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

\+ W.P.(C) 8472/2024

M/S BAWA INTERNATIONAL .....Petitioner

Through: Mr. Shivashish Karnani, Mr. Akshay Grover & Mr. Brijesh Varma, Advs.

versus

JOINT COMMISSIONER CENTRAL GOODS AND SERVICE TAX APPEAL I DELHI & ANR......Respondent

Through: Mr. Anish Roy, SSC with Mr. Girish Agarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **16.10.2024**

1. The instant writ petition had been preferred for the framing of an appropriate direction commanding the respondents to release the refunds as claimed by the writ petitioner and as a consequence of the Order-in-Appeal dated 18 October 2022.

2. Undisputedly, that Order-in-Appeal has neither been questioned nor assailed by the respondents.

3. Pursuant to the notice, which was issued on the instant writ petition, a reply has been filed by the Deputy Commissioner concerned and who, in Para 15, avers as follows: -

> "15. That after thoroughly reviewing the issues raised in RFD-08 dated 28.10.2021 and above-mentioned Order-in-Appeal dated 18.10.2022, it has been determined that the said order is not legally tenable and is required to be set aside on the following grounds:
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> There is mismatch in the amount of turnover of zero-rated supply i.e. Rs. 1,30,79,341.39/- shown in Statement 3A and the actual FOB value i.e. Rs.1,28,68,841/- reflected in ICEGATE. As per para 47 of Circular no. 125/44/2019-GST dated 18.11.2019, for

calculating the eligible amount of refund the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account. Therefore, FOB value of the zero rated supply ie. Rs.1,28,68,841/- should have been taken in place of Rs. 1,30,79,341.39/- being the lower of the two values for calculation of refund amount. Thus, the Appellate order has arrived at incorrect figures of refund based on invoice value, whereas the FOB value of the goods is the correct value for determination of refund amount.

b. Invoices mentioned in Annexure-B at Sr. No. 33,34,35,36,39, 42,46,47,52,53,54,57,59,62,127,160,161 are not reflected in GSTR-2A for the relevant period. As per Para 5 of Circular No.135/05/2020- GST dated 31.03.2020, the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Although, the appellate authority has held that ITC in respect of invoices at sr. no. 33,34,35,39, 42,46,47,52,53,54, 57,59,161 of Annexure B are not admissible to the taxpayer, however, no findings with regard to invoices at Sr. No. 36 and 160 has been given by the Appellate Authority and in its final findings these invoices have been included for computation of grant of refund.

C. The refund in respect of shipping bill no. 5141775 dated 12.09.2020 has also been claimed which do not pertain to refund period - October 2020 to March 2021. As per the refund mechanism prescribed in the Act and Rules, net ITC permits inclusion of only the ITC availed on the inputs and input services during the relevant period i.e. the period for which the claim has been filed as defined in Rule 89(4)(f) of CGST Rules 2017. In this context, the Appellate Authority has referred to the Para 61 of the Circular no. 125/44/2019 dated 18.11.2019. However, the said para covers the circumstances where invoice is issued in a particular month and the goods are received in the subsequent month. Whereas, in this case the taxpayer has included the supply which is beyond the scope of relevant period defined as above."

4. We find ourselves unable to either appreciate or countenance how such an untenable position could have been taken by the Deputy Commissioner, and that too, by way of an affidavit filed before the High Court.

5. As is manifest from a reading of Para 15, the sole ground on

which the refund is sought to be contested is the opinion of the Deputy Commissioner that the Order-in-Appeal is not legally tenable.

6. Since the order of 18 October 2022 has admittedly attained finality, the stand as taken cannot possibly be sustained. The claim of the petitioner for grant of refund is clearly merited. It would consequently be entitled to refund along with statutory interest.

7. The claim of the petitioner for grant of statutory interest would have to be examined in light of the decision rendered by the Court in **Bansal International v Commissioner of DGST and Anr**. [2023 SCC OnLine Del 7406] and where it was held:-

> "32. The learned counsel also informed this Court that the interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of sixty days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of sixty days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of sixty days of the filing of such an application - that is, the application filed pursuant to the orders of the appellate fora and not the first application.
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> 33. It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of

> interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days from the date of his application filed pursuant to its entitlement to refund claim attaining finality."

8. We, accordingly, allow the instant writ petition and direct the respondents to attend to the refund claim as made by the writ petitioner forthwith along with statutory interest as payable.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 16, 2024/*neha*