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W.P.No.9063 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.9063 of 2021

M/s.Tulip Nilgiris Exports Pvt. Ltd.,
138-D Gray's Hill North,
Opp.Telephone Exchange,
Coonoor 643 101, Nilgiris.

... Petitioner

-VS-

1.Additional Commissioner of Central Taxes and
Central Excise (Appeals),
6/7, A.T.D. Street,
Race Course, Coimbatore – 641 018.

2.The Assistant Commissioner of Central Taxes
and Central Excise,
Coonoor Division, No.65,
Brooksland Main Road,
Lord Hobart Road, Quill Hills,
Coonoor – 643 101.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for the records and quashing the impugned order in Appeal No.08/2020 dated 06.07.2020, passed by the 1st respondent and consequently, directing to uphold the rejection of refund by the 2nd respondent, vide Refund Rejection Order GST-RFD-06 dated 30.05.2019 as being clearly arbitrary, beyond the



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jurisdiction vested upon the respondents and contrary to Section 16(2) of the IGST Act and Section 54 of the CGST Act and also in violation of Articles 14, 19(1)(g) and 265 of the Constitution of India.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.R.Rajendran Raghavan
Senior Standing Counsel

ORDER

The petitioner assails the appellate order dated 06.07.2020 by which the refund claim made by the petitioner in respect of unutilised Input Tax Credit (ITC) was refused by affirming the order-in-original.

2. The petitioner states that it is an exporter of processed tea. It is a registered person under applicable GST laws and had availed of ITC in respect of the procurement of tea from the local market. As per Section 16(3) of the Integrated Goods and Services Tax Act, 2017 (the IGST Act), the petitioner has two options while undertaking exports. The first option is to export goods without payment of IGST against a letter of undertaking and thereafter claim refund; and the second option is to pay IGST and thereafter claim refund of such IGST. After resorting to the first option, the petitioner



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claimed refund of ITC in respect of the period running from July 2017 to November 2017. While claiming refund, the petitioner did not calculate the refund entitlement with reference to the total ITC availed of in the tax period, but on the basis of the ITC attributable to the exports made in the month. According to the petitioner, this resulted in the petitioner claiming a lower refund than that to which the petitioner is entitled as per law. While claiming refund in the month of June 2018, the petitioner also claimed the additional refund to which the petitioner asserts entitlement for the period of July 2017 to November 2017 and for the month of May 2018. While the claim pertaining to the month of June 2018 was accepted, claims pertaining to May 2018 and July 2017 to November 2017 were rejected. When the matter was carried in appeal, the appellate authority affirmed the order of the assessing officer. This writ petition arises in the above facts and circumstances.

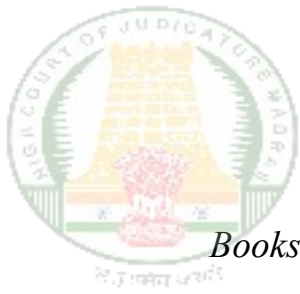
3. Learned counsel for the petitioner contended that Section 54 of the Central Goods and Services Tax Act, 2017 (the CGST Act) provides for a two year period within which a refund claim may be made. He also pointed



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out that the said two year period is required to be computed from the relevant date. As per the explanation set out in Section 54, learned counsel submits that the relevant date is the date of export. Since the refund claim was made by the petitioner within two years from the date of the relevant export, he submits that the refund claim is within the period prescribed by the statute.

4. By placing reliance on Circular No.37/11/2018-GST dated 15.03.2018 (Circular No.37), learned counsel submits that the Central Board of Excise and Customs, GST Policy Wing, recognised that input goods or services may be availed of at a point in time earlier to the date of export of the end product and, therefore, there may be a time lag between the accumulation of unutilised ITC and the date of refund claim. According to learned counsel, the above mentioned Circular addresses this concern by permitting clubbing of refund claims for more than one calendar month or more than one quarter. As regards the stipulation in clause 11.2 of the Circular that the claim cannot be spread across different financial years, learned counsel relied on the judgment of the Delhi High Court in *Pitambra*



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Books Pvt. Ltd. v. Union of India (Pitambra Books), 2020 (34) G.S.T.L. 196

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(Del.), wherein the Division Bench of the Delhi High Court struck down the stipulation that the claim for refund should not span more than one financial year. Since the petitioner's claim for refund is not contrary to the prescription in Section 54 or Rule 89 of the CGST Rules, learned counsel submits that this writ petition is liable to be allowed.

5. In response to these submissions, Mr.R.Rajendran Raghavan, learned Senior Standing Counsel, submits that the refund claim of the petitioner pertains to June 2018. Therefore, he submits that the claim was duly considered and accepted as regards June 2018, and rejected with regard to earlier periods. According to learned counsel, a refund claim should be made in the manner prescribed and the petitioner cannot be permitted to club claims pertaining to more than one financial year. Without prejudice, learned counsel also submits that the entitlement to refund of the petitioner cannot be assessed in these proceedings since such assessment turns on questions of fact.

6. Section 54(1) of the CGST Act provides, in relevant part, as under:



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“54. Refund of tax

(1) 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.”

.. ..

.. ..

Explanation

(2) “relevant date” means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;”

From the above provision, the conclusion that follows is that a refund claim may be made before the expiry of two years from the relevant date. Such



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relevant date is required to be computed from the date of export of the goods concerned by any mode. Since the refund claim pertains to exports made between July 2017 and November 2017 and the refund application was filed on 09.01.2019, it is clear that such refund application was made within two years from the relevant date. Circular No.37, which was relied upon by learned counsel for the petitioner, clarifies that refund claims may be made not only on a calendar month basis but by clubbing claims pertaining to more than one calendar month or more than one quarter. The restriction imposed by the said Circular with regard to refund claims spanning more than one financial year was struck down by the Division Bench of the Delhi High Court in *Pitambra Books* on the ground that it curtails the two year period prescribed by statute.

7. The above discussion leads to the conclusion that the refund claim of the petitioner was made within the period of limitation prescribed by statute. As regards the entitlement of the petitioner to refund, such entitlement has to be determined not only with reference to Section 54 of the CGST Act read with Rule 89 thereof, but also by examining relevant



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documents relating to utilised ITC and exports. This exercise cannot be undertaken in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

8. In the impugned appellate order, the appellate authority rejected the claim for refund by recording the following findings in paragraph 9 of the order, which is set out below:

“9. From available records, it is seen that for the month of June 2018, the appellant has claimed refund of Rs.21,82,215/-, by taking the Turnover of zero rated supply of goods as Rs.2,01,30,134/-; the Adjusted total turnover as Rs.2,01,30,134/- and the Net ITC as Rs.21,82,215/-. However, as per the provisions of Rule 89 of the CGST Rules, 2017, the value of Turnover of zero rated supply of goods, the Adjusted total turnover and Net ITC to be taken for calculation of refund amount is only the value for the relevant period, i.e., the period for which the claim has been filed. As the refund claim in question has been filed for the period June 2018, the values corresponding only to June 2018 ought to be taken into consideration for calculation of refund amount. Thus, in



respect of June 2018, the Turnover of zero rated supply of goods is Rs.1,33,66,950/-; the Adjusted total turnover is Rs.1,33,66,950/- and the Net ITC is Rs.6,45,304/- resulting in sanction of refund amount of Rs.6,45,304/-.”

9. In effect, the appellate authority concluded that the refund claim can only be made with regard to a specific calendar month. This conclusion is contrary both to statutory prescription and Circular No.37. Therefore, the order impugned is unsustainable and is hereby quashed. As noticed earlier, it does not follow from the conclusion that the refund claim is within the time limit specified by statute that the petitioner is entitled to refund. Such entitlement should be established by the petitioner with reference to relevant documents and applicable provisions. For such purpose, the matter is remanded to the 2nd respondent. The 2nd respondent is directed to provide a reasonable opportunity to the petitioner and thereafter readjudicate the refund application by taking into account the observations set out in this order. This exercise shall be completed within a maximum period of two months from the date of receipt of a copy of this order.

10. The writ petition is disposed of on the above terms without any



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order as to costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

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and Central Excise,
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