
(2022) 03 DEL CK 0240

In the Delhi High Court

Case No : Civil Writ Petition No. 11138 Of 2021, Civil Miscellaneous Application No. 40310 Of 2021

Richie Rich Exim Solutions

APPELLANT

Vs

Commissioner Of Cgst Delhi South

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Central Goods and Service Tax Rules, 2017 — Rule 92(3)

Citation : (2022) 03 DEL CK 0240

Hon'ble Judges : Rajiv Shakdher, J; Poonam A. Bamba, J

Bench : Division Bench

Advocate : Rajesh Jain, Virag Tiwari, Ramashish, Aditya Singla, Utsav Vasudeva

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The substantive prayers made in the writ petition are as follows:

"a) quash and set aside the refund rejection order dated 30.12.2020 passed by the Assistant Commissioner Central GST, Delhi South;

b) direct the respondent to grant refund of Rs.98,54,248/- claimed under CGST, SGST & Cess for the period September, 2020;

c) direct the respondent to grant interest in terms of Section 56 under CGTST/SGST;

2. Notice in this writ petition was issued on 30.09.2021, whereupon the respondent has filed a counter-affidavit in the matter, followed by a rejoinder being lodged by the petitioner.

2.1. The grievance that the petitioner articulated on the very first day of hearing i.e., 30.09.2021 was that, even though the proviso to sub-rule 3 of Rule 92 of the Central Goods and Service Tax Rules, 2017 [in short, 'CGST Rules'] required

the respondent to grant personal hearing to the petitioner before rejecting its application for refund, the regime set forth in the said rule was not complied with.

2.2. We may note that on that date, when notice was issued by a coordinate bench of this court i.e., 30.09.2021, Mr Aditya Singla, who appears on behalf of respondent, had screen-shared the details available on the respondent's GST portal to demonstrate that the date of hearing had, in fact, been fixed and it was the petitioner who did not appear in support of its refund application on the date and time allocated in that regard. Mr Singla had, thus, conveyed to the court that the date fixed for grant of personal hearing was 29.12.2020, and the time allotted was 03:00 P.M.

2.3. In consonance with the directions issued by the court on that date, a counter-affidavit, as noted above, has been filed on behalf of the respondent, which seeks to take the same stance, as was portrayed before the court on 30.09.2021.

3. The petitioner, on the other hand, has filed a rejoinder, in which it is averred that the only site available to the petitioner for obtaining information with regard to his case is services.gst.gov.in. The petitioner also goes on to aver that the webpage, which has been placed on record by the respondent is from a website i.e., gstprod.cbec.gov.in/cbec.aces.gst.ui.

3.1. Therefore, according to the petitioner, the screenshot which was screen-shared by Mr Singla on 30.09.2021, could not be viewed by the petitioner.

3.2. In support of this plea that there was, in fact, no date fixed for grant of personal hearing, the petitioner has also relied upon the audit history of the case which was generated, concededly, by the respondent. [See page 41 of the case file, exhibited as Annexure P-2 (colly).]

3.3. A perusal of the audit history does establish the veracity of the assertions made by the petitioner, which is, that it does not reveal that hearing for its refund application was fixed on 29.12.2020. Since the audit history, as noticed above, is a document generated by the respondent, it is clear that the respondent has not been able to discharge the onus which is placed on it, to demonstrate that a date had been fixed for grant of personal hearing to the petitioner.

4. That being the position, the impugned order passed in the petitioner's refund application, in our view, is flawed, as the proviso to sub-rule 3 of Rule 92 of the CGST Rules clearly obliges the respondent to grant a reasonable opportunity to the petitioner of hearing before rejecting the application for refund.

4.1. For the sake of convenience, the relevant provision is extracted hereafter:

"92. Order sanctioning refund.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.” [Emphasis is ours.]

5. We may also note that it has been argued by Mr Jain, that there are only two grounds on which a refund application could have been rejected by the respondent :

(i) First, the amount claimed as refund was not admissible; and

(ii) Second, the amount claimed as refund was not payable.

5.1. Mr Jain says that a perusal of the order of rejection i.e., the impugned order dated 30.12.2020 would show that the only ground on which the petitioner's application for refund stands rejected is that its supplier has been reported as 'risky'.

6. This apart, Mr Jain also submits that under sub-rule 3 of Rule 92 of the CGST Rules, the respondent was required to give minimum 15 days for filing a reply to the notice for application for refund, whereas the time allocated to the petitioner was only 7 days.

7. Mr Singla, on the other hand, has sought to defend the case of the respondent based on the position taken in the impugned order.

8. As noted above, the respondent has been unable to discharge the onus, as to whether the hearing in the matter was fixed on 29.12.2020.

8.1. Since the respondent was mandatorily required to grant reasonable opportunity to the petitioner before rejecting its application for refund, there has been, as contended by Mr Jain, a breach of the principles of natural justice.

9. Furthermore, according to us, the order of rejection i.e., the impugned order has given no reasons as to why refund sought by the petitioner was neither admissible nor payable. Mr Jain is right that the only ground given was that the supplier of the petitioner was reported as "risky", which, to our minds, does not convey much.

9.1. It is not in dispute that the petitioner filed an application for refund of Rs.98,54,248/-, which included CGST amounting to Rs.15,89,160/-, SGST

amounting to Rs.15,89,160/- and cess amounting to Rs.66,75,928/-. This refund was sought with respect to exports of goods/services.

9.2. Upon a show cause notice being issued by the respondent, which is, dated 22.12.2020, the petitioner filed its reply on 23.12.2020, with due alacrity, even though the timeframe given was 7 days, which was, concededly, less than what is required to be granted under sub-rule 3 of Rule 92.

9.3. Therefore, Mr Singla is right, to the limited extent, that the petitioner seems to have not made a grievance with regard to the timeframe allotted to it.

10. That said, the other aspect of the matter, which is, that no personal hearing was granted, stands established having regard to the record placed before us.

10.1. As noted above, the audit history as generated by the respondent goes against the stand taken by the respondent.

11. Therefore, for the reasons given hereinabove, we are inclined to accept the stance taken on behalf of the petitioner that the impugned order deserves to be set aside.

11.1. It is ordered accordingly.

12. The respondent shall hear the petitioner in support of its refund application, before passing a fresh order with regard to the same.

12.1. The respondent will pass a speaking order and a copy of the same will be furnished to the petitioner.

12.2. To hasten the proceedings, the respondent will issue a notice in writing to the petitioner, fixing the date, time and venue of the hearing. Notice shall issue within ten days of the receipt of a copy of the judgement.

12.3. Once hearing in the matter is concluded, the respondent, as noticed above, will pass a speaking order on the refund application, one way or the other, as per law; within two weeks after the personal hearing has concluded.

13. The writ petition is disposed of in the aforesaid terms.

14. Consequently, pending application shall stand closed.