



\$~10

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 07th July, 2023

+

W.P.(C) 7248/2023 & CM APPL. 28227/2023

ADVANCE SYSTEMS Petitioner

Through: Mr. Siddharth Malhotra, Adv.

versus

THE COMMISSIONER OF CENTRAL

EXCISE AND CGST Respondent

Through: Mr. Atul Tripathi, Sr.SC with
Mr. Amresh Kumar Jha & Mr.
V.K. Attri, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“(i) Issue a writ in the seeking writ of mandamus and/ or any other appropriate writ, directing the respondent department to sanction the refund claims filed by the Petitioner under. Refund Application dated 20.02.2023 (Reference no. AAA070223060035R) for the amount of Rs. 7,45,296/- for the period January, 2021 to March, 2021 and Refund Application dated 20.02.2023 (Reference No. AA070223060088G) for the amount of Rs. 9,74,094/- for the period April, 21 to Sept,21, along with the applicable interest as per the provisions of the Central Goods and Service Tax Act, 2017 and rules made thereunder;

(ii) Issue writ of mandamus, directing the Respondent Department to allow Form GST PMT-03 with respect to the amount of Rs.31,640/- for the period January, 2021 to March, 2021 and Rs.22,482/- for the period April, 2021 to September, 2021

(iii) Pass any other order(s) as this Hon’ble Court may deem fit and more appropriate in order to grant relief to the petitioner.”

2. The petitioner claims refund of Input Tax Credit (hereafter ‘ITC’), in respect of certain exports made under Letter of Undertaking (hereafter ‘LUT’).



3. The petitioner's claim for refund relates to exports effected during the period January, 2021 to September, 2021.
4. The petitioner had filed two applications pertaining to the said Zero Rated Supplies under Section 54(3)(i) of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**').
5. The respondent had acknowledged the receipt of the said claims, however, the said acknowledgment was not uploaded online and was not processed.
6. Although the petitioner filed the applications for refund (in Form GST RFD-01) on 20.04.2022; the respondent did not process the same within the stipulated period.
7. After much delay, on 19.05.2022, the respondent issued a Show Cause Notice proposing denial of refund claimed by the petitioner on several grounds.
8. The petitioner sought time to respond to the said Show Cause Notice. However, the respondent rejected the petitioners claim in terms of Orders-in-Original (two in number) dated 17.06.2022. The petitioner appealed the said orders before the appellate authority.
9. The appellate authority examined the petitioner's challenge to the Orders-in-Original (two in number), bearing nos.: ZT0706220299219 and ZU0706220299086, both dated 17.06.2022 as well as the petitioner's claim for the refund of ITC.
10. The appeals were disposed of by Orders-in-Appeal dated 31.01.2023. The appellate authority partly allowed the petitioner's claim for refund to the extent of ₹7,45,296/- instead of ₹7,76,936/- as claimed by the petitioner for the period, January, 2021 to March, 2021



and further allowed the petitioner's claim to the extent of ₹9,74,094/- instead of ₹9,96,576/- as claimed by the petitioner, for the period, April, 2021 to September, 2021.

11. Notwithstanding that the petitioner had succeeded before the appellate authority, the respondent failed and neglected to process its claim for refund.

12. The petitioner had, once again, filed the claim for refund on the basis of the Orders-in-Appeal dated 31.01.2023. According to the respondent, the said application was deficient as it was not accompanied by an undertaking to the effect that the petitioner would refund the sanctioned amount along with interest in case it is found that the requirements of Section 16(2)(c) of the CGST Act read with Section 42(2) of the CGST Act, were not complied with in respect of the amount refunded.

13. It is material to note that the deficiency memo did not specifically indicate the said deficiency. It merely stated that "*supporting documents attached are incomplete*". Undisputedly, the petitioner had provided the copy of the Orders-in-Appeal on the basis of which it claimed the refunds.

14. In view of the above, clearly, there was no requirement to furnish any further documents to substantiate the petitioner's claim.

15. We are also of the view that the petitioner was not required to make repeated applications for refund after it had prevailed in its appeals before the appellate authority. The appellate proceedings are a continuation of the petitioner's applications for refund and, therefore, the Orders-in-Appeals were required to be implemented.



16. Mr. Atul Tripathi, learned Counsel appearing for the respondent states that, notwithstanding, that the petitioner had prevailed in its appeal, it was required to submit an online request. He submits that in terms of the circular dated 03.10.2019, a person prevailing in its claim for refund in appeal or in any other forum, is required to file a fresh application in form GST RFD-01.

17. He further submits that the said form is, once again, required to be accompanied by all relevant documents including undertaking and declaration.

18. We are unable to accept that it is open for the respondent to raise any deficiency memo after a tax payer has succeeded in appellate proceedings. Undisputedly, the petitioner had filed its application in the requisite form (GST RFD-01) along with the necessary declarations and undertaking.

19. The respondent had examined the said refund and had denied the same on certain grounds, which were subject matter of appellate proceedings. After the petitioner had succeeded in its appellate proceedings, there is no question of the respondent now raising any deficiency or once again requiring the petitioner to furnish any undertaking or declaration which it had already done at the initial stage.

20. We are unable to accept that a taxpayer is required to make repeated applications for seeking a refund. Once a tax payer has made a claim for refund, the same is required to be processed in accordance with law. If the refund is rejected for any reason and the said party prevails before the appellate authority, it is not open for the



respondents to desist from processing the claims on any such technical grounds. The circular dated 03.10.2019 sets out a convenient procedure for moving the concerned authorities, and must be construed as such.

21. Thus, a tax payer may file a fresh online application to trigger the processing of its refund, however, it is not open for the respondents to raise further deficiency memos regarding the same.

22. We are also unable to accept that the petitioner's refund can be withheld merely on the ground that the respondent proposes to review the Orders-in-Appeal dated 31.01.2023. However, it is clarified that the disbursement of the refund in favour of the petitioner would not preclude the respondents from availing their remedies against the Orders-in-Appeal in accordance with law.

23. In view of the above, the petition is allowed. The respondent shall forthwith sanction the refund claim as preferred by the petitioner to the extent as accepted by the appellate authority along with applicable interest in accordance with the provisions of the CGST Act.

24. The respondent shall also process the petitioner's request furnished in Form GST-PMT-03 in accordance with law.

25. All pending applications also stand disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 7, 2023/"SS"