

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3983 of 2022

Steel Authority of India Limited (Bokaro Steel Plant), (a company registered under the Companies Act, 1956/2013), having its office at Ispat Bhawan, Bokaro Steel City, P.O. & P.S. Bokaro, District Bokaro, PIN 827001, Jharkhand, through its Authorized Signatory-cum-Deputy General Manager (F&A-S&IT), Rajeev Gupta, aged about 47 years, son of Ramjee Prasad, resident of Quarter No. 7302, Sector 4F, Bokaro Steel City, Padudi, P.O. and P.S. Bokaro, District Bokaro, PIN 827004, Jharkhand. **Petitioner**

-VERSUS-

1. The State of Jharkhand, through the Commissioner of State Taxes, having its office at Utpad Bhawan, Kanke Road, P.O. Ranchi University, P.S. Gonda, District Ranchi, PIN 834008.
2. Joint Commissioner of State Taxes (Administration), Dhanbad Division, Dhanbad, having its office at Luby Circular Road, Opposite Court Compound, P.O. and P.S. Dhanbad, District Dhanbad, PIN 826001, Jharkhand.
3. Deputy Commissioner of State Taxes, Bokaro Circle, Bokaro, having its office at Bokaro, P.O. and P.S. Bokaro, District Bokaro, Jharkhand.
4. State Tax Officer, Bokaro, having its office at Bokaro, P.O. and P.S. Bokaro, District Bokaro, Jharkhand.**Respondents**

**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner :	Mr. Sumeet Gadodia, Advocate Mrs. Shilpi Sandil Gadodia, Advocate Mr. Ranjeet Kushwaha, Advocate Mrs. Akansha Mittal, Advocate
For the Resp-State :	Mr. Sachin Kumar, AAG-II, Mr. Ravi Prakash Mishra, AC to AAG-II

13/ 12.06.2023

Per Deepak Roshan, J:

The instant writ application has been preferred by the petitioner praying therein for the following reliefs:-

- (i) *For issuance of appropriate writ/order/direction, directing the Respondents to produce before this Hon'ble Court the refund rejection order being RFD-06 No. 91 dated 18.10.2019 allegedly passed by Respondent No.3 and to consequentially quash the same, wherein the application for refund filed by Petitioner vide Application Reference Number (ARN) AA200318232092U dated 04.03.2019 for the period July, 2017 to March, 2018 on account of 'refund of ITC on export of goods and services without payment of tax' has been rejected.*
- (ii) *For issuance of further writ/order/direction including Writ of Mandamus, directing Respondent-authorities, particularly Respondent No.3 to immediately refund an amount of Rs. 2,90,86,294/- for the period 2017-18 as admittedly the Petitioner is entitled for refund of the said amount in terms of the provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017.*
- (iii) *For issuance of further writ/order/direction including Writ of Mandamus, directing Respondents to pay statutory interest on the refundable amount of Rs. 2,90,86,294/- @ 6% with effect from expiry of 60 days from the date of receipt of application for refund, till the date of payment of the refundable amount.*

2. The facts as it emerges for the averments made in the respective affidavits it appears that the Petitioner is a government company and the instant writ application pertains to its Bokaro Steel Plant, which is primarily engaged in the business of manufacture of iron and steel and is duly registered under the provisions of the Goods and Services Tax Act, 2017 bearing GSTIN No. 20AAACS7062FAZJ.

3. For the purpose of manufacture of iron and steel, Petitioner requires various raw materials including 'coal' which is subjected to levy of compensation cess under 'The Goods and Services Tax (Compensation to States) Act, 2017. In terms of Section 11 of the aforesaid Act, compensation cess payable on Inputs is permitted to be adjusted only against tax liability of compensation cess, and, unutilized compensation cess is not adjustable against the liability towards CGST, SGST and IGST. However, in case of export, excess ITC available towards

compensation cess at the hands of the assessee can be claimed as refund in terms of Section 16 read with Section 54 of the CGST Act.

4. Accordingly, Petitioner applied for refund of unutilized ITC for the period 2017-18 on account of refund of 'ITC on export of goods and services' without payment of tax for an amount of Rs. 2,90,86,294/-. Said application for refund was filed in Form GST-RFD 01A dated 04.03.2019 bearing ARN No. AA200318232092U.

5. Subsequent upon filing of such application, the jurisdictional assessing officer of the Petitioner i.e., Deputy Commissioner of State Tax, Bokaro Circle, Bokaro (Respondent No.3), vide Information No. 1245 dated 12.06.2019, asked certain clarifications from the Petitioner, and, the Petitioner submitted such clarifications with Respondent No.3.

6. The Petitioner, thereafter, received an e-mail dated 27th October, 2019 mentioning, inter alia, that '*Order details against RFD 06 have been submitted by the Tax Official for ARN AA200318232092U dated 22.10.2019*'.

7. Subsequently, Petitioner checked status of its Refund Application online and in the online portal, it was clearly reflecting that refund of the Petitioner has been sanctioned for an amount of Rs. 2,90,86,294/- and payment advice in RFD-05 was yet to be issued by the jurisdictional officer. Although Petitioner received such communication in its online portal as well as e-mail, payment advice in RFD-05 was not issued by the jurisdictional officer and, hence, Petitioner's representative met Respondent No.3 for issuance of payment advice, but it was informed by Respondent No.3 that refund payment advice could not be issued due to some technical difficulties which Respondents are trying to resolve. Thereafter, Petitioner filed several representations and repeatedly followed up with Respondent-authorities for issuance of refund payment advice, but, in vain.

After a lapse of about two and half years, despite repeated follow-ups by the Petitioner, Respondent No.3, for the first time, vide its Letter No. 155 dated 9th April, 2022, communicated to the Petitioner that the erstwhile Deputy Commissioner of State Tax, Bokaro Circle, Bokaro had passed an order on 22.10.2019 in Form RFD 01-B, wherein its application for refund has been rejected and the amount towards accumulated ITC has been credited in Petitioner's electronic credit ledger on 22.10.2019.

Petitioner, immediately on receipt of the said information, applied for certified copy of the entire order-sheet including certified copy of RFD 01-B as

well as the purported order passed pertaining to rejection of its claim for refund. The Petitioner was supplied certified copy of Form RFD 01-B, wherein the order rejecting refund was described as 'Order No. 91 dated 18.10.2019', but Petitioner was not supplied the said order by Respondent-authorities. Since no order rejecting refund was supplied to the Petitioner, the Petitioner, thereafter, again filed representations before Respondent-authorities for processing its claim for refund and to issue consequential order of refund including interest, as, there was no order in the records rejecting refund application of the Petitioner. However, pursuant to said representations, the Petitioner was communicated a letter contained in Memo No. 208 dated 31st May, 2022 informing the Petitioner that refund application of the Petitioner has been rejected by the erstwhile Deputy Commissioner of State Tax, Bokaro Circle, Bokaro through RFD 01-B dated 22.10.2019 and ITC has been re-credited to the electronic credit ledger of the Petitioner and, hence, its request for processing of its refund application cannot be adhered to. It is in the said background that Petitioner filed the instant writ application claiming above-mentioned reliefs.

8. Pursuant to the order passed by this Court, a Counter Affidavit has been filed on behalf of the Respondents and, in Para-14 of the Counter Affidavit, it has been categorically admitted that Order No. 91 dated 18.10.2019, as mentioned in RFD 01-B dated 22.10.2019 is not available as per the official record. However, despite the fact that Respondents admitted that there is no order available in the official record of rejecting refund application of the Petitioner, still it was submitted that Petitioner has statutory remedy of preferring an Appeal under Section 107(1) of the Goods and Services Tax Act, and, since Appeal has not been preferred by the Petitioner, writ application is not maintainable. In the Counter Affidavit, the factum of communication of e-mail dated 22.10.2019 and the status of the refund application of the Petitioner as 'refund sanctioned' was admitted, but, Respondents tried to justify the said communication by stating, inter alia, that said communication was an intermediary information and the finding of 'refund sanctioned' was of the tax official, which was still subject to the decision to be taken by the authorized officer. Thus, in substance, Respondents in their Counter Affidavit admitted that Petitioner was earlier communicated the fact that its refund has been sanctioned and, further, Respondents also admitted in their Counter Affidavit that Order No. 91 dated 18.10.2019, by which refund of the Petitioner was rejected, is not available in the official record. However, despite the aforesaid,

Respondents in their Counter Affidavit stated that since the amount of accumulated ITC has already been re-credited in the electronic credit ledger of the Petitioner, the writ application of the Petitioner for seeking refund of accumulated ITC along with interest was not maintainable.

9. This Court, after noticing the aforesaid facts, especially the fact that Petitioner was earlier communicated that its refund has been sanctioned and also the fact that the order rejecting refund of the Petitioner was not available as per official record, formed an opinion that in absence of any order available on record rejecting the claim of refund of the Petitioner, it cannot be said that any decision has been taken towards sanction or rejection of refund application of the Petitioner. Under the said circumstances, this Court, vide order dated 30th January, 2023, passed following order:-

“Writ petition has been preferred for a direction upon the respondents to produce the refund rejection order being RFD-06 no. 91 dated 18.10.2019 allegedly passed by respondent no.3 and to consequentially quash the same. Petitioner has sought consequential relief of refund of Rs. 2,90,86,294/- for the period 2017-18 along with statutory interest.

The counter affidavit of the respondents dated 14th December 2022 at paragraph-7 categorically indicates that a refund application was made by the petitioner on 4th March, 2019 for the period 2017-18 (July 2017 to March 2018) claiming a refund of Rs. 2,90,86,294/- as ‘refund of ITC on exports of goods and services without payment of tax’. According to the petitioner, its claim was rejected. At paragraph-9 of the counter affidavit it has also been stated that certain documents submitted by the petitioner pursuant to letter dated 12th June 2019 bearing no. 1425 were scrutinized by the Department and by an e-mail dated 22nd October 2019 a communication to the effect mentioning inter alia ‘order details against RFD 06 have been submitted by the Tax Official for ARN200318232092U’ dated 22nd October 2019. At para-10 it is further stated that based upon the finding of the Tax Official, the same was uploaded on the portal and the status of ARN was shown as ‘refund sanction’. The said display was subject to the decision to be taken by the authorized officer. As such, it was also displayed that RFD-05 was not issued. Thereafter at para-12 it has been stated that after through scrutiny of the documents submitted by the petitioner and the official documents available, the then deputy commissioner of State Taxes, Bokaro Circle rejected the refund application of the petitioner

on 18th October 2019 mentioning the same as Order No. 91 and issuing Form GST RFD-06. The department accordingly issued RFD 01-B on 22nd October, 2019 with a remark that the refund application stood rejected and the ITC involved in the refund application has been credited in the 'Electronic Credit Ledger' of the petitioner on 22nd October, 2019 itself. The statement made at para-14 of the counter affidavit is rather startling which reads as under:-

“14. That it is further humbly stated that as per available official record, no separate order sheet mentioning order no. 91 is on record. The order no.1 only commensurate that the refund application of the petitioner stand rejected.”

Learned counsel for the respondents has not been able to tell us as to what were the grounds of rejection because the order of rejection is not there. At one point of time vide Annexure-6 dated 22nd October, 2019 the order details updated under GST RFD-06 at GSTN portal the status of ARN was shown as refund sanction. Neither the sanction order nor the rejection order is there. It is the case of the petitioner that all such refund applications for subsequent periods 2018-19 and 2019-20 have already been sanctioned.

In these circumstances, we are left with nothing to decide because ball still lies in the court of the tax authorities. Apparently no decision on sanction or rejection seems to have been taken on the refund application. Before proceeding to ask the concerned officials to explain such a contradictory stand, we deem it proper to allow the respondents to take a decision on the refund application of the Petitioner within a period of four weeks from today. Petitioner shall cooperate in debiting the electronic credit ledger of the amount which was credited to his electronic credit ledger as and when asked for. Let the matter be listed on 1st March, 2023.”

10. In compliance of the order passed by this Court, petitioner has debited the amount of Rs. 2,90,86,294/- from its electronic credit ledger on 13.02.2023 and approached the Respondent-authorities for processing its refund application. Thereafter, the matter was listed before this Court on 15.03.2023, 23.03.2023 and 29.03.2023 and on the said dates Respondent-State of Jharkhand sought time for seeking instructions on the issue of passing of an order on the application of refund of the Petitioner. However, subsequently, a supplementary counter affidavit

was filed by Respondent-Department, wherein a volt face was taken and it was stated that Petitioner should approach the Department by filing a fresh refund application which will be processed by the Department in accordance with law.

11. In the backdrop of the aforesaid factual enunciation, the question for adjudication before this Court is *“Whether the petitioner is entitled to claim refund along with statutory interest on the basis of its original application for refund being Application Reference No. ARN AA200318232092U dated 04.03.2019 for an amount of Rs. 2,90,86,294/- for the period 2017-18 or it is required to apply afresh for refund of the said amount”* ?

12. Mr. Sumeet Gadodia, assisted by Mr. Ranjeet Kushwaha, Advocates, has vehemently argued that action of the Respondent-State Tax authorities in dealing with the application for refund of the Petitioner is unknown to law and they have acted in flagrant violation of not only the principles of natural justice, but the manner in which refund application of the petitioner has been dealt which clearly reflects that entire exercise has been undertaken with malice in law to somehow deny the claim of statutory interest under Section 56 of the CGST Act, 2017. While referring to the e-mail dated 22nd October, 2019 and the GST Portal Screenshot, it has been submitted that Petitioner was clearly informed that its refund has been sanctioned for an amount of Rs. 2,90,86,294/- and only a payment advice in RFD-5 is to be issued by the jurisdictional officer. Thereafter, petitioner’s representative were made to run from pillar to post for issuance of payment advice and it is only after a lapse of about 30 months, the petitioner for the first time was informed that its refund application has been rejected vide Order No. 91 dated 18.10.2019 and the amount of unutilized ITC has been credited in its electronic credit ledger. However, copy of the said order is not available on record and, per contra, despite the said fact, Respondents in the counter affidavit have tried to justify rejection of the refund by stating, inter alia, that the communication made in online portal was only on the basis of the finding of the Tax Official which was subject to decision taken by the authorized officer. Further, reliance has been placed to the provisions of Rule 92(3) of the CGST Rules, which provides for the detailed mechanism for considering the application for refund and grant of opportunity of hearing before any refund claim is sought to be dismissed by the authority.

13. Mr. Gadodia, while placing reliance upon Circular No. 17/17/2017-GST dated 15.11.2017, has contended that said Circular issued by CBEC provided

mechanism for manual processing of the claim for refund, but the procedure prescribed under the CGST Rules regarding processing of claim for refund was still required to be followed by the prescribed authority, and, if prescribed authority was of the opinion that claim for refund of a dealer is required to be rejected under Rule 92(3) of the CGST Rules, a notice in Form GST RFD-08 was required to be given to the said dealer asking it to file its show cause reply as to why claim for refund be not rejected. It was contended that no show cause notice was issued to the Petitioner in Form GST RFD-08 and it was submitted that there was no occasion for issuance of such show cause notice, as Petitioner was communicated that its refund has been sanctioned, and, it is only after a lapse of 30 months, for the first time, petitioner has been communicated that its refund has been rejected. Reliance was placed upon a decision of the Hon'ble Bombay High Court rendered in the case of ***Adisan Laboratories Pvt. Ltd. vs. Union of India, reported in (2022) 24 Tax Law.com 75 (Bombay)***, wherein Hon'ble Court, in similar circumstances, by considering Rule 92 of the CGST Rules, held that issuance of notice under Rule 92(3) is not a mere formality and is an aid to the provisions giving an opportunity to the applicant to demonstrate that refund is payable to it.

14. Further reliance has been placed upon the decision of ***Union of India vs. Tata Chemicals, reported in (2014) 6 SCC 335***. Relevant Para-38 is extracted hereunder:-

“38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has

been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.”

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15. Per contra, Mr. Sachin Kumar, AAG-II, assisted by Mr. Ravi Prakash Mishra, AC to AAG-II, has submitted that Petitioner has an alternative remedy of preferring Appeal against refund rejection order under Section 107(1) of the Act. Further, by placing reliance upon the Supplementary Counter Affidavit, it has been submitted that necessary guidelines were obtained from GSTN Legal Cell, Delhi and an e-mail dated 20.02.2023 was received, wherein it was advised that since the process of filing of application for refund was part manual and part online, tax payers may be advised to file refund application under any suitable category as per direction of the Hon’ble High Court. It has been submitted that since refund of the Petitioner has already been rejected and the amount has been re-credited in its electronic credit ledger, Petitioner should file fresh application for refund which shall be considered by the Department and appropriate order for refund shall be passed.

16. We have considered the rival submissions of the parties and have carefully examined the documents available on record and from recital of the same, it would be evident that Petitioner has filed refund application on 04.03.2019 and vide e-mail dated 22.10.2019 and corresponding communication in GSTN Portal, Petitioner was informed that its refund application has been sanctioned which is awaiting issuance of payment advice under RFD-05 by the jurisdictional officer. Consequent thereto, Petitioner repeatedly followed-up with the Respondent-Department for issuance of payment advice and after a lapse of about 30 months, in the month of April, 2022, Petitioner was communicated for the first time that its refund application has been rejected through RFD 01-B and the refund order is bearing order no. 91 dated 18.10.2019. However, copy of the said refund rejection order is not available in the record of the Department. Admittedly, no opportunity of hearing has been granted to the Petitioner before passing of the purported order of rejection of refund.

17. It is in the aforesaid background that this Court, vide order dated 30.01.2023, held that in absence of any order either sanctioning or rejecting refund application being available on record, no decision can be said, under law, to be taken on the refund application of the Petitioner. Accordingly, we directed the

respondent to take decision on the refund application of the Petitioner. However, despite the order, which has not been challenged by the Respondents, the Respondents have not taken any decision on the refund application of the Petitioner, but instead, filed supplementary counter affidavit again stating, *inter alia*, that refund application of the petitioner has been rejected vide Order no. 91 dated 18.10.2019 despite the fact that said order is not available in the official record and has contended that petitioner should file refund application afresh.

18. We see no reason to accept the said contention of the respondents primarily for three reasons, firstly, respondents have not produced before this Court Order no. 91 dated 18.10.2019 allegedly passed by Respondent No. 3 by which refund application of the Petitioner has been rejected; secondly, even if any order was passed rejecting application of the Petitioner, said order was passed in utter violation of the principles of natural justice and without complying with Rule 92(3) of the CGST Rules, which provides for grant of opportunity of hearing before rejection of refund application of an applicant; and thirdly, if Petitioner is directed to apply for refund application afresh, the Petitioner would lose the benefit of statutory interest in terms of Section 56 of the CGST Act, which, otherwise, the Petitioner is entitled as its refund application has been purportedly illegally rejected contrary to the statutory provisions.

In this regard, reference may be made to the judgment of Hon'ble Supreme Court in the case of ***Union of India vs. Tata Chemicals (supra)***; in the said case it has been held that obligation to refund money received and retained without right implies and carries with it the right of interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.

19. At this stage, it may be noted here that Petitioner applied for refund for the subsequent periods also towards unutilized ITC on account of compensation cess i.e., for the periods April, 2018 to March, 2019 and April, 2019 to March, 2020. It is an admitted fact that refund for the subsequent periods has already been sanctioned in favour of the Petitioner. Petitioner has further annexed a copy of its Electronic Credit Ledger from which it is reflected that as on 31.03.2021, Petitioner was having an excess ITC of Rs. 359.54 crores as closing balance towards compensation cess in its electronic credit ledger. Thus, re-credit of an amount of Rs. 2,90,86,294/- being the refundable amount for the period 2017-18 in the electronic credit ledger of the Petitioner towards compensation cess, was

making no difference as the Petitioner has not utilized the said amount for payment of any output tax liability.

20. In view of the cumulative facts mentioned hereinabove, we are of the opinion that alleged order bearing Order no. 91 dated 18.10.2019, by which refund application of the Petitioner has been purportedly rejected by the Respondent, is *non-est* in the eye of law being a non-existing order and the claim of refund of the Petitioner is required to be processed in terms of its original application being Application Reference Number (ARN) AA200318232092U dated 04.03.2019. The Petitioner is further entitled to interest in terms of the provisions of Section 56 of the CGST Act after expiry of 60 days from the date of receipt of the application for refund i.e., 04.03.2019 @ 6% per annum till the date of payment of refundable amount to the Petitioner. Respondents are directed to process the claim of refund along with interest of the Petitioner within a period of three weeks from the date of receipt/production of the copy of this order. However, under the facts and circumstances of the case, there would be no order as to costs.

21. Consequently, the instant application stands allowed and disposed of. Pending I.A., if any, stands disposed of.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J)

Amardeep/-