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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th February, 2023*

+ **W.P.(C) 5462/2022**

SAURABH SINGAL

..... Petitioner

Through: Mr. Rahul Mangla, Adv.

versus

CENTRAL GOODS AND SERVICES TAX,
DELHI THROUGH COMMISSIONER Respondent

Through: Mr. Vijay Joshi, Sr. SC,
CBIC with Mr. Gurraj
Singh Narula, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to implement the order dated 08.10.2020. The petitioner also impugns the verification report dated 08.03.2021.

2. The petitioner is engaged in the business of supplying footwear, and carries on the said business under the name of the sole proprietorship concern, M/s Lavya International. The petitioner had applied for a refund of a sum of ₹9,98,246/- which comprised of Central Goods and Services Tax amounting to ₹4,02,000/- and State Goods and Services Tax, amounting to ₹5,96,246/-, for the period, June 2018 to December 2018.

3. The petitioner's application for refund dated 15.05.2019 was duly acknowledged. According to the petitioner, his claim for refund in terms of Section 54(3)(ii) of the Central Goods and

Services Tax Act, 2017 (hereinafter “**the Act**”) arose on account of inverted duty structure. The petitioner claims that the Input Tax Credit in respect of various inputs exceeds the output liability in respect of the supplies.

4. The petitioner’s claim for refund was rejected by the respondents by an order dated 16.12.2019.

5. The petitioner’s application was, essentially, rejected not on the ground that the petitioner was not entitled to any refund, but on the ground that the periods for which refund was claimed did not correspond to the periods for which returns were filed. The petitioner had claimed refund for a period of seven months. According to the respondent, the petitioner was either required to file quarterly returns or monthly returns. The claim for refunds were required to be made corresponding to the returns filed.

6. Aggrieved by the order dated 16.12.2019, the petitioner preferred an appeal before the appellate authority [Joint Commissioner (Appeals)].

7. The petitioner prevailed in its appeal and, by an order dated 08.10.2020, the petitioner’s appeal was allowed and the order dated 16.12.2019, passed by the Assistant Commissioner was set aside.

8. In view of the above, the petitioner filed an application for refund on 29.12.2020, claiming refund of the amount of ₹9,98,246/-.

9. Notwithstanding that the petitioner had prevailed in its appeal, his application for refund is not processed.

10. The counter affidavit filed by the respondent indicates that the order dated 08.10.2020 passed by the Appellate Authority was the subject matter of a review order dated 18.02.2021, under

Section 112(3) of the Act.

11. The Principal Commissioner had examined the order passed by the Appellate Authority and had directed that an appeal be filed against the same. However, it is not disputed that the respondent has not filed the appeal as yet.

12. A plain reading of Section 112(3) of the Act indicates that the Commissioner may on its own motion or on a request from the Commissioner of State (Tax) or Commissioner of Union Territory (Tax), call and examine the record, of any order passed by the appellate authority or the revisional authority for the purpose of satisfying as to the legality or the propriety of the said order. He may, by an order, direct the Officers subordinate to him, to apply to the appellate tribunal, within a period of six months from the date of which, the said order has been passed.

13. Concededly, the effect of the review order is confined to directing filing of an appeal and it does not amount to stay of the order directed to be appealed against.

14. The time period for filing the appeal has long elapsed. However, Mr. Joshi, learned Counsel appearing for the respondent, states that the respondent could not file an appeal as a tribunal has not been constituted as yet. He submits that as and when the appellate tribunal is constituted, the respondent would file an appeal.

15. It is also material to note that whenever parties have found the need of urgent orders, the parties have filed petitions before this Court seeking such orders on the ground that since the tribunal is not constituted, the remedy of appeal is not available. The respondent has not sought any such relief.

16. The appeal is required to be filed within a period of six

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months from the date of the order; however, we are not required to examine the question whether an appeal, if so filed, would be maintainable or not. Suffice for us to notice that there is no order which has the effect of staying the import of the order of the Appellate Authority dated 08.10.2020.

17. It is not permissible for the respondents to simply ignore the appellate order on the ground that it proposes to file an appeal.

18. In the aforesaid circumstances, we consider it apposite to allow the present petition and direct the respondents to forthwith process the petitioner's claim for refund. It is so directed.

19. It is clarified that this order would not preclude the respondent from availing appropriate remedies in accordance with law. If the respondent prevails in securing any further order from the appellate tribunal (as and when constituted), it would be entitled to take consequential recourse to recovery of any amount so disbursed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 16, 2023

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