



WEB COPY



W.P.No.17732 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.17732 of 2020

M/s.Datamark Prodapt India BPO LLP
Prince Infopark, Block-A, 6th Floor,
Plot No.81-B, 2nd Main Road,
Ambattur Industrial Estate,
Chennai – 58.

.. Petitioner

VS

The Joint Commissioner of GST
Ambattur Division, III Range,
R-40,A-1,100 Feet Road,
Mugappair East, Chennai – 600 037.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the respondent in order dated 03.11.2020 in C.No.IV/10/322/2019 and quash the same, and further direct the respondent to grant refund of Rs.10,91,422/- (Rupees Ten Lakhs Ninety One Thousand Four Hundred and Twenty Two Only) to the petitioner.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.K.Umesh Rao



W.P.No.17732 of 2020

ORDER

WEB COPY

A reading of the trajectory of events that have transpired in this matter would reveal the tortured attempts by the Assessee and the Department, the former seeking to avail CENVAT credit that was available to it and the latter calling on every provision under the Act, to deny its eligibility.

2. The Goods and Services Tax (GST) came into effect from 01.07.2017. The petitioner has credit of CENVAT of a sum of Rs.10 lakh (approx) for the months of April, May, June, 2017. The law entitles an assessee to seek refund of CENVAT credit within a period of one year from year from the date of export. It all started with an application dated 25.10.2017 where the petitioner sought refund of CENVAT credit under Rule 5 for the months of April, May, June, 2017.

3. With the onset of GST, the petitioner was required to make a debit to the CENVAT credit account at the time of effecting the claim. This is not even statutory requirement and only flows from Notification No.27 / 2012 – CE(NT) dated 18.06.2012. In this Notification, the Central Board of Excise and Customs (Board) has



W.P.No.17732 of 2020

suggested certain safeguards, conditions and limitations for the availment of refund of CENVAT credit and states at Clause 2(h) that any refund claim shall have a corresponding debit to the CENVAT credit account simultaneous with making the claim.

4. The Board evidently omitted to note that with the enactment of Central Goods and Services Tax Act, 2017, CENVAT credit account would be disabled. This is what has in fact transpired in not just the present case, but in the cases of several similarly placed assesses who have sought identical relief.

5. The only difference between those assesses and the present is that when the petitioner's application was returned by the authority citing the condition under Notification No.27/2012, this petitioner being more compliant sought to adopt other measures to obtain the relief.

6. In the cases of other assesseees they approached the Courts / authorities directly in *BNP Paribas Global Securities Operations Private Limited v The Assistant Commissioner of GST & Central Excise* (MANU/TN/3063/2021), *Global Analytics India Pvt Ltd vs The Commissioner of G.S.T & Central Excise* [2019 (7) TMI



W.P.No.17732 of 2020

1185], *Zamil Steel Engineering India Pvt Ltd vs Commissioner of CGST & Central Excise* [2020 (5) TMI 611], *Mysy Tech India Private Limited v The Commissioner of GST & CE* [Appeals-II] [2020 (3) TMI 754] and *Sundaram Business Service Ltd v Commissioner of GST & CE (Appeals-I) Chennai* [2020 (2) TMI 908] and this Court and the CESTAT have noted the impossibility compliance with this condition.

7. No doubt, as learned standing counsel points out, it is only with the march of law that this error has come to light and been corrected. However, it is a fact that CENVAT account was disabled with the onset of GST and for the authorities to have insisted on compliance of Notification No.27/2012 is itself a patent error. I am thus of the considered view this should not stand in the way of the petitioner, being entitled to relief, if it is otherwise so entitled.

8. To complete the narration, the petitioner thereafter filed an application for refund under Section 54 of the Act on 17.01.2019. The claim was rejected as against which a first appeal was filed which also came to be rejected on 30.07.2020. The reasoning set out in the order of the appellate authority is based on



W.P.No.17732 of 2020

the provisions of Section 54 and the second proviso to Section 142(4) of the Act as well as a circular issued by the Board on 15.03.2018.

9. The Circular states that there shall be no refund except in the circumstances set out thereunder and admittedly, the petitioner does not comply with the conditions. However, I am of the considered view that this is not relevant insofar as the flaw in this case has already been occasioned at an anterior stage, on the basis of an incorrect Notification issued by the Board.

10. Not content with the confusion caused thus far, the petitioner while not challenging the order of the Appellate Commissioner, makes a further representation on 28.08.2020. Inter-alia it cites the decision of this Court and of the CESTAT referred to paragraph 6 of this order, praying that its application for refund be considered, excluding the time spent before the GST authorities, as that was clearly a wrong forum. The impugned order has been passed on 03.11.2010 on the sole ground that, as the order of the first appellate authority dated 30.07.2020 has attained finality, the question of refund does not arise.



W.P.No.17732 of 2020

11. This order is patently erroneous on several grounds.

Firstly, the eligibility of the petitioner to refund on a substantive basis has itself, never been questioned. The denial is based solely on a technical basis.

12. That apart, the fact that Notification No.27/12 has been held to propound an incorrect condition by this Court as well as by the CESTAT ought to have merited consideration with the authority. Instead he does not advert to this aspect of the matter at all.

13. Further, the claim is fully supported by the provisions of Section 142(3) of the Act, that reads as follows:-

"Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944(1 of 1944)."

14. Seen in the above context, the impugned order is wholly incorrect in law and is liable to be set aside, and I do so.



W.P.No.17732 of 2020

15. I may mention at this juncture that the learned Standing Counsel also seeks to advance other arguments not advanced by the officer in the impugned order. It would be improper to improve the impugned order based on the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill v Chief Election Commissioner* (1978 (1) SCC 405), as per which an order would have to stand or fail on the strength of the reasoning question contained therein. Such other submissions are thus eschewed in limine.

16. In light of the discussion as aforesaid, I am of the considered view that the impugned order has no legs to stand and the same is set aside and this writ petition is allowed. The petitioner is entitled to and will receive the refund of the CENVAT credit in cash within a period of six weeks from date of receipt of a copy of this order. No costs.

10.03.2023

Index:Yes

Neutral Citation:Yes

ssm

Note to Registry : Issue order on 16.03.2023.



W.P.No.17732 of 2020

To

The Joint Commissioner of GST
Ambattur Division, III Range,
R-40,A-1,100 Feet Road,
Mugappair East,
Chennai – 600 037.



WEB COPY



W.P.No.17732 of 2020

DR. ANITA SUMANTH,J.

ssm

W.P.No.17732 of 2020

10.03.2023