



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D. B. Civil Writ Petition No. 2604/2023

Medicamen Biotech Limited, SP-1192 A & B Phase IV, RIICO
Industrial Area Bhiwadi, District Alwar, Rajasthan 301019
Through its authorised representative Sh. Jaipakash Narula

-----Petitioner

Versus

1. Union of India, through its Revenue Secretary, Ministry of Finance, North Block, Raisina Hills, Delhi 110001.
2. The Commissioner (Appeals), Central Goods and Services Tax, Jaipur, NCRB Statue Circle, Jaipur 302005.
3. The Assistant Commissioner of Central Goods and Services Tax, Division C, Bhiwadi.

-----Respondents

For Petitioner	:	Mr. Preetam Singh Advocate with Mr. Govind Purohit Advocate.
For Respondents	:	Mr. Ajay Shukla Advocate.

**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN**

Order

10/04/2023

1. With the consent of the parties, this petition is heard finally.
2. The petitioner, having GSTIN 08AACM1217A1Z9, filed refund application in Form RFD-01 amounting to Rs. 14,34,804/- vide ARN No. AA0812200031153 under the category "supply made to SEZ unit/Developer with payment of Tax" for the period July, 2020 in terms of the provisions of Section 54, sub-section (3)(ii) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act of 2017') read with Rule 89, sub-rule (5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred



to as 'the CGST Rules of 2017'). On the basis of the aforesaid application, the proper officer, i.e., the Adjudicating Authority sanctioned refund of an amount of Rs. 14,30,110/- vide refund sanction order No. Z081200148802 dated 14.12.2020 passed in Form GST RFD-06 and credited the said amount vide payment advice issued in Form GST RFD-05.

3. The Competent Authority, i.e. Principal commissioner, Central Goods and Service Tax, Commissionerate, Alwar, in terms of provisions of Section 107(2) of the CGST Act of 2017 reviewed the order of refund dated 14.12.2020 observing that on examination of the records and documents uploaded by the claimant taxpayer, the requisite declarations and undertakings as per Master Circular No. 125/44/2019-GST dated 18.11.2019 was not duly signed, hence, the refund claim processed by the jurisdictional Assistant Commissioner was improper. Accordingly, the Principal Commissioner, CGST & Central Excise Commissionerate, Alwar observed that the refund sanctioned vide order dated 14.12.2020 passed by the Adjudicating Authority is not legal and proper to the extent of Rs. 14,30,110/-.

4. Pursuant to review reference order dated 19.07.2021, the respondent-department filed appeal under Section 107 of the CGST Act of 2017 on the ground that the Adjudicating Authority has erred in sanctioning refund claim to the petitioner.

5. Vide impugned order dated 20.09.2022 passed by the Additional Commissioner (Appeals), CGST, Jaipur (hereinafter referred to as 'the Appellate Authority'), the claim of refund and the order passed by the Adjudicating Authority allowing the refund has been held to be not legal and correct mainly on the basis that



scanned copies of declarations and undertakings which were uploaded as attachments with Form GST RFD-01 submitted electronically through common portal, but the taxpayer/writ petitioner, due to oversight failed to physically sign those declarations and undertakings before scanning and attaching with Form GST RFD-01. Thus, principally on the ground that the declarations filed by the petitioner were not signed by the proper person and also uploaded in PDF files as un-signed scanned copy, no verification was required and, therefore, refund order was not proper.

6. As there is no Tribunal in existence where the petitioner could avail the remedy of second appeal, the petitioner is before this Court.

7. Learned counsel for the petitioner would submit that it is an undisputed fact that all the documents including the declarations and undertakings attached to GST RFD-01 were digitally signed. However, even though there is no requirement of the rule that it should be separately signed in physical mode also before uploading and submitting through electronic mode, by administrative instructions, such a requirement has been introduced and not only that, the same has been made basis to reject the claim of the petitioner. Second limb of submission of learned counsel for the petitioner is that in any case, there is no dispute with regard to correctness of the declarations given by the petitioner and, therefore, order passed by the Appellate Authority declaring that the order of refund passed by the Adjudicating Authority was improper and illegal, is not sustainable in law.



8. Learned counsel for the respondents would submit that even if it may not be the requirement of the rules to upload physically signed scanned declarations and undertakings along with GST RFD-01, vide Circular No. 125/44/2019-GST dated 18.11.2019 (Annexure-10), it has been clearly provided that the declarations appended with the refund application are required to be physically signed before they are scanned and uploaded through electronic mode on the portal.

9. The Appellate Authority, in order to hold that the order of refund passed by the Adjudicating Authority in favour of the petitioner was improper and illegal, has recorded the following findings:

"10. Further, I find that the respondent in their cross reply admitted that, scanned copies of few more Declarations and Undertakings were uploaded as attachments with FORM GST RFD-01 submitted electronically through the common portal, but by oversight these Declarations and Undertakings were not physically signed before scanning and attaching with FORM GST RFD-01....."

In the next para, i.e. Para 11 of the impugned order, the Appellate Authority recorded as below:

"11. I also find that the Respondent in their cross reply submitted that no deficiency memo was issued by the proper officer in FORM GST RFD-03 for any deficiency found in the refund application filed by the Respondent. Therefore, it is not permissible for the Department to file an appeal at this stage on the ground of any deficiency in the refund application filed by the Respondent. In this regard I find that the deficiency memo was issued by the proper officer in FORM GST RFD-03 only in case of non availability of documentation but not for the authenticity/admissibility of documents/refund. In this case the declaration filed by the respondents were not signed by the proper person and also uploaded in PDF files as un-signed scanned copy, therefore there is no question arise about verification of the same. These declarations are necessary part of refund but the submission of RFD 01 through portal by a authorised person does not provide validity in respect of files uploaded along-with them."



10. It is not in dispute that all the declarations, which are required as per law to claim refund, were uploaded by the petitioner through electronic mode while claiming refund in GST RFD-01. However, the dispute is with regard to declarations referable to Rule 89, sub-rule (2) (d) and Rule 89 (2)(e) of the CGST Rules of 2017. In Para 6 of the writ petition, the petitioner has clearly averred that the GST refund claim application was filed electronically on the GST common portal, i.e., www.gst.gov.in and duly signed using the digital signature certificate of the authorised signatory for GST purposes. It has been further averred that the application was uploaded with the necessary documents, including declarations and undertakings as envisaged in Circular No. 125/44/2019 dated 18.11.2019 issued by the Central Board of Indirect Taxes and Customs.

There is no dispute raised by the respondents to the aforesaid averments. As far as digital signatures on the declarations are concerned, that is also not in dispute as it would be clear from the abstract of the impugned order which has been quoted hereinabove.

The only reason assigned by the Appellate Authority to declare the sanction for refund as illegal is that declarations were not signed in physical mode before it could be scanned and uploaded through electronic mode. For this purpose, as is apparent from the impugned order, the Appellate Authority has relied upon Circular dated 18.11.2019 (Annexure-10).

11. The legal requirement with regard to submission of application for refund is contained in Rule 89 of the CGST Rules of



2017. Relevant part of the aforesaid provision, for the purpose of present case, is extracted as below:

“89.Application for refund of tax, interest, penalty, fees or any other amount

(1) Any person, except the persons covered under notification issued under section 55, claiming refund of [any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file [, subject to the provisions of rule 10B,] an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

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(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **FORM GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-

(a) xxxxxxxx

(b) xxxxxxxx

(ba) xxxxxxxx

(c) xxxxxxxx

(d) xxxxxxxx

(e) xxxxxxxx

[(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;]”

A reading of the aforesaid provisions of Rule 89 of the CGST Rules of 2017 would show that there is no specific requirement that the declaration must necessarily be signed in physical mode.

12. Method of authentication is covered by the provisions contained in Rule 26 of the CGST Rules of 2017, relevant part of which reads as below:

“26. Method of authentication

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate



or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.

(2) xxxxxxxxxx

(3) xxxxxxxxxx”

13. A conjoint reading of the provisions contained in Rule 26 and Rule 89 of the CGST Rules of 2017 leaves no manner of doubt that as far as requirement of law is concerned, it does not mandate that even after having authenticated a document in the manner prescribed under Rule 26 of the CGST Rules of 2017, insofar as declarations (as sought in the present case) are concerned, they are also required to be signed in physical mode before being scanned and uploaded through electronic submission along with the application for refund.

It appears that by administrative instructions, i.e. Circular dated 18.11.2019 (Annexure-10), such requirement has been added.

14. Though non-submission of refund application along with the declarations as required under the law would certainly be illegal and that may, in appropriate case, entail rejection of the application, however, if declarations, as in the present case, are digitally authenticated in the manner prescribed under Rule 26 of the CGST Rules of 2017, non-submission of physically signed and scanned declarations may only be an irregularity, but not an illegality. We have also taken into consideration that declarations made by the petitioner have not been found to be factually incorrect.

15. In view of above, we are of the view that the impugned order passed by the Appellate Authority upsetting the order of refund passed by the Adjudicating Authority is not sustainable in



law. Therefore, impugned order rejecting claim of refund and depriving the petitioner of the refund to which it may be entitled, without any authority of law, cannot be allowed to be sustained. Administrative instructions cannot bar claim of refund if the legal requirements as contained in the law are fulfilled.

16. In the result, writ petition is allowed. Order dated 20.09.2022 passed by the Appellate Authority is set aside and order dated 14.12.2020 passed by the Adjudicating Authority stands revived and will enure to the benefit of the petitioner to claim its refund.

(ANIL KUMAR UPMAN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

MANOJ NARWANI /13