16.06.2025
Sl. No.02
Ct No. 3
SG

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

W. P. A. 701 of 2023

Jaigaon Steel Centre
Vs.
Assistant Commissioner of CGST &Central Excise, Cooch Behar Division and Ors.

Mr. Sandip Choraria,
Mr. Rajeev Parik.
… for the petitioner

Mr. Ratan Banik,
Mr. Bishwa Raj Agarwal.
… for the respondents

1. The Petitioner has preferred the present writ petition under Article 226 of the Constitution of India seeking quashing and setting aside of the impugned order dated 05.01.2023, passed by the Additional Commissioner, CGST & Central Excise, Siliguri Appeal Commissionerate (Respondent No. 2) in Appeal No. GAPPL/ADC/GSTD/108/2021/SLG-Appeal, in exercise of powers under Section 107(11) of the Central Goods and Services Tax Act, 2017 (hereinafter “CGST Act”). Vide the said impugned order, Respondent No. 2 reversed the refund order dated 11.03.2021 passed by the Assistant Commissioner (Respondent No. 1), whereby the Petitioner’s refund claim had been sanctioned.

2. The Petitioner is engaged in the business of export and resale of iron and steel products and regularly undertakes export activities, including zero-rated supplies, in compliance with the provisions of the CGST Act and allied laws. In December 2020, the Petitioner exported goods to Bhutan via Hatisar Land Customs Station (LCS), under the administrative jurisdiction of Jaigaon Customs. Notably, at the material time, Jaigaon LCS was a Non-EDI (Electronic Data Interchange) port, thereby necessitating manual documentation including shipping bills and Export General Manifest (EGM).
3. In respect of the said exports, the Petitioner submitted a refund application dated 24.02.2021 claiming refund of unutilized input tax credit to the tune of ₹15,86,000/- each under the CGST and SGST Acts. Respondent No. 1, vide separate orders dated 09.03.2021 and 11.03.2021, sanctioned the refund in full.
4. Subsequently, on 02.09.2021, the Petitioner received a Review Order wherein Respondent No. 4 directed Respondent No. 1 to file an appeal challenging the refund order dated 11.03.2021. In compliance, Respondent No. 1 preferred an appeal in Form GST APL-03 before Respondent No. 2, primarily on the ground that the details of the 12 shipping bills were not available.

5. Pursuant thereto, Respondent No. 2 passed the impugned order dated 05.01.2023, wherein it was held that the refund amount of ₹6,97,835/- each under CGST and SGST Acts had been erroneously granted, and the same was directed to be reversed and recovered from the Petitioner. Being aggrieved by the same, the Petitioner preferred the present writ petition.

6. Although the impugned appellate order is appealable before the Appellate Tribunal under Section 112 of the CGST Act, 2017, the Petitioner has invoked the writ jurisdiction of this Court in view of the admitted fact that the Appellate Tribunal under the said statute is non-functional, thereby rendering the statutory remedy inefficacious.

7. The principal contention urged on behalf of the Petitioner is that at the relevant time, several land customs ports, including Jaigaon LCS, did not possess EDI capabilities to transmit data electronically to the ICEGATE portal. Consequently, the shipping bills in question were manually processed and not uploaded on the ICEGATE system. However, the Petitioner has actually exported the said goods as mentioned in the said 12 shipping bills. In support thereof, the Petitioner placed reliance on letters dated 14.07.2021 and 06.10.2021 issued

by the Office of the Superintendent, Land Customs Station, Hatisar, which details out the verified EGM and shipping bill details maintained manually in the official records. The said documents, according to the Petitioner, were submitted before the Appellate Authority, but were not considered while passing the impugned order dated 05.01.2023.

8. Per contra, Mr. Banik, learned Standing Counsel appearing for the Respondents, refuted the aforesaid contentions and submitted that the Appellate Authority had duly considered the materials placed on record, including the letters and documents relied upon by the Petitioner, and passed a reasoned and speaking order after due application of mind.

9. This Court has duly heard the submissions advanced by learned counsel appearing on behalf of both the Petitioner and the Respondents. The Court has also meticulously examined the materials placed on record, including the relevant documentary evidence.

10. Upon the perusal of the impugned order dated 05.01.2023, it emerges that Respondent No. 2, the Appellate Authority, allowed the said Appeal on the ground that the Petitioner had failed to upload the soft copies of the shipping bills, as mandated under CBIC Circular No.

125/44/2019-GST dated 18.11.2019. The Petitioner had instead submitted only a scanned copy of a self-declaration, wherein all twelve (12) shipping bills having a cumulative export value of ₹83,28,103/-were listed. In the absence of the physical or electronically verifiable copies of the said shipping bills, Respondent No. 2 did not treat the self-declaration as sufficient proof of export, and consequently disallowed the refund claim of the Petitioner pertaining to the aforesaid 12 shipping bills.

11. It is not in dispute that the Petitioner did not furnish physical copies of the aforementioned shipping bills. However, the Petitioner produced two letters dated 14.07.2021 and 06.10.2021, issued by the Office of the Superintendent, Land Customs Station (LCS), Hatisar. These letters comprehensively enumerate the verified export invoices pertaining to the Petitioner and certify, on the basis of the official records maintained at LCS Hatisar, that all goods mentioned in the said invoices had indeed been exported from Hatisar LCS. In the considered view of this Court, such certification by a competent customs authority, based on contemporaneous official records, constitutes reliable and adequate proof of export.

12. In terms of Section 54(3) of the Central Goods and Services Tax Act, 2017, an assessee making zero-rated supplies without payment of tax is entitled to claim refund of unutilized input tax credit. Given that the Superintendent of LCS Hatisar has unequivocally certified the export of goods by the Petitioner under the said invoices, the refusal by Respondent No. 2 to treat such certification as proof of export appears legally untenable. Therefore, this Court is of the considered opinion that the impugned order suffers from material irregularity and is liable to be interfered with.
13. In light of the foregoing discussion, the impugned order dated 05.01.2023, passed by the Additional Commissioner, CGST & Central Excise, Siliguri Appeal Commissionerate, is hereby quashed and set aside.
14. The Appellate Authority is directed to rehear the matter in Appeal File No. GAPPL/ADC/GSTD/ 108/ 2021/SLG-Appeal afresh, while treating the letters dated 14.07.2021 and 06.10.2021 issued by the Superintendent, Land Customs Station, Hatisar, as valid documentary proof of export, insofar as they cover the shipping bills/invoices enumerated therein. However, if any particular shipping bill is not reflected in the said letters, the Appellate Authority shall be at

liberty to reject such claim to that limited extent, treating it as unsupported by requisite proof of export.

15. The Appellate Authority shall afford the Petitioner/assessee or his authorized representative a reasonable opportunity of personal hearing before passing a fresh order in accordance with law. The entire exercise shall be completed expeditiously and preferably within a period of 4 weeks from the date of communication of this order.

16. With the above directions, the present writ petition is disposed of.

17. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

18. There shall be no order as to costs.

19. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)