

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 5744/2023

M/s. Raj Kamal Cargo Movers, Plot No. 81, Depty Office Wali Gali, Road No. 9, V.k.i. Area, Jaipur Through Its Proprietor Mr. Raj Kumar Gurjar S/o Jagdish Narayan.

-----Petitioner

Versus

1. The Assistant Commissioner, State Tax Department, Enforcement Wing, Rajasthan -Ii, Circle C, Ward -I, Kar Bhawan Ambedkar Circle, Jaipur
2. The Chief Commissioner, State Tax Department, Kar Bhawan, Ambedkar Circle, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Vikram Kumar Gogra.
For Respondent(s)	:	Mr. Ayush Singh] Mr. Ajay Singh] for Mr. Punit Singhvi.

HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

20/12/2023

1. This writ petition has been filed by the petitioner seeking direction to the respondent No.1 to issue the refund due to it forthwith.
2. It is *inter alia* indicated that the orders dated 30/3/2021 and 28/5/2021 were passed by the Assistant Commissioner, State Taxes, Ward – I, Circle – Anti Evasion, Division III, Jaipur creating demand of Rs. 26,70,276/- and Rs.34,88,364/-, respectively.
3. Feeling aggrieved, the petitioner filed appeal which came to be decided by order dated 28/5/2021, whereby, the orders dated 30/3/2021 & 28/5/2021 were set aside and the amount of

demand recovered from the petitioner of Rs.34,88,354/- was ordered to be refunded as per law.

4. The petitioner applied online on 17/5/2022 through GST Common Portal for refund of the amount. The respondent no.1 referred the matter to his higher authority for withholding the amount of refund under Section 54(11) of the Rajasthan Goods & Services Tax Act, 2017 ('the Act, 2017').

6. The respondent no.2 after hearing the parties, passed the order dated 7/12/2022 (Annex.3) and came to the conclusion that there exists no reasonable and strong ground for withholding the refund and directed the proper officer to process the application of refund as per the provisions of Act/Rules provided the petitioner furnishes solvent security as per his satisfaction.

7. The petitioner submitted the requisite for complying with the directions of furnishing the solvent security and requested the respondent no.1 to refund the amount with up-to-date interest. However, the respondent no.1 by order impugned dated 21/2/2023 ordered that in the interest of State before allowing the refund, bank guarantee in the form of solvent security needs to be taken and required the petitioner to furnish the bank guarantee. The petitioner contested the said requirement of furnishing the bank guarantee, however, the refund was not made.

8. Feeling aggrieved, the present petition has been filed.

9. Learned counsel for the petitioner made submissions that though the order passed by the respondent no.2 requiring the petitioner to furnish solvent security is beyond the scope of Section 54 (11) of the Act, 2017 still the petitioner complied with the requirement of furnishing the solvent security, however, the

respondent no.1 going beyond the directions given by respondent no.2 has demanded bank guarantee from the petitioner, which is not justified and, therefore, the order dated 21/2/2023 (Annex.5) be set aside and the respondent no.1 be directed to refund the amount along with interest in accordance with law.

10. It was further submitted that action of the respondent no.1 in demanding the bank guarantee only reflects high handedness of the said authority inasmuch as the requirement of providing solvent security cannot be equated with furnishing a bank guarantee. The respondent no.1 only with a view to somehow block the refund as ordered by the appellate authority, has demanded bank guarantee, therefore, the order impugned deserves to be set aside.

11. A reply to the writ petition has been filed *inter alia* seeking to justify the original order, which came to be set aside by the appellate authority and that in the circumstances of the case the demand of bank guarantee is justified.

12. Learned counsel for the respondents supported the order impugned with reference to the order passed by the respondent no.1 *inter alia* seeking to safeguard the interest of the State while making refund and it was prayed that the petition be dismissed.

13. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. The order passed by the appellate authority while rejecting the prayer of the respondent on an application filed under Section 54 (11) of the Act, 2017 was very clear and specifically required the proper officer to process the application of refund as per the

provisions of Act/Rules provided the petitioner furnishes the solvent security as per his satisfaction.

15. The respondent no.1 by his order dated 21/2/2023, with reference to the facts based on which the original order was passed, which stood quashed, ordered that bank guarantee needs to be taken by way of solvent security before allowing the refund.

16. It appears that the respondent no.1, who had passed the original order, which came to be set aside by the appellate authority and ordered for refund so made, has been trying to somehow block the refund to be made to the petitioner. Initially, he moved an application under Section 54 (11) of the Act, 2017 which came to be rejected by the authority and direction was given to the petitioner to provide solvent security. Once solvent security was produced by the petitioner, the respondent no.1 again, apparently not willing to refund the amount, has demanded bank guarantee from the petitioner.

17. The indication made that the bank guarantee needs to be taken from the petitioner by way of solvent security by itself is contradictory inasmuch as the term 'solvent security' essentially means that the person who is providing the security should not have been declared bankrupt by the court and he has to produce documents to indicate that he owns some movable/immovable property, which is equivalent to the amount for which the said security is being provided. The solvent security is that of a person who is entitled to/recipient of the amount. Whereas, the 'bank guarantee' is a guarantee given by the bank on behalf of the applicant to cover the payment obligation to a third party. As such, it cannot be said that the demand of bank guarantee by

respondent no.1 could be equated with providing solvent security in terms of the order passed under Section 54 (11) of the Act, 2017.

18. In view of the above discussion, the action of respondent no.1 in seeking bank guarantee from the petitioner is *ex facie* contrary to the directions of respondent no.2 and, therefore, the same cannot be sustained.

19. Consequently, the writ petition filed by the petitioner is allowed. The order dated 21/2/2023 seeking bank guarantee from the petitioner by way of solvent security is quashed and set aside. The respondent no.1 is directed to comply with the directions of the appellate authority dated 28/5/2021 and that of Chief Commissioner, State Taxes dated 7/12/2022 within a period of two weeks from the date of this order.

(ASHUTOSH KUMAR),J

(ARUN BHANSALI),J