IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.8496 of 2023
and W.M.P.No.8689 of 2023

M/s.Acrologic Business Solutions Private Limited,
(Represented by its Director Shri Satish R),
Block No.B.147, Door No.3,
Hansa Building,
RK Swamy Centre, Pathari Road,
Thousand Lights Metro Station,
Chennai-600 006, Tamil Nadu. ... Petitioner

-vs-

1.Assistant Commissioner of Central Taxes,
Madhavaram Division,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai-600 034,
Tamil Nadu.

2.Joint Commissioner of Central Taxes (Appeals-1),
No.26/1, Mahatma Gandhi Salai,
Nungambakkam,
Chennai-600 034, Tamil Nadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records which culminated in the issue of the impugned order-in-Appeal 43/2022 (GSTA-I) (JC) dated 08.02.2022 passed by the 2nd respondent and quashing the same in its entirety and directing the respondent to allow the refund claim application with consequently, directing the 1st respondent to sanction the refund claim for April 2018 to August 2018 Rs.7,34,732/- to the petitioner.

For Petitioner : Mr.Lalitendra Gulani

For Respondents : Mr.M.Santhanaraman
Senior Standing Counsel

ORDER

By this writ petition, the petitioner challenges an appellate order dated 08.02.2022 rejecting the refund claim of the petitioner to the extent of Rs.7,34,732/-.

2. The petitioner is a Business Process Outsourcing company, which exports services under a letter of undertaking, without payment of IGST, and avails of refund of unutilised Input Tax Credit (ITC) under Section 16(3) of

the Integrated Goods and Services Tax Act, 2017 read with Section 54 of the Central Goods and Services Tax Act, 2017 (the CGST Act).

3. During the period running from April 2018 to March 2019, the petitioner exported services of the aggregate value of Rs.10,12,26,441/- to overseas recipients. Upon issuing invoices, payments were received under Foreign Inward Remittance Certificates (FIRC). Thereafter, the petitioner filed a refund application in respect of unutilised ITC under Section 54 of the CGST Act on 04.09.2020. Upon receipt of such application, by notice dated 29.09.2020, the petitioner was called upon to show cause as to why a sum of Rs.9,22,424/- towards wrong ITC claim and a sum of Rs.28,050/- under the head 'Other' should not be disallowed. The petitioner replied to the notice on 08.10.2020 and stated that it was unable to function normally on account of the COVID-19 pandemic. Therefore, the petitioner requested that the delay be condoned. Since the adjudicating authority did not accept the request of the petitioner, the petitioner assailed the order of the adjudicating authority by way of an appeal. The appellate authority concluded that the export turnover for the period running from April 2018 to August 2018

cannot be considered because the same is time barred. Consequently, only the export turnover from September 2018 to March 2019 was considered in the appellate order. The present appeal arises in the said facts and circumstances.

4. Learned counsel for the petitioner invited my attention to the dates and events. After pointing out that the refund application was made on 04.09.2020, learned counsel submits that the period impacted by the COVID-19 pandemic was excluded from the limitation period for filing a refund application under Section 54 of the CGST Act by a notification issued on 05.07.2022 under notification No.13/2022-C.T. By virtue of such notification, he submitted that the limitation period was required to be computed by excluding the period running from 01.03.2020 to 28.02.2022. If computed by permitting the benefit of the above notification, learned counsel submitted that the claim for refund is within time.

5. In response to this contention, Mr.M.Santhanaraman, learned

Senior Standing Counsel, submits that the petitioner should have responded online to the show cause notice dated 29.09.2020 and that the show cause notice indicates that a sum of Rs.9,22,424/- was rejected as a wrong ITC claim. Since the petitioner did not reply in the manner required, it is submitted that the petitioner is not entitled to the disallowed refund claim.

6. Upon taking note of the rival contentions, the issue that falls for consideration is whether the petitioner was entitled to refund if the petitioner could avail of the exclusion in terms of notification No.13/2022-C.T. Under Section 54 of the CGST Act, an exporter of services is entitled to refund in respect of unutilised ITC. From the show cause notice dated 29.09.2020, it appears that a sum of Rs.9,22,424/- was classified as a wrong ITC claim. In the remarks column of the show cause notice, the break up is provided. An ITC claim of Rs.1,33,207/- was considered ineligible because it pertains to capital goods; a further sum of Rs.28,050/- was considered ineligible because services were received by an unregistered branch in Bangalore; and a further sum of Rs.54,485/- was rejected on the ground that it was not reflected in GSTR 2A. If these three sums are added, it aggregates to

Rs.2,15,742/- which corresponds to the amount the petitioner agreed to exclude from the refund claim. Therefore, the sum of Rs.7,34,732/-, which was claimed by the petitioner, corresponds to amounts disallowed as time barred because the said claim pertains to FIRCs issued from April 2018 to August 2018.

7. Notification No.13/2022-C.T. dated 05.07.2022 provides, in relevant part, as under:

> *"In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No.35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No.14/2021-Central Tax, dated the 1st May, 2021,*

published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby:-

(i) .. ..

(ii) .. ..

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020."

The above notification clearly specifies that the period running from 01.03.2020 to 28.02.2022 is required to be excluded for computation of the period for limitation for filing a refund application under Section 54 of the CGST Act. The relevant date is the date of receipt of payment in convertible foreign exchange, as per Explanation (2) to sub-section (14) of Section 54. Even as regards FIRCs issued in April 2018, if the benefit of the above notification is extended to the petitioner, the refund application dated 04.09.2020 would be within the two year period, which is to be computed from the relevant date, as per sub-section (1) of Section 54 of the CGST Act.

8. Apart from concluding that the claim is barred by limitation, no other reason has been mentioned in the appellate order for rejecting the refund claim of Rs.7,34,732/-. For reasons set out above, the said conclusion in the appellate order is unsustainable. Hence, the impugned order is quashed and, as a corollary, the 1st respondent is directed to refund the sum of Rs.7,34,732/- to the petitioner within a period of two months from the date of receipt of a copy of this order. The writ petition is allowed without any order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

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Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Salai,
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SENTHILKUMAR RAMAMOORTHY,J

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