IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.11.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.23604, 23605 and 23607 of 2022

M/s. Lenovo (India) Pvt. Ltd.,
rep. by its Authorized Signatory
Mr.Seiyadou Ahamadou.

...Petitioner in all W.Ps.

Vs.

1. The Joint Commissioner of GST (Appeals-1)
O/o. the Commissioner of GST & Central Excise (Appeals-I)
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.

2. The Assistant Commissioner of GST and Central Excise,
Division I, Puducherry Commissionerate,
No.14, Municipal Street,
Azeez Nagar, Reddiyarapalayam,
Puducherry- 605 010.

3. The Central Board of Indirect Taxes and Customs,
rep. by its Chairman, having Office at
North Block, New Delhi- 110 001.

4. Union of India,
Ministry of Industry and Commerce,
rep. by its Secretary,
Department of Commerce (SEZ Division)
having Office at Udyog Bhawan,

New Delhi – 110 107. ...Respondents 1 to 4 in all W.Ps.

Prayer in W.P.No.23604 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for entire records relating to impugned order-in-Appeal No.222/2022 (GSTA-1) (JC) dated 26.07.2022 passed by the first respondent and to quash the same and to direct the second respondent to sanction the refund amount of Rs.84,80,988/- along with interest immediately.

Prayer in W.P.No.23605 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records relating to impugned order-in-Appeal No.203/2022 (GSTA-1) (JC) dated 29.06.2022 passed by the first respondent and to quash the same and to direct the second respondent to sanction the refund amount of Rs.1,63,25,141/- along with interest immediately.

Prayer in W.P.No.23607 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for entire records relating to impugned order-in-Appeal No.202/2022 (GSTA-1) (JC) dated 28.06.2022 passed by the first respondent and to quash the same

and to direct the second respondent to sanction the refund amount of Rs.2,92,80,806/- along with interest immediately.

For Petitioners in all W.Ps. : Mr.Raghavan Ramabadran
For M/s.Lakshmi Kumaran and Sridharan Attorneys

For Respondents 1 to 3 in all W.Ps. : Mrs.Hemalatha
Senior Standing Counsel

Common Order

Heard Mr.Raghavan Ramabadran, learned counsel appearing for the petitioner and Mrs.Hemalatha, learned Senior Standing Counsel for the respondents 1 to 3 and perused the materials placed on record. Since the fourth respondent, Ministry of Industry and Commerce, is only a formal party, notice to fourth respondent is dispensed with.

2. The challenge in these Writ Petitions is to the Order-in-Appeal passed by the first respondent, Joint Commissioner of GST (Appeals-1) dated i) 26.07.2022; ii) 29.06.2022 and iii) 28.06.2022 and to quash the same and consequently, to direct the second respondent, Assistant

Commissioner of GST and Central Excise to sanction the refund amount along with interest immediately.

3. Since the issue involved in all these three Writ Petitions is identical, all these Writ Petitions were heard together and disposed of vide this Common Order.

4. The facts of the case in short are as follows:-

i) The petitioner is engaged in manufacture/import of Computers (Desktops/Laptops etc.) and supplying the said goods and related services to units in Special Economic Zones (in short, SEZ Unit). As per Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act, in short) exports and supply of goods or services or both to SEZ units/developers are considered as zero-rated supplies (i.e. no tax is payable on such supplies). The petitioner filed applications under Section 16 of IGST Act read with Section 54 of Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 89 of CGST Rules, 2017, claiming refund of IGST paid by them

for the months of December, 2019, January 2020 and February 2020. However, the petitioner's applications have been rejected in part by the second respondent by means of the Order-in-Original and when the petitioner went on appeal before the first respondent/Appellate Authority, the Appellate Authority also confirmed the order passed by the second respondent by way of Order-in Appeal. Challenging the Order-in-Appeal dated 26.07.2022, 29.06.2022 and 28.06.2022, the present Writ Petitions are filed.

5. Mr.Raghavan Ramabadran, learned counsel for the petitioner submitted that the petitioner is a **D**omestic **T**ariff **U**nit (**DTA Unit**) and for supply of goods/services to SEZ units made during the months of December, 2019 January 2020 and February 2020, the petitioner filed applications for refund through GSTN Portal claiming refund of IGST paid along with required declarations and undertakings, which is inclusive of Statement-4 along with copies of tax invoices with endorsement made by the Specified/Authorized Officer in respective SEZ. However, the second respondent rejected the said applications and the reason for such rejection in

respect of three applications are detailed hereinbelow:-

A. In respect of the application for refund made for the month of **December, 2019,** dated 14.12.2021, to the tune of Rs.3,47,36,359, the second respondent vide order dated 23.02.2022, rejected the claim partially to the tune of Rs.2,92,80,806/- on the following grounds:-

i) Wrong mention of date of endorsement in Statement-4 so as to cover inordinate delay in getting endorsement from Authorized Officer/Specified Officer (AO/SO). The delay cannot be attributed to the pandemic since the lock down commenced only in March, 2020.

ii) Revised Statement-4 filed by the application is not liable to be considered since the same is time barred.

B. In respect of the application for refund made for the month of **January, 2020** dated 27.01.2022 to the tune of Rs.2,49,30,254/- the second respondent vide order dated 25.03.2022 rejected the claim partially to the tune of Rs.84,80,988 on the following grounds:-

i) DTA procurement certificate copies in respect

of 11 invoices were submitted only during the personal hearing, which was beyond the period of two years from the relevant date for filing refund claim, and hence, the claim for refund cannot be considered.

ii) The claimant has made mistakes in the Statement-4 in order to veil the fact of inordinate delay in obtaining endorsements from SEZ Officer. The POD documents submitted in respect of II invoices after the personal hearing is beyond the period of two years. Hence, the refund claim cannot be allowed.

iii) Proof of receipt of consideration in respect of supply of services was not submitted along with the application and was submitted only with the reply, which was beyond the period of two years. As per Rule 30 (4) of the SEZ Rules, 2006, the endorsement should have been made withing 45 days and refund cannot be allowed, if the date of endorsement is beyond 45 days.

C). In respect of the application for refund made for the month of **February, 2020** dated 26.02.2022 to the tune of Rs.1,89,22,862/- the second respondent vide order dated 26.04.2022 rejected the claim partially to the tune of Rs.1,63,25,141/- on the following grounds:-

"i) The claimant has made mistakes in the Statement-4 in order to veil the fact of inordinate delay in obtaining endorsements from SEZ Officer. Hence, the refund claim cannot be allowed.

ii) Submission that endorsement to the effect that the goods are received in full cannot be accepted, inasmuch as the Rules require endorsement that the goods have been admitted in full for authorized operations. In the absence of such endorsement, refund cannot be allowed.

iii) In respect of two invoices amounting to Rs.29,13,768/- as mentioned in Annexure-IV, the AO/SO has certified for receipt of services, whereas, the consignment mentioned in the said invoices pertains to supply of goods, and that, since there is inappropriate endorsement in respect of two invoices, refund cannot be allowed."

6. The learned counsel appearing for the petitioner would submit that in all these three applications, the reasons assigned by the second respondent for rejection of refund claim is on the ground of i) Inordinate

delay in obtaining the endorsements, ii) POD not at the time of filing of application but only at the time of personal hearing, and hence, the claim is barred by limitation and iii) Mismatch in the Statement-4, which cannot be relied on and claim is rejected.

7. **Rejection of application on the ground of inordinate delay in obtaining Endorsement/Inappropriate Endorsement/Endorsement seal is incomplete/Endorsement does not state that goods supplied were for authorized operations:-**

7.1 The learned counsel appearing for the petitioner would pyramid his arguments by submitting that nowhere does the provisions of GST Act require the petitioner to obtain endorsement within period of 45 days from the Authorized Officer from the date of invoice. The learned counsel submitted that though the respondent-Department referred to Rule 30 (4) of SEZ Rules, 2006, which mandates that endorsement has to be obtained within 45 days from the date of invoice, as far as the petitioner's case is concerned, the said Rule 30 (4) of SEZ Rules, 2006 will not come into picture since the petitioner has adopted the mode of payment of tax under Section 16 (3) (b) of IGST Act, which enables the petitioner to seek for

refund of IGST paid with respect to supply made to SEZ units and the petitioner has not opted to supply the goods to SEZ units without payment of tax under Section 16 (3) (a) of IGST Act. Therefore, the learned counsel contended that since the goods supplied by the petitioner were on payment of applicable IGST, the petitioner made applications for refund under Section 16 of the IGST Act read with Section 54 of the CGST Act read with Rule 89 of CGST Rules, 2017 and hence, it is not open to the respondent-Department to contend that as per Rule 30 (4) of SEZ Rules 2006, the endorsements ought to have been obtained within 45 days from the date of invoice, and hence, the impugned orders rejecting the petitioner's claim by applying SEZ rules is not sustainable.

7.2 The learned counsel further submitted that it is their SEZ customers, who are required to obtain endorsement from the Authorized Officer (AO) and the petitioner cannot insist the AO to issue the endorsement in time. Further, as per SEZ Act or Rules, the AO is not required to make endorsement in any particular manner, since the invoices submitted by the petitioner were endorsed by AO, there is no doubt that the goods were supplied to SEZ units under Section 16 of IGST Act, and the

petitioner is entitled for zero-rated tax benefit and delay in obtaining the endorsements, or mistake, if any, in such endorsements, are all technical irregularity and so long as the signature is not doubted, the petitioner cannot be penalized for the actions of AO, which is beyond the control of the petitioner and by such means, deprive the petitioner's right to claim benefit under 16 (3) (b) of IGST. Further, it is submitted that during the disputed period, there was difficulty in obtaining endorsement due to Covid-19. Therefore, the learned counsel submitted that the petitioner must not be denied their substantive right of refund on account of circumstances beyond their control.

7.3 The learned counsel for the petitioner would further submit that, in terms of Section 16 of IGST Act as it stood then, the provisions contained thereunder does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof and the amendment to Section 16 stipulating the rules for use of goods for authorized operations was made prospectively w.e.f. 1.10.2023 onwards only. Therefore, the

learned counsel contended that rejection of the application on the reason that "the endorsement does not specifically states that the goods have been admitted in full is for authorized operations and the endorsement only states that the goods were received in full and that is not sufficient, and hence, the claim is rejected" is not sustainable.

7.4 Therefore, the learned counsel contended that rejection of application on the aforesaid grounds is not tenable.

8. ***Rejection of applications on the ground of alleged delay in submitting supporting documents:-***

8.1 The learned counsel for the petitioner would submit that Section 54 of CGST Act prescribes two years time limit for filing the refund application and though no supportive documents are attached, as per Rule 90(2) of CGST Rules, proper officer shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and if the application submitted is found to be complete, an acknowledgment shall be made available to the applicant through the common portal or in a situation, where, the Officer is in want of any

particular document, as per Rule 90(3) of CGST Rules, the Officer is mandated to issue a deficiency memo calling for the applicant to comply with the deficiencies pointed out in the memo and file a fresh application and such application will not be treated as application filed beyond the period of limitation, rather, such delay will only be excluded while calculating 60 days for the Officer to pass orders in such application under Section 54 (7) of CGST Rules.

8.2 Thus, by referring to the aforesaid provision, the learned counsel submitted that had there been any deficiencies noted in the applications for refund made by the petitioner, thesecond respondent ought to have pointed out the same within a period of 15 days from the date of receipt of such application by issuing deficiency memo, instead, what the second respondent done is that, he has issued an acknowledgment indicating that the application has no deficiencies, and thereafter, issued a show cause notice in Form RFD-08 proposing to reject the claim for refund to an extent of Rs.84,80,988/-in respect of the claim made for the month of January, 2020, which is untenable.

8.3 Therefore, the learned counsel contended that the refund claim cannot be rejected so long as such claim is filed within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act., and the delay in filing the supporting document at the time of filing of reply/personal hearing would only extend the time limit to pass an order under Section 54 (7) of the CGST Act and non-submission of documents at the time of filing application for refund cannot lead to an inference that application is filed with a delay.

8.4 The learned counsel for the petitioner further submits that in respect of a claim made for the month of December, 2019, the petitioner has furnished supportive documents only at the time of filing of reply/personal hearing on 28.01.2022 and the same had been accepted by the respondent-Department and the Department also processed the application, thereafter, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, that too, only during personal hearing and

therefore, claim is rejected.

8.5 The learned counsel further relied on a notification issued by Central Tax, dated 05.07.2022, vide No.13/2022, wherein, it is stated that the period from 01.03.2020 to 28.02.2022 shall be excluded for computation of period of limitation for the purpose of filing refund application under Section 54 of the CGST Act. The learned counsel also in support of his contention relied on a decision passed by this Court, in the case of **M/s.Focus Trading Enterprises Vs. Joint Commissioner of GST Appeals I, in W.P.No.6638 of 2022, dated 13.10.2023,** wherein, impugned order of rejection of revised returns was quashed as being not barred by limitation in the light of the said notification dated 05.07.2022. Therefore, the learned counsel submitted that non-filing of supporting documents at the time of filing application would not be fatal to the petitioner's claim as the same were filed well within the period of limitation.

9. Mismatch of details

9.1 The learned counsel for the petitioner would submit that in respect of the claim for refund made for the month of December 2019, though the respondent-Department pointed out that the date of endorsement in the invoices is different from the date of endorsement mentioned in Statement-4, but, subsequently, the said defect was rectified by the petitioner at the time of filing of reply on 28.01.2022 and the petitioner also furnished revised Statement-4. Therefore, the learned counsel submitted that the defect pointed out by the respondent-Department with regard to mis-match is procedural and curable and the same has been rectified, hence, claim cannot be denied on this technical ground as barred by limitation.

10. Thus, while summing up his arguments, the learned counsel for the petitioner would submit that when there is no doubt with regard to the supply of goods made by the petitioner to SEZ Uuits at zero-rated tax and when the applications are filed by the petitioner along with Statement-4, in terms of as per Section 16 (3) (b) of the IGST Act read under Section 54 (1) of the CGST Act, 2017 read with Rule 89 of CGST Rules for the months of December, 2019, January and February 2020, the applications are well

within the period of limitation and the claim for refund cannot be negatived in whole or part on any of the aforesaid grounds.

11. Per contra, Mrs.Hemalatha, learned Senior Standing Counsel for the respondent-Income Tax Department would submit the claim made by the petitioner in respect of three months, viz,.December, 2019 and January and February 2020 were partially disallowed on the ground that there was inordinate delay of more than 45 days from the date of supply of goods in obtaining the endorsement, for which, no sufficient reason was shown by the petitioner in their reply to the show cause notice; that as per Rule 30 (4) of SEZ Rules, endorsement has to be obtained within 45 days from the date of invoice; that in respect of the claim made for February, 2020, there was no specific endorsement made by AO/SO stating the goods admitted were for authorized operations and the endorsement only states that the goods were admitted in full and that in respect of two invoices, AO/SO has certified “for receipt of services’’, whereas, the consignment mentioned in the said invoices pertains to “supply of goods’’, and that, since there is inappropriate endorsement in respect of two invoices, refund cannot be

allowed; that in respect of the claim for the month of December, 2019 there was a difference between the dates of endorsement made by AO in the invoices to the date that was mentioned in the Statement -4 and though the petitioner filed revised Statement-4, the same is barred by limitation; that in respect of the claim made for the month January, 2020 petitioner has not submitted DTA procurement certificate at the time of filing refund applications and submitted the same only at the time of filing reply/personal hearing,which was beyond the period of two years from the relevant date for filing refund claim, and hence, the claim for refund cannot be considered.

11.1 The learned Senior Standing Counsel further submitted that though the learned counsel for the petitioner has taken a stand that the petitioner has supplied the goods to SEZ units and made application for refund under Section 16 of the IGST Act read with Section 54 of the CGST Act read with Rule 89 of CGST Rules and therefore, Rule 30 (4) of SEZ Rules 2006, cannot be applied, the learned Standing Counsel submitted that Rule 89 (2) (e) and Rule 46 of CGST Rules mandates that SEZ Rules have to be followed. The learned Standing Counsel further submits that Rule 30

(4) of SEZ Rules, 2006 and Rule 80 of CGST Rules have to be read conjointly, as the conjoint reading of above legal provisions makes it clear that supply made to SEZ developer or Unit shall be zero-rated tax and the supplier shall be eligible for refund of unutilized ITC or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ Developer or SEZ unit for authorized operations and an endorsement to this effect have to be issued by the SO of SEZ within a period of 45 days and in the absence of such an endorsement, the application for refund cannot be allowed.

11.2 The learned Senior Standing Counsel further submitted that the petitioner ought to have filed all the supportive documents at the time of filing the applications for refund, and the petitioner, in order to veil the inordinate delay in obtaining the endorsements not filed the documents at the time of filing applications and filed the same only at time of filing reply/personal hearing, and hence, the same were rejected on the ground of limitation. Had the petitioner filed those supporting documents at the time, when the refund applications were filed, obviously, the respondent-

Department would be relied on those documents and based on the same, would have allowed the claim. Therefore, the learned Senior Standing Counsel submitted that both the first and second respondent after having found all the aforesaid defects have rightly rejected the petitioner's claim though not wholly but partially and the same requires no interference.

11.3 The learned Senior Standing Counsel further submitted that though the petitioner has taken a stand non-issuance of deficiency memo under Rule 90(3) of CGST Rules vitiates the proceedings to reject the refund, in respect of the claim made for the month of January, 2020, the question of issuing deficiency memo would arise only when the application submitted by the petitioner is complete in terms of all documents and as per Rule 92 (3) when the refund is inadmissible, then, show cause notice needs to be issued and accordingly, show cause notice has been issued calling forth petitioner's reply and therefore, submitted that for all the cases, where, refund is inadmissible, it is not necessary to be proceeded with an deficiency memo and mere acknowledgment given by the respondent-Department stating that the applications are complete that per se would not

lead to an inference refund applications are correct in all aspects and refund has to be sanctioned.

11.4 The learned Senior Standing Counsel further submitted that with regard to the rejection of the claim for refund made for the month of December 2019, since there had been mismatch of details contained in the Statement-4 as the date of endorsement made in the invoices is different from the date of endorsement mentioned in Statement-4, and though the petitioner filed revised Statement-4, since the same had been filed with a delay, the claim has been rejected on the ground of limitation. However, the learned Senior Standing Counsel fairly submitted that since the said defect pointed out by the respondent-Department with regard to mis-match is procedural and curable and the same has been rectified by the petitioner at the time of filing of reply on 28.01.2022 by filing revised Statement-4, the same is accepted.

12. I have given due considerations to the submissions made by the

learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents 1, 2 and 3.

13. In the present case, the applications made by the petitioner for refund of IGST paid for the supply of goods made to SEZ Units in respect of December, 2019, January, 2020 and February, 2020 came to be rejected partially on the following grounds :-

> i) Inordinate delay in obtaining Endorsement; Inappropriate Endorsement; Endorsement does not state that goods supplied were for authorized operations;
>
> ii) POD was made not at the time of filing applications but at the time of filing reply/personal hearing, and the same is barred by limitation.
>
> and
>
> iii) Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

Inordinate delay in obtaining Endorsement; Inappropriate Endorsement; Endorsement does not state that the goods supplied were for authorized operations:-

14. So far as the rejection of the petitioner's claim on the above said ground is concerned, it is the contention of the petitioner that though the respondent-Department referred to Rule 30 (4) of SEZ Rules, 2006, which mandates that endorsement has to be obtained within 45 days from the date of invoice, as far as the petitioner's case is concerned, the said Rule 30 (4) of SEZ Rules, 2006 will not come into picture since the petitioner had supplied the goods to SEZ unit not without payment of tax under Section 16 (3) (a) but on payment of tax under Section 16 (3) (b) of IGST Act, which enables the petitioner to seek for refund of IGST paid by them, and the provisions of GST Act does not require the petitioner to obtain endorsement within period of 45 days from AO from the date of invoice.

14.1 To resolve the issue as to whether the petitioner has to obtain endorsement within 45 days as per SEZ Rules 2006 or whether as per the provisions of GST, the petitioner is not required to obtain endorsement within a stipulated period, firstly, it has to be find out as to under which provisions the petitioner's case would fall. In this context, it would be

beneficial to refer to Section 16 (3) of IGST Act and Rule 30 (4) of SEZ Rules 2006, which are extracted hereinbelow:-

" **Section 16 (3) of IGST Act, 2017:-**

A registered person making zero-rated supply shall be eligible to claim refund either of the following options, viz.,

(a) he may supply goods or service or both under bond or letter of undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized intput tax credit.

(b) he may supply goods or service or both subject to such conditions, safeguards and procedure as may be prescribed on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

Rule 30 (4) of SEZ Rules, 2006 :-

"A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that the goods have been admitted in full into the SEZ shall be treated

as proof of export and copy with such endorsement shall also be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA Supplier within 45 days failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the DTA Supplier"

14.2 A conjoint reading of Section 16 (3) of IGST Act, 2017 and Rule 30 (4) of SEZ Rules, 2006 would make it clear that the goods can be supplied to SEZ under two situations. One in terms of Section 16 (3)(a) and another in terms of Section 16 (3) (b). In terms of Section 16 (3) (a), goods can be supplied without payment of tax, upon execution of bond or letter of undertaking. In terms of Section 16 (3)(b), goods can be supplied on payment of tax. Rule 30 (4) of SEZ Rules deals with issue of endorsement by the AO to ensure that the goods have been admitted in full into the SEZ and to treat the same as proof of export. Once the endorsement is made, it would be considered that the goods have been exported. In any event, any duty has been paid in terms of Section 16 (3) (b) of the Act, the assessee would be entitled for refund. In the event, without payment of

duty, if the goods had entered into SEZ, endorsement shall be made in terms of Rule 30 (4) within 45 days and the same has to be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA Supplier within 45 days, failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the DTA Supplier.

14.3 As far as Rule 30 (4) of SEZ Rule is concerned, the significance of the endorsement made by AO are as follows:-

i) The endorsement would only ensure that goods have reached the SEZ. Upon production of endorsement, refund of tax can be made.

ii) In the event, if no endorsement is made within 45 days from the date of entry of goods into SEZ, the concerned Officer, viz., the Goods and Services Tax or Central Excise Officer shall raise demand of tax or duty against the DTA Supplier to ensure that either the goods will reach the SEZ within 45 days or else to pay tax.

14.4 In the present case, the question of payment of tax does not arise since the petitioner has paid IGST but there was delay in obtaining the

endorsement. Thus, once the assessee had paid the tax and the goods have entered SEZ and obtained endorsement to that effect and furnished the same for the purpose of refund, at any cost, refund cannot be denied for any reason whatsoever. The Officer, who is processing the refund should be concerned only about the aspect as to whether the goods have reached SEZ zone and whether tax for such entry has been remitted or not. In the present case, there is no doubt on the aspect of payment of tax by the petitioner and also entry of goods into SEZ and endorsement also obtained. The delay in obtaining the endorsement and producing the same at any cost would result only in a delay of entertaining the application for refund and in which case, the affected party would only be the petitioner and the interest of the Department not going to be affected in any way. Thus, the refund cannot be denied on any other reason whatsoever, since, it is the petitioner's legal entitlement to get back the refund of tax paid by him. If at all, there is any lapse, the same has to be sought to be rectified by the petitioner and the application can be processed by the Department to grant refund. If the goods entered into SEZ and endorsement is made after the expiry of 45 days, in such circumstances, if the concerned Officer raised a demand

under Rule 30 (4) of SEZ Rule, and the assessee paid demand of tax, in those cases also, the assessee is entitled to for refund. Therefore, significance of the endorsement is only to ensure that the goods have entered into SEZ and also for the purpose of payment of tax or demand against the DTA Supplier.

14.5 In the case on hand, it is an admitted fact that the goods have entered into SEZ and duty has also been paid by the petitioner. Therefore, the failure to obtain endorsement within 45 days is not due to fault on the part of the petitioner and it is for the AO to make endorsement in time, for which, the petitioner cannot be found fault with. Hence, the denial of refund claim by citing that endorsement obtained was not within 45 days and therefore, claim is barred by limitation and said findings to such effect are liable to be set aside since the failure of obtaining endorsement in time is only due to the fault of AO and the petitioner cannot be denied the claim on the ground of inordinate delay in obtaining endorsement.

14.6 As regards the other issue relating to 'Inappropriate Endorsement', as rightly pointed out by the learned counsel for the

petitioner, as per SEZ Act or Rules, the AO is not required to make endorsement in any particular manner, since the invoices submitted by the petitioner were endorsed by AO, there is no doubt that the goods were supplied to SEZ units under Section 16 of IGST Act, and the petitioner is entitled for zero-rated tax benefit and delay in obtaining the endorsements, or mistake, if any, in such endorsements are all technical irregularity and so long as the signature is not doubted, the petitioner cannot be penalized for the actions of AO, which is beyond the control of the petitioner and by such means, deprive the petitioner's right to claim benefit under 16 (3) (b) of IGST, instead, the respondent-Department should have assisted the assesseee in rectifying the defects, rather than rejecting the petitioner's applications by citing technical reasons.

14.7 With regard to the issue that 'Endorsement does not state that goods supplied were for authorized operations', it is seen that provisions of Section 16 of IGST Act does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof and the

amendment to Section 16 stipulating the rules for use of goods for authorized operations was made prospectively w.e.f. 01.10.2023 onwards only and since the petitioner made claim with regard to the supply made to SEZ unit prior to 01.10.2023, the respondent-Department cannot insist that that endorsement must state that goods supplied, were for authorized operations, and such other endorsement. Therefore, this Court holds that the rejection of the petitioner's claim on the reason that the endorsement does not specifically states that the goods that have been admitted in full was for authorized operations, and it only states that the goods were received in full and that the endorsement is incomplete/insufficient/inappropriate, is not tenable. Hence, the findings rendered by the respondent-Department with regard to the denial of claim by citing the delay in obtaining endorsement, endorsement is inappropriate, etc., are set aside.

Rejection of claim as barred by limitation since POD was made not at the time of filing applications but at the time of filing reply/personal hearing.

15. So far as the second issue relating to denial of claim on the

ground that the application is barred by limitation is concerned, it is seen that Section 54 (1) of CGST Act prescribes time limit of two years only for filing the refund application and accordingly, the petitioner filed claim for the months of December, 2019, January 2020 and February 2020 on the following dates i) 14.12.2021 ii) 27.01.2022 iii) 26.02.2022, which were well within the period of limitation and the same is not disputed by the respondent-Department, however, the respondent-Department objection is only with regard to the non-furnishing of supportive documents at the time of filing application but producing the same at the time of personal hearing and therefore, only from the date on which all relevant documents are received along with application in full, period of limitation would start reckoned and hence, the claim is barred by limitation. This Court is unable to accept the contention of the learned Senior Standing Counsel for the respondent-Department.

15.1 To decide the issue as to whether the POD at the time of filing applications but at the time of filing reply/personal hearing, would be fatal

to the petitioner's case, it is beneficial to refer to Rule 90(2) & (3) of CGST Rules, which is extracted hereinbelow:-

Rule 90 (2) of CGST Rules, 2017:-

"The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer, who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be incomplete in terms of sub-rule (2) (3) and (4) of Rule 89, an acknowledgment in Form GST RFD-02 shall made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

Rule 90 (3) of CGST Rules, 2017:-

Where any deficiencies are noticed, proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file fresh refund application after rectification of such deficiencies"

15.2 In terms of Rule 90 (2) of CGST Rules, the proper officer

shall, within period of fifteen days of filing of the said application, scrutinize the application for its completeness and in case the application is found to be complete, an acknowledgment shall be made available to the applicant through the common portal or in case, the Officer is in want of any particular documents, as per Rule 90(3) of CGST Rules, the Officer is mandated to issue a deficiency memo calling for the applicant (petitioner) to comply with the deficiencies pointed out in the memo and file a fresh application.

15.3 In the present case, admittedly, the second respondent in respect of the claim made for the month of January 2020 has issued an acknowledgment indicating that the application has no deficiencies but thereafter, issued a show cause notice in Form RFD-08 proposing to reject the claim for refund to an extent of Rs.84,80,988, which is incorrect. If it is the case of the respondent-Department that the petitioner has filed the applications with deficiencies, the respondent-Department ought to have issued any memo pointing out such deficiency under Rule 90(3), instead the second respondent has accepted the petitioner's applications and issued

acknowledgment, and therefore, it is not open to the respondent to contend that the supporting documents were filed with a delay.

15.4 Further, it is noticed that, in respect of the claim made for the month of December, 2019, the petitioner has furnished supportive documents only at the time of filing of reply/personal hearing on 28.01.2022 and the same had been accepted by the respondent-Department and the Department also processed the application, while that being so, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by citing that the documents were filed belatedly, and therefore, claim is not acceptable.

15.5 At this juncture, this Court would like to refer to a Circular issued by the Central Board of Direct Taxation, bearing CBDT No.14 of 1955 dated 11.04.1955, wherein, certain administrative instructions were given for guidance of Income Tax Officers on matters pertaining to assessment , which remains in force as on date. For better appreciation, the relevant guidelines of CBDT are extracted hereinbelow:-

"**1.** The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while ITO's are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under s. 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should :—

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

4. .....

5. While officers should, when requested, freely advise assessees the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers.

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

15.6 Thus, on a reading of the above Circular would make it clear that when the taxpayer made a claim for refund and if there is any discrepancies or defects in the application made for such claim, the Officer

concerned should come forward to assist the assessee bearing in mind the above principles laid down by the CBDT. This Court also expects the Officer concerned to assist the assessee, whenever, the assessee intends to make a claim for refund or any other issue in line with the Circular issued by CBDT. Even in terms of Rule 90 (3), the Officer is supposed to have intimated the deficiencies contained in the application and allowed the assessee to rectify those deficiencies and thereafter, he shall proceeded to consider as to whether the claim for refund is just and proper. But, in the present case, it is seen that the respondent-Department has acted in a way, which is totally contrary to the Circulars issued by the CBDT. Had the respondent-Department intimated about the deficiencies at the point of time, when the applications were entertained by issuing any deficiency memo, obviously, the petitioner would have rectified those defects pointed out by the respondent-Department and would have made fresh application. Even Rule 90(3) provides an opportunity to the assessee to file fresh refund application after rectification of certain deficiencies pointed out by the Officer concerned. When such being the intention of the Rule, Officer concerned ought to have acted in a manner facilitating the assessee to get

his claim for refund. Instead, both the respondents have passed the impugned orders, which are contrary to the provisions of Rule 90 (3) of CGST Rules, 2017 and Circular issued CBDT, dated 11.04.1955. Even Section 54 (1) of CGST states that ***"any person claiming refund of any tax and interest, if any, paid on such tax, or any other amount paid by him, may make application before expiry of two years from the relevant date in such form and manner as may be prescribed".***

15.7 Thus, a reading of the Section 54 (1) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section "**may** make application before two years from the relevant date in such form and manner as may be prescribed", which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed under Section 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of

two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

15.8 In the present case, the application was filed within two years and therefore, the question of making claim after two years does not arise even assuming AO made endorsement after two years, the same would in no way debar the claim as barred by limitation. Further, even Rule 90 (3) of CGST Act permits to make fresh application, which means that in appropriate cases, the Officer concerned can permit the refund application even beyond the period of limitation. Therefore, I do not find any substance in the submission made by the learned Senior Standing Counsel for the respondent and both respondents have miserably failed to consider the said aspect while passing the impugned orders and hence, the same are liable to be set aside. Hence, this Court holds that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under Section 54(1) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time limit to pass an order under Section 54 (7) of the CGST Act and

non-submission of documents at the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing. Further, when the respondent-Department has accepted the supportive documents produced by the petitioner at the time of filing of personal hearing, in respect of the claim made for the month of December, 2019 and processed the application, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, and hence, refund claim cannot be allowed. That apart, in terms of notification issued by Central Tax dated 05.07.2022, vide No.13/2022, which excludes the period from 01.03.2020 to 28.02.2022 for computation of period of limitation for the purpose of filing refund application under Section 54 of the CGST Act. Thus, the petitioner's claim cannot be rejected on the ground of limitation. Hence, the findings of the respondents on the aforesaid aspect are liable to be set aside.

Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

16. So far as the rejection of the claim on the ground of mismatch of details is concerned, though the respondent-Department pointed out that the date of endorsement in the invoices is different from the date of endorsement mentioned in Statement-4, in respect of the claim for refund made for the month of December 2019, since said defect was rectified by the petitioner at the time of filing of reply on 28.01.2022 and the petitioner also furnished revised Statement-4, and the same is also accepted by the learned Senior Standing Counsel for the respondent-Department, findings rendered by the respondent-Department on the ground of mismatch are also liable to be eschewed.

17. Thus, in the light of the aforesaid findings, this Court is of the view that both the first and second respondent have committed a serious flaw in the decision making process and therefore, the impugned orders have to be held to be unsustainable. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and consequently, the second

respondent is directed to process the petitioner's applications for refund and issue the refund within a period of 30 days from the date of receipt of a copy of this order. No costs.

Post the matters for filing compliance report of this order on 18.12.2023.

06.11.2023

sd
Index : yes/no
Neutral Citation : yes/no

Note : Issue order copy on 20.11.2023.
To
1. The Joint Commissioner of GST (Appeals-1)
O/o. the Commissioner of GST & Central Excise (Appeals-I)
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.

2. The Assistant Commissioner of GST and Central Excise,
Division I, Puducherry Commissionerate,
No.14, Municipal Street,
Azeez Nagar, Reddiyarapalayam,
Puducherry- 605 010.

3. The Central Board of Indirect Taxes and Customs,
rep. by its Chairman, having Office at
North Block, New Delhi- 110 001.

4. Union of India,
Ministry of Industry and Commerce,
rep. by its Secretary,
Department of Commerce (SEZ Division)
having Office at Udyog Bhawan,
New Delhi – 110 107.

Krishnan Ramasamy,J.,

sd

W.P.Nos.23604, 23605 and 23607 of 2022

06.11.2023