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

Date of decision: 3rd April, 2025

+ **W.P.(C) 3824/2025**

SHALENDER KUMAR

.....Petitioner

Through: Mr. Sidhant Sarwal, Adv.

versus

**COMMISSIONER DELHI WEST CGST COMMISSIONERATE &
ORS.**

.....Respondents

Through: Mr. Gibran Naushad, Sr. Standing
Counsel with Mr. Harsh Singhal & Mr.
Suraj Shekhar Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226/227 of the Constitution of India challenging the order bearing Order No. 04/2024-25 dated 14th January, 2025 and the Review Order bearing No. 12/2023-24 dated 21st July, 2024, passed by the Commissioner, Delhi West, CGST Commissionerate- Respondent No. 1 under the Central Goods And Service Tax Act, 2017 (*hereinafter referred as the 'CGST Act, 2017'*).
3. The Petitioner in the present case is engaged in the wholesale trade and export of FMCGs and is registered with the GST Department bearing GSTIN-07ANZPK3951A1ZT.
4. The Petitioner was granted refund by the Appellate Authority for the period December, 2022 vide Order in Appeal dated 17th January, 2024,



bearing No. 246/ADC/Central Tax/Appeal-II/Delhi/2023-24 wherein it was held that the claim of the Petitioner was genuine and legitimate and the Petitioner was eligible for refund as the same satisfied the mandatory conditions prescribed under Section 16(2) of the CGST Act, 2017. However, the said refund was not processed in favour of the Petitioner.

5. The background of the case is that a show cause was issued upon the Petitioner dated 23rd June, 2023 as to why the refund claim filed by him should not be rejected on the ground that the L1 and L2 suppliers' licences as mentioned in the show cause were cancelled. A reply was submitted by the Petitioner and an Order-in-Original dated 26th September, 2023 was passed by the Adjudicating Authority. The operative portion of the said order of the Adjudicating Authority is set out below:

"I, hereby Reject refund for an amount Rs.15,15,499.9/- (IGST-Rs.15,15,499.9/- + CGST-Rs.0/- + SGST-Rs.0/-) and sanction refund amount Rs.0/- under Rule 92(1), 92(3) & 92(4) of CGST Rules 2017 read with sub section 5 of Section 54 of CGST Act, 2017 to M/s SHAHJI ENTERPRISES with GSTIN-07ANZPK3951A1ZT with a registered place of business located at 11th FLOOR, OFFICE NO.1110, Pearl Beast Height 2, PITAMPURA ROAD, PITAMPURA, Netaji Subhash Place, New Delhi, North West Delhi, Delhi, 110034."

6. This order was appealed against by the Petitioner. In the appeal, the Appellate Authority held in favour of the Petitioner and allowed the refund in the following terms:

"8. Therefore, I hold that the adjudicating authority has denied rightful refund of the tax paid on export of goods to the appellant on the grounds which are actually against the available statute and also contrary to the judgments of Hon'ble Court and Hon'ble Supreme"



Court as discussed supra. As such, the adjudicating authority has erred in rejecting the appellant's refund claim amounting to Rs. 1815500/-. The impugned order passed by the adjudicating authority is neither legal nor maintainable in law as such the same is liable to be set aside and the appellant's appeal is liable to be allowed. Accordingly, I pass the following order:

ORDER

9. The appeal filed by M/s Shahji Enterprises (Legal Name: Shalender Kumar), 11th Floor, Office No. 1110, Pearl Best Height 2, Pitampura Road, New Delhi 110034 against Order-in-Original No. ZL0709230332191 dated 26.09.2023 is hereby allowed. The impugned order dated 26.09.2023 is set aside as discussed supra. The appeal is disposed of in terms of Section 107(12) of CGST Act, 2017.”

7. The Department decided to file a review of the said Appellate Authority's order and also gave an opinion under Section 54(11) of the CGST Act, 2017, that processing the refund now would be contrary to the interest of the revenue. The operative portion of the review order dated 21st July, 2024 and the order dated 14th January, 2025 are set out below:

“Operative portion of the Review Order dated 21st July, 2024

7. Accordingly, in exercise of the power vested upon me under Section 112(3) of the CGST Act, 2017 read with Rule 111(1) of the CGST Rules 2017, I hereby authorize the Assistant Commissioner, CGST Division-Pitampura, Delhi West Commissionerate and direct him to file an appeal against the Order in Appeal No. 246/ADC/Central Tax/Appeal-11/Delhi/2023-24 dated 17.01.2024 in respect of M/s Shahji Enterprises (Legal Name: Shalender Kumar), GSTIN:07ANZPK3951A1ZT before the GST Appellate Tribunal, Delhi (Competent Appellate Tribunal, as may be constituted), with prayer that:



- i. The Order in Appeal No. 246/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 17.01.2024 passed by the Appellate Authority, may be set aside;**
ii. Any other orders as deemed fit and proper may be passed.

Operative portion of the Impugned Order dated 14th January, 2025

In terms of the power vested in me under section 54(11) of the CGST Act, 2017, I withhold the further processing and sanction of refund filed by the taxpayer M/s. Shahji Enterprises(Legal Name: Shalender Kumar), 11th Floor, Office No 1110, Pearl Best Height 2, Pitampura Road, Pitampura, Netaji Subhash Place, New Delhi-110034 vide ARN No. AA0702240037931 dated 02.02.2024 consequent to passing of Orders-in-Appeal No. 246/ADC/Central Tax/Appeal-II/Delhi/2023-24 dated 17.01.2024 till the finality of the Appellate proceedings before GSTAT or High Court or Supreme Court against said order or further orders passed by these forums and appealed against before the next Higher Appellate forum, as grant of refund at this stage will adversely affect the revenue in said appeal on account of the malfeasance committed as discussed supra.”

8. Ld. Counsel for the Petitioner submits that the Appellate Authority's order has not been challenged or set aside by any forum and thus, it still stands. No order has also been passed in the Review. The opinion under Section 54(11) of the CGST Act, 2017, is invalid and the refund ought to be processed in accordance with the Order passed by Appellate Authority.
9. Mr. Naushad, Id. Counsel appearing for the Revenue Department submits that the Department intends to file an appeal against the Order-in-



Appeal dated 17th January, 2024. However, since there is no Appellate Tribunal as on date, the appeal has not been filed.

10. Ld. Counsel for the Petitioner - Mr. Siddhant Sarwal relies upon the decision of the Coordinate Bench of this Court in ***W.P.(C) 14719/2022*** titled ***G.S. Industries v. Commissioner Central Goods and Services Tax Delhi West & Ors*** . to argue that the processing of refund cannot be held back.

11. Mr. Naushad, Ld. Counsel seeks to distinguish the ***G.S. Industries*** (Supra) on the ground that in the said case, there was no opinion under Section 54(11) of the Act.

12. Section 54(11) of the CGST Act, 2017, reads as under:

*“Section 54 - xxx
Section 54(11) - Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.”*

13. A perusal of Section 54(11) of the Act would show that the refund can be held back on the satisfaction of the following two conditions –

- (i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and
- (ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.



14. In the opinion of this Court the Department's opinion under Section 54(11) cannot be relied upon on a standalone basis. In the absence of an appeal or any other proceeding pending, challenging the order of the Appellate Authority, the opinion under Section 54(11) cannot result in holding back the refund. The refund having been permitted by the Appellate Authority and no order in review having been passed, the Department cannot hold back the refund. In **G.S. Industries (supra)** the Coordinate Bench has observed as under:

“xxx xxx xxx

7. *The petitioner responded to the said Show Cause Notices. Petitioner's explanation was not accepted and by a separate order dated 14.12.2020, the applications for refund were rejected.*

8. *The petitioner filed separate appeals impugning the orders-in-original dated 14.12.2020, which were disposed of by a common order dated 03.01.2022 (Order-in-appeal No.209-210/2021-2022). The Appellate Authority allowed the petitioner's appeal. It accepted that the petitioner was in existence at the material time, and the findings contrary to the same were erroneous. The Appellate Authority relied upon certain documents, including electricity bills, income tax returns etc. filed by the petitioner. The Appellate Authority also found that the Adjudicating Authority had not provided any basis for observing that the product manufactured by the petitioner required very less or no brass at all.*

9. *Since the petitioner succeeded in its appeal, the petitioner is entitled to the refund as claimed. However, notwithstanding the same, the refund has not been disbursed.*

10. *Ms. Narain, learned counsel appearing for the respondent, submits that the respondent has decided to challenge the Order-in-appeal dated 03.01.2022, and*



the Commissioner has passed an order dated 19.05.2022, setting out the grounds on which the appeal is required to be preferred against the Order-in-appeal.

11. The principal question that falls for consideration by this Court is whether the benefit of Order-in-appeal dated 03.01.2022 can be denied to the petitioner and the refund amount be withheld solely on the ground that the respondent has decided to file an appeal against the said order.

12. Concededly, the respondent has not filed any appeal against the order-in-appeal dated 03.01.2022, and there is no order of any Court or Tribunal staying the said order. Indisputably, the order-in-appeal dated 03.01.2022 cannot be ignored by the respondents solely because according to the revenue, the said order is erroneous and is required to be set aside.

13. Learned counsel for the parties also pointed out that the said issue is covered by the earlier decision of this Court in Mr. Brij Mohan Mangla Vs. Union of India & Ors.: W.P.(C) 14234/2022 dated 23.02.2023.

14. In view of the above, the present petition is allowed. The respondents are directed to forthwith process the petitioner's claim for refund including interest.

15. It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents prevail in their challenge to order-in-appeal dated 03.01.2022, the respondents would also be entitled to take consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law."

15. In view of this position, the refund in favour of the Petitioner would be liable to be allowed in terms of the order passed by the Appellate Authority.

16. It is, however, made clear that if in law the Department can still challenge the said Appellate Authority's order, the processing of refund in



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terms of the today's order of this Court shall be subject to the decision in any appeal. The refund shall be processed along with interest in terms of Section 56 of the CGST Act, 2017, within a period of two months.

17. In the opinion of this Court, considering the fact that refund amounts are payable with interest for the delayed period for paying the refund, it would in fact be contrary to the interest of the Department itself to hold back the refund inasmuch as if any appeal is filed and the order of the Appellate Authority is reversed, then the same would also bind the Petitioner.

18. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 3, 2025

Rahul/ss