

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

W.P. No. 21405 of 2020

ORDER: *(Per Hon'ble Sri Justice C. Praveen Kumar)*

1) Heard Sri. Bharat Raichandani, learned Counsel appearing for the Petitioner and Sri. B.V.S. Chalapathi Rao, learned Standing Counsel appearing for Respondent Nos. 3, 4 and 5.

2) The present Writ Petition came to be filed seeking issuance of a writ of *Certiorari* for the following reliefs:

- a) *Quash the impugned Order No. VJAGST-REJ/266/2019-20 dated 27.11.2019;*
- b) *Quash the impugned letter bearing C. No. V/18/102/2020-Refunds dated 29.06.2020, and;*
- c) *Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondents to sanction entire refund claim with interest to the Petitioner under the provisions of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 and to pass such other reliefs”.*

- 3) The facts, in issue, are as under:
- i. The Petitioner herein is engaged in manufacture and export of medicaments/pharmaceuticals products, falling under Chapter 30 of the Central Excise Tariff Act, 1985.
 - ii. With the introduction of Goods and Services Tax, 2017, [**GST**], the Petitioner migrated to the GST regime and duly registered under the provisions of Central Goods and Services Tax Act, 2017 [**CGST**].
 - iii. In the instant case, the Petitioner supplied goods to SEZ Units on payment of Integrated Goods and Services Tax, 2017 [**IGST Act**], in accordance with the provisions of Section 7(5) of the IGST Act. The supply of goods to SEZ Unit is considered as “zero-rated supply” in terms of Section 16(1)(b) of IGST Act. The fact that the Petitioner made zero-rated supplies and paid IGST on supplies is not in dispute. That being the position, under section 54 of the CGST Act, *inter alia*, the Petitioner is entitled for IGST paid on zero-rated supplies.

- iv. It is the case of the Petitioner that, after the roll-out of GST, on account of non-availability of electronic refund module on the common portal, a temporary mechanism is devised, to initiate the process of refund effectively. Accordingly, the Petitioner was required to file the refund application in the Form GST RFD-01A on common portal; take a print out and submit the same physically to the jurisdictional Tax Office along with the documents, which the Petitioner has done and acknowledgments to that effect were also given to the Petitioner.
- v. In the month of February, 2020, the Petitioner attempted to submit physical documents in support of the above refund claims with respective jurisdictional Departments. However, the Department did not accept the documents, but informed the Petitioner that, in the light of Circular, dated 18.11.2019, issued by CBIC, the Petitioner is required to file refund application along with all supporting documents electronically on common portal with effect from 26.09.2019.

- vi. The Petitioner claims to have informed the Department that since the refund application is shown as 'processed' and, as such, the Petitioner could not file refund application afresh. In response, the Department verbally informed the Petitioner to raise ticket on helpdesk. Accordingly, a ticket was raised on GSTN helpdesk on 16.03.2020. Correspondence between the Department and the Petitioner took place and ultimately nothing happened. But, however, on 21.07.2020, the 4th Respondent informed the Petitioner that his Office has issued Form GST RFD-06, [rejection order], on the ground of non-submission of application for refund claim along with necessary supporting documents.
- vii. On coming to know about the same, the Petitioner herein sent E-mail, dated 22.07.2020, informing that they have not received physical copy of the rejection order and that the same is also not available in the common portal. In response to the same, physical copies of the same were furnished on 28.07.2020.
- viii. Having regard to the above, the present Writ Petition came to be filed, seeking the reliefs referred to above.

2. A counter came to be filed by Respondent Nos. 1, 3, 4 and 5 disputing the averments made in the affidavit filed in support of the Writ Petition.

3. The relevant paragraphs in the Counter are as under:

“8. 2.1

2.5 The registered person needs to file the refund claim with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order issued in this regard by the Chief Commissioner of Central Tax and the Commissioner of State Tax. In case such an order has not been issued in the State, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, in the later case, an undertaking is required to be submitted stating that the claim for sanction of refund has been made to only one of the authorities. It is reiterated that the Central Tax Officers shall facilitate the processing of the refund claims of all registered persons whether or not such person was registered with the Central Government in the earlier regime.

9. It is submitted that without having any documentary evidence on the hands of the jurisdictional proper officer, granting of refund on provisional basis to the petitioner is not tenable and possible as was argued by the petitioner. Without having the documentary

evidence supporting the refund application, the jurisdictional proper officer cannot process the claim. The CBIC categorically stated that the printout of the refund application with all the supporting documents shall be submitted to jurisdictional proper officer in order to process the refund application. Even though it is a procedural requirement, the supporting documents are very much required in order to process the refund claim. Without any documentary evidence the jurisdictional proper officer cannot process the refund claims”.

4. Today when the matter is taken up for hearing, both the Counsel reiterated the averments made in the affidavit filed in support of Writ Petition and the Counter, in support of their arguments, and ultimately it is agreed upon that the Petitioner herein shall make a fresh application seeking refund, in terms of Circular No. 125/44/2019-GST, dated 18.11.2019, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, within a period of three [03] weeks from today.

5. Hence with the consent of both the counsel, the Writ Petition is disposed of directing the Petitioner to make a fresh application for refund claim enclosing necessary supporting documents in terms of Circular No. 125/44/2019-GST, dated 18.11.2019,

issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, within a period of four [04] weeks from today. In which event, the authorities shall dispose of the same on merits and in accordance with law as early as possible, preferably within a period of Three weeks thereafter.

6. With the above direction, the Writ Petition is ***disposed of***.
No Order as to costs.

7. As a sequel, interlocutory applications, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

A.V. RAVINDRA BABU, J

Date: 07.09.2022
SM...

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

W.P. No. 21405 of 2020

(Per Hon'ble Sri Justice C. Praveen Kumar)

Date: 07.09.2022

SM