

(2022) 10 GUJ CK 0113

In the Gujarat High Court

Case No : R/Special Civil Application No. 16308 Of 2020

M/S Chromotolab And Biotech Solutions

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Central Goods & Services Tax Rules, 2017 — Rule 89, 89(1), 89(3), 90(2), 90(3), 92, 93

Central Goods And Services Tax Act, 2017 — Section 39, 39(3), 49(6), 54, 54(1), 54(c) (1), 54(2), 55, 57

Integrated Goods And Services Tax Act, 2017 — Section 16, 16(3)

Citation : (2022) 10 GUJ CK 0113

Hon'ble Judges : N.V.Anjaria, J; Bhargav D. Karia, J

Bench : Division Bench

Advocate : Dhaval Shah, Priyank P Lodha

Final Decision : Allowed

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr. Dhaval Shah for the petitioner and learned advocate Mr. Priyank Lodha for the respondents.

2. By filing the present petition under Article 226 of the Constitution, the petitioner has prayed for direction against the respondents to re-credit amount of Rs.3,37,076/- in electronic credit ledger of the petitioner with interest from the date of order dated 19.11.2019 till its realisation. The petitioner has also prayed to set aside the said order dated 19.11.2019.

2.1 By the said order dated 19.11.2019 passed by the Assistant Commissioner, CGST & Central Excise, respondent no.3 herein, the refund claim of the petitioner came to be rejected on the ground that it was barred by limitation in terms of Explanation (2)

(c) (1) of Section 54 of the Central Goods & Services Tax Act, 2017. Further prayer is made to direct the respondents to pay the entire refund claim.

3. The petitioner no.1 is engaged in the business of trading and clearance of finished excisable goods, namely analytical instruments and consumables such as mass spectroscopy, standard and impurities machinery, laboratory products, force scientific columns, cole parmer, modular gas generators, etc., which are mainly used by the pharmaceutical companies.

3.1 The petitioner supplied finished goods to pharmaceutical companies located in Special Economic Zone (SEZ) issuing tax invoices. It was stated that the tax invoices were examined and admitted by the competent officer of the Special Economic Zone. The supply of the goods by the petitioner was zero-rated supply within the purview of Section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). As per the said provision, supply of goods or services to Special Economic Zone developer or to the unit within SEZ is treated zero-rated supply. The zero-rated supplies are not subjected to payment of IGST, for,

section 16 provides mechanism to clear the goods for zero-rated supply either under bond or Letter of Undertaking. Sub-section(3) of Section 16 of IGST Act, shall be admissible if the goods are supplied on payment of IGST under Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act").

3.2 For the supplies of finished goods during the period from August 2017 to October 2017, raising invoices, the petitioners claimed refund claim under Section 54 of the CGST Act. The application was filed on 28.12.2018 on common portal under Rule 89(1) of the Central Goods & Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"). Upon filing the refund claim for the amount of Rs. 3,48,497/- in FORM GST RFD-01 by the petitioner, for the aforesaid period, the ARN acknowledgement was issued on the receipt of the application.

3.3 Thereafter, the petitioner came to be served with the notice in the prescribed format under sub-rule (2) of Rule 90 of the CGST Rules, whereby the petitioner was asked to explain as to why the refund claim of Rs. 3,37,076/- should not be rejected on the ground of bar of limitation. By that notice, the petitioner was called upon to appear before respondent no.3 authority within three days, that is, on 19.11.2019. It is the say of the petitioner that to his surprise, the order dated 19.11.2019 came to be issued whereby the refund of rs. 11,421/- was sanctioned rejecting the claim of Rs. 3,37,076/- on the ground that it was time barred.

3.4 After receiving the aforementioned order, the petitioner addressed communication dated 19.11.2019 to respondent no.3 Assistant Commissioner, CGST & Central Excise, pointing out that proper notice was not issued to him and the notice was even otherwise given after a lapse of one year without raising any

query or point out any deficiency. On 31.12.2019, the petitioner submitted an undertaking stating that they would not file an appeal against the rejection of refund claim and requested to give re-credit of the amount claimed, which was rejected, as above.

3.5 It appears that on 03.03.2020, respondent no.3 admitted the delay in re-crediting the amount in the electronic credit ledger on account of technical issue, but did not dispute the eligibility of re-credit of the amount. The petitioner lodged its complaint on 04.03.2020 to Saksham Seva Help Desk, as suggested by respondent no.3 itself but in vain despite reminders. The petitioner approached this Court by filing the present petition as despite the petitioner having continuously followed-up with the respondents since last one year, there had been no response and re-credit was not given.

4. The petition was contested by respondents no. 1 to 3, They filed affidavit-in-reply, wherein it was contended inter alia that the refund claim of Rs.3,48,497/- of the petitioner was filed under section 54 of the CGST Act. It was contended that as per the procedure laid down in the Circular dated 15.11.2017, the application was required to be filed. It was further stated that the petitioner generated ARN number for the said refund claim on 20.12.2018 by filing application in FORM RFD-01A and relevant documents as required by the said circular. The printout of the application along with relevant documents was submitted by the petitioner to the office of respondents on 17.10.2019.

4.1 According to the respondents, the submission of the printout of the application was after expiry of due date in terms of Explanation (2) of Section 54 of the CGST Act. Therefore, the refund claim of the petitioner was partially rejected and the re-credit was not given as claimed. Provisions of Section 54 read with relevant rules were highlighted and relied on by the respondents to justify the rejection of the refund claim as time barred.

4.2 Respondents stated, which is the crux of their stand, is revealed from the following,

"....petitioner pleaded that the refund claim was filed on 28.12.2018 is factually and legally incorrect in view of what is stated hereinabove. The petitioner in the instant case filed the refund application in FORM GST RFD 01Z through ARNAA2410719070903X date 28.12.2018 on the common portal, but submitted print out of the FORM GST RFD 01A along with the necessary documents in this office on 17th October, 2019. The clause 2.3 of the circular supra clearly stipulates that the print out of the FORM GST RFD 01A along with necessary documentary evidences as applicable are required to be submitted before the jurisdictional proper officer, within the time stipulated for filing of such refund under the CGST Act. Therefore, the actual date of submission of complete refund claim was 17.10.2019 as per said circular. Since the application was submitted by the petitioner with this office on 17.10.2019, therefore, before that date, no acknowledgement/deficiency memo can be issued."

4.2.1 It was further contended,

"...as stipulated under the Explanation (2) of the Section 54 of the CGST Act, in this case the relevant date is the date of tax invoice. Hence, the last date (two year from the relevant date) for filing a refund claim in respect of invoices issued during the tax period July-2017 to October-2017 was 16.10.2019 as per the invoices submitted with the refund claim filed on 17.10.2019. Refund of tax invoices issued up to 16.10.2017 is not admissible to the petitioner since these are hit by the bar of limitation as per Section 54. As per above facts, the petitioner's plea that the refund was filed within time is not sustainable."

5. The short question that arises is whether the period of two years for filing refund claim under Section 54 of the CGST Act would be applicable upto date of filing application on common portal or date of submitting printout of application for refund uploaded on common portal. The stand of the respondent is that the circular dated 15.11.2017 prescribes the procedure to file application physically and the actual date of filing of the refund claim would be counted from the said date, when physical tendering of the application/documents happened, and not when the application was entered into the portal and acknowledged.

5.1 The statutory provisions attracting in the controversy may be looked at. Section 54 of the CGST Act provides mechanism for refund of any tax or interest. It 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 that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed.

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

(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 further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by--

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section

33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(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).....

(7) The proper officer shall issue the order under....

(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)

(c)

(d)

(e)

(f)

4(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained...

(10) Where any refund is due to a registered person....

(a)

(b)

(11)

(12)

(13)

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.--For the purposes of this section,--

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under subsection (3).

(2) "relevant date" means--

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,--

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange, or in Indian rupees wherever permitted by the Reserve Bank of India where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

5.1.1 Sub-section (1) of Section 54 of the CGST ACT provides 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 an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Prior to the insertion of Explanation (2) (ba) by the Finance Act, 2022, the relevant date in the case of goods exported out of India by land, the date on which such goods pass the frontier. In the case of services exported out of India, the date of receipt of payment in convertible foreign exchange or in Indian rupees or issue of invoices, where payment of the services had been received in advance prior to the date of issue of the invoice, is treated as relevant date.

5.1.2 Explanation (ba) was inserted by Finance Act, 2022 as under:

"in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone Unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the date for furnishing of return under Section 39 in respect of such supplies."

5.2 Rule 89(3) of the CGST Rules stipulates,

"(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed."

5.3 Rule 93 of the CGST Rules provides that for credit of the amount of rejected refund claim. The said Rule reads as under,

"Rule 93 - Credit of the amount of rejected refund claim

(1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation. -For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal."

5.4 Respondents relied on Circular dated 15.11.2017, which in its clause 2.4 provides that application for refund of unutilised input tax credit on inputs or input services used in making zero-rated supplies shall be filed in FORM GST RFD01A in the common portal and the amount claimed as refund shall get debited in accordance with Rule 89(3) of the CGST Rules from the amount in the electronic credit ledger to the extent of the claim. The said circular lays down the procedure to file an application physically.

5.5 The total case of the respondents is thus that since the physical submission of the application along with documents was on 17.10.2019, it was beyond the period of two years and therefore time barred, counted from the relevant date.

5.6 Now, it is not in dispute that the petitioners filed their refund application in the common portal on 28.12.2018 and ARN was generated. Until the application with documents were physically submitted on 17.10.2019, the respondents did not do anything on the application, which was filed as per the mechanism adopted by the respondents, on 28.12.2018.

It is not in dispute that the refund claim of the petitioner otherwise satisfied all requirements of Section 54 of the CGST Act and the attendant Rules and the petitioner was eligible to seek refund. The refund claim was however considered as time barred stating that the application was liable to be treated to have been filed on 17.10.2019 and not on 28.12.2018.

5.7 The respondents have relied on Circular dated 15.11.2017, which stipulates procedure to refund of IGST to Special Economic Zone developer or a Special Economic Zone unit. Relevant paragraph 2.3 of the said circular which is pressed into service to justify the rejection of the claim for refund is extracted as under,

"2.3 The application for refund of integrated tax paid on zero-rated supply of goods to a Special Economic Zone developer or a Special Economic Zone unit or in case of zero-rated supply of services (that is, except the cases covered in paragraph 2.2 above and para 2.4 below) is required to be filed in FORM GST RFD-01A (as notified in the CGST Rules vide notification No. 55/2017 – Central Tax dated 15.11.2017) by the supplier on the common portal and a print out of the said form shall be submitted before the jurisdictional proper officer along with all necessary documentary evidences as applicable (as per the details in statement 2 or 4 of Annexure to FORM GST RFD – 01), within the time stipulated for filing of such refund under the CGST Act."

5.8 What is provided in the circular is that the refund claim application in FORM GST RFD-01A as per Rules is required to be filed by supplier on the common portal and the printout of the said form shall be submitted to the jurisdictional officer with the necessary documents. Now the petitioner has filed the application on the common portal within time, but the documents to be physically furnished along with the application was physically submitted on 17.10.2019. It is on this count that the claim of the petitioner is treated beyond limitation.

5.9 The Circular provided for procedure of filing application and filing of physical application with documents cannot have an overriding operation to the detriment of the assessee, who filed the refund application in the common portal of the respondents, which was acknowledged and ARN was also generated.

The date of application filed on the portal has to be treated as one to reckon whether it was filed within two years as contemplated under Section 54 of the CGST Act.

6. In Commissioner of Central Exercise, Bolpur Vs. Ratan Melting & Wire Industries [2008(12) STR 416 (SC)], it was held by the Supreme Court that the circular contrary to the statutory provisions cannot operate. In J.K. Lakshmi Cement Ltd. Vs. Commercial Tax Officer, Pali [2018(14) GSTL 497 (SC)], the Supreme Court held that the circular cannot alter the statutory provisions to the detriment to the assessee.

6.2 The Division Bench of this Court in M/s. Ayana Pharma Ltd. Through its Authorised Reps. Mulraj K. Chheda Vs. Union of India in SCA No. 14158 of 2021, recognised the mode of electronic filing. In that case, the authority had rejected the manual application of refund on the ground that the provision was for electronic filing only.

6.3 Resultantly, it has to be held that the date of filing of the application by the petitioner on common portal would be liable to be treated as date of filing claim for refund to the satisfaction of requirement of Section 54 of the CGST Act and Rule 89 of the CGST Rules. The procedure evolved in Circular dated 15.11.2017 cannot operate as delimiting condition on the applicability of statutory provisions.

6.4 For all the aforesaid reasons, the present petition deserves to be allowed.

The respondents are directed to re-credit the amount of Rs.3,37,076/- in the electronic credit ledger of the petitioner with interest at the rate of 9% p.a. from the date of order of rejection of the claim, i.e., 19.11.2019 till realisation.

6.5 The exercise shall be completed within two weeks from the date of receipt of this order.

7. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly.