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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 25.07.2023*

+ W.P.(C) 9742/2023 & CM APPL. 37331/2023

M/S SHIVBHOLA FILAMENTS PRIVATE
LIMITED

..... Petitioner

Through: Mr. Yuvraj Singh, Ms. Hemlata
Rawat & Mr. Chetan Kumar Shukla,
Advts.

versus

ASSISTANT COMMISSIONER CGST & ANR. Respondents
Through: Mr. Atul Tripathi & Mr. V. K. Attri,
Advts.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. Issue notice.
2. The learned counsel for the respondents accepts notice.
3. The petitioner has filed the present petition, *inter alia*, impugning an Order-in-Appeal dated 18.11.2021 whereby, the appeals preferred by the petitioner (eight in number) against the eight separate orders, all



dated 31.12.2020, passed by the Adjudicating Authority, were rejected.

4. The petitioner is engaged in the manufacturing of Polypropylene Yarn and Polypropylene narrow woven fabric, which is chargeable to Goods and Services Tax (GST) at the rate of 12% and 5% respectively.

5. The petitioner claims that raw materials used for manufacturing of the product (Granules, Master Batch, Spin Finish Oil) are chargeable to GST at the rate of 18%. The petitioner, thus, claims that due to the inverted tax structure, it is unable to avail the entire credit of input tax paid by it on inputs in discharge of its tax liability on output.

6. In the aforesaid circumstances, the petitioner had filed refund applications dated 23.10.2020 for various tax periods from August, 2018 to March, 2019. The petitioner received “Notice of Rejection of Application for Refund” dated 18.12.2020 (hereafter ‘**Show Cause Notice**’) in respect of each of its refund applications. The petitioner was also called upon to show cause as to why its refund applications should not be rejected.

7. The aforementioned notices indicated that the petitioner’s applications for refund were proposed to be rejected for the reason that there was mismatch with the returns filed by the petitioner in form GSTR 2A. The petitioner responded to the said show cause notices and furnished a reconciliation statement for each tax period. However, the petitioner’s applications (except for application relating to the tax period between August 2018 to September, 2018, which was rejected on the ground of limitation) were rejected for the same reason as stated



in the show cause notices – mismatch with the returns filed by the petitioner).

8. Aggrieved by the said rejection orders dated 31.12.2020, the petitioner preferred appeals before the Appellate Authority under Section 107 of the Central Goods and Service Tax Act, 2017 (hereafter ‘**the CGST Act**’). The said appeals have been rejected by a common Order-in-Appeal dated 18.11.2021, which is impugned in the present petition.

9. The petitioner challenges the impugned Order-in-Appeal dated 18.11.2021 essentially on two grounds. First, that the petitioner was not afforded an opportunity to be heard by the Adjudicating Authority and thus, the refund rejection orders were required to be set aside. Second that the petitioner had furnished the reconciliation statement scaling down its claims for refund, yet the same were rejected on the ground that there was a mismatch in the returns filed.

10. A plain reading of the impugned Order-in-Appeal dated 18.11.2021 indicates that the petitioner’s applications for refund were rejected on the ground that the petitioner had changed the value of the inverted rated supply of goods substantially. The relevant extract of the impugned Order in Appeal dated 18.11.2021 reads as under: -

“5.8 From, the above, it can be seen that the appellant is changing the value of inverted rated supply of goods very frequently and drastically. I also noticed that in the reconciliation statement, the appellant has included the value of waste of HSN 55051090 attracting GST @ 18%, goods of HSN code 5402 of



traded goods which do not fall under the category of inverted rated goods. Furthermore, the item of HSN 5402 which is inward supply of goods of the appellant found appearing in trading turnover as well as inverted turnover. Like-wise there was mis-match in the amount of tax payable on such inverted rated supply goods. I also noticed variation in amount of 'Total Adjusted Turnover' mentioned by the appellant at each stage of period. In appeal No.95/2021, the amount of Adjusted Total Turnover in Form GSTRFD- 01 has been shown as Rs.5,10,01,517/- as against Rs.3,12,40,839.32 in Reconciliation statement and Rs.6,92,25,015/- in GSTR-3B. Thus, I am of the considered view that the AA has correctly pointed out that there was mis-match in inverted rated supply of goods, Adjusted total turnover and the amount of tax payable on such inverted rated supplies.”

5.9 I also noticed that in SCNs it has been mentioned that some invoices included for the purpose of arriving at the amount of 'Net ITC' not found in GSTR-2A returns for the relevant period. In this regard, I want to refer Circular No.135/05/2020-GST dated 31.03.2020 wherein it has been clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Hence, I am of the view that the refund of accumulated ITC shall not be available to the appellant of those invoices the details of which are not reflected in GSTR-2A of the applicant at the time of filing of refund. In view of the above discussions, mis-match in Net ITC, Inverted rated supply of goods and tax payable on such supplies and adjusted total turnover clearly established and the appellant failed to reconcile the mis-match documentary or otherwise.”

11. It is apparent from the above that although the Appellate



Authority had flagged issues on the basis of which certain amount of refund as claimed by the petitioner was required to be rejected, however, no exercise was conducted to determine the extent of the refund claimed, which was untenable. The petitioner had submitted reconciliation statements, and had reduced its claims for refund substantially to restrict the same to the quantum of refund, that according to the petitioner, was due.

12. Plainly, it is not apposite for the concerned authorities to simply reject an application for refund on the ground of any mismatch without permitting the tax payer to reconcile the same and provide the necessary explanations.

13. In the present case, the petitioner was not heard by the Adjudicating Authority and no such exercise for determining the amount of refund admissible was undertaken.

14. In view of the above, we consider it apposite to set aside the impugned Order-in-Appeal dated 18.11.2021 as well as the orders dated 31.12.2020 passed by the Adjudicating Authority (annexed with the petition as Annexure P/4) and restore the petitioner's applications for refund before the Adjudicating Authority for determining the amount of refund payable to the petitioner after affording the petitioner an opportunity to be heard. The petitioner is also at liberty to file a written explanation along with a statement reconciling the quantum of refund claimed with the amounts as disclosed in the returns, within a period of two weeks from today. In the event, the petitioner files any such detailed



explanation and reconciliation statements, the Adjudicating Authority shall consider the same and pass a speaking order.

15. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 25, 2023
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