

(2023) 05 DEL CK 0519

In the Delhi High Court

Case No : Civil Writ Petition No. 5722 Of 2023

Alex Tour And Travel Private Limited

APPELLANT

Vs

Assistant Commissioner, Cgst, Division-Janakpuri

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Integrated Goods and Service Tax Act, 2017 — Section 2(6), 16(3)(a)
Central Goods and Service Tax Act, 2017 — Section 54(5), 112

Citation : (2023) 05 DEL CK 0519

Hon'ble Judges : Vibhu Bakhru, J; Amit Mahajan, J

Bench : Division Bench

Advocate : Karan Sachdev, Masooma Rizvi, Aditya Singla

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

CM APPL. 22428/2023 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present appeal, inter alia, praying as under:

"a) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, directing the Respondent to implement the Order-in-Appeal No. 120-123/2022-23 dated 28.07.2022, 114-115/2022-23 dated 28.07.2022 and 262/2021-22 dated 08.02.2022 passed by the Ld. Additional Commissioner, CGST Appeals-II, Delhi and expeditiously grant refund of Rs. 2,62,01,727/- to the Petitioner along with applicable interest;

b) Pass such further orders and other reliefs as the nature and circumstances of the case may require."

4. The controversy in this petition relates the petitioner's entitlement for refund of Input Tax Credit availed on inputs / input services, which the petitioner claims to have used for export of service.

5. Undisputedly, the export of services is treated as a zero-rated supply and the petitioner is entitled for refund of the Input Tax Credit under Section 16(3)(a) of the Integrated Goods and Service Tax Act, 2017 (hereafter 'the IGST Act').

6. The petitioner filed refund applications, all dated 13.04.2021, claiming refund of unutilised Input Tax Credit, amounting to Rs. 46,38,276/- for the financial year 2018-19. Thereafter, on 14.04.2021, the petitioner filed applications seeking refund of the unutilised Input Tax Credit, amounting to an aggregate sum of Rs. 2,15,63,451/- for the period 2019-20. A tabular statement indicating the period for which refund was sought and the amount claimed, is set out below:

Sl. No.

Period

Amount of refund

claimed (INR)

2018-19

1.

Apr-June

14,89,720/-

2.

July-Sept

3,82,149/-

3.

Oct-Dec

9,32,211/-

4.

Jan-Mar

18,34,196/-

Sub-total

46,38,276/-

2019-20

5.

Apr-June

72,35,435/-

6.

July-Sep

80,95,822/-

7.

Oct-Mar

62,32,194/-

Sub-total

2,15,63,451/-

TOTAL

2,62,01,727/-

7. The applications filed by the petitioner for refund of unutilised ITC were rejected, inter alia, on the ground that the services provided by the petitioner were intermediary services and did not qualify for export of services. The respondent also raised an issue regarding non-furnishing of Foreign Inward Remittance Certificate (hereafter 'FIRC').

8. According to the petitioner, it was not feasible to co-relate invoices with separate FIRCs and a consolidated FIRC would be sufficient to claim the refund for the unutilised Input Tax Credit.

9. The petitioner filed appeals against the orders dated 14.06.2021 (seven in number) passed by the adjudicating authority under Section 54(5) of the Central Goods and Service Tax Act, 2017 (hereafter 'the CGST Act').

10. The appellate authority allowed the said appeals preferred against the orders dated 14.06.2021 by three separate orders: Order-in-Appeal No. 262/2021-22 dated 08.02.2022 for the period October, 2019 to March, 2020; Order-in-Appeal No. 114-115/2022-23 dated 28.07.2022 for the period April, 2019 to September, 2019; and Order-in-Appeal No. 120-123/2022-23 dated 28.07.2022 for the period 2018-19.

11. It is relevant to note that the appellate authority also accepted the petitioner's contention that in case of voluminous transactions of export of services to customers located outside India, submission of transaction-wise FIRCs were not feasible. The relevant extract of the Order-in- Appeal dated 08.02.2022 is set out below:

"As regards discrepancy related to FIRC observed in the impugned order I find force in the contention of appellant in their case of voluminous transaction of

export of services to customers located outside India transaction wise FIRC is not feasible nor it is intended by law. I hold that FIRC issued from bank in any format is conclusive evidence of the fact that appellant has received the foreign currency and issuance of consolidated FIRC by the Banker can't be the ground of rejection of refund claim to which appellant is otherwise eligible.

Thus I am of considerate view services rendered by Appellant qualify as an export of service in accordance with Section 2(6) of the IGST Act. Hence, rejection of subject four refund claims by the adjudicating authority in the impugned orders are without appreciating the facts of the matters and are not maintainable in law and liable to be set aside. I find that in accordance with the contentions made by the Appellant and the relevant statutes of the said Act, the four appeals filed by the appellant holds ground and merits acceptance."

12. It is relevant to note that similar observations were also made in the Orders-in-Appeal dated 28.07.2022.

13. The petitioner again filed Form GST RFD-01 on 19.02.2022, 23.08.2022 and 10.11.2022 for grant of refund along with interest. Notwithstanding that the petitioner has succeeded before the appellate authority, the respondent has not processed the petitioner's claim for refund.

14. The respondent states that after the appellate authority had passed the Orders-in-Appeal, the following Deficiency Memos and Show Cause Notices were issued:

i. Deficiency Memo dated 05.03.2022 in respect of claim for refund for Rs. 62,32,194/-.

ii. Show Cause Notice dated 21.02.2023 in respect of claim for refund for an amount of Rs. 46,38,276/-.

iii. Deficiency Memo dated 16.11.2022 in respect of claim for refund for an amount of Rs. 1,53,31,257/-.

15. It is contended on behalf of the respondent that since the petitioner did not respond to the said Show Cause Notices or Deficiency Memos, the claim for refund has not been processed.

16. Mr. Singla, learned Counsel for the respondent also submits that the issues raised by the respondent relate to the furnishing of FIRCs. He referred to the observations made by the appellate authority as quoted above and submitted that the decision of the appellate authority is erroneous and the Revenue proposes to file appeals against the Orders-in-Appeal as and when the Appellate Tribunal is constituted.

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.

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.

22. In view of the above, the refund applications filed by the petitioner to seek implementation of the Orders-in-Original and the 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 08.02.2022 and almost ten months have elapsed in respect of Orders-in-Appeal dated 28.07.2022. 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.

25. The present petition is allowed. The respondent is directed to forthwith disburse the petitioner's claim for refund along with interest as payable in accordance with law.

26. It is, however, clarified that this order would not preclude the respondent from availing statutory remedy against the Orders-in-Appeal in accordance with law.