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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 29.02.2024

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W.P.(C) 11926/2023 & CM. APPLS. 46666/2023, 711/2024

SVERA AGRO LIMITED

..... Petitioner

versus

COMMISSIONER OF CENTRAL TAX AND GST, GST DELHI
NORTH COMMISSIONERATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Siddharth Malhotra, Advocate.

For the Respondents:

Ms. Anushree Narain, Senior Standing Counsel

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J (ORAL)**

1. Petitioner seeks a direction to the respondent to sanction the refund claim of the petitioner for the period August 2020 to March, 2021. Petitioner further seeks withdrawal of the deficiency memos issued by the respondent in response to the refund claim of the petitioner for the period May, 2019 to July, 2019.

2. Learned counsel for the petitioner submits that the refund application was being rejected by issuing deficiency memos requiring the petitioner to furnish a certificate issued by the Chartered



Accountant in terms of Rule 89 (2)(1) (m) of the Central Goods and Services Tax Rules, 2017.

3. Learned counsel for respondent submits that the Circular No.125/44/2019 dated 18.11.2019 requires the assessee seeking refund of unutilized Input Tax Credit to furnish a self-declaration under Rule 89(2)(1) if the amount claimed is less than Rs.2 lakh, otherwise furnish a certificate as required under Rule 89(2)(m).

4. We are unable to accept the contention of learned for the respondent in view of the statutory scheme of the Act.

5. Relevant portion of Section 54 of the Central Goods and Services Tax Act, 2017, pertaining to refund of tax reads as under:-

“Section 54: Refund of tax

“(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

*Provided *** *** ****

*(2) *** *** ****

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;*



(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided *** *** ***

Provided *** *** ***

(4) *** *** ***

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) *** *** ***

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) *** *** ***

(b) refund of unutilized Input tax credit under sub-section



(2) *The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-*

(1) *a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:*

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) *a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:*

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.”

9. Rule 89 (2) mandates filing of documentary evidence to establish that refund is due to the applicant. Rule 89 (2) (1) provides that a declaration is to be furnished by the claimant in case amount of refund does not exceed Rs.2 lakh, to the effect that the incidence of



tax interest or any other amount claimed as refund has not been passed on to any other person. In cases where amount exceeds Rs.2 lakh, Rule 89(2)(L) mandates for filing of a certificate in Annexure-II of Form GST RFD-01, issued by a Chartered Accountant or Cost Accountant to similar effect.

10. Provisos to sub-clauses (l) and (m) stipulate, respectively that a declaration or a certificate is not required to be furnished in respect of cases covered clauses (a), (b), (c), (d) or (f) of sub-section (8) of Section 54.

11. The provisos waive the requirements of furnishing a declaration or a certificate from a Chartered Accountant or Cost Accountant in cases covered under the said provisos.

12. Admittedly, case of the petitioner is covered under Section 54 (8) (b), which is one of the excepted provisions in the proviso to 89 (2) (l) and (m). Consequently, we hold that the deficiency memos issued to the petitioner, requiring the petitioner to furnish a certificate of the Chartered Accountant are not sustainable. They are accordingly set aside.

13. We are informed that pending these proceedings, refund has already been sanctioned to the petitioner, however, without payment of any interest.



14. Since part of the amount was denied on account of deficiency memos, which we have not found to be sustainable in view of the proviso to Rule 89 (2) (1)(m), we hold that petitioner is entitled to interest on the delayed refund in terms of Section 56 of the Central Goods and Service Tax Act, 2017 at the rate notified by the Government within a period of four weeks from today.

15. By order dated 05.01.2024, the submission of learned counsel for the petitioner was noticed that the online portal of the respondent was not accepting the refund applications and this Court had permitted the petitioner to file the refund applications for period August, 2019, October, 2019 and December, 2019, physically.

16. As per the petitioner, in view of pendency of the present petition, further claims could not be lodged. Accordingly, on petitioner filing such refund applications, the Department shall not reject the same solely on the ground of limitation.

17. Petition is accordingly disposed of in above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 29, 2024/NA