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

% **Date of Decision: 19th July, 2023**

+ **W.P.(C) 14886/2022**

CHEGG INDIA PVT LIMITED.....Petitioner

Through: Ms. Charanya Lakshmi
Kumaran & Mr. Agrim Arora,
Advs.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX DELHI

EAST & ANR..... Respondents

Through: Mr. Anish Roy, Sr. SC, CBIC
for R1

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, impugning an Order-in-Appeal dated 21.09.2021 (hereafter '**impugned order**'), *inter alia*, praying as under:

“a) Issue a writ of certiorari or any other appropriate writ or order or direction in the nature thereof, quashing the Order-in-Appeal No. 219-229/JC/CentralTax/App1-1/Delhi/2021 dated 21.09.2021 (enclosed at Annexure P1 of this Writ Petition) to the extent prejudicial to the Petitioner and consequently direct the Respondent No. 1 to grant refund amounting to Rs. 25,04,738/- (as elaborated at Para 4.5 of the Writ Petition) along with interest; or”

2. The petitioner is, *inter alia*, engaged in the business of software development, content development, marketing and other IT and IT enabled services in the field of education technology. The petitioner



claims that it exports education services to recipient in seventy countries without payment of GST. The said services are Zero Rated Supplies in terms of Section 16 of the Integrated Goods & Services Tax Act, 2017 (hereafter '**IGST Act**'). The petitioner is thus entitled to refund of Input Tax Credit (hereafter '**ITC**') relating to input services.

3. The petitioner is essentially aggrieved by rejection of its claims for refund of ITC for the periods, April, 2018 to August, 2018; and October, 2018 to March, 2019. The petitioner's grievance is limited to rejection of refund of ITC on CAM charges aggregating ₹17,75,688/- and rejection of refund of ITC aggregating ₹7,29,050/- in respect of certain invoices, which were not furnished.

4. The petitioner had filed claims (eleven in numbers) for refunds relating to accumulated ITC in respect of the aforementioned periods aggregating ₹2,41,98,274/-.

5. The petitioner claims that the said ITC was accumulated in respect of the Zero Rated Supplies and it was, thus, entitled to refund of the same.

6. By an order dated 02.03.2020, the concerned authority rejected the refund to an extent of ₹39,18,756/- and sanctioned the balance amount. The petitioner's claims for refund to the aforesaid extent was rejected as attributable to catering charges and Common Area Maintenance Charges (hereafter '**CAM**').

7. The petitioner had filed appeals against the said refund rejection order (eleven in numbers) under Section 107 of the Central Goods and Service Tax Act, 2017 (hereafter '**CGST Act**'). The said appeals



were rejected by a common Order-in-Appeal dated 21.09.2021, which is impugned in the present petition.

8. A plain reading of the impugned order indicates that the Appellate Authority had merely referred to Section 17(5)(b) of the CGST Act and rejected the appeal. There is no discussion as to how Section 17(5)(b) of the CGST Act is applicable to CAM charges and catering charges.

9. Although the Appellate Authority has held that the petitioner has not fulfilled the eligibility conditions for availing ITC as per Section 16 of the CGST Act, the reasons for the said conclusion are not clearly discernible.

10. We are also of the view that there is a fundamental error in the manner in which the petitioner's refund applications have been processed.

11. Admittedly, the concerned authority had not issued any notice as required under Rule 92(3) of the Central Goods and Services Rules, 2017 (hereafter '**CGST Rules**'), setting out the reasons for rejection of the refund. The petitioner, thus, had no opportunity to satisfy the concerned authorities as to its claim for refund to the extent it has been rejected.

12. In view of the above, we consider it apposite to set aside the impugned order as well as the refund rejection orders to the extent, the same reject the refund claims made by the petitioner.

13. The concerned authority is at liberty to issue a fresh notice, clearly setting out the reasons for proposing to reject the refund claims to the extent it has. The petitioner shall, in terms of Rule 92(3) of the



CGST Rules, file a response in Form RFD-09, within the prescribed period.

14. The concerned authority shall consider the same and take an informed decision. All rights and contentions of the parties are reserved.

15. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 19, 2023

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