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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.11.2024

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W.P.(C) 2869/2024**M/S. ELITE INTERNATIONAL THROUGH ITS
PROPRIETOR SH. ROHAN ARORAPetitioner**

Through: Mr. Vineet Bhatia, Mr. Rakesh
Kumar, Ms. Aamnaya J Mishra,
Mr. Bipin Punia, Mr. Keshav
Garg & Mr. Abhinav Sharde,
Adv.

versus

**COMMISSIONER OF CGST DELHI NORTH
AND ORS.Respondents**

Through: Mr. Shashank Sharma, SSC.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE DHARMESH SHARMA****J U D G M E N T****YASHWANT VARMA, J. (Oral)**

1. The instant writ petition has been preferred assailing the order dated 23 November 2022 which has rejected the application of the petitioner for refund and which subsequently came to be affirmed by the appellate authority in terms of its order dated 25 October 2023. The petitioner, consequently, seeks a refund of an amount of INR 16,10,541/- along with applicable statutory interest.
2. From the facts which stand disclosed in the writ petition, we find that the writ petitioner had during the year in consideration,



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effected three exports under Invoice Nos. E-129-EX, E-130-EX and E-131-EX. The date of realisation of export proceeds stand duly disclosed in paragraph 6 of the writ petition and which is reproduced hereinbelow:-

“6. That during the year under consideration the Petitioner had conducted three transactions of export as per details hereunder:

S.No	Invoice No.	Date	Amount (in USD)	Amount (in INR)
1.	E-129-EX	28.07.2021	1,38,127	
2.	E-130-EX	17.01.2022	27,228	
3.	E-131-EX	01.02.2022		25,42,510

For Export Invoice E-129-EX

Date of realisation of exports proceeds	BRC No.
26-03-2021	KKBK0000958996875120
22-04-2021	KKBK0000958996875123
20-05-2021	KKBK0000958996875119
08-06-2021	KKBK0000958996875121
30-06-2021	KKBK0000958996875117
15-07-2021	KKBK0000958996875122
07-09-2021	KKBK0000958996875118

For Export Invoice E-130-EX

Date of realisation of exports proceeds	BRC No.
21-10-2021	KKBK0000958996990450
31-01-2022	KKBK0000958996990449

For Export Invoice E-131-EX

Date of realisation of exports proceeds	BRC No.
24-11-2020	KKBK0000958997204017



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21-01-2021	KKBK0000958997204014
24-02-2021	KKBK0000958997204015
08-03-2021	KKBK0000958997204016

3. At this juncture we find it apposite to note the submission of Mr. Bhatia, learned counsel for the petitioner, that out of the three exports, two of them were realised in US Dollars. We also take note of a certificate placed on our record, issued by the Federal Bank with regard to Invoice No. E-131-EX, which certifies that the amount has been received from a convertible Vostro account.

4. An application for refund was thereafter made and during the consideration of which, a Show Cause Notice dated 04 August 2022 came to be issued proposing to reject that claim. The petitioner is stated to have furnished a reply on 13 August 2022 and whereafter on 23 November 2022, the respondents proceeded to pass the impugned order rejecting its application for refund.

5. Aggrieved by the aforesaid, the petitioner approached the appellate authority which has chosen to affirm the order of 23 November 2022. As we view the order dated 25 October 2023 passed by the appellate authority, we find that before it all documentation including the **eBRCs**¹ which were absent at the first stage of adjudication had been duly filed and submitted. The appellate authority, however, took the position that since a perusal of the eBRCs would evidence the export value having been realised in Indian Rupees as opposed to freely convertible currency, the application for refund was correctly rejected.

¹ Electronic Bank Realization Certificate



6. This becomes evident from reading paragraph 7 to 9 of the order passed by the appellate authority which is reproduced hereinbelow:-

7. The adjudicating authority, in the next issue, observed that the BRCs have not been issued against the appellant's export of goods even after prescribed period of nine months. In this context, the appellant stated that non-receipt of eBRC was beyond their control as these are provided by DGFT website and were not getting reflected at that time however these are now reflected on the website and are being downloaded. I find that the appellant, at appellate stage, has submitted copies of eBRC against export invoices. However, I find that all of these eBRCs are evidencing realized value in INR instead of freely convertible currency. Though the export invoices, except some invoices, are evidencing the amount in USD yet the eBRC are not evidencing the realization of export proceeds in USD or freely convertible currency. The appellant has not given any specific submission as to how they are eligible for export benefits where export proceeds are realized in INRs. As such, the submissions of said eBRCs, evidencing realization of export proceeds in INRs, is to be treated as not submitted as the purpose of submitting the same i.e. to examine whether the appellant is eligible for export benefit (refund of ITC accumulated against export of goods) will remain unresolved.

8. Therefore, in view of the above, I am of the considered view that the adjudicating authority has rightly rejected the appellant's refund claim. The impugned order, rejecting the appellant's said refund claim is legal and maintainable in law and therefore, I do not find any reason to interfere with the said impugned order. Accordingly, I pass the following order:

ORDER

9. The appeal filed by M/s Elite International (Legal Name: Rohan Arora), 1060, Gali No. 15, Naiwala, Karol Bagh, North Delhi, Delhi 110005 against Order-In-Original No.ZL0711220251069 dated 23.11.2022 is hereby rejected and disposed of in terms of Section 107(12) of the CGST Act, 2017."

7. Assailing the view so taken, learned counsel for the writ petitioner drew our attention to Circular No.88/07/2019-GST[F.NO. CBEC-20/16/04/2018-GST], dated 1 February 2019 and which reads



as follows:-

“The circular is revised in view of the amendment carried out in section 2(6) of the IGST Act, 2017 vide section 2 of the IGST (Amendment) Act, 2018 allowing realization of export proceeds in INR, wherever allowed by the RBI. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

3.1 Original Para 2(k)

Realization of export proceeds in Indian Rupee: Attention is invited to para A (v) Part-I of RBI Master Circular No. 14/2015-16 dated 1st July, 2015 (updated as on 05th November, 2015), which states that *"there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan"*.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to countries outside India Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

3.2 Amended Para 2(k)

Realization of export proceeds in Indian Rupee: Attention is invited to para A (v) Part- I of RBI Master Circular No. 14/2015-16 dated 01st July, 2015 (updated as on 05th November, 2015), which states that *"there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees*



but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.”

8. As is manifest from the above, the respondents themselves have rendered a clarification that if export proceeds against specific exports have been realised in Indian Rupees albeit routed through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of the Asian Clearing Union or Nepal and Bhutan, the refund would not be liable to be denied.

9. Before us, the respondents would contend that the aforesaid Circular alludes to “specific exports” and therefore, it is presently unclear as to whether the same would apply to all exports or to certain commodities and species of exports. It was thus submitted that since the Circular is being pressed in aid for the first time before this Court, at least this aspect should be kept open for verification and examination of the respondents.

10. While acceding to that request, we are of the firm opinion that at least the original order in term of which the refund application came to be rejected dated 23 November 2022 as well as the order of the appellate authority of 25 October 2023 would not sustain in light of the Circular enabling an exporter to receive remittances from duly



verified Vostro accounts.

11. We, accordingly, allow the present petition and quash the impugned orders dated 23 November 2022 and 25 October 2023. The application for refund shall be taken up for consideration afresh by the adjudicating authority who shall proceed to examine the same in light of Circular No. No.88/07/2019-GST[F.NO. CBEC-20/16/04/2018-GST] dated 01 February 2019 and the stand as taken by the writ petitioner before us and chronicled above.

12. We also leave it open to the adjudicating authority to examine the aspect of specific exports which was canvassed for our consideration. All rights and contentions of respective parties in that respect are kept open.

13. The exercise of determination shall be concluded with due expedition and preferably within a period of six weeks from today. In case the petitioner is ultimately found entitled to the refund, the same shall be made over along with applicable statutory interest.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 27, 2024/Ch