

\$~253

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10461/2022**

**M/S NETGEAR TECHNOLOGIES INDIA
PRIVATE LIMITED**

..... Petitioner

Through: Ms. Priyanka Rathi, Mr.
Ashwini Chandrasekaran
& Ms. Shubhangi Gupta,
Advts.

versus

**THE ASSISTANT COMMISSIONER GST
DELHI EAST COMMISSIONERATE** Respondent

Through: Mr. Harpreet Singh, Sr.
SC with Ms. Suhani
Mathur & Mr. Jatin Kumar
Gaur, Advts.

CORAM:

**HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN**

ORDER

%

18.05.2023

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to grant the refund of ₹26,88,280/-, pursuant to Order-in-Appeal dated 09.03.2021, along with applicable interest.
2. The petitioner claims that it had exported services to M/s. Netgear Asia Pte Ltd. without payment of Integrated Goods and Services Tax during the period October, 2017 to March, 2018.
3. Since, according to the petitioner, the supplies made were Zero Rated Supply, the petitioner filed a claim for the refund of Input Tax Credit in the prescribed form (Form GST-RFD-01A) on 15.04.2019, claiming a refund of ₹26,88,280/- for the relevant period, along with interest.
4. The respondent rejected the petitioner's application for refund by an Order-in-Original dated 22.05.2019. The petitioner

appealed the said Order-in-Original before the Appellate Authority [learned Joint Commissioner (Appeals), CGST Appeals-1, Delhi]. The Appellate Authority allowed the appeal by an Order-in-Appeal dated 09.03.2021.

5. Notwithstanding the same, the petitioner's request for the claim was not processed. The petitioner filed another application dated 27.04.2021 once again claiming refund of the said amount. Thereafter, by a communication dated 10.08.2021, the petitioner was informed that the Commissioner, CGST, Delhi East Commissionerate had directed the respondent to file an appeal against the Order-in-Appeal dated 09.03.2021. The said appeal has not been preferred as yet.

6. Mr. Harpreet Singh, learned Counsel for the respondent, submits that the same is for the reason that the Appellate Tribunal has not been constituted. Thus, although the Revenue intends to file an appeal under Section 112 of the Central Goods and Services Tax Act, 2017, it has been unable to do so.

7. Concededly, the respondent has taken no steps to secure any order with regard to the stay of the Order-in-Appeal pursuant to which the petitioner is now entitled to the claim of refund. We are unable to accept that the Revenue can ignore the Order-in-Appeal and deny the benefits of the same on the ground that it seeks to appeal the said order. In the present case, the petitioner has been denied the benefit of the order in its favour for over two years. Clearly, the same cannot be countenanced.

8. The said issue is also covered by an earlier decisions of this Court in *Zones Corporate Solutions Pvt. Ltd. v. Commissioner of Central Goods & Services Tax Delhi East & Anr.: 2020-VIL-302-DEL:W.P.(C) 3620/2020* and *Alex Tour and Travel Private Limited v. Assistant Commissioner, CGST,*

Division-Janakpuri: 2023-VIL-284-DEL: W.P.(C) 5722/2023.

9. In view of the above, the present petition is allowed. The respondent is directed to disburse the petitioner's claim for refund with applicable interest as expeditiously as possible and, in any event, within a period of four weeks from today.

10. It is clarified that this would not preclude the respondents from availing the remedies as available in law.

11. Needless to say, if the Revenue prevails in upsetting the Order-in-Appeal dated 09.03.2021, it would also be entitled to recover the amount as disbursed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 18, 2023

"SS"