

(2022) 09 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (T) No. 1031 Of 2021

M/s CTC (India) Private Limited

APPELLANT

Vs

Commissioner (Appeals) And Others

RESPONDENT

Date of Decision : 07-09-2022

Acts Referred:

Central Goods And Services Tax Rules, 2017 — Rule 89(4)
Central Goods And Services Tax Act, 2017 — Section 2(47), 17(5)

Citation : (2022) 09 JH CK 0019

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : ?Vani Kumari, Amit Kumar

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. The instant writ application has been preferred for following reliefs:-

(i) For issuance of Writ in the nature of Certiorari thereby quashing the order dated 29.10.2020 (Annexure-9) passed by respondent No.2 in Appeal No.29/CGST/JSR/2020 communicated to the petitioner on 03.12.2020.

(ii) For issuance of Writ in the nature of Certiorari thereby quashing the order in the prescribed Form-GST-RFD-06 being order no., 07/R-F/2019 dated 07.02.2019 contained in C. No.V (Refund) 18 / GST / CTC/ ITC/ Jan18/63/JSR-111/2018/387 dated 07.02.2019.

(iii) For issuance of Writ in the nature of Mandamus directing respondent No.3 for refund of accumulated CGST, SGST and IGST credit for the period of January, 2018, total being Rs.9,89,191.00 to the petitioner.

2. The brief facts of the case as disclosed in the instant application is that the petitioner is a company registered under the Company Act, 1956 and is a 100 percent export oriented unit, exporting its products to countries like USA, China,

Germany and other countries. The petitioner filed an application for refund of accumulated CGST, SGST and IGST credit for the period of January, 2018, total being Rs.9,89,191.00/- in the prescribed Form-GST-RFD-01A along with supporting documents.

The petitioner while filing the GSTR-3B return of Input Tax Credit for the month of January, 2018; inadvertently, missed out to mention the zero rated supplies to the tune of Rs.3,79,82,605/- against the outward taxable supplies (zero rated) in the said return and instead mentioned the same to be "zero". However, the said amount of zero rated supplies has been correctly shown in GSTR-1 return of outward supplies against export invoices.

On receipt of the refund application dated 13.12.2018, the respondent No.3 issued and served a notice of rejection of application for refund contained in C.No.V (Refund) 18/GST/CTC/ITC/Jan18/63/JST-III/2018/57 dated 04.10.2019 calling upon the petitioner to show cause as to why the refund claim to the extent of the amount mentioned therein should not be rejected for the reasons mentioned therein.

Against the notice dated 04.01.2019, the petitioner filed its reply on 29.01.2019 stating interalia that excess refund filed by considering wrong NET ITC shall be rejected; expenses under Sl. No.1-3 relates to part purchased for maintenance of Plant and Machinery used in production, and therefore, CGST and SGST credit of Rs.2489.22 should be allowed, however those mentioned in Sl. No.4-6 and 9 may be rejected. In other words, the petitioner filed a detailed reply and after considering the reply, the adjudication order has been passed.

3. The case of the petitioner is that the respondent No.3 without considering the explanation given by the petitioner and without even providing an opportunity of personal hearing passed an order in the prescribed Form-GST-RFD-06 dated 07.02.2019, whereby the authority has rejected the claim of the petitioner. Being aggrieved by the said order of rejection dated 7.2.2019, the petitioner preferred an appeal, however though the petitioner appeared in appeal and tried to satisfy the appellate authority his case for refund has been rejected.

4. Learned counsel for the petitioner submits that the respondents in the instant case has passed the impugned orders without considering the facts in entirety and without considering the documents which was provided by the petitioner. The respondents have failed to take into account the fact that the definition of adjusted total revenue as provided under Rule 89 (4) of the Central Goods and Services Tax Rules, 2017 specifically excludes the exempted supplies and the claim of the petitioner for refund falls under exempt supplies as per Section 2(47) of the Central Goods and Services Tax Act, 2017.

Further, the respondents have erred in rejecting the claim of refund on the ground that the zero rated supply of Goods and Services has been taken as Rs.3,79,82,605/- though the value of zero rated supply as per GSTR-3B appears to be zero.

Relying upon the aforesaid submissions petitioner prayed for quashing of the aforesaid rejection order as well as the appellate order and further prayed for a direction for refund of the amount as claimed by the petitioner.

5. A counter affidavit has been filed in this case by the respondent stating inter alia that there is no infirmity in the impugned adjudication order, inasmuch as, refund claim has been rejected correctly as the amount of the refund amount is calculated on the formula and since value of zero rated supply of Goods and Services as per GSTR-3B for January, 2018 is zero; hence refund amount appears to be zero.

It has been specifically stated in the counter affidavit that a personal hearing was also granted to the petitioner on 31.01.2019 which was attended by Sri P. K. Choudhary and Sri Gurtej Singh.

Mr. Amit Kumar, learned counsel for the respondents submits that the invoices at point nos. 2(1), 2(2), 2(3), 2(7) and 2(8) was considered but refund of credit was not admissible in terms of Section 17(5) of CGTST Act, 2017. Learned counsel further submits that rejection of refund claim has been done correctly as the amount of refund claim is calculated on the formula and since value of zero rated supply of Goods and Services as per GSTR-3B for January, 2018 is zero hence refund claim appears to be zero.

Learned counsel reiterated that during course of assessment proceeding personal hearing was also conducted on 31.01.2019 which was duly availed by the assessee and further the GSTR-3B is self assessment/declaration and the petitioner did not corroborate his claim by corresponding invoices; as such the claim of the petitioner for refund was rejected in absence of supporting documents.

6. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavits, it appears that petitioner has not produced any documentary evidence for his claim of refund; either before the adjudicating authority or before the appellate authority though he was afforded personal hearing but the petitioner failed to prove that the declaration zero rated value of GSTR-1 was legal and genuine.

It further transpires that the Appellate Authority has given a categorically finding that the application for refund of unutilized ITC on account of zero rated supplies has to be accompanied by documentary evidence to establish that a refund is genuinely due to the applicant. However, in the instant case such documentary or other evidence which was necessary to substantiate the claim of the assessee was not furnished even before the Appellate Authority.

In other words, the assessee could not provide any such corroborative evidence in the form of documents even before the Appellate Authority, what to say before the assessment proceeding, to substantiate its claim of zero rated supply so that

its claim could be validated. The law is very clear that merely claiming any refund on the basis of averments would not suffice unless and until the said claim of any assessee is corroborated by documentary evidence. In the instant case, the petitioner is making claim without furnishing any documentary evidence to support their contention.

From the appellate order it also transpires that the Appellate Authority has duly considered the circular No.37/11/2018-GST dated 15.3.2018 which is related to a refund claim on account of export of goods without payment of tax and held that the same is possible only on verification of invoices. At the cost of repetition, since the petitioner fails to substantiate its claim of refund by giving documentary evidence either before the assessment proceeding or before the appellate authority; his claim for refund has been rejected. Even before this Court, the petitioner failed to do so.

7. Before parting, it is pertinent to mention here that the claim of the petitioner that the impugned order of rejection is bad in law on the ground of principle of natural justice of affording reasonable opportunity is also not sustainable, inasmuch as, from the impugned order itself it is clear that personal opportunity of hearing was duly afforded to the petitioner and as a matter of fact on the date of personal hearing, which was conducted on 31.1.2019, the assessee was represented by Sri P. K. Choudhary and Sri Gurtej Singh; as such, even the ground of natural justice is misplaced in the instant case.

8. Having regard to the facts of the case and the discussion made hereinabove, we refrain to interfere with the impugned orders. Consequently, the instant writ application is dismissed on contest.