IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 30.10.2023
CORAM:
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.7989 of 2023
and
W.M.P.No.8231 of 2023

Ugam Solutions SEZ Pvt Ltd
CHIL SEZ , India Land KGISL,
Tech Park
Block A, I Floor,
Keeranatham Village,
Saravanampatty,
Coimbatore - 641 035
through its authorized Signatory
M/s.Kajal Kamat ...Petitioner

Vs.

The Deputy Commissioner of
GST & Central Excise,
Coimbatore II-Division,
1441, Elgi Building,
Trichy Road,
Coimbatore - 641 018. ...Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the impugned order bearing DIN 20221259XM0000111A08 dated 23.12.2022 passed by the respondent based on the above show cause notice dated 18.11.2022 bearing SCN SL.No.04/2022 ST (DC) issued by the respondent and quash the impugned order bearing DIN 20221259XM0000111A08, dated 23.12.2022 passed by the respondent and consequently direct the respondent to sanction the refund of Rs.51 83 236/- forthwith along with interest pursuant to the Final Order Nos.41241 to 41244 dated 10.06.2022 in Service Tax Appeal Nos.40274 to 40277 passed by the CESTAT.

For Petitioner : Mr.Bharati Raichandani

For Respondents : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

This Writ Petition has been filed challenging the Order-in-Original dated 23.12.2022, whereby, the refund application filed by the petitioner has been rejected.

2. The main grievance of the petitioner is that initially, application for refund was filed under Rule 5 of the CENVAT Credit Rules, 2004, read with Notification No.5/2006-CE (NT) dated 14.03.2006 since the Department took a stand that the petitioner is supposed to have filed under the Notification No.9/2009-ST, dated 03.03.2009, the Adjudicating Authority i.e., Assistant Commissioner had rejected the refund claims by way of four orders dated 12.03.2012, 14.03.2012, 30.03.2012 and 30.03.2012. Aggrieved over the said rejection orders, the petitioner preferred Appeals before the Appellate Authority, i.e., Commissioner (Appeals) and the said Appeals were also dismissed on 07.11.2012 by way of four separate rejection orders. Thereafter, the petitioner has preferred further Appeal before the Appellate Tribunal, i.e., CESTAT, and the CESTAT passed a Judgment dated 10.06.2022 stating that the petitioner is entitled to file the refund claims under Rule 5 of the CENVAT Credit Rules, 2004.

3. Thereafter, the respondent herein issued a show cause notice dated 18.11.2022 calling upon the petitioner to furnish the particulars as specified in Form-A. The said show cause notice was challenged on the ground that the Application filed for refund was allowed by the CESTAT, however, during the interregnum period, the impugned Order-in-Original came to be passed on 23.12.2022 and thereafter, the petitioner has withdrawn the application for refund with liberty to challenge the present impugned order.

4. Mr.Bharati Raichandani, learned counsel appearing for the petitioner assailed the Order-in-Original by mainly contending that, the issue as to whether the petitioner is entitled to the refund claim has already been settled by the CESTAT, in favour of the petitioner, pursuant thereto, the respondent is supposed to have considered the request of the petitioner and allowed the refund claim, but without doing so, the respondent to re-opened the said issue and issued show cause notice dated 18.11.2022 and sought for many particulars and passed the Order-in-Original dated 23.12.2022, which is arbitrary, illegal and liable to be set aside.

5. *Per contra,* Mr.B.Ramana Kumar, learned Senior Standing Counsel for the respondent would submit that the issue was not at all settled as the Appellate Tribunal has only held that the petitioner is entitled to file an application under Rule 5 of CENVAT and directed to finalize the process of refund in terms of Form-A but the Tribunal has not stated anything in regard to granting of exemption and therefore, the respondent issued show cause notice seeking relevant particulars alone and in pursuance of the same, passed the impugned order.

6. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondent and this Court also perused the materials on records, particularly, details of Form-A submitted by the petitioner.

7. In Form-A, it has been stated under the heading Claim (C) TOTAL TURNOVER DURING THE GIVEN PERIOD, the Form has to be submitted providing details as to the value of all output services, including value of services exported. However, in the present case, the information provided by the petitioner is only with regard to the value of services exported and the petitioner has not mentioned anything about the exemption services provided. Accordingly, in Column (D), it is mentioned as to what are all the enclosures the petitioner is supposed to provide in Column D (ii) - Copy of invoices. Here, the petitioner furnished the details as per Form-A but they are the only copies of the invoices.

7.1 Since the petitioner failed to provide sufficient information, the respondents by virtue of the show cause notice dated 18.11.2022 asked for the certain particulars. Therefore, it is clear that the respondent by virtue of the show cause notice has not re-opened the issue but only sought for certain particulars, which the petitioner has not furnished along with Form-A, which was filed earlier in terms of Rule 5 of CENVAT. But, the petitioner was under wrong impression that the issue has already been settled by CESTAT, and therefore, it is not proper for the respondent to re-open the issue.

7.2 In matters pertaining to refund claims, certainly, the respondent-Department is entitled to call for all the particulars from the assessee while entertaining the refund claim, and the assessee is also bound to provide the same.

7.3 In the case on hand, even on perusal of Form-A, viz., the application filed for refund, it is seen that the petitioner has failed to provide some of the particulars, and hence, the respondent-Department by virtue of the show cause notice called for relevant particulars, which the petitioner is bound to furnish. Since the petitioner, who was under an wrong information that the respondent has reopened the issue and not considered the claim for refund, has failed to provide particulars sought for by the respondent-Department rather has challenged the show cause notice and in the interregnum period, the impugned Order-in-Original has been passed.

7.4 In the light of the above narrated facts, it cannot be stated that opportunity has not been provided but the opportunity provided by the respondent was not utilized by the petitioner. Though the petitioner failed to utilize the opportunity provided by the respondent, for the interest of justice, this Court is of the view that one more fair opportunity shall be granted to the petitioner, since the petitioner appears to have misconstrued the purpose behind the issuance of show cause notice.

8. Thus, this Court is inclined to allow the Writ Petition. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the petitioner is granted liberty to file an Application for refund in Form-A, providing all the details, particularly, details as sought for by the respondent in the show cause notice dated 18.11.2022 within a period of two weeks from the date of receipt of a copy of this order. As and when such Application is filed, the respondent shall provide an opportunity of personal hearing to the petitioner and pass orders in respect of the petitioner's claim for refund on merits and in accordance with law within a period of two months thereon. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.10.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps

To

The Deputy Commissioner of GST & Central Excise,
Coimbatore II-Division,
1441, Elgi Building,
Trichy Road,
Coimbatore - 641 018.

KRISHNAN RAMASAMY, J,

mps

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