

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-9057-2022

Date of decision:- 25.09.2023

M/s Global Health Ltd

....Petitioner

vs.

Union of India and ors.

...Respondents

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

Present: Mr. Rohit Sud, Advocate
for the petitioner

Mr. Vaibhav Gupta, Jr. Standing counsel
For the respondents.

Ritu Bahri, J.

1. The present petition has been filed seeking quashing of order dated 03.01.2020 (P-6) whereby the claim of the petitioner for refund of Rs.16,60,114/- has been rejected; impugned order dated 21.03.2022 (P-7) whereby the appeal of the petitioner against order dated 03.01.2022 has been rejected. Further prayer of the petitioner is issuance of writ in the nature of mandamus for declaring the procedure under Rule 90 (3) of the Central Goods and Service Tax Rules, 2017 (for short 'CGST Rules') as ultra vires to the Article 14 of the Constitution of India.

2. The petitioner is registered with Goods and services Tax Gurugram, vide GSTIN No.06AACCG2681CIZZ. The assessee has been assigned to the

Central GST administration, vide office Order No.01/2018 dated 10.01.2018 issued by the office of the Chief Commissioner CGST & Central Excise, Haryana Zone and office of the Commissioner of Excise & Taxation Government of Haryana. The Petitioner is engaged in providing world class healthcare service.

3. The precise grievance of the petitioner before this Court is that while filing form GSTR-3B for the month of September 2017, the Petitioner had mistakenly paid liability of SGST under reverse charge mechanism amounting to Rs.17,48,958/- though the liability for same was Rs. 88,844/- only. The said form was filed on 20.10.2017.

4. With respect to the excess SGST paid to the extent of Rs. 16, 60,114/, the petitioner filed refund application dated 18.10.2019 (P-1) in accordance with provisions of section 54 of CGST Act, 2017 read with Rule 89 of Central Goods and Services Tax Rules, 2017 (for short 'Rules 2017').

5. Respondent no.3 upon scrutiny of the refund application filed on 18.10.2019, issued a deficiency memo having reference number ZV061119004118L in FORM GST RFD-03 dated 01.11.2019 (P-2) as per Rule 90(3) of the CGST Rules (hereinafter referred to as the First Deficiency Memo). As per the provisions of Rule 90(3) of the CGST Rules, once the proper officer communicates to the applicant the deficiencies noticed in FORM GST RFD-03, the applicant is required to file a fresh refund application post rectification of the deficiencies. In other words, on account of the requirements of filing a fresh refund application, the refund application filed initially is deemed to be rejected by virtue of the said rule.

6. The deficiency memo dated 01.11.2019 (was issued after 2 years from the relevant date, post which the petitioner had no choice but to file a second

refund application having ARN AA0611190041181 on 05.11.2019 (P-3) after rectifying/clarifying the deficiencies raised in the deficiency memo.

7. Upon examination of the second refund application filed on 05.11.2019, the respondent no.3 under rule 92(3) sent a show cause notice to the petitioner for rejection of the application of refund. The copy of the Show cause notice dated 11.12.2019 is annexed as Annexure P.4.

8. The petitioner attended the personal hearing on 19.12.2019 and submitted the documents. The petitioner also submitted a reply on dated 24.12.2019 in response to the show cause notice issued on 11.12.2019 having reference no. ZA061219000728L along with all the relevant documents online and other requisite documents offline directly to the office of the Assistant Commissioner. The copies of the documents for reply to show cause notice are annexed as Annexure P-5.

9. The order-in-original dated 03.01.2020, having reference no. ZL0601200023867, was issued to the petitioner on 04.01.2020, holding the refund application as time barred and rejecting the refund of amount of Rs. 16,60,114. The copy of the impugned order dated 03.01.2020 is annexed herewith as Annexure P-6.

10. Aggrieved by the same, the petitioner filed appeal before the Joint Commissioner of Central Tax (Appeals) on dated 22.06.2020, vide which the Ld. Appellate Court has affirmed the order passed by the Assistant Commissioner. The copy of the order dated 21.03.2022 passed in appeal no. 109/2020-21 is annexed herewith as Annexure P-7. Hence the present writ petition.

11. On notice of the writ petition, a written statement has been filed on behalf of respondent Nos. 2 and 3 wherein reference has been made to circular dated 18.11.2019 (R-2/1) which was issued by CBEC wherein in para No. 12, it has been provided that since the refund application filed after correction of deficiency is treated as fresh application, such a rectified refund application submitted after the correction of deficiencies, shall have to be within the period of 02 years of limitation, as has been provided under the provisions of Section 54 of CGST Act, 2017. However, in the present case, the petitioner has filed Form GSTR-3B for the period September, 2017 on 20.10.2017 and has paid an amount of Rs.17,48,958/- as GST. The petitioner at the end of the period of 02 years, sought refund under Section 54 of the Act. The said application being found to be deficient and accordingly, the deficiency was conveyed to the petitioner, vide deficiency memo dated 01.11.2019 (P-2). The petitioner then filed correct fresh application dated 05.11.2019 seeking refund, which was time barred and was thus rejected on the ground of limitation in terms of circular dated 18.11.2019, vide order dated 03.01.2020, which was further affirmed by the Appellate Authority, vide order dated 21.03.2022 (P-7).

12. At the very outset, learned counsel for the petitioner does not press the challenge of validity of Rule 90 (2) of CGST Rules, 2017 and has referred to judgment of Delhi High Court in a case of ***BSNL vs. Union of India and others***, passed in W.P. (C) No. 3550/2023, decided on 06.04.2023 wherein the petitioner impugned the validity of Rule 90 (3) of CGST Rules, 2017. The petitioner was aggrieved by the denial of its request for refund of GST. The claim of the petitioner was that the excess tax was paid for the month of December, 2017 and

the petitioner is entitled to refund of the said amount. The writ petition was allowed and in para No. 27 to 29, it has been observed as under:-

27. It is pointed out that the Adjudicating Authority had proceeded on the basis that it had communicated the deficiencies in Form GST RFD 03 on 31.01.2020 electronically and the said deficiency was resolved after the expiry of two years as stipulated in Section 54 of the CGST Act. The Adjudicating Authority had referred to Rule 90(3) of the Rules and had proceeded on the basis that the said Rule provides for filing of a fresh refund application after rectification of deficiencies. And, the date for filing the fresh application was required to be considered for the purpose of limitation.

28. We are of the view that Rule 90(3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application filed by a taxpayer as non est.

29. If the application filed is not deficient in material particulars, it cannot be treated as non est. If it is accompanied by the “documentary evidences” as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the application is required to be treated as non est for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued.

13. The above judgment is directly applicable to the facts of the present case, as in the present case, the petitioner initially filed the form GSTR-3B for the month of September on 20.10.2017. But since excess amount was paid by mistake, the petitioner filed refund application dated 18.10.2019 (P-1) i.e within a period of two years and on 01.11.2019, the deficiency memo was issued after two years of filing of the form GSTR-3B. Thus, keeping in view the fact that the petitioner has filed the refund application within a period of two years i.e on 18.10.2019, his second application dated 05.11.2019 after removing the deficiency, could not have been rejected on the ground that it was time barred.

14. Accordingly, the present petition is allowed and order dated 03.01.2020 (P-6) and order dated 21.03.2022 (P-7) are set aside. The matter is remanded back to the Adjudicating Authority to consider afresh in the light of the observations made by this Court.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25.09.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No