21.05.2025
Item No.8
gd/ssd

MAT/198/2025
COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX, HOWRAH CGST AND CX COMMISSIONERATE AND ANR.
VS
ABHISHEK RAMISETTY
IA NO: CAN/1/2025, CAN/2/2025

Mr. Uday Sankar Bhattacharya,
Mr. Tapan Bhanja
..for the Appellants.

1. This intra court appeal by the revenue is directed against the order dated 3rd October, 2024 in WPA 19890 of 2024.

2. The said writ petition was filed by the respondent herein for a direction upon the appellant/department to process the refund application and refund the amounts claimed therein in the light of Section 54 of the CGST Act along with interest. The writ petition has been disposed of by directing the appellant to take appropriate steps and rectify the deficiencies pointed out by the department in the Form GST RFD – 03 and such application was directed to be processed within a time frame.

3. Aggrieved by the same, the appellants are before this court by way of this appeal.

4. The appeal is time barred as there is a delay of 91 days in filing the appeal.

5. When the appellant/department alleges that the respondent/assessee was not diligent in processing his application, they also should have been diligent in processing the appeal and should have filed the appeal within the period of limitation. So whatever applies to the assessee will equally apply to the department.

6. Therefore, we would have been well justified in dismissing the application for Condonation of delay.

7. However, since we have elaborately heard Mr. Uday Sankar Bhattacharya, learned senior standing counsel assisted by Mr. Tapan Bhanja, learned standing counsel for the department, we are persuaded to exercise discretion in the matter and condone the delay in filing the appeal.

8. Accordingly, the application in CAN 1 of 2025 is allowed.

9. The undisputed facts are that the respondent/writ petitioner filed three refund applications in the statutory format, namely, GST RFD – 01 for the period April, 2020 to March, 2021, April, 2021 to March, 2022 and April, 2022 to March, 2023. These applications were made on 19.5.2023, 20.5.2023 and 22.5.2023. The department uploaded a deficiency memo in GST RFD – 03 on 26.5.2023, 30.5.2023 and 30.5.2023 by selecting the option “supporting documents attached are incomplete”.

10. According to the writ petitioner, no details of the purported deficiency in the refund applications were uploaded in the common portal by the department and in this regard, the screen shots of the common portal were filed to show that the deficiencies were not communicated. On account of this, the writ petitioner would contend that they were unable to decipher as to on what grounds the refund applications were returned as defective. After a reasonable period of time the writ petition was filed. In the writ petition the deficiencies based on which the applications for refund would not be processed was submitted before the learned writ court by the learned standing counsel for the department and the statutory provisions were referred to, namely, the second proviso to Section 54(3) and Section 54(3)(ii) of the Act and Rule 89(5) of the CGST Rules, 2017 and Rule 89(2)(h) was also referred to and it was pointed out that these are the deficiencies. In the portal all that the assessee was informed under the Deficiency Column "supporting documents attached are incomplete".

11. Therefore, it is not in dispute that the assessee was not made known of the defects which they are required to rectify. This is not only required for the purpose of compliance of the principles of natural justice but it is a statutory mandate in terms of sub-rule (3) of Rule 9 which mandates that where any

deficiencies are noticed the proper officer was communicated to the application in Form GST RFD – 03 through the common portal electronically, requiring him to file a fresh refund application after rectifying of such deficiencies. If the deficiencies noticed are not communicated to the assessee, obviously they would not be in a position to rectify the deficiencies and file a fresh refund application after rectification.

12. Therefore, the learned Single Bench was fully justified in permitting the writ petitioner to cure the deficiencies and submit the refund application which has been directed to be processed.

13. As could be seen from the impugned order the deficiencies are all not substantive in nature but more procedural in nature. If that be so, the assessee should be given an opportunity to rectify the deficiencies.

14. Therefore, we are of the view that the direction issued by the learned Single Bench was just and proper and calls for no interference.

15. Since the statute mandates a fresh refund application after rectification of deficiencies has to be filed, we slightly modify the direction issued by the learned Single Bench by directing the respondent/writ petitioner to rectify all the deficiencies pointed out by the department which was placed before the learned writ court and recorded in the impugned order and

upon fully rectifying the defects, a fresh application for refund shall be uploaded by the respondent/writ petitioner within a period of two weeks from the date of receipt of the server copy of this order.

16. If the portal is unable to accept online filing, then the respondent/writ petitioner is permitted to file a manual application which shall be processed in terms of the direction issued by the learned Single Bench.

17. With the above direction, the appeal is dismissed without any costs.

18. It is made clear that this judgment and order shall not be treated as a precedent but has been passed considering the peculiar facts and circumstances of the case.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)