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

% ***Date of Decision : 06th February, 2023***

\+ **W.P.(C) 6727/2022**

M/S MAHAJAN FABRICS PVT. LTD. ..... Petitioner
Through: Mr. R. S. Yadav and Mr. Abhishek Jaju, Advs.

versus

COMMISSIONER, CGST AND ORS. ..... Respondents
Through: Ms. Sushila Narang, Senior Panel Counsel.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J (*Oral*)

1. The petitioner has filed the present petition impugning an order dated 30.12.2021 passed by the Joint Commissioner of Central Goods and Services Tax (Appeals-1) [Order-in-Appeal No. 445/JC/Central Tax/Appeal-I/Delhi/2021] (hereafter '**the impugned order**') allowing the Revenue's appeal against an order dated 12.09.2019 (Order-in-Original) passed by the Assistant Commissioner.

2. The petitioner had filed an application for refund of CGST under Section 54 of the Central Goods and Services Tax Act, 2017 (hereafter '**the Act**') read with Rule 89(1) of the Central Goods and Services Tax Rules, 2017 (hereafter '**the Rules**').

3. The said application was allowed by the Order-in-Original dated 12.09.2019 and an amount of ₹22,32,502/- was directed to be remitted to the specified bank account of the petitioner. The same comprised of ₹16,22,489/- as refund of the Central Tax

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(CGST) and ₹6,10,013/- as State Tax (SGST).

4. The aforesaid order was reviewed by the Commissioner under Section 107(2) of the Act. In terms of the said provision, the Commissioner directed that the appeal be preferred to the Appellate Authority [in this case, the Joint Commissioner (Appeals)].

5. The review order dated 15.03.2020, directing the filing of the appeal, indicates that the decision to appeal the Order-in Original dated 12.09.2019 was premised on a finding that the vehicle numbers mentioned in two invoices [Invoice No. GST/19-20/174 dated 04.05.2019 (vehicle no. DL01 LY 4032) and Invoice No. GST/19-20/208 dated 11.05.2019 (vehicle no. DL01 LY 4411), which were issued by M/s Artex Overseas Pvt. Ltd., were not reflected at the *e-vahan* portal. The Commissioner, therefore, concluded that the 126 invoices – in respect of which the refund was sought – were dubious and the claim for refund of tax was inadmissible.

6. It is important to mention that only a few of the 126 invoices were picked up for scrutiny and the conclusion, that the refund is inadmissible (in review order dated 15.03.2020), was founded solely on the assumption that since the vehicles mentioned in two invoices were not found registered on *e-vahan* portal, the details given in the other invoices were also unreliable.

7. In view of the Commissioner's review order dated 15.03.2020, directing that an appeal be filed against the Order-in-Original dated 12.09.2019, the Revenue preferred the appeal on the grounds as stated in the review order dated 15.03.2020 and as briefly noted above.

8. The Appellate Authority [Joint Commissioner (Appeals)] found that the vehicles mentioned in the two invoices that were

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picked up for scrutiny were, in fact, registered with the *e-vahan* portal. Paragraph 6.5 of the said impugned order reads as under:

> ***"6.5*** *It is observed that out of 126 invoices on the basis of which refund claim is filed, only 2 vehicles were selected for scrutiny. The documents submitted by the respondent in respect of these two vehicles now are found to be reflected in e vahaan portal. However, I find that in respect of remaining 124 invoices, the respondent had neither submitted e vahaan details nor submitted any evidence to substantiate that they had actually received the goods. In the absence of such details, I do not agree with the contention of the respondent. Merely filing of returns, GSTR-2A, Statement-3, Shipping Bills date, EGM details etc. for claiming refund of unutilized ITC is not enough to prove bonafide. There was no compliance with the provisions of Section 16 of the CGST Act, 2017."*

9. Notwithstanding that the Appellate Authority had found that the two vehicles were registered on the *e-vahan* portal, it allowed the Revenue's appeal on the ground that the petitioner had not established that the goods had been received by providing details of other vehicles in respect of the remaining 124 invoices.

10. Ms. Narang, learned counsel appearing for the respondents, submits that it was incumbent upon the petitioner to produce details of all the invoices and establish the registration of all the vehicles which were used to transport the goods covered under the invoices (126 in number). It was not sufficient for the petitioner to confine itself to establishing the registration of only two vehicles on the *e-vahan* portal, that were used to transport the goods under the two invoices in question.

11. On a pointed query from the Court as to which provision

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of the Act required the petitioner to file details of all vehicles and also establish its registration with the *e-vahan* portal, the counsel submitted that there is no such requirement but once a doubt is raised, it is incumbent on the petitioner to file the requisite details.

12. Section 16 of the Act sets out the eligibility conditions to be satisfied for availing input credit. Section 16 of the Act reads as under:

> ***"16. Eligibility and conditions for taking input tax credit***
>
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
>
> *(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,–*
>
> *(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
>
> *[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]*
>
> *(b) he has received the goods or services or both.*
>
> *[Explanation : For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—*
>
> *(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent*

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or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of [section 41 [xxx]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

PROVIDED FURTHER that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

PROVIDED ALSO that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services

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> *or both after the [thirtieth day of November] following the end of financial year to which such invoice or [xxx] debit note pertains or furnishing of the relevant annual return, whichever is earlier:*
>
> *[PROVIDED that the registered persons shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]"*

13. It is clear from the explanation to Section 16(2)(b) of the Act that the person would be deemed to have received the goods if the conditions, as stated therein, are satisfied.

14. In the present case, there is no dispute that the petitioner had filed its return disclosing all necessary details for claiming the refund. It was, accordingly, also sanctioned in terms of the Order-in-Original dated 12.09.2019.

15. It appears from the review order dated 15.03.2020 that a few invoices were picked up for scrutiny. Out of the said invoices, it was found that the vehicles mentioned in two invoices were not registered on the *e-vahan* portal.

16. It is on the basis of this finding that the decision to file an appeal was taken by the Commissioner of Tax. He assumed that the refund claims made by the petitioner were dubious solely on the basis of the aforesaid finding. However, the Appellate Authority had found the said finding to be incorrect, as is apparent from Paragraph 6.5 of the impugned order, as stated above.

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17. Thus, the review order dated 15.03.2020 to file an appeal against the Order-in-Original is founded on an erroneous finding. Having accepted the same, the Appellate Authority was required to reject the Revenue's appeal outrightly.

18. Having established that the foundation of the Revenue's appeal is flawed, the petitioner was not required to do anything more. The Appellate Authority did not find any flaw in the details as furnished by the petitioner. There is neither any tangible reason to doubt the particulars, as stated in the invoices, nor any finding that the same are untrue.

19. In view of the above, the present petition is allowed. The impugned order dated 30.12.2021 is set aside.

20. The respondents are directed to disburse the amount of refund sanctioned by the Assistant Commissioner in terms of the Order-in-Original dated 12.09.2019.

21. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 6, 2023

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