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

% *Date of Decision: 28th March, 2023*

+ **W.P.(C) 14719/2022**

G S INDUSTRIES

..... Petitioner

Through: Mr. Vineet Bhatia & Mr.
Siddarth Malhotra, Advs.

versus

COMMISSIONER CENTRAL GOODS AND SERVICES
TAX DELHI WEST & ANR. & ORS. Respondents

Through: Ms. Anushree Narain, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **28.03.2023**

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter-alia*, praying that the directions be issued to the respondent to refund the tax amounting to ₹23,10,333/- claimed by the petitioner for the period September, 2017 to March, 2018. The petitioner also seeks directions that the respondent be directed to pay an amount of ₹14,46,417/- being the refund amount claimed for the period April, 2018 to March, 2019. Additionally, the petitioner also claims interest on the said amount of refund, which have been withheld by the respondent.

2. The petitioner carries on the business as G.S. Industries and is engaged in manufacturing Handpump parts falling under HSN 8413/9140, which is chargeable to Goods and Services Tax @ 5%.

3. The petitioner claims that it has accumulated Input Tax Credit on account of an inverted duty structure.

4. The petitioner filed an application on 04.07.2019 claiming refund of ₹23,10,333 accumulated Input Tax Credit for the period September 2017 to March, 2018. The petitioner filed another application on 09.07.2019 claiming an amount of ₹14,46,417/- as accumulated Input Tax Credit for the period April, 2018 to March, 2019. Thus, the petitioner claims an amount of ₹37,56,750/- as refund of accumulated tax.

5. The applications filed by the petitioner were acknowledged. However, thereafter two separate deficiency memos, both dated 29.11.2019, were issued. The respondent pointed out certain deficiencies and also sought certain clarifications with regard to the said applications. In addition, the respondent also called upon the petitioner to submit a Chartered Accountant's certificate confirming that the incidence of tax and interest was not passed on to any other person.

6. The petitioner responded to the said deficiency memos by a communication dated 27.01.2020. However, the respondent did not accept the petitioner's explanation and issued Show Cause Notices dated 23.11.2020 calling upon the petitioner to show cause why his applications for refund not be rejected for the following reasons:

“ 1. It has been observed that you are claiming that you are manufacturing India Mark 11 hand pump and their parts which fall under the 5% GST classification. Further, it has also been observed that the major part of the refund claim is of Brass Scrap (18%). You are requested to submit the complete details of the purchase and sale registers for the relevant period.

2. From various sources, it was also observed that the product which are claimed to be manufactured by you requires very little to no Brass. You are requested to provide the details of the stock register/item wise summary for verification of the refund claim.

3. You are also requested to submit the details of the registered place of business (both principal and additional) to this office as a PV was conducted by the AE branch on 16.09.2020 at the regd. Principal place of business under section 67(1) of the CGST Act 2017 and it was observed that some other firm is running since January 2019.”

7. The petitioner responded to the said Show Cause Notices. Petitioner’s explanation was not accepted and by a separate order dated 14.12.2020, the applications for refund were rejected.

8. The petitioner filed separate appeals impugning the orders-in-original dated 14.12.2020, which were disposed of by a common order dated 03.01.2022 (Order-in-appeal No.209-210/2021-2022). The Appellate Authority allowed the petitioner’s appeal. It accepted that the petitioner was in existence at the material time, and the findings contrary to the same were erroneous. The Appellate Authority relied upon certain documents, including electricity bills, income tax returns etc. filed by the petitioner. The Appellate Authority also found that the Adjudicating Authority had not provided any basis for observing that the product manufactured by the petitioner required very less or no brass at all.

9. Since the petitioner succeeded in its appeal, the petitioner is entitled to the refund as claimed. However, notwithstanding the same, the refund has not been disbursed.

10. Ms. Narain, learned counsel appearing for the respondent, submits that the respondent has decided to challenge the Order-in-appeal dated 03.01.2022, and the Commissioner has passed an order

dated 19.05.2022, setting out the grounds on which the appeal is required to be preferred against the Order-in-appeal.

11. The principal question that falls for consideration by this Court is whether the benefit of Order-in-appeal dated 03.01.2022 can be denied to the petitioner and the refund amount be withheld solely on the ground that the respondent has decided to file an appeal against the said order.

12. Concededly, the respondent has not filed any appeal against the order-in-appeal dated 03.01.2022, and there is no order of any Court or Tribunal staying the said order. Indisputably, the order-in-appeal dated 03.01.2022 cannot be ignored by the respondents solely because according to the revenue, the said order is erroneous and is required to be set aside.

13. Learned counsel for the parties also pointed out that the said issue is covered by the earlier decision of this Court in ***Mr. Brij Mohan Mangla Vs. Union of India & Ors.: W.P.(C) 14234/2022 dated 23.02.2023.***

14. In view of the above, the present petition is allowed. The respondents are directed to forthwith process the petitioner's claim for refund including interest.

15. It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents prevail in their challenge to order-in-appeal dated 03.01.2022, the respondents would also be entitled to take

consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 28, 2023

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