IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.29871 of 2022

and

W.M.P.No.29261 of 2022

M/s.Resource Unlimited
Rep by its Proprietor Arul Kannan
No.19/, First Street, Indira Nagar
Avinashi Road, Tirupur – 600 016. ... Petitioner

-Vs-

1.The Joint Commissioner of GST and
Central Excise (Appeals)
Tirupur Division, 6/7, A.T.D Street,
Race Course Road, Coimbatore – 641 601.

2.The Deputy Commissioner of GST and
Central Excise, Tirupur Division,
First Floor, Kumaran Shopping Complex,
Tirupur – 641 601. ... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of the 1st respondent culminated inorder vide Nos.80 & 81/2022-GST, dated

26.07.2022 as well as 2nd respondent order vide No.2010/2019 and 2011/2019 dated 20.01.2020 from the file C.No.IV/16/2011/2019 through the FORM No.GST-RFD-06 and quash the same and direct the Respondents to issue payment order of the legitimate refund claims or issue show cause through FORM GST RFD-08 to rectify any error.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mr.K.Mohana Murali, Senior Panel Counsel

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ORDER

This Writ Petition has been filed challenging the order of the first respondent dated 26.07.2022 made in Order-in-Appeal Nos.80 & 81/2022-GST confirming the order passed by the second respondent.

2.Learned counsel for the petitioner submits that the petitioner had filed two refund applications dated 22.08.2019 and 10.09.2019. The said applications came to be rejected vide Refund Sanction / Rejection Order passed by the Second Respondent viz., Deputy Commissioner of GST & Central Excise, Tirupur Division, both dated 20.01.2020 pertaining to Acknowledgement No.2010/2019 [Acknowledgement Date: 30.09.2019, Tax Period November, 2017] and Acknowledgement No.2011/2019 [Acknowledgement Date: 30.09.2019, Tax Period February, 2018]. Against the said order of rejection, the petitioner preferred an appeal before the Appellate Authority viz., first respondent [Joint Commissioner of GST and Central Excise (Appeals)] and the said appeal also came to be rejected vide order dated 26.07.2022 made in Order-in-Appeal Nos.80 & 81/2022-GST by confirming the order passed by the second respondent.

3.The main contention of the petitioner is that the two refund applications came to be rejected without affording an opportunity of personal hearing to the petitioner when it had been specifically stated under proviso to Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017 that no application for refund shall be rejected without giving the applicant an opportunity of being heard. Further, the learned counsel for the petitioner would submit that even in the appeal before the first respondent [appellate authority], the aspect of providing an opportunity of personal hearing was not considered in terms of Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017 and the first respondent/Appellate Authority vide the impugned order dated 26.07.2022 had merely confirmed the order passed by the second respondent holding that the refund claims were wrongly filed under 'Any Other' category without proper reason. Though under the Act, there is a provision for appealing the order of the first respondent before GST Appellate Tribunal, since the same has not been constituted, the petitioner has come before this Court by filing the present Writ Petition.

4.In response to the submissions made by learned counsel for the petitioner, Mr.K.Mohana Murali, learned Senior Panel Counsel would fairly submit that in terms of proviso to Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017, even though an officer comes to the conclusion of rejecting the refund claim of an applicant, the same cannot be made without affording an opportunity of personal hearing to the said applicant. However, in the instant case, it is an admitted fact that no opportunity of personal hearing was granted to the petitioner.

5.I have duly considered the submissions made by the learned counsel appearing on behalf of the petitioner and the learned Senior Panel counsel appearing on behalf of the respondent.

6.Admittedly, the petitioner had filed two refund applications dated 22.08.2019 and 10.09.2019 and the said applications came to be rejected vide Refund Sanction / Rejection Order passed by the Second Respondent dated 20.01.2020, without affording an opportunity of personal hearing in terms of proviso to Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017. Against the said order passed by the second respondent, the petitioner had preferred an appeal before the Appellate Authority viz., first respondent and the first respondent had also dismissed the appeal vide order dated 26.07.2022 holding that the refund claims were wrongly filed under 'Any Other' category without proper reason. Furthermore, the first respondent also failed to consider the issue of not affording an opportunity of personal hearing to the petitioner. At this juncture, it is appropriate to extract Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017 which reads as follows:

***92. 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.

7.From a mere reading of the above provision, it is crystal clear that the no application for refund shall be rejected without giving the applicant an opportunity of being heard. However, in the instant case, the same has not been followed which is a clear violation of the principles of natural justice.

8.In such view of the matter, this Court is inclined to set aside the order passed by the first respondent dated 26.07.2022 as well as the Second Respondent dated 20.01.2020. While setting aside the order, this Court remits the matter back to the second respondent for fresh consideration after affording an opportunity of personal hearing to the petitioner and pass orders afresh in the applications made by the petitioner on merits and in accordance with law.

9.The Writ Petition stands allowed with the aforesaid directions. Consequently, connected Writ Miscellaneous Petition is closed. No costs.

19.10.2023

Neutral Citation : Yes/No
Internet : Yes/No
Index : Yes/No
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To

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KRISHNAN RAMASAMY, J.

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