HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8871-2019
Reserved on: 15.03.2023
Pronounced on:27.04.2023

Afflatus International ....Petitioner

V/s.

Union of India and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh Mahna, Advocate
for the petitioner.

Mr. Sunish Bindlish, Sr. Standing Counsel with
Mr. Gagandeep Singh Malhotra and
Mr. Prashant Rana, Advocates for respondents No. 1 and 2.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

The petitioner is seeking writ of mandamus directing respondents to release the refund due to the petitioner alongwith interest.

2. The grievance of the petitioner in the present writ petition is that vide order dated 19.11.2018 (Annexure P-1) passed in CWP-28035-2018, a direction was given to the respondents to take a decision on the representation dated 30.08.2018 seeking refund of the tax by passing a speaking order. In compliance of the order dated 19.11.2018 (Annexure P-1), respondent No. 4 had passed an order on 02.01.2019 (Annexure P-2) wherein it was observed that no direction for refund can be issued unless the conditions stipulated in circular No. 17.17.2017-GST are satisfied. The application for refund of unutilized input tax credit on inputs or input

services used in making zero-rated supplies shall be filed in FORM GST RFD-01A on the common portal. Thereafter, the amount claimed as refund shall get debited in accordance with sub-rule (3) of rule 86 of the CGST Rules from the amount in the electronic credit ledger to the extent of the claim. Thereafter, common portal shall generate a proof of debit (ARN-Acknowledgment Receipt Number) which would be mentioned in the FORM GST RFD-01A manually alongwith the print out of FORM GST RFD-01A to the jurisdictional proper officer with all necessary documents. However, no application had been received in the office after rejection of the previous amount and subsequent re-credit of the said amount in the electronic credit ledger of the petitioner. The petitioner informed the officer that system was not allowing them to re-apply an application for refund. As per para 2.2. of the circular No. 70/44/2018-GST, it has been clarified that common portal does not allow a tax payer to file fresh application for refund once the deficiency memo against the earlier refund application for the same period has been issued. The tax payer would be required to submit the rectified refund application under the earlier reference number (ARN) only. Since the re-credit in the electronic credit ledger (using FORM GST RFD-01B) has already been carried out, the officer cannot proceed further till the time a suitable clarification be issued by Central Board of Excise and Customs (CBEC). The officer had further stated that refund will be sanctioned within 10 days on receipt of refund application complete in all respects after the clarification issued by Central Board of Excise and Customs (CBEC).

3. After notice, affidavit dated 10.09.2019 was filed by the respondent No. 3. The stand of respondent No. 3 in the affidavit is that a

fresh applications for refund for the period from October 2017 to January 2018 was made online on 19.12.2018 but the hard copies of the refund applications alongwith other required documents were submitted on 29.01.2019. In compliance of the order dated 19.11.2018 (Annexure P-1) passed by this Court, a speaking order had already been passed on 02.01.2019. The petitioner was required to submit proof of the debit entry of the amount already re-credited and proper officer had issued deficiency memo GSTRD-03 on 31.12.2019 for want of said proof of debit entry. Since the petitioner did not comply with the deficiency notice, his applications could not be considered as per law by the proper officer.

4. In para No. 9 of the affidavit, reference has been made to a clarification issued by the CBEC vide circular No. 94/13/2019-GST dated 28.03.2019 under which a registered taxable person was allowed to submit refund application manually with earlier ARN itself. It also provides that the tax payer shall debit electronic ledger voluntarily by filing Form DRC-03 on the common portal regarding the rejected amount of earlier refund application. After the above said clarification, the petitioner submitted a fresh application for issuing refund on 29.03.2019. The petitioner was given a notice on 09.04.2019 to fulfill the mandatory condition as per circular No. 94/13/2019-GST dated 28.03.2019 i.e. the petitioner had to reverse input tax credit for which refund is claimed by uploading DRC 03 on the GST portal. The petitioner reversed the input tax credit in the electronic credit ledger on 11.04.2019 and intimated the same to proper officer. Thereafter, the proper officer on 11.04.2019 issued acknowledgement in form RFD-02 and issued refund on 12.04.2019 i.e. on the very next day of issuing acknowledgement to the petitioner.

5. The petitioner has filed the rejoinder and has placed on record the earlier reply filed by the respondents dated 10.04.2018 (Annexure R-1) in which all the details with regard to deficiency memo towards refund application have been given and the petitioner was entitled for refund straightway as per Rule 91 of CGST Rule to the extent of 90% of the refund and thereafter payment of interest cannot be denied. The respondents had granted refund only for the period of October, November, December, 2017 and January, 2018. The delay had taken place for no fault of the petitioner.

6. The only short question which remains to be decided is payment of interest and in this regard the stand of the respondents is that as per Section 56 of the Haryana Goods Service Tax Act, 2017 interest is payable to the applicant only when the tax amount is ordered to be refunded under sub section (5) of Section 54 is not refunded within 60 days from the date of receipt of the application. In the present case, since the amount was refunded to the petitioner on the very next day after issuing acknowledgement in Form RFD-02. Hence, there was no delay in issuing refund to the petitioner.

7. As per respondents, payment of refund has been made after following the guidelines issued by CBEC circular No. 17.17.2017-GST and the moment the petitioner gave his application manually with earlier ARN after reversing input tax credit in the electronic credit ledger on 11.04.2019 and intimated the same to the proper officer. The proper officer issued acknowledgement in form RFD-02 on the same date and on the very next day i.e. 12.04.2019 refund was issued. The payment has been made as per the procedure given in the circular No. 94/13/2019-GST dated 28.03.2019

which covers the payment of refund. Hence, there is no delay on the part of the respondents in making payment of refund.

8. Keeping in view the above observation, the present writ petition is dismissed as the amount was refunded to the petitioner on the very next day after issuing acknowledgement in Form RFD-02.

(RITU BAHRI)
JUDGE

27.04.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No