for acknowledging an application. Rule 90 (1) states that where the application relates to a claim for a refund from the electronic cash ledger, an acknowledgment in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section 54 (7) shall be counted from

such date of filing. As per Rule 90 (2), the application for a refund, other than the claim for a refund from the electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of the filing of the said application, scrutinise the application for its completeness and where the application is found to be complete in terms of Sub-Rules (2), (3) and (4) of Rule 89, an acknowledgment in Form GST RFD-02 is to be made available to the applicant through the common portal electronically. Rule 90 (3) specifies that where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. Form GST RFD-03, which contains the deficiency memo, is as follows :

“FORM-GST-RFD-03
[See Rule 90 (3)]
Deficiency Memo

Reference No. :

Date:

<DD/MM/YYYY>

To

..... (GSTIN/UIN/Temporary ID)

..... (Name)

..... (Address)

Subject: Refund Application Reference No. (ARN).....Dated ...
<DD/MM/YYYY> - Reg.

Sir/ Madam,

This has reference to your above mentioned application filed under Section 54 of the Act. Upon scrutiny of your application, certain deficiencies have been noticed below :

Sr. No. Description (select the reason from the drop down of the Refund application)

1. *<MULTI SELECT OPTION>*

2.

Other <TEXT BOX> (any other reason other than the reason select from the 'reason master')

You are advised to file a fresh refund application after rectification of above deficiencies.

Signature (DSC):.....

Name of Proper Officer:.....

Date:

Designation:.....

Place :

Office Address :.....”

9. Rule 92 of the CGST Rules of 2017 prescribes the procedure for issuing an order sanctioning a refund. Under Rule 92, if upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in Form GST RFD-06. In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment is issued in Part A of Form GST RFD-07. Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under

the provisions, he shall pass an order in Part A of Form GST RFD-07 informing him of the reasons for the withholding of such refund. Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant, requiring him to furnish a reply in Form GST RFD-09 within fifteen days of the receipt of such notice and after considering the reply, make an appropriate order. Form GST RFD-08 is as follows :

*“FORM-GST-RFD-08
[See rule 92 (3)
Notice for rejection of application for refund*

SCN No.:	Date: <DD/MM/YYYY>
To _____ (GSTIN/UIN/ Temporary ID) _____ (Name) _____ (Address) ACKNOWLEDGMENT No.	
ARN	Dated...<DD/MM/YYYY>.....

This has reference to your abovementioned application for refund, filed under section 54 of the Act. On examination, it appears that refund application is liable to be rejected on account of the following reasons:

<i>Sr. No.</i>	<i>Description (select the reasons of inadmissibility of refund from the drop down)</i>	<i>Amount Inadmissible</i>
i		

ii		
iii	<i>Other (any other reason other than the reasons mentioned in 'reason master')</i>	

You are hereby called upon to show cause as to why your refund claim, to the extent of the amount specified above, should not be rejected for reasons stated above.

☐	<i>You are hereby directed to furnish a reply to this notice within fifteen days from the date of service of this notice.</i>
☐	<i>You are also directed to appear before the undersigned on DD/MM/YYYY at HH/MM.</i>

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Signature (DSC):

Name :.....

Date:

Designation:.....

Place :

Office Address :.....”

Where the proper officer is satisfied that the amount is payable to the applicant or not payable, the officer will communicate the decision in the forms prescribed.

10. This, in short, is a statutory procedure prescribed for dealing with the application of the refund arising under the provisions of the IGST Act of 2017 and CGST Act of 2017 in the context of the facts of this case. The gist of the procedure enumerated above is that once

an application for a refund is made, it has to be processed. If there are lacunae, the Applicant is to be informed to remove the lacunae and to submit the claim after removing the said lacunae; the application is to be considered for either grant or rejection of the refund. Also, no application for a refund should be rejected without giving an opportunity to the applicant of being heard. The procedure is a self-contained and provides for various stages which mandates steps to be taken by the applicant and the officer.

11. Turning now to the methodology adopted in the present case. The Petitioner had applied for a refund. The Petitioner received an acknowledgment under Form GST RFD-02 with a Nil remark, meaning, thereby, the application for refund was acknowledged. There were no lacunae pointed out under the said acknowledgment. No deficiency was pointed out; neither deficiency memo, as contemplated under Rule 90 (3) of the CGST Rules of 2017 in Form GST RFD-03, was issued to the Petitioner. The Petitioner directly received Form GST RFD-08 under Rule 92 (3) of the CGST Rules of 2017 for rejection of the application for refund. There were no reasons given in the said Form GST RFD-08, and it was stated that the *Exports Defects Memo Knowledge Capital-pdf.pdf* is a file that is attached.

12. However, the said file is not annexed to the reply affidavit and its copies are placed on record by the learned AGP from the office

file. The file stated to be annexed to Form GST RFD-08 contained the following comments :

“Requirements of documents :

- *Copy of GSTR-2A of GST Portal of relevant period in landscape format (Produced copy is not readable in continuous way).*
- *Column of “Input Type” is not filled in statement of invoices (Annexure -B). Supporting documents with Annexure B such as copies of tax invoices of ITC not uploaded.*
- *Statement of Export transactions made during relevant period has uploaded in Annexure 3A under rule 89 (4) but supporting Export Documents such as Export Invoices, Bill of lading and bank remittance not uploaded (outward supply).*
- *As per FORM-GST-RFD-01 Export of goods was made under bond or Letter of Undertaking but copy of the same not uploaded.*
- *Declaration under second and third proviso to section 54 (3).*
- *Undertaking in relation to sections 16 (2) (c) and section 42 (2).*
- *Statement 3 under rule 89(2)(b) and rule 89 (2) (c).*

- *Reconciliation statement of GSTR 3B and GSTR-1 with Turnover of zero rated supply of goods and services and adjusted turnover”.*

These are deficiencies. They ought to have been communicated to the Petitioner under Form GST RFD -03 as per Rule 90 (3) of the CGST Rules of 2017. Instead, these deficiencies were made a ground to issue a show cause notice for rejection of the refund. Thereafter, Respondent No.3 proceeded to reject the application on the ground that no reply was received to the show cause notice.

13. There was no opportunity given to the Petitioner to rectify lacunae, and the deficiencies which are to be informed through Form GST RFD-03 were sent in a file attached in Form GST RFD-08. This deprived the Petitioner of submitting a fresh refund application as contemplated under Rule 90 (3) of the CGST Rules of 2017.

14. Apart from this prejudice to the Petitioner, there is non-adherence with the procedure envisaged under the Rules to use the correct Forms prescribed. Not only Form GST RFD-03 was not issued, but a file is sought to be attached to Form GST RFD-08, which has a different Form. We find no explanation for why the deficiencies were uploaded in a separate file. The reason sought to be given by the learned AGP on behalf of the officer is that this Form does not have enough space. However, the deficiencies were

wrongly informed, as a matter of rejection, in show cause under Form GST RFD-08 but they should have been by Form GST RFD-03. Form GST RFD-03 has a drop-down menu from which deficiencies can be selected and has an additional text box for entering other reasons not listed in the 'reason master'. The forms prescribed under the CGST Rules of 2017 governing refunds are for promoting uniformity, clarity, compliance and efficiency. The statutorily prescribed forms play a critical role in the GST system as they ensure smooth functioning and promote transparency and compliance. The standardised forms bring uniformity and make collating and analyzing data easier. They provide clarity which reduces the likelihood of errors and confusion. These forms also ensure compliance by providing structured and standardised methods.

15. Attaching a file and that too in a wrong form, unless prescribed, has a potential to give rise to needless litigation. As it happened in this case, the Petitioner asserts that no such file was attached to the Form while it is the contention of the learned AGP that this file was available.

16. The impugned order was passed noting that the Petitioner has not filed any reply, and no hearing was given to the Petitioner. The circumstances of why the Petitioner could not file a reply is narrated

earlier. Proviso to Rule 92 (3) of the CGST Rules of 2017 needs to be noted in this regard which reads as under :

“92(3) Order sanctioning refund.-

(1).....

(2).....

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant, requiring him to furnish a reply in Form GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4).....

(5).....”

(emphasis supplied)

Since it is an admitted position that no hearing was given to the Petitioner before the rejection of the refund application contrary to the proviso to Rule 92(3) of the Rules, the impugned order needs to be set aside on this ground as well.

17. Therefore, the methodology adopted by the Respondents in rejecting the application of the Petitioner for a refund is completely contrary to the scheme of the CGST Rules of 2017. The Petitioner was not given an opportunity to clear deficiencies, and the Petitioner was not given an opportunity of hearing before rejecting the refund application; the impugned order, therefore, cannot be sustained.

18. Accordingly, the impugned order dated 25 July 2022, passed by Respondent No.3- Assistant Commissioner of State Tax, is quashed and set aside.

19. The application of the Petitioner made under Form-GST-RFD-01 is restored to file. Thereafter, Respondent No.3 will process the application as per the procedure referred to above from the stage of filing an application and decide whether the Petitioner is entitled to a refund on its own merits. If there are deficiencies in the Petitioner's application, the same may be informed to the Petitioner as per Form-GST-RFD-03, and if not, the application be processed as per law. This exercise be carried out by Respondent No.3 within a period of twelve weeks from the date order is uploaded.

20. The writ petition is allowed in the above terms.

ABHAY AHUJA, J.

NITIN JAMDAR, J.