IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2024

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10770, 12864, 12865, 14674, 14677, 14679 & 14680 of 2021
and W.M.P.Nos.11402, 11403, 13665, 13667, 13669,
13671, 15574, 15575, 15577 & 15578 of 2021

M/s.WIPRO Ltd.,
Rep. by its Senior Manager (Indirect Taxation),
Authorized Signatory,
Mr.Raman Venkat,
Sr.No.602/03, ELCOT SEZ,
Sholinganallur, Chennai – 600 119.

...Petitioner in all W.Ps

Versus

The Assistant Commissioner,
Office of the Assistant Commissioner of GST & CE,
Sholinganallur Division,
Chennai – South Commissionerate,
No.692, MHU Complex, 8th Floor,
Nandanam, Anna Salai, Chennai – 35.

...Respondent in all W.Ps

Prayer in W.P.No.10770 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Notice of Rejection of Refund dated 10.03.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to grant the refund.

Prayer in W.P.No.12864 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Order of Rejection of Refund ARN.No.AA 3312200348999 dated 01.03.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to grant the refund.

Prayer in W.P.No.12865 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Order of Rejection of Refund ARN.No.AA 3312200352134 dated 01.03.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to grant the refund.

Prayer in W.P.No.14674 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Show Cause Notice No.01/2021 dated 29.06.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to drop these proceedings C.No.V/15/04/2021 GST Refund.

Prayer in W.P.No.14677 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Show Cause Notice No.02/2021 dated 29.06.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to drop these proceedings C.No.V/15/04/2021 GST Refund.

Prayer in W.P.No.14679 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Show Cause Notice No.03/2021 dated 29.06.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to drop these proceedings C.No.V/15/04/2021 GST Refund.

Prayer in W.P.No.14680 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in the file of the respondent pertaining to the Show Cause Notice No.04/2021 dated 29.06.2021 and quash the same as illegal, arbitrary, violative of principles of natural justice and to direct the respondent to drop these proceedings C.No.V/15/04/2021 GST Refund.

For Petitioner in all W.Ps : Mr.G.Shivadass,
Senior Counsel
for Mr.S.Muthuvenkatraman

For Respondent in all W.Ps : Mr.K.Mohanamurali,
Senior Standing Counsel

COMMON ORDER

With the consent of both sides, these writ petitions are taken up for final disposal.

2. Details of the impugned orders/notices in W.P.Nos.10770, 12864, 12865, 14674, 14677, 14679 & 14680 of 2021 are tabulated hereunder:

Sl.No.	Writ Petition No.	Impugned Order/Notice	Date of the Impugned Order/Notice
1	10770/2021	Notice for Rejection of Refund	10.03.2021
2	12864/2021	Order of Rejection of Refund bearing ARN.No.AA 3312200348999	01.03.2021
3	12865/2021	Order of Rejection of Refund bearing ARN.No.AA 3312200352134	01.03.2021
4	14674/2021	Show Cause Notice No.01/2021	29.06.2021
5	14677/2021	Show Cause Notice No.02/2021	29.06.2021
6	14679/2021	Show Cause Notice No.03/2021	29.06.2021
7	14680/2021	Show Cause Notice No.04/2021	29.06.2021

3. The Orders of Rejection of Refund dated 01.03.2021 passed by the respondent in ARN.No.AA 3312200348999 & ARN.No.AA 3312200352134 are the subject matter of challenge in W.P.Nos.12864 & 12865 of 2021 respectively.

4. The reason given by the respondent for rejecting the refund claim of the petitioner in the aforesaid impugned orders are almost identical. For the sake of clarity and brevity, Impugned Order dated 01.03.2021 in W.P.No.12864 of 2021 alone is reproduced below:

*"**Findings:***

3.1. I have gone through the refund application, show cause notice and the reply submitted by the claimant and also their submissions during the personal hearing. Here, the issue to be decided are (a) whether ITC including ITC on ISD credit transferred from their head office can be availed by a SEZ Unit engaged in development and export of software (b) if yes is the answer for (a) then whether the said unit can export the services on payment of IGST utilising the said ITC and file a claim for claiming refund of the same in cash.

3.2. A plain reading of Sec 16 of the CGST Act, 2017 and the SGST Act, 2017, it is noticed that there is no explicit provisions available under the said section for availment of ITC including the ISD credit passed by their head office, by a SEZ Unit.

3.3. Sec 26(1)(c) of the SEZ Act, 2005 Provides for exemption from any tax by any Central Acts when goods/services are supplied from a DTA unit to a SEZ Unit.

3.4. Further Sec 16(1)(b) of the IGST Act terms supply to SEZ developer/unit as zero rated and subsection (2) of the said section provides for availment of ITC by the supplier making zero rated supplies. Further subsection (3) of the said section provides for the facilities available to the person engaged in zero rated supplies which is reproduced below for ready reference:

> *"(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely; - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder."*

3.5. Further as per Second proviso to rule 89(1) of CGST Rules, 2017 which deals with the provisions of refund in respect of supplies effected to SEZ units, only the supplier of goods/services are eligible for refund and not the receiver SEZ unit. Further while filing such refunds the said supplier shall submit a declaration as per rule 89(2)(f) of the CGST Rules 2007 to the effect that tax has not been collected from the SEZ unit/Developer.

3.6. From the above discussions, I hold that M/s.WIPRO Ltd., are not eligible to avail ITC on inputs as well as on the ISD credit transferred by their head office. Further being a SEZ unit they are not eligible to claim the same as refund by exporting services on payment of IGST out the said ITC availed by them. Hence I am inclined to reject the refund amount of Rs.3893331/- filed vide ARN No.AA3312200348999 dated 11.12.2020 claiming refund of IGST paid on the export of services for the tax period 03/2019, under Sec 54(6) of the CGST/SGST Act 2017. Further I am incline to hold that an amount of Rs.3503997.90 sanctioned vide provisional refund order RFD04 No.ZP33122200316924 dated 30.12.2020 to them under rule 91(2) of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017 which was erroneously refunded to them and hence liable for recovery under Section 73(1) of the CGST Act, 2017 with applicable interest under Section 50(1) of the said Act with *penalties applicable under Section 73(9) of the said Act. In view of the above, I pass the following order.*

3.7. I reject the refund amount of Rs. of Rs.3893331/- (Rupees thirty eight lakhs ninety three thousand three hundred and thirty one only) filed vide ARN No.AA3312200348999 dated 11.12.2020 claiming refund of IGST paid on the export of services, under Sec 54(3) of the CGST/SGST Act 2017 for the tax period 03/2019 by M/s.Wipro Limited, Survey No.602/02, Elcot SEZ, Sholinganallur, Chennai – 600 119.

3.8. I further pass the following order:

(a) I confirm the demand of an amount of Rs.3503997.90 (Rupees thirty five lakhs three thousand nine hundred and ninety seven and ninety paise only) sanctioned as refund under Sec 54(6) of the CGST Act, 2017 vide provisional refund order RFD04 No.ZP33122200316924 dated 30.12.2020 under Section 73(1) of the CGST Act, 2017 made applicable to IGST Act, 2017 as erroneous refund to M/s.Wipro Ltd.

(b) I confirm the demand of interest as applicable under Section 50(1) of the Act on the said amount refunded erroneously as in (a) above from the date of sanction till the date of payment of the same by M/s.Wipro Ltd.

(c) I impose a penalty of Rs.350400/- (Rupees three lakhs fifty thousand four hundred only) under Sec 73(9) of the Act on M/s.Wipro Ltd."

5. The admitted position is that the petitioner is a company engaged in Information Technology (IT) services viz., Software Services (SS) and Information Technology Enabled Service (ITES) viz., Business Process Outsourcing services (BPO).

6. The petitioner had received certain "input service" as defined in

Section 2(60) of the Central Goods and Services Tax Act, 2017 *(hereinafter referred to as the 'CGST Act')* from its sister concern. It also received certain "Input Tax Credit" as defined in Section 2(63) of the CGST Act from its Head Office which was registered as an "Input Service Distributor" as defined under Section 2(61) of the CGST Act during the period 2019-2020.

7. The Input Tax Credit (ITC) availed by the petitioner was distributed by its Head Office as per Section 20 of the CGST Act. Section 20 of the CGST Act reads as under:

> ***"Section 20. Manner of distribution of credit by Input Service Distributor.***
>
> *(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.*
>
> *(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:--*
>
> *(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;*
>
> *(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;*
>
> *(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;*
>
> *(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of*

the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.--For the purposes of this section,--

(a) the "relevant period" shall be--

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied 1[under entries 84 and 92A] of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule."

8. The petitioner utilized the aforesaid credit and paid out tax on such "Zero Rated Supply" as defined under Section 2(23) read with Section 16 of the Integrated Goods and Services Tax Act, 2017 *(hereinafter referred to as "IGST Act")* and claimed refund under Section 16(3)(b) of the IGST Act as it stood during the period in dispute. Section 16(3) of the IGST Act reads

differently during the period in dispute. Section 16(3) of the IGST Act reads as under:

Section 16. Zero rated supply
(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.
Substituted by the Finance Act, 2021 with effect from 01.10.2023
(3) A registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder; subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this subsection along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

9. It is the case of the petitioner that Section 16(1)(a) of IGST Act refers to export of goods or services or both also as "Zero Rated Supply" and does not exclude export of goods or services by any person from India.

10. It is submitted that the petitioner satisfies the ingredients of "Export of Service" as defined in Section 2(6) and referred to Section 16(1)(a) of the IGST Act and that once the petitioner satisfies the ingredients of "Export of Service" as defined in Section 2(6) and if the transaction is of export of service, then Section 16(1)(a) of IGST Act would treat such supply of service as a "Zero Rated Supply" as the Section covers all "Export of Service" and therefore, export of Service by SEZ unit is not excluded from the same.

11. It is further the case of the petitioner that even when such supplies outside the country are made to a recipient and is treated as exempted supply under Section 16(2) of the IGST Act. When no tax is payable, Input Tax Credit can be taken as per the statute. Therefore, the registered Zero Rate Supplier (i.e. the SEZ Unit) can discharge tax liability subject to Section 16(3) of the IGST Act wherein both the sub-provisions of

Section 16(3) of the IGST Act envisage claiming of refund of either unutilized Input Credit or refund of integrated tax paid as the case may be.

12. The learned Senior Counsel for the petitioner submitted that the denial of refund under Section 16(3)(b) of the IGST Act is unjustified as there is no prohibition under the said provisions of IGST Act from availing ITC by the petitioner.

13. The learned Senior Counsel further submitted that it is the duty of the Officers of the Department to guide and assist assessee with regards to availability of exemptions and taxation procedures and it is no part of their duty to deprive an assessee of the benefit available to them under law.

14. Therefore, the learned Senior Counsel for the petitioner submitted that the ground taken by the respondent in Notice for Rejection / Order of Rejection that being a SEZ unit, the petitioner is not liable to pay tax on export and hence, the petitioner is not entitled to file refund application is bad in law and facts and also, the same is devoid of any merit and hence, prayed that this writ petition may be allowed.

15. That apart, the learned Senior Counsel for the Petitioner relied on the Judgement of the Madurai Bench of this Court in the case of ***M/s.ATC Tires Private Ltd. Vs. Joint Commissioner of GST & Central Excise (Appeals) & Anr., (2022) 4 TMI 1194,*** wherein, it has been observed as follows:

> *"**42.** The purpose of granting refund on zero rated supply is to ensure that the exports are competitive in the international market and such transactions are not burdened with taxes.*
>
> ***43.** The export by the petitioner from its SEZ unit in Tirunelveli is a zero rated supply within a meaning of section 2(23) of the IGST Act, 2017 read with section 16 of the IGST Act, 2017. Once, it is concluded that it was a zero rated supply, refund in terms of section 16(3)(a) of the IGST Act, 2017 cannot be denied. Sub-sections (3) and (10) of section 54 of the Central Goods and Services tax Act, 2017 complement section 16 of the IGST, 2017.*
>
> ***44.** Section 54 of the Central Goods and Services tax Act, 2017 allows the refund of tax and includes refund in case of zero rated supply made without payment of tax. Proviso to section 54(3) of the Central Goods and Services tax Act, 2017 allows refund of unutilized input-tax credit of zero-rated supplies made without payment of tax.*
>
> ***45.** No refund of input-tax credit is allowed only if the supplier of goods or services or both avails of drawback in respect of Central tax or claims refund of the integrated tax paid on such supplies. This is admittedly not the case here.*
>
> ***46.** The petitioners export specifically falls under such category in proviso to section 54(2) of the Act. Proviso to rule 89(1) is only an exception to rule 89(1) of the Central Goods and Services tax Rules, 2017. There is no bar under rule 89(1) of the Central Goods and Services tax Rules, 2017 for refund of unutilized input-tax credit.*
>
> ***47.** As mentioned above, the very purpose of granting this refund is only to give incentive for exports and to reduce the burden of tax to make*

the exports more competitive in the international markets.

48. *Rule is not intended to deny the legitimate benefit available to an exported effecting zero rated supplies. In this connection, reference is made to the decision of the Honourable Supreme Court in Unichem Laboratories Ltd. v. Collector of Central Excise, Bombay, (2002) 145 ELT 502 (SC), wherein the Honourable Supreme Court held as follows:*
"12. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law—no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."

49. *The impugned order proceeds on the assumption that application for refund in respect of supplies to a special economic zone or a special economic zone developer, can be filed only by a supplier of the goods or services in terms of second proviso to rule 89(1) of the Central Goods and Services tax Rules, 2017.*

50. *Therefore, there is no merit in the impugned order passed by the respondent denying the benefit of refund of unutilized input-tax credit of zero rated supplies effected by the petitioner.*

51. *I am therefore inclined to allow this writ petition together with consequential relief to the petitioner. The writ petition thus stands allowed with the above observations. No costs."*

16. In support of his submissions, the learned Senior Counsel for the Petitioner has placed reliance on the following decisions:

(i) M/s.ATC Tires Private Ltd. Vs. Joint Commissioner of GST & Central Excise (Appeals) & Anr. reported in ***(2022) 4 TMI 1194***

(ii) Unichem Laboratory Vs. Collector of Central Excise, Bombay reported in ***(2002) 145 ELT 502 (SC)***

(iii) Suncham Trading Co. Vs. Commissioner of Customs reported in ***2018 (16) GSTL 209 (Mad)***

(iv) Britania Industries Ltd. Vs. Union of India reported in ***2020 (42) GSTL 3 (Guj)***

(v) Amit Cotton Industries Vs. Principal Commissioner of Customs reported in ***2019 (29) GSTL Guj***

(vi) Union of India Vs. Kamalakshi Finance reported in ***1992 Supp (1) SCC 443***

17. On the other hand, learned Senior Standing Counsel for the respondent submitted that challenging the order passed in ***M/s.ATC Tires Private Ltd. Vs. Joint Commissioner of GST & Central Excise (Appeals) & Anr.*** reported in ***(2022) 4 TMI 1194,*** the Department has preferred a Writ Appeal in W.A.(MD)No.1029 of 2024 before the Madurai Bench of this Court. It is stated that vide Order dated 19.06.2024, the Madurai Bench of this Court implicitly stayed the impugned Writ Court Order in W.A.(MD) No.1029 of 2023 by directing the petitioner not to take any coercive steps to implement the order impugned therein.

18. The contentions of the respondent in the counter affidavit are summarized hereunder:

(i) The Show Cause Notice has been issued by the respondent based on the collective reading of the provisions of CGST Act & Rules, 2017; IGST Act & Rules, 2017; SEZ Act, 2005 and SEZ Rules, 2006 and hence, the same is tenable in law.

(ii) There is no provision for availing ITC by SEZ Unit under the GST enactments as supplies to SEZ are exempted. Further, it is submitted that the supplier can claim refund of tax paid as per the provisions of the CGST Act read with Rule 89 of the CGST Rules, 2017.

(iii) It is submitted that the petitioner being a SEZ unit operating under the provisions of SEZ Act, 2005, there is no necessity for the petitioner to claim themselves as per the normal GST registrant as effecting "Zero Rated Supply" on payment of tax under the provisions of the IGST Act and resorting to refund under Section 54 of the CGST Act.

(iv) As per the second proviso to Rules 89(1) of the CGST Rules, 2017 which deals with the refund in respect to supplies of goods/services effected to SEZ units, it is only the supplier of goods/services who are eligible to claim refund and not the SEZ units.

(v) As per the provisions of Section 26 of SEZ Act r/w. Rule 30 of SEZ Rules, 2006, petitioner being a SEZ unit is entitled to the prescribed exemptions, drawback and concessions. Section 51(1) of the SEZ Act has an overriding effect over other Acts. Hence, as per the provisions of the SEZ Act, the petitioner being a SEZ unit is entitled to procure domestically/import input goods/services without payment of any taxes.

(vi) It is submitted that the petitioner's contention that being a registered person under the GST Act are entitled to avail Input Tax Credit (ITC) under Section 16 of the CGST Act, 2017 is not correct for the reason that there is no specific provision under the GST Act/SEZ Act which allows the unit to avail the Input Tax Credit. Further, the petitioners claim that they can utilise the Input Tax Credit available under the Electronic Credit Ledger for payment of tax on supply of service is also not correct as they are not eligible to avail Input Tax Credit (ITC).

19. Further, the learned Senior Standing Counsel for the respondent has placed reliance on the following decisions:

(i) Adani Power Ltd. Vs. Commissioner of Central Tax – GST Telengana reported in ***2020 (372) ELT 266 (T)***

(ii) Vaachi International Pvt. Ltd. reported in ***2020 (36) GSTL 38 (A.A.R.GST)***

(iii) Shyamragu & Co. (India) Pvt. Ltd. Vs. Union of India reported in ***2010 (256) E.L.T.193 (Kar.)***

20. In reply, the learned Senior Counsel for the petitioner submitted that in the case of ***Britannia Industries Ltd. Vs. Union of India*** reported in ***2020 (42) G.S.T.L.3 (Guj.),*** the Division Bench of Gujarat High Court had rendered a decision in favour of SEZ Unit. However, as against the said decision, the Department had preferred a Special Leave Petition in SLP Diary No.19737 of 2021 before the Hon'ble Supreme Court. Later, the said SLP was renumbered as Special Leave to Appeal (C) No.13431 of 2021. On 29.07.2024, the Hon'ble Supreme Court disposed of the said petition as not pressed since the tax effect of the subject matter of said petition was falling below the threshold contained in Circular dated 22.08.2019 of the Central Board of Indirect Tax & Customs.

21. I have considered the arguments advanced by the learned counsel on either side and I have perused the materials available on record.

22. The petitioner has multiple establishments. It is therefore required to obtain separate registration for each of the establishments in terms of Section 25(5) CGST Act. Under Section 2(61) of the CGST Act, the Head Office of the petitioner is an "Input Service Distributor". It is also required to be registered under Section 25(5) of the CGST Act. Sections 25(5) and 2(61) of the CGST Act are usefully extracted below:

Section 25(5) of the CGST Act	Section 2(61) of the CGST Act
25. Procedure for registration.— *(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.*	***2. Definitions.****— In this Act, unless the context otherwise requires,—* *(61) -Input Service Distributor means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;*

23. The respondent Department had denied the benefit of refund to the petitioner claimed under Section 16(3)(b) of the IGST Act i.e., refund of

tax paid primarily on the ground that petitioner being a Special Economic Zone (SEZ) Unit, the petitioner was not entitled to avail Input Tax Credit (ITC) on the Input Tax Credit distributed by its Head Office as an Input Service Distributor.

24. As per Section 16(1)(a) of the IGST Act, export or supply of goods or services to a SEZ developer or a SEZ unit is a "Zero Rated Supply". As a person making Zero Rated Supply, petitioner claimed refund under Section 16(3)(b) of the IGST Act as it stood during the period in dispute. The Input Tax Credit (ITC) distributed by the petitioner's Head Office as an Input Service Distributor was sought to be denied.

25. A reading of Section 16(3)(b) of the IGST Act as it stood during the period in dispute makes it clear that a registered person who makes a "Zero Rated Supply" as defined in Section 2(23) of the IGST Act, 2017 r/w. Section 16 of the said Act is eligible to claim refund of tax paid, in accordance with the provisions of Section 54 of the CGST Act or the rules made thereunder and subject to such conditions, safeguards and procedure as may be prescribed under either of the following two situations:

(a) Where there is a supply goods or services or both under "bond" or "Letter of Undertaking", subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) Where there is a supply of goods or services or both on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, subject to such conditions, safeguards and procedure as may be prescribed.

26. In the present case, the petitioner is a recipient of certain input services from its own sister concern and its Head Office. Hence, the petitioner is eligible to avail Input Tax Credit (ITC) passed on which was utilized. The supplying units of the petitioner have not availed exemption under Section 16(2) of the IGST Act. Instead, they had paid tax out of the surplus credit and passed on the same to the petitioner. Thus, the petitioner was entitled to avail Input Tax Credit under Section 19 of the CGST Act and was also entitled to the benefit of refund under Section 16(3)(b) of the IGST Act.

27. There is no bar under the provisions of IGST Act which would prohibit the petitioner from claiming refund of Input Tax Credit (ITC) or tax paid merely because the petitioner is a SEZ unit. As a SEZ unit, the petitioner was also required to obtain separate registration in terms of

Section 25(5) of the CGST Act. Thus, Input Tax Credit (ITC) which is availed by the petitioner as a SEZ unit could be utilized by it for discharging the tax liability to avail the benefit of refund claim under Section 16(3)(b) of the IGST Act as it stood during the period in dispute r/w. Section 54 of the CGST Act.

28. Further, the purpose of granting such refund under the respective GST enactments is to incentivise exports and to reduce the burden of tax on the exports by making exports competitive in the international markets.

29. The Hon'ble Supreme Court in ***Unichem Laboratories Ltd. Vs. Collector of Central Excise, Bombay*** reported in ***2002 (145) E.L.T 502 (S.C)*** has held that it is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. The relevant portion of the said decision reads as under:

> *"13. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law – no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."*

30. As export incentives ought to be given, refund of tax paid by the petitioner cannot be denied by the Respondent Department to the petitioner. There could be an element of doubt as to whether the units which supplied services have availed the benefit independently under sub-section (1)(a) or (1)(b) to Section 16 of the IGST Act. This would require a verification.

31. Under these circumstances, the petitioner may obtain a necessary certificate from the jurisdictional Assessing Officer to the effect that the petitioner's units which supplied services have not independently received any of the export incentives under Section 16(1) of the IGST Act. Subject to such verification, the refund claim of the petitioner may be allowed by the Respondent.

32. In view thereof, the impugned Notice of Rejection of Refund dated 10.03.2021, the Order of Rejection of Refund dated 01.03.2021 and Show Cause Notices dated 29.06.2021 which are impugned in these writ petitions are liable to be quashed.

33. Accordingly, Notice for Rejection of Refund dated 10.03.2021 impugned in W.P.No.10770 of 2021; Order of Rejection of Refund dated 01.03.2021 impugned in W.P.Nos.12864 & 12865 of 2021 respectively and Show Cause Notices dated 29.06.2021 impugned in W.P.Nos.14674, 14677, 14679 & 14680 of 2021 are hereby quashed.

34. Consequently, the respondent is directed to refund the petitioner with the amount of Integrated Goods & Services Tax (IGST) paid by the petitioner on the export of services, after verifying that no benefit was independently availed by the petitioner's supplying units under Section 16(1)(a) & 16(1)(b) of the IGST Act, within a period of three months from the date of receipt of a copy of this order.

35. With the above direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

13.12.2024

mrr
Index : Yes/No
Neutral Citation : Yes/No
Speaking Order (or) Non-Speaking Order

To

The Assistant Commissioner,
Office of the Assistant Commissioner of GST & CE,
Sholinganallur Division,
Chennai – South Commissionerate,
No.692, MHU Complex, 8th Floor,
Nandanam, Anna Salai, Chennai – 35.

C.SARAVANAN, J.

mrr

W.P.Nos.10770, 12864, 12865, 14674,
14677, 14679 & 14680 of 2021

13.12.2024