IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10971 OF 2024
ALONGWITH
WRIT PETITION NO. 14092 OF 2022
ALONGWITH
WRIT PETITION NO. 10964 OF 2024
ALONGWITH
WRIT PETITION NO. 10969 OF 2024
ALONGWITH
WRIT PETITION NO. 13395 OF 2022
ALONGWITH
WRIT PETITION NO. 13579 OF 2022
ALONGWITH
WRIT PETITION NO. 10972 OF 2024

Siemens Ltd.
Represented Through Its Authorized
Signatory ….Petitioner

V/s.
The Joint Commissioner of State Tax
and Ors. …Respondents

Mr. Sujit Ghosh, Senior Advocate a/w Ms. Mannat Waraich, Mr. Vaibhav Patankar and Mr. Ashray Behura i/b Patankar & Associates for Petitioner.
Ms. Dhruti Kapadia, AGP for State.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 12th AUGUST 2024

P.C. :

WRIT PETITION NO. 13579 OF 2022

1. Mentioned out of turn.

2. By consent taken up for hearing at the admission stage itself.

3. Rule. Rule made returnable forthwith.

4. Petitioner is challenging an order dated 28th July 2021 passed by Respondent No.1, i.e., Joint Commissioner of State Tax (Appeals) by which Respondent No.1 has rejected the refund claim of petitioner amounting to Rs.1,77,495/-. The refund claim has been rejected on the sole ground of non compliance of the time limit prescribed under Section 34(2) of the Central Goods and Services Tax Act, 2017 (the CGST Act).

5. Petitioner had entered into an agreement with one Torrent Pharmaceuticals Limited, Gujarat (TPL) for supply of goods and services. Petitioner raised invoices in the month of September 2018 on TPL amounting to Rs.11,63,578/- having GST implication of Rs.1,77,495/-. Since the supplies were not made in accordance with the terms of agreement, TPL did not make any payment to petitioner in respect of the said invoices. It is not disputed that the invoices were neither accounted for in the books of accounts by TPL nor any Input Tax Credit (ITC) was claimed by TPL in respect of the said supply. This fact is corroborated by a letter of undertaking dated 22nd June 2020 issued by TPL stating that it had not claimed any ITC in respect of the said supply.

6. The fact that the invoices amounting to Rs.11,63,578/- was not acknowledged by TPL was brought to the notice of petitioner in the month

of February 2020. Petitioner immediately issued credit notes against the said invoices.

7. It is petitioner's case that petitioner is entitled to refund under Section 54(1) of the CGST Act which provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. The relevant date under Section 54 of the CGST Act so far as petitioner is concerned means the date of payment of tax (Section 54(2)(h) of the CGST Act).

8. Mr. Ghosh submitted that Section 34(2) of the CGST Act on which respondent has relied upon to reject the refund claim is not applicable at all since petitioner has not asked for tax liability to be adjusted in any manner. Mr. Ghosh submitted that since the time limit for applying for such adjustment had expired petitioner sought refund of the amount under Section 54 of the CGST Act.

9. Petitioner had filed refund application dated 23rd September 2020 and annexed thereto various supporting documents. The reason of refund is sought as "excess payment of tax".

10. This was followed by Show Cause Notice dated 12th October 2020 calling upon petitioner to show cause as to why the refund claim amounting to Rs.1,77,495/- should not be rejected in view of certain discrepancies found. Petitioner replied to the Show Cause Notice on 25th November 2020 in which petitioner once again relied upon Section 54 of the CGST Act. Various supporting documents were once again annexed to the reply.

11. The refund application came to be rejected by an order dated 1st December 2020 without giving personal hearing to petitioner. In the impugned order dated 1st December 2020 passed by Respondent No.4 it is accepted that the credit notes against invoices which were not accepted by TPL has been issued but Respondent No.4 has proceeded on the basis of it being not within the time prescribed under Sub Section (2) of Section 34 of the CGST Act though he records petitioner's case that the application has been under Section 54 of the CGST Act. The refund application came to be rejected on the ground that the application was not within the time prescribed under Section 34(2) of the CGST Act.

12. Petitioner preferred an appeal against this order which appeal came to be dismissed by non speaking order dated 28th July 2021. The appellant authority has noted the statement of facts, grounds of appeal, submissions and discussion but in the conclusion at Paragraph No.26 and

27 has dismissed the appeal by simply saying that appellant is not eligible for refund on account of excess payment paid as per provisions of law. Respondent No.1 has noted in the impugned order that one of the grounds of appeal was that Respondent No.4 while verifying the refund claim has completely mis-interpreted Section 34(2) of the CGST Act and has applied it erroneously for rejecting the refund claim. Respondent No.1 has also noted that one of the ground is Section 34(2) of the CGST Act has no relevance to decide the subject application for refund claim of appellants but does not even deal with the same in the impugned order.

13. On these grounds as noted above itself both the orders, i.e. the order passed by Respondent No.4 on 1st December 2020 and Respondent No.1 on 28th July 2021 needs to be quashed and set aside which we hereby do. We have to also note that in the affidavit in reply respondents have tried to improvise their case and have raised grounds which are not acceptable. First of all what is stated in the affidavit in reply has not been discussed in the two orders which we have quashed and secondly the deficiencies mentioned therein have been completely cured. We make this observation because the impugned orders otherwise would have mentioned that the deficiencies have not been cured.

14. Therefore, we remand the matter to Respondent No.4 to consider the refund application applying provisions of Section 54 of the

CGST Act on the basis of documents already supplied and keeping in mind the certificate issued by TPL has not been disputed earlier and pass the order in accordance with law.

15. The refund application shall be disposed on or before 31st October 2024. Before passing any order, petitioner will be given a personal hearing, notice whereof shall be communicated atleast 5 working days in advance. If the Assessing Officer is going to rely on any judgment/order of any Court or Tribunal, a list thereof shall be made available to petitioner in advance before the personal hearing so that petitioner will be able to deal with the same/distinguish the same during the personal hearing. Should, petitioner wish to file written submission to record what transpired during the personal hearing, petitioner may file the written submission within four working days of the completion of personal hearing. Any order passed shall be a reasoned and detailed order dealing with all the submissions of petitioner.

The refund shall be given with applicable interest as provided under the CGST Act.

16. Rule made absolute in terms of prayer clause (a).

17. Petition disposed.

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18. Mr. Ghosh states that the facts are almost identical in all petitions except the figures and the date would vary. Ms. Kapadia also agrees. Therefore, in view of what we have held in Writ Petition No. 13579 of 2022, these pe[titions are also allowed and the matters remanded to original adjudicating authority, i.e., Deputy Commissioner of State Tax for *denovo* hearing. The directions given in Paragraph No.15 of our order in Writ Petition No. 13579 of 2022 shall apply to these petitions as well.

19. Therefore, all Petitions disposed.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**