IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 2225 of 2021

ESL Steel Limited (earlier known as Electrosteel Steels Limited, through its General Manager (Finance) Sanjive Kumar Singh ...Petitioner

Versus

1. Principal Commissioner, Central Goods and Service Tax & Central Excise, District-Ranchi.
2. Chief Commissioner, Central Goods and Service Tax & Central Excise, Ranchi Zone, Patna.
3. Assistant Commissioner, Central Goods and Service Tax & Central Excise, Division-I, Bokaro ...Respondents

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CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Biren Poddar, Sr. Advocate
M/s. Deepak Sinha, Piyush Poddar, Manav Poddar, Advocates

For the Resp.-CGST : Mr. P.A.S. Pati, Advocate
Ms. Ranjana Mukherjee, Advocate

RESERVED ON 07/12//2023 **PRONOUNCED ON 4/03/2024**

Per Deepak Roshan J. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner for the following reliefs:

> *"(i) For quashing and setting aside the impugned Order-in-Appeal No. 18/CGST/RAN/2021 dated 01.03.2021 (Annexure-7) passed by the Appellate Authority i.e., Joint Commissioner (Appeals), CGST, Ranchi.*
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> *(ii) For quashing and setting aside the Order-in-Original dated 31.07.2020 (Annexure-6) passed by the Respondent No. 3, whereby the said Adjudicating Authority without considering the show-cause reply dated 31.07.2020 (Annexure-5) filed by the petitioner, issued a rejection order in Form GST RFD-06 dated 31st July, 2020 rejecting the petitioner's claim of Rs. 1,93,21,127/- pertaining to cess paid on inputs used in making exports supplies, on the ground that PH scheduled on 30.07.2020 in this case was not attended and no documents uploaded/submitted to clarify/resolve the discrepancies pointed in the SCN uploaded dated 15.07.2020 in Form RFD-08 (Annexure-3).*
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> *(iii) For a direction upon the concerned respondents to pass a fresh order-in-original allowing the petitioner's claim of refund of Rs. 1,93,21,127/; pertaining to cess paid on inputs used in making export supplies, after affording due opportunity of hearing to the petitioner and also after taking into account the show-cause reply dated 31.07.2020 (Annexure-5) filed by the petitioner before respondent no. 3."*

3. The brief facts of the case as it appears from the writ application is that the petitioner company is engaged in manufacturing of steel products like

TMT Bars, Steel Rods etc. and for Financial Year 2017-18, the petitioner has made certain inwards supplies of coal on which compensation cess was charged by the supplier. The petitioner also imported coal and paid cess over the same and also claimed Input Tax Credit (ITC) of Rs. 41,92,74,925/- on such cess paid to the supplier or to the Government for the Financial Year 2017-18. The Coal was used in domestic supplies as well as zero-rated supplies. The petitioner, therefore, claimed proportionate refund of cess i.e., cess paid on coal which was utilized in zero-rated supplies.

Petitioner filed two claims for refund of cess separately for export supplies and supplies to SEZ units. Petitioner also filed an appeal in Form GST APL-01 against rejection of refund on export supplies and also filed a refund application for claiming refund of cess for the Financial Year 2017-18 in GST RFD-01 on 13.03.2020 for refund of an amount of Rs. 2,01,53,182.00/- on account of SEZ and direct export and accordingly a Refund ARN Receipt was duly issued to the petitioner (Annexure-1). After filing of the said refund application dated 13.03.2020 (Annexure-1), the petitioner Company once again filed a revised refund application dated 26.06.2020 claiming refund of Rs. 1,93,21,127/- on account of export sales without payment of tax for the Financial Year 2017-18 (Annexure-2).

After filing of the refund application dated 26.06.2020 (Annexure-2), the petitioner was served with a show-cause notice for rejection of application for refund in Form GST-RFD-08 dated 15.07.2020, asking the petitioner, as to why the claim of refund, to the extent of the amount specified above, should not be rejected (Annexure-3).

4. The case of the petitioner is that the SCN dated 15.07.2020 (Annexure-3), was served upon the petitioner on 16th July, 2020 at 3:20 p.m. via mail. He was given 15 days' time from the date of service, to reply to the reasons mentioned by the respondent no. 3 i.e., by 31st July, 2020 (Annexure-4). However, the respondent no. 3 without considering the time limit of 15 days from the date of service of show-cause notice, asked the petitioner to appear before him on 30th July, 2020 at 11:30 A.M. as mentioned in the aforesaid notice dated 15.07.2020 (Annexure-3).

Petitioner filed its reply to the above show-cause notice on 31.07.2020 before the respondent no. 3, giving reply to the reason mentioned in the aforesaid notice (Annexure-5). He could not make appearance before respondent no. 03 on 30.07.2020 due to some COVID-19 cases in the petitioner-Company.

5. The specific case of the petitioner company is that the Respondent No. 3, in complete violation of principles of natural justice, even did not accept the show-cause reply dated 31.07.2020 filed by the petitioner and issued a rejection order in Form GST RFD-06 dated 31st July, 2020 rejecting the petitioner's claim of Rs. 1,93,21,127/- pertaining to cess paid on inputs (Annexure-6).

Being aggrieved by the aforesaid rejection order, the petitioner filed an appeal under section 107 of CGST Act, before the Appellate Authority in Form GST APL-01; however, the Appellate Authority rejected the aforesaid appeal filed by the petitioner vide impugned Order-in-Appeal No. 18/CGST/RAN/2021 dated 01.03.2021 (Annexure-7).

Though, as per the provisions of the CGST Act, the remedy of challenging the Order-in-Appeal lie before the Tribunal by way of filing the appeal under section 112 of the CGST Act; however, there is no constitution of appellate tribunal as on date of filing, which would be evident from Circular No. 132/2/2020-GST dated 18.03.2020 issued by the Central Government and therefore there is no alternative remedy available with the petitioner to challenge the above orders, therefore, the petitioner was compelled to file the instant writ petition (Annexure-8).

6. Mr. Biren Poddar, learned Sr. Counsel for the petitioner has assailed the impugned OIO and OIA mainly on the following grounds:

(i) There is a violation of principles of natural justice;

(ii) The OIO is non-speaking order;

(iii) No DIN has been mentioned in either SCN or rejection order.

Learned Sr. counsel for the Petitioner-Company submits that petitioner has filed supplementary affidavit to bring on record the memo of appeal filed by the company before the Appellate Authority, wherein all the relevant grounds were raised by the petitioner. The Appellate authority has passed an order without considering the grounds raised by the petitioner and its submission before the appellate authority, which is bad in law.

He strenuously contended that entire proceedings initiated by the Respondent Department in rejecting the refund claim of the petitioner is totally in violation of the principles of natural justice, as no opportunity of hearing was granted to the petitioner and even the show-cause reply dated 31.07.2020 filed by the petitioner within a period of limitation i.e., 15 days,

from the date of receipt of SCN, has not been considered. He further contended that the date of hearing on the said show-cause notice was fixed by the respondent no. 3 on 30.07.2020 which is 14th day from the date of receipt of the show-cause notice, inasmuch as, the SCN dated 15.07.2020 (Annexure-3) was served on the petitioner on 16th July, 2020 at 3:20 P.M. via mail. Since the petitioner was given a 15 days' time from the date of service, to reply to the reasons mentioned by the respondent no. 3 i.e., by 31st July, 2020; but surprisingly, the respondent no. 3 without considering the time limit of 15 days from the date of service of notice, asked the petitioner to appear before him on 30th July, 2020 at 11:30 A.M. as mentioned in the aforesaid show-cause notice dated 15.07.2020. Admittedly, in the instant case, the show-cause notice was served upon the petitioner on 16th July, 2020 through e-mails.

Learned Sr. Counsel reiterated that the Order-in-Original (OIO) dated 31.07.2020 (Annexure-6) passed by the respondent no. 3 has been passed in complete violation of principals of natural justice, without giving any opportunity of hearing to the petitioner and even without considering the show-cause reply dated 31.07.2020 (Annexure-5) filed by petitioner, which would be evident from the following facts:

(i) SCN uploaded dated 15.07.2020 in form RFD-08 (Annexure-3).

(ii) SCN dated 15.07.2020 (Annexure-3) was served on the petitioner on 16the July, 2020 at 3:20 p.m. via email (Annexure-4) to the petitioner to file show -cause reply within 15 days from the date of service of SCN.

(iii) SCN reply dated 31.07.2020 (Annexure-5) was filed within 15 days from the date of service of SCN.

(iv) Order-in-Original dated 31.07.2020 (Annexure-6) was passed by the respondent no. 3 without allowing opportunity of hearing to the petitioner and without considering the show-cause reply (Annexure-5) filed by the petitioner before him.

(v) Learned Ac-CGST did not follow the virtual hearing instructions issued by the Hon'ble Supreme Court and CBIC itself.

On merits of the case, learned Sr. Counsel submits that the refund formula under Rule 89(4) considers the total value of Zero-rated supplies and not the value of SEZ & supplies' & Value of export supplies without payment of duty separately.

Relying upon the aforesaid submissions, learned Sr. Counsel for the petitioner company prays that the relief as claimed in the instant writ application may be allowed.

7. Mr. P.A.S. Pati, learned Sr. standing counsel for the Revenue assisted by Ms. Ranjana Mukherjee, Jr. S.C. submits that the Order-in-Original and Order-in-Appeal are legal and passed in accordance with the provisions of CGST Act, 2017 read with CGST Rules, 2017.

He further submits that from perusal of the appellate order (OIA), it is clear that the Appellate Authority has considered the entire facts and rejected the appeal of the petitioner. He further submits that from OIO dated 31.07.2020, it is evident that principles of natural justice have been followed. Since the petitioner failed to upload its reply on scheduled date of personal hearing on 30.07.2020; the concerned respondent thought that the petitioner ignored the personal hearing. On 15.07.2020, show-cause notice was issued to the petitioner through GST Portal and on 16.07.2020, the same was uploaded. On 16.07.2020 the SCN was also emailed as reminder. In the SCN, it was clearly mentioned to file a reply within 15 days and the date 30.07.2020 was fixed for personal hearing and since the reply to SCN has never been submitted on GST Portal within the stipulated date and hard copy of reply was submitted on 31.07.2020; however, on 31.07.2020 the OIO was passed. He reiterated that opportunity of hearing was granted on 30.07.2020, but the same was not availed by the petitioner and the reply was neither uploaded on GST Portal nor submitted in the office of the respondent within the stipulated time.

Learned counsel for the Revenue lastly submits that the Appellate Authority has considered the entire gamut of the case and rejected the case of the petitioner on merits; as such no interference is required and the instant application is fit to be dismissed.

8. Having heard learned counsel for the rival parties and after going through the documents available on record and the provisions of law, it appears that the petitioner is engaged in manufacture and sale/supply of steel products. It exports the goods manufactured without payment of tax (zero rated supply). The petitioner availed ITC on the competition cess paid by them on its input coal. Major output of the petitioner were products on which compensation cess was not payable and ITC remained unutilized in credit ledger.

It further transpires that on 13.03.2020 GST-RFD-01 was filed by the petitioner seeking refund of Rs. 2,02,53,182/- for the period 2017-18 on the ground of refund claim on account of SEZ and direct export. On 26.06.2020

a revised GST-RFD-01 was filed seeking refund of Rs. 1,93,21,127/- for the period 2017-18 on the ground of refund claim on zero rated supply of goods (export sales). On 15.07.2020, GST-RFD-08 i.e., SCN for rejection of refund was issued to the petitioner. On 30.07.2020, date was fixed for personal hearing and also for filing show-cause reply. The petitioner filed its reply to SCN on 31.07.2020 itself; however, GST-RFD-01 was issued rejecting the claim of refund of petitioner on the ground that petitioner did not respond to SCN. On 01.03.2021, even the appeal of the petitioner was rejected.

9. From the arguments of the petitioner, it is clear that the main ground of challenge is that the principles of natural justice have not been followed in this case. To appreciate this issue, it would be profitable to go through the provisions of the Act & Rules itself. Rule 92(3) of the Central Goods and Service Tax Rules, 2017 provides as under:

> ***"(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."*

The proviso to the aforesaid Rule-92(3) of the Central Goods and Service Tax Rules, 2017, provides as under:

> *"Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."*

Thus, the aforesaid Rule 92(3) along with the proviso thereof, prescribes the procedures to be followed by the Proper Officer, for adjudication of the refund application, in the following manner:

(i) *To issue show-cause notice in FORM GST RFD-08 for filing reply by the applicant within fifteen days from the date of service of notice in FORM GST RFD-09*

(ii) *To provide personal opportunity of hearing to the applicant before passing the rejection order of application for refund.*

(iii) *To pass the rejection order in Form GST RFD-06.*

From perusal of the aforesaid Rules, it is crystal clear that the refund application cannot be rejected without hearing the applicant (petitioner herein) and in the instant case, admittedly; the rejection order dated

31.07.2020 (Annexure-6) has been passed without providing any opportunity of hearing to the petitioner, which would be evident from the following facts:

(a) SCN dated 15.07.2020 (Annexure-3) has been served upon the petitioner through e-mail on 16.07.2020 at 12.03 p.m (Annexure-4), requiring the petitioner to furnish reply within fifteen days.

(b) Aforesaid fifteen (15) days expires on 31.07.2020, on which date the petitioner furnished its reply dated 31.07.2020 (Annexure-5), sent through e-mail dated 31.07.2020.

(c) But the date of Personal Hearing (PH) as per the proviso to Rule 92(3) has been pre-maturely fixed on 30.07.2020 itself.

10. At this stage it is pertinent to mention here that while a Personal Hearing (P.H.) was fixed on 30.07.2020, but admittedly it was premature in nature; thus, another personal hearing should have been granted to the petitioner after 31.07.2020 i.e., after receipt of reply to SCN, for making submissions and production of relevant/necessary papers and documents, to ensure that the Adjudicating Authority can examine such submissions and verify those documents before passing any order. However, interestingly, the final order itself was passed on 31.07.2020.

In the similar facts and circumstance, the Bombay High Court in the case of ***BA Continum India Pvt. Ltd. Vs. Union of India***, reported in ***MANU/MH/0659/2021,*** at paragraphs-34.1 and 35 has held, as under;

> *"**34.1.** From the above, it is evident that in case 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, he shall issue notice to the applicant requiring filling of reply within 15 days of receipt of notice and after considering the reply make an order sanctioning the amount of refund in whole or in part or rejecting the refund claim which order shall be made available to the applicant. As per the proviso, an application for refund shall not be rejected without giving the applicant an opportunity of being heard. Therefore, there is a clear legal mandate that if an application for refund is to be rejected, the same can only be done after giving the applicant an opportunity of being heard.*
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> ***35.** The expression "Opportunity of being heard is not an expression of empty formality. It is a part of the well- recognized principle of audi alteram partem which forms the fulcrum of natural justice and is central to fair procedure. The principle is that no one should be condemned unheard. It is not necessary to delve deep into the expression save and except to say that by way of judicial pronouncements the said expression has been made central to the decision making process, breach of which would be construed to be violation of the principles of natural justice thus adversely affecting the decision making process; a ground for invoking the power of judicial review".*

Similar view was taken by the Karnataka High Court in the case ***Asiatic Clinical Research Pvt. Ltd. V. Union of India***, reported in ***MANU/KA/0502/2021.***

Similarly, the Delhi High Court on the similar issue in the case of ***Richie Rich Exim Bolutions Vs. Commissioner or CGST Delhi South*** reported in MANU/DE/1078/2022, has allowed the application of the Assessee and the order of rejection of application of refund was quashed and set aside.

11. At this stage, it is also profitable to refer the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the Government of India, which also incorporates the concept of granting a personal hearing after filing of a reply. Relevant clause is extracted here under:

> *"**14.3 Personal hearing**: After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorized representative.*

Thus, even the Master Circular speaks for giving personal hearing to the Assessee after receiving the reply to SCN; however, in the case at hand the SCN itself gave the date of P.H. before the expiry of 15 days from the date of receipt of SCN; which is admittedly; premature. Further the Adjudicating Authority was in so hurry that it passed the order on the very next date.

At this juncture, it is necessary to refer the order passed by the appellate authority (OIA) while dealing with the ground of personal hearing. From the OIA, it transpires that the appellate authority on the issue of personal hearing has opined that personal hearing was granted and was conducted as per Ministry's instruction and P.H. was conducted on 15.01.2021. Perhaps, the learned appellate authority has misdirected itself in giving finding that personal hearing was given to the Assessee. However, the fact remains that P.H. was given on 15.01.2021 (during appellate proceeding), but not during original proceeding. Thus, the main ground of principle of natural justice has not at all been dealt with by the appellate authority and it went on giving the entire order on merits.

12. Further, from perusal of the impugned rejection order of refund dated 31.07.2020 (Annexure-6), it transpires that the same is also non-speaking

order i.e., without recording any reasons, though the same is mandatory under Rule 92(3) of the Rules, 2017, and therefore unsustainable and is fit to be quashed, inasmuch as, none of the submissions made by the petitioner has been considered and the claim of refund was rejected on the ground that P.H. scheduled on 30.07.2020, in this case, was not attended and no documents were uploaded/submitted to clarify/resolve the discrepancies as pointed in the SCN uploaded dated 15.07.2020 in form RFD-08 (Annexure-3).

Reference in this regard may be made to the judgment delivered by the Madras High Court in the case of ***Jay Jay Mills (India) Pvt. Ltd. Vrs. State Tax Officer, Tirupur*** reported in ***MANU/TN/5662/2020***. Para-5 of the said order is extracted herein below:

> ***"5.*** *It is a settled proposition of law that whenever an application of this nature is made, the statutory authority are bound to consider the claim made and pass a reasoned Order. In present case, the petitioner had made an application for refund under Section 54 of the Act and when the respondent has issued notice to them for rejection of the ineligible goods and services of SGST, CGST and IGST, they have given a detailed reply, objecting to the parties. All these objections were required to be dealt with by the authority, before taking a final call, which is conspicuously absent. As such, the order itself can be termed to be "a non-speaking order" and therefore, are liable to be set aside. However, if the respondent is granted an opportunity to pass fresh orders, after considering the objections of the Petitioner, the end of justice could be secured."*

Similar view has also been taken by the Bombay High Court in the case of ***Colgate Global Business Services Pvt. Ltd. Vrs. Union of India &Ors.*** reported in ***MANU/MH/0240/2022***, wherein at para-5 it has been observed as under:

> ***5.*** *A perusal of the impugned order indicates that the respondent no. 3 has rejected the application for refund without recording any reasons, though the same is mandatory under Rule 92(3) of the Central Goods and Services Tax Rules, 2017. In our view, the order passed by the respondent no. 3 is in breach of the said provisions and deserves to be granted and set-aside."*

13. Before parting it is also necessary to observe that the impugned order is also bad in law, inasmuch as, from perusal of show-Cause notice dated 15.07.2020 (Annexure-3) and the rejection order of refund dated 31.07.2020 (Annexure-6), it would transpire that there is no DIN quoted on those Notice/Order, and as such those Notice/Order are invalid and deemed to have never been issued as per the Circular No. 122/41/2019-GST dated 05.11.2019 and Circular No. 128/47/2019-GST dated 23.12.2019, therefore the entire subsequent proceedings are null and void.

In this regard, the Ministry of Finance, Government of India has issued a Circular No. 122/41/2019-GST dated 05.11.2019, regarding

generation and quoting of DIN on any communication issued by Department to tax payers and other concerned persons. In Para-4 of the same, the following has been specifically mentioned:

> ***"4.*** *The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exception mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued."*

Thereafter, another Circular No. 128/47/2019-GST dated 23.12.2019 was issued by the Central Government, wherein at Para-2 and Para-5 of the same, following, *interalia,* has been mentioned:

> ***"2. .....****In continuation of the same, the Board has now directed that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country."*
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> ***3.....***
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> ***4.....***
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> ***5.*** *The Board once again directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of Circular No. 122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be deemed to have never been issued."*

14. Having regard to the aforesaid discussions and the judgments of various High Courts referred to herein above and the Circulars issued by the Revenue itself on the issue in hand, it is crystal clear that principles of natural justice have not been followed in the instant case. As such, interest of justice would be sufficed by remitting the case to the respondent no.3, to start proceeding from the stage of personal hearing. It goes without saying that it is an admitted case that reply to SCN was received on 31st July 2020; as such, the concerned authority shall consider that reply to SCN filed by the petitioner and give a date for personal hearing and pass an appropriate order in accordance with law.

15. As a result, the instant writ application is allowed. Pending I.A., if any, also stands disposed of.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

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