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

\+ W.P.(C) 17773/2024

M/S GLOBAL OPPORTUNITIES PRIVATE LIMITED .....Petitioner

Through: Mr. Sparsh Bhargava, Ms. Ishita Farsaiya, Ms. Vanshika Taneja, Advs.

versus

SALES TAX OFFICER CLASS II/ AVATO .....Respondent

Through: Mr. KG Gopal Krishnan, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **18.02.2025**

1. This writ petition has been preferred seeking the following reliefs:

> "i. issue a writ, order or direction, in the nature of mandamus directing the Respondent to issue refunds of IGST along with interest pursuant to the applications filed to give effect to the Appellate Orders dated 10.08.2024 and 04.10.2024 issued by the Appellate Authority for the period February 2018 to July 2018 and November 2018 to March 2022, the details of which are stated in **Annexure P - 4**;
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> ii. issue a writ, order or direction, in the nature of mandamus directing the Respondent to process the refund applications pending for grant of refund of IGST and issue refund along with interest for the period April 2022 to March 2023, the details of which are stated in **Annexure P - 4;**
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> iii. For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. The petitioner is essentially aggrieved by the failure on the part of the respondents to issue refunds and which had arisen consequent to the appellate orders dated 10 August and 04 October 2024. We had

while examining the petition initially on 27 January 2025 taking note of the principal issues which arise. That order is extracted hereinbelow:

> "Notice. Since the respondents are duly represented, let a reply be filed within a period of two weeks from today. The petitioner shall have a week thereafter to file a rejoinder affidavit.
>
> We take note of the submission advanced by the respondent who draws our attention to Section 112(3) of the Central Goods & Services Tax Act, 2017 [**"CGST Act"**] and the decision taken by the Commissioner to prefer an appeal against the appellate orders dated 10 August 2024 and 04 October 2024.
>
> However, and undisputedly, that provision does not result in orders passed in favor of the assessee being placed in abeyance even in a case where an appeal may have been either preferred or is decided to be instituted. Matter requires consideration."

3. The prima facie opinion that we had expressed finds resonance in the judgment of this Court in **Alex Tour & Travel (P) Ltd. v. Commr. (CGST)**[1] and where while dealing with an identical stand taken by the respondents, the Court had held as follows:

> "**17.** Undisputedly, the Revenue is entitled to file an appeal under section 112 of the Central Goods and Services tax Act, 2017, within a period of three months from the date of the order. We are informed that the said period has been extended as the Appellate Tribunal has not been constituted as yet. However, the respondent cannot refuse to comply with the appellate orders on this ground.
>
> **18.** We are unable to accept that the Revenue can ignore an order passed by the appellate authority on the ground that it proposes to appeal the said order.
>
> **19.** Suffice it to note that there is no order passed by any competent court, staying the implementation of the orders-in-appeal passed by the appellate authority. The Revenue has also taken no steps for securing orders to that effect.
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> **20.** We are also unable to appreciate the insistence on the part of the Revenue for the appellant to file fresh applications for the refund.
>
> **21.** Mr. Singla fairly states that fresh applications for refund or response to show-cause notices are not necessary, considering that the proceedings emanated from the petitioner filing applications for refund, which culminated in orders-in-appeals passed by the appellate authority.
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> **22.** In view of the above, the refund applications filed by the petitioner to seek implementation of the orders-in-appeal and the

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[1] 2023 SCC OnLine Del 2709

deficiency memos shall be treated as non est.

23. The appellate authority has not granted any interest on the amount of refund due. However, more than one year has elapsed in case of order- in-appeal dated February 8, 2022 and almost ten months have elapsed in respect of orders-in-appeal dated July 28, 2022. Plainly, the petitioner cannot be denied interest as payable for the period of delay in refunding the amount due to the petitioner.

24. In view of the aforesaid, we consider it apposite to hold that the petitioner is also be entitled to interest in accordance with law."

4. In **Kunal International v. Union of India**[2], the petitioner similarly sought a refund granted by the appellate authority and which was withheld by the respondents citing their intention to appeal before the Appellate Tribunal that was yet to be constituted.

5. The Court, relying on *Alex Tour and Travel*, held that the respondents could not ignore the appellate order in the absence of any interim order having been passed and which may have relieved the respondents from complying with the order passed by the appellate authority. The Court thus while clarifying that the respondents' statutory remedies remain unaffected, directed the immediate release of the refund in the following terms:

"**4.** The petitioner grievance is that despite succeeding before the Appellate Authority, the respondents have not disbursed the refund.

5. The respondents have filed their counter-affidavit, *inter alia,* stating that the competent authority has reviewed the Order-in-Appeal dated 07.04.2021 and has directed that the appeal be filed before the Appellate Tribunal. However, the respondents have been unable to file an appeal as the Tribunal has not yet been constituted.

6. Mr. Ojha, learned counsel appearing for the respondents also referred to the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 issued by the Central Government in exercise of the powers under Section 172 of the CGST Act. He submits that in terms of the said order, the time period for filing an appeal before the Appellate Tribunal has been extended to three months or six months, as the case may be, after the President of the Appellate Tribunal enters office.

7. There is a serious controversy as to whether the Central Government in exercise of a power can extend the period of limitation as specified in the statute. However, it is not necessary for

[2] 2023 SCC OnLine Del 6374

this Court to examine the same in this petition. The controversy in this case relates to the reluctance of the respondents to comply with the order passed by the Appellate Authority. Notwithstanding that the respondents may have a right to appeal the order dated 07.04.2021 before the Appellate Tribunal, we are unable to accept that the respondents can ignore the said order and not comply with the same, without a competent authority or court staying the said order.

8. The issue involved in this petition is covered by the earlier decision of this Court in the case of *Alex Tour and Travel Private Limited* v. *Assistant Commissioner, CGST, Division-Janakpuri* : Neutral Citation : 2023 : DHC : 3303-DB.

9. In view of the above, the present petition is allowed and the respondents are directed to forthwith disburse the refund as sanctioned by the Appellate Authority in terms of the order dated 07.04.2021. It is, however, clarified that this order would not preclude the respondents from availing the statutory remedy against the said order in accordance with the law or seeking consequential orders for recovery of the amount disbursed if the respondents prevail in their remedies."

We thus find no justification in the stand taken by the respondents.

6. The writ petition is accordingly allowed. The respondents are directed to pass appeal effect orders forthwith and to process the claim for refund expeditiously.

7. We further direct the respondents to attend to prayer (ii) of the petition and consider the issue of release of refunds along with interest for the period April 2022 to March 2023. The said prayer may be duly examined and disposed of in accordance with law and preferably within a period of three weeks from today.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 18, 2025/*neha*