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W.P.No.2849 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.02.2024	Pronounced on: 16.02.2024
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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2849 of 2021

M/s. Afortune Trding Research Lab LLP,
Represented by its Partner and Authorized Signatory,
Mr.Chandrakumar Dugar,
No.7, Pedunaicken Street,
George Town,
Chennai – 600 079.

.. Petitioner

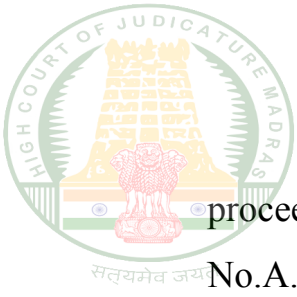
Vs.

1.Additional Commissioner (Appeals I),
Office of the Commissioner of GST and Central Excise,
(Appeals-I),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.Deputy Commissioner of GST & Central Excise,
Parrys Division, Chennai
North Commissionerate, Chennai,
Newry Towers, 1st Floor,
No.2504-I, Block-II Avenue,
12th main road, Anna Nagar,
Chennai – 600 040.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records and



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proceedings of the Impugned Order dated 27.08.2020 bearing reference No.A.No.03-10/2020(GSTA-I)(CN)(ADC), issued by the 1st respondent and quash the same and consequently direct the 2nd respondent to refund an amount of Rs.11,64,898/- (Rupees eleven lakhs sixty four thousand eight hundred and ninety eight only) pursuant to applications A.No.03,04,07 & 10/2020 (GSTA-I) (CN) and A.No.06,08&09/2020 (GSTA-I) (CN).

For Petitioner : Ms.Ramya Subramaniam

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

By the impugned Order in Appeal No.A.No.03-10/2020 (GSTA-I) (CN) (ADC) dated 27.08.2020, the first respondent as the Appellate Authority under the provisions of the respective GST enactments has rejected the appeals filed by the petitioner against eight separate Order-in-Original Nos.196 to 203/2019-RF all dated 06.11.2019 passed by the second respondent.

2. Operative portion of the impugned common order dated 27.08.2020 reads as under:-



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“6.Coming to the first ground, the Appellant has not denied the fact that the export proceeds in this case were credited into their HDFC account in Indian Rupees. The Appellant has averred that the subscription amounts paid by their clients are paid through Pay Pal Account in US Dollars and Paypal being a payment gateway receives the amount in US Dollars and the same gets credited to CITI bank (Paypal's bankers) and CITI bank transfers the amount to HDFC bank, which is the Appellant's bank in INR after deduction of their service charges.

6(i).In this regard, the amended Para 2(k) of the Board's Circular No. 88/07/2019-GST,dated 01-02-2019 is reproduced below:

3.2 Amended Para 2(k)

Realization of export proceeds in Indian Rupee :

Attention is invited to para A(v)Part-I of RBI Master Circular No. 14/2015-16, dated 1st July, 2015 (updated as on 5th November, 2015), which states that "there is no restriction on invoicing of export Contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-



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resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, attention is invited to the amendment to section 2(6) of the IGSJ Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Thus, from the above Circular it is clear that the export proceeds can be realized in rupees provided it is through a freely convertible Vostro account of a non-resident bank. Apparently, in this case, the Appellant has not realized the amount according to the above terms and conditions.

6(ii). This apart, as per Section 2(6)(iv) of the IGST Act, 2017, for export of services, the payment for the service has to be received by the supplier of service in convertible foreign exchange. Since in the instant case, the Appellant had not received the payment in foreign exchange and it was Paypal payment services who is acting as a gateway are the ones that are actually receiving the payment from the subscribers in foreign currency in India and they are transferring this in Indian currency to the Appellant, there is a violation of the Section 2(6) ibid of the IGST Act as well as violation of the above stated Board's Circular as well as RBI directions.

6(iii). Hence, in view of the foregoing statutes and Circulars, on the first ground itself the refund in these cases cannot be entertained in as much as the major condition for export of services has not been satisfied.

7. Now, coming to the second ground, admittedly, the Appellant had not produced any export invoices in these cases. Section 31 of the CGST Act, 2017 provides that a registered person shall issue a tax



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*invoice and also in case of export of goods or services, the invoice shall carry the requisite endorsements. Further, Section 2(6) of the IGST Act, 2017, states that "export of services" means the supply of any service when,— (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (ii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange. However, since the Appellant had not produced the tax invoices, the location of the service recipient could not be ascertained to establish that the recipient of the services are located outside India and thus the condition number (ii) mentioned in Section 2(6) *ibid* has not been established in these cases. Thus, in the absence of invoices, the claims can certainly not be entertained.*

7(i). The Appellant themselves have stated that they had submitted the following documents before the Respondent viz. RFD-01A, LUT, Letter of declaration, proof of ITC (invoice copies), copy of GSTR2A, copy of electronic credit and debit ledgers, copy of Statement 3 and copy of FIRC advice from CITI bank. Thus, it is clear that they had not provided copies of tax invoices, if any, raised by them. Also they had not produced any FIRC or BRC copies since no invoices had been raised by them. The copies of FIRC advice submitted by them from CITI bank cannot be considered as a valid document in lieu of the FIRC since it is only an FIRC advice and cannot be treated as FIRC. In fact, the bank themselves have given this declaration clearly stating that "This is an Advice and Not to construed as an FIRC". The copies of ITR/Balance sheet filed by the Appellant also, unfortunately does not come to their rescue in these cases.

7(ii). Thus, in view of the fact that no invoices were raised by the Appellant nor were they able to submit FIRC/BRC in these cases, the refunds require to be



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rejected in as much as none of the conditions mentioned in Section 2(6) of the IGST Act, 2017 have been established to have been satisfied.

8. In an identical situation, the Advance Ruling Authority under GST, Rajasthan, in the case of Thinklab Edusoft LLP reported in 2020 (37) G.S.T.L. 106 (A.A.R GST - Raj.) had held as follows:

*BEFORE THE AUTHORITY FOR
ADVANCE RULING UNDER GSI,
RAJASTHAN*

*S/Shri J.P. Meena, Member (Central
Tax) and Hemant Jain, Member (State
Tax)*

IN RE: THINKLAB EDUSOFT LLP

*Advance Ruling No. RAJ/AAR/2019-
20/35, dated 13-3-2020*

*"Advance Ruling application -
Maintainability of - Advance ruling
sought on questions as to availability of
FIRC in respect of export proceeds with
respect to services for funds received
through service providers like Paypal,
Worldremit, etc., Documents required for
export without payment of tax to prove
receipt of proceeds in foreign currency
in case FIRC is not receivable in case of
such transactions; and the measure to be
followed in case any refund proceedings
are due to non-availability of FIRC or
any other supporting documents being
relied upon by the GST Department
-Question sought by applicant outside
the scope of Section 97(2) of. Central
Goods and Services Tax Act, 2017
therefore, the application is liable for*



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rejection without going in to the merit of the case under Section 98(2) of Central Goods and Services Tax Act,2017. [paras 2, 5]"

8(i).Further, in the case of Kobelco Machinery India Pvt. Ltd vs CST, Kolkatta, reported in 2017 (3) GSTL 260 (Tri. - Kolkata), the Tribunal had held as follows:

"Refund - Service Tax paid on input services used for export of goods/services -Denial of - Non-receipt of remittances in convertible foreign exchange - Refund not admissible if remittances received in Indian Rupees and Foreign Inward Remittance Certificate (FIRC) not produced - Rule 5 of Cenvat Credit Rules, 2004 read with Rule 3 of Export of Services Rules, 2005 and Notification No. 5/2006-C.E."

9.Therefore, in view of the various discussions and findings, the Impugned Orders are upheld in toto and the appeals of the Appellant merit rejection.

10.Appeals rejected."

3.The petitioner is engaged in the business of providing opinions on equity and futures market, trading stocks, options based on stock and share markets.

4.The petitioner has remitted Goods and Service Tax (GST) for the services rendered to its clients/customers. According to the petitioner, predominantly all the clients/customers of the petitioners are from the U.S and the neighboring countries.



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5. Under these circumstances, the petitioner has treated the above supply of services rendered to its clients/customers as “export of service” within the meaning of Section 2(6) of the Integrated Goods and Services Tax Act, 2017. Section 2(6) of the Integrated Goods and Services Tax Act, 2017 reads as under:-

2. In this Act, unless the context otherwise requires,—

(6) “export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

6. It is further submitted that the export of service effected by the petitioner to its clients/customers also qualifies as “zero rated supply”



within the meaning of Section 16 of the Integrated Goods and Services Tax Act, 2017 and therefore the petitioner filed application under Section 54 of the IGST Act read with Rule 89(2) of the Central Good and Services Tax Rules, 2017 for refund.

7.It is submitted that the petitioner has complied with all the requirements of the aforesaid provision as there was an export of service within the meaning of Section 2(6) of the Integrated Goods and Services Tax Act, 2017.

8.The transactions of the petitioner is captured in the following paragraphs from the affidavit filed in support of the writ petitioner:-

“As stated earlier, the business model of the petitioner is such that Paypal receives the subscription fee from the subscribers in US dollars. Subsequently, after deducting the service charges, Paypal credits the said amount to the petitioner in Indian Rupee. This is in accordance with The RBI guidelines clearly indicate that Paypal cannot receive the amounts in US dollars. Paypal therefore has to ensure that the amount received is not in non-convertible foreign currency, but rather in Indian currency, when it reaches the bank account of the Petitioner. Therefore, the entire transaction was done in accordance with the RBI regulations. The following flow-chart elucidates the transaction that took place.”



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Subscribers make the payment for availing the Petitioner's service through the Paypal platform.



Paypal collects the payment in foreign exchange (US Dollars in the instant case). In doing so, Paypal acts as an intermediary/agent of the Petitioner.

9.The learned counsel for the petitioner has further drawn attention to

the following paragraphs from the affidavit:-

“30. The Reserve Bank of India vide Circular No.RBI/2010-11/281 A.P.(DIR Series) Circular No.17 dated 16.11.2020 has directed AD Bankers to a NOSTRO Collection Account mandatorily for Online Payment Gateway service Providers for receipt of Export Proceeds. A freely convertible VOSTRO account of a Non Resident Bank is a freely convertible NOSTRO Collection Account for Resident Bank. In other words, Paypal as an agent is collecting export proceeds in freely convertible foreign exchange on behalf of the Petitioner

31. Furthermore, it is clear that Paypal was authorized as the agent of the petitioner to collect the money in foreign exchange. This is clear from the Paypal User Agreement which states as follows:

“Paypal acts as an intermediary for receipt of funds from buyers by sellers and does not act as a repository or custodian with respect to such funds. For Export Payment Services, Paypal is only responsible for depositing the export proceeds with the authorised dealer bank. For Domestic Payment Services, PayPal is only responsible for depositing the payments with your designated bank.”

In this user agreement, “Paypal Service” means the



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payment gateway processing services offered by PayPal to its users who are resident in India to facilitate receipt of payments from a buyer (either domestic or foreign) for credit into their bank accounts.”

10.It is further submitted that the payments were received by the petitioner in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 vide Notification No.FEMA 14(R)/2016-RB dated 02.05.2016 issued under Section 47 of the Foreign Exchange Management Act, 2000. A specific reference is made to Regulation 3 of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016:-

“Regulation 3 - Manner of Receipt in Foreign Exchange:-

(1)Every receipt in foreign exchange by an authorized dealer, whether by way of remittance from a foreign country or by way of reimbursement from his branch or correspondent outside India against payment for export from India, or against any other payment, shall be as mentioned below:

(A)Members of the Asian Clearing Union

(i) Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives:-

(a) Receipt for export of eligible goods and services by debit to the Asian Clearing Union Dollar account and / or Asian Clearing Union Euro account in India of a



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bank of the member country in which the other party to the transaction is resident or by credit to the Asian Clearing Union Dollar account and / or Asian Clearing Union Euro Account of the authorized dealer maintained with the correspondent bank in that member country;

- (b) Receipt may also be made in any freely convertible currency in all other cases;
- (c) In respect of exports from India to Myanmar, payment may be received in any freely convertible currency or through ACU mechanism from Myanmar.

(ii) Nepal and Bhutan

- (a) Receipt may be in Rupees
- (b) Receipts for export of goods to Nepal may be made in free foreign exchange, provided the importer resident in Nepal has been permitted by the Nepal Rashtra Bank to make payment in free foreign exchange. However such receipts shall not be routed through the ACU mechanism.

(iii) Islamic Republic of Iran

- (a) Receipt of export of eligible goods and services, in any freely convertible currency and / or in accordance with the directions issued by the Reserve Bank to the authorized dealers from time to time.
- (b) Receipt in any freely convertible currency and / or in accordance with the directions issued by the Reserve Bank to the authorized dealers from time to time in all other cases.

(B) All countries other than those mentioned in A above

- (i) Receipt in rupees from the account of a bank situated in any country other than a member country of the Asian Clearing Union.



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(ii) Receipt in any freely convertible currency.

(2)(a) In respect of an export from India, receipt shall be made in a currency appropriate to the place of final destination as mentioned in the declaration form irrespective of the country or residence of the buyer.

(b) Any other mode of receipt of export proceeds for an export from India in accordance with the direction issued by the Reserve Bank of India to authorized dealers from time to time.

(3) Authorised dealers have been permitted to allow receipts for export of goods/software to be received from a Third Party (a party other than the buyer) as per the guidelines issued by the Reserve Bank.”

11.The petitioner is a startup company and is in the process of expanding and growing its business. In such circumstances, the petitioner is relying on the tax refund as one of the source of recycling funds in the business. With the limited capital, the petitioner intricately manages its finances.

12.It is submitted that the 1st respondent has erroneously stated that the petitioner has not submitted the invoices pertaining to the said period and dismissed the appeal filed by the petitioner on mere technical ground that the petitioner did not submit export invoices and thereby violated



Section 2(6) of the IGST Act, 2017.

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13.It is submitted that the petitioner has proven beyond reasonable doubt that the service recipient is outside the country and that the money was infact received in foreign exchange. In any event, mere technical breaches assuming without admitting did exist cannot be the reason for denial of the claim.

14.It is submitted that as on date, there is no appellate Tribunal to file appeal against the Impugned Order. The Impugned Order is contrary to the well established principles of law and prayed for allowing the Writ Petition.

15.The learned Senior Standing Counsel for the respondents would submit that the assessee did not provided proof to establish that the amount received in Indian Rupees is through freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan.

16.It is submitted that according to petitioner Paypal is acting as a



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gateway and receiving payment from subscribers in foreign currency into India and transferring the money to the assessee in Indian Rupees to them.

Hence, the provisions provided in RBI master circular No.14/2015-16 dated 01.07.2015 is not applicable.

17.The petitioner has not furnished necessary supporting documents evidence proof of receipt of export proceeds in convertible foreign exchange and not furnished details of export invoices. Hence, all the refund claims were ineligible and were rejected.

18.Further, the petitioner has not established its case of refund and the respondent has passed a detailed order as to why the petitioner is not entitled to refund and prayed for dismissal of the Writ Petition.

19.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

20.Facts are not in dispute. The petitioner is engaged in the business of



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providing online services through its website www.tradingwiser.com. Users visiting its website subscribe to plans as given and make payments. Services are provided in the form of information and knowledge on various investment options. Payments are routed through the paypal, an intermediary, appointed by the petitioner. The petitioner had therefore filed refund claims, partly seeking refund of ITC availed on service used in provision of such services, under Section 16(3) of the Integrated Goods and Services Tax Act, 2017 on exports of such services made without payment of Tax under Section 54 of the CGST Act, 2017 and partly on refund of tax paid on export of services made on payment of tax under Section 16(4) of Integrated Goods and Services Tax Act, 2017 read with Section 54 of the CGST Act, 2017.

21.The refund claims of the petitioner were rejected by the second respondent vide orders dated 06.11.2019 & on the following two broad categories:-

- (i) *The export proceeds in these cases were received by the petitioner in Indian rupees which was not in accordance with the RBI directions wherein it is stated that export proceeds against specific exports may be realized in rupees provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union, Nepal or Bhutan. **In these cases the petitioner had failed to establish that the amount received in Indian Rupees***



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was through freely convertible Vostro account as stated in the RBI directions.

- (ii) *The petitioner had not produced any export invoices, whereas Section 31 of the CGST Act, 2017 provides that a registered person shall issue a tax invoice and also in case of export of goods or services, the invoice shall carry the requisite endorsements. However, since the petitioner had not produced the tax invoices, the location of the service recipient could not be ascertained to establish that the recipient of the services are located outside India thereby not satisfying the condition number(ii) mentioned in Section 2(6) of the IGST Act, 2017.*

22.The decision of the 2nd respondent has been affirmed by the 1st respondent vide impugned Order dated 27.08.2020 bearing reference No.A.No.03-10/2020(GSTA-I)(CN)(ADC).

23.Issue that arises for consideration is whether the petitioner is entitled for refund of the tax borne on input and final service exported to its overseas customers.

24.Export of service is a “**zero-rated supply**” within the meaning of Section 16(1) of the Integrated Goods and Services Tax Act, 2017. The expression “**zero-rated supply**” is defined in Section 16(1) of the Integrated Goods and Services Tax Act, 2017.



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25.As per Section 16(2) of the Integrated Goods and Services Act, 2017, a supplier effecting '**zero rated supply**' is entitled to avail Input Tax Credit notwithstanding such supply are exempt from payment of tax. Reason for such refund is to reduce the burden of tax on exports to make exports competitive.

26.As per Section 16(3) of the Integrated Goods and Services Tax Act, 2017, a registered person making “**zero rated supply**” is eligible to claim refund of unutilised input tax credit on supply of goods or services or both made without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed. This is similar to rule 5 of the CENVAT Credit Rules, 2004, read with Rule 19 of the Central Excise Rule, 2002.

27.As per proviso to Section 16(3) of the Integrated Goods and Services Tax Act, 2017 the registered person making a “**zero rated supply**” of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under



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section 50 of the Central Goods and Services Tax Act, 2017 within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

28.As per Section 16(4) of the Integrated Goods and Services Tax Act, 2017, the Central Government may specify on the recommendation of GST council and subject to such safeguards and procedures,

- (i) *a class of persons who may make “zero rated supply” on payment of integrated tax and claim refund of the tax so paid;*
- (ii) *a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.*

29.Section 16(4) of the Integrated Goods and Services Tax Act, 2017 is similar to mechanism prescribed under Rule 18 of the Central Excise Rule, 2002.

30.Section 16 of the Integrated Goods and Services Tax Act, 2017 are reproduced below:-

Section 16 of the Integrated Goods and Services Tax Act, 2017	
<i>(1) “Zero-rated supply” means any of the</i>	<i>(2) Subject to the provisions of Sub-</i>

**Section 16 of the Integrated Goods and Services Tax Act, 2017**

- following supplies of goods or services or both namely:-*
- (a) **export of goods or services or both;**
or
- (b) *supply of goods or services or both [for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.*

Section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

Provided *that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.*

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) *a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*

(ii) *a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.*

31. Thus, both input tax credit (ITC) and tax paid on zero rate by utilizing the input tax credit (ITC) are available by way of refund under Section 16 of Integrated GST Act, 2017 where ever there is “**zero rated**”



supply”. Procedure under Section 54 of the Central Goods and Services Tax, 2017 have to be followed.

32. Section 54 of the Central Goods and Services Tax, 2017 contemplates refund of tax on exports. Section 54 of the Central Goods and Services Tax, 2017 reads as under:-

“Section 54 Refund of tax.-

(1) *Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :*

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 , may claim such refund in [such form and] manner as may be prescribed.

(2) *A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55 , entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed , before the expiry of 1 [two years] from the last day of the quarter in which such supply was received.*



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(3) *Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

- (i) zero rated supplies made without payment of tax;*
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) *The application shall be accompanied by-*

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and*
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:*



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Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

- (5) *If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57 .*
- (6) *Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*
- (7) *The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.*
- (8) *Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-*
- (a) refund of tax paid on [export] of goods or services or both or on inputs or input services used in making such [exports];*



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- (b) *refund of unutilised input tax credit under sub-section (3);*
- (c) *refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;*
- (d) *refund of tax in pursuance of section 77 ;*
- (e) *the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or*
- (f) *the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.*

[(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]

- (9) *Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).*
- (10) *Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-*
 - (a) *withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;*
 - (b) *deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay*



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but which remains unpaid under this Act or under the existing law .

Explanation .-For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

- (11) *Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.*
- (12) *Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56 , be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.*
- (13) *Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27 , shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 .*
- (14) *Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.*

Explanation.- For the purposes of this section,-

- (1) *"refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies,*



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or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]



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(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange ⁶ [or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.”



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33.The expression “export of services” is defined in Section 2(6) of the Integrated Goods and Services Tax Act, 2017. It reads as under:-

“Section 2: In this Act, unless the context otherwise requires,-

(6) “export of services” means the supply of any service when,

- i. the supplier of service is located in India;*
- ii. the recipient of service is located outside India;*
- iii. the place of supply of service is outside India;*
- iv. **the payment for such service has been received by the supplier of service in convertible foreign exchange; and***
- v. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.”*

34.There is no dispute that the petitioner is providing services of its clients through its online portal to customers/client. The payments for the services provided by the petitioner are routed through an intermediary namely Paypal with whom the petitioner has an arrangement.

35.As an intermediary, Paypal directly credits the amounts received in Indian currency directly into the petitioner's account. As far as export proceeds,



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the amounts are received in convertible foreign exchange by the said intermediary namely Paypal. The amounts are first credited into its account with CITI Bank of the said intermediary namely Paypal. Thereafter, amounts in Indian currency are transferred from the intermediaries CITI Bank account to the petitioner's account with HDFC Bank after deduction of its service charges.

36.The routing of the payment by the intermediary viz., Paypal from its account in CITI Bank to the petitioner's own account with HDFC Bank in Indian Rupees is in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 as notified by Notification No: FEMA 14(R)/2016-RB dated 02.05.2016. Regulation 3 prescribes the manner of receipt of foreign exchange. Regulation 3 of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 reads as under:-

“Regulation 3 - Manner of Receipt in Foreign Exchange:-

(2) Every receipt in foreign exchange by an authorized dealer, whether by way of remittance from a foreign country or by way of reimbursement from his branch or correspondent outside India against payment for export from India, or against any other



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payment, shall be as mentioned below:

(A) Members of the Asian Clearing Union

(i) Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives:-

- (a) Receipt for export of eligible goods and services by debit to the Asian Clearing Union Dollar account and / or Asian Clearing Union Euro account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the Asian Clearing Union Dollar account and / or Asian Clearing Union Euro Account of the authorized dealer maintained with the correspondent bank in that member country;*
- (b) Receipt may also be made in any freely convertible currency in all other cases;*
- (c) In respect of exports from India to Myanmar, payment may be received in any freely convertible currency or through ACU mechanism from Myanmar.*

(ii) Nepal and Bhutan

- (a) Receipt may be in Rupees*
- (b) Receipts for export of goods to Nepal may be made in free foreign exchange, provided the importer resident in Nepal has been permitted by the Nepal Rashtra Bank to make payment in free foreign exchange. However such receipts shall not be routed through the ACU mechanism.*

(iii) Islamic Republic of Iran

- (a) Receipt of export of eligible goods and services, in any freely convertible currency and / or in accordance with the directions issued by the Reserve Bank to the authorized dealers from*



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time to time.

(b) Receipt in any freely convertible currency and / or in accordance with the directions issued by the Reserve Bank to the authorized dealers from time to time in all other cases.

(B) All countries other than those mentioned in A above

(i) Receipt in rupees from the account of a bank situated in any country other than a member country of the Asian Clearing Union.

(ii) Receipt in any freely convertible currency.

(2)(a) In respect of an export from India, receipt shall be made in a currency appropriate to the place of final destination as mentioned in the declaration form irrespective of the country or residence of the buyer.

(b) Any other mode of receipt of export proceeds for an export from India in accordance with the direction issued by the Reserve Bank of India to authorized dealers from time to time.

(3) Authorised dealers have been permitted to allow receipts for export of goods/software to be received from a Third Party (a party other than the buyer) as per the guidelines issued by the Reserve Bank.”

37.Regulation 3(2) of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 makes it clear that in respect of an export from India, receipt shall be made in currency appropriate to the place of final destination as mentioned in the declaration form.



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38.As per Regulation 3(2)(b) of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 any other mode of receipt of export proceeds for an export from India in accordance with the directions issued by the Reserve Bank of India to authorized dealers from time to time.

39.Thus, if payments are routed through an intermediary to person like petitioner, the intermediary should be an authorised person to receive such payment in convertible foreign exchange. As an intermediary, the petitioner is required to only credit the amounts in convertible foreign exchange into Reserve Bank of India.

40.Thus, there is no dispute with on the services provided by the petitioner to its foreign clients. The petitioner has provided the export services within the meaning of Section 2(b) of the IGST Act, 2017. The Paypal merely acts as an intermediary who receives the remittances in freely convertible foreign exchange and in as much required to comply with the requirements of the foreign exchange.



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41. Merely because the receipts are routed through the intermediary and received in Indian currency ipso facto would not mean that the petitioner has not exported services within the meaning of Section 2(6) of the IGST Act, 2017. Receipt of payment by an intermediary for and on behalf of its client like the petitioner will qualify as payment received by the client. As the only requirement is with the payments received is freely convertible foreign exchange has to be directly remitted into the authorized dealers account as otherwise an intermediary will be violate the requirements of the foreign exchange.

42. Regulation 3(3) of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 makes it clear that the authorized dealers have been permitted to allow receipts for export of goods / software to be received from a Third Party (a party other than the buyer) as per the guidelines issued by the Reserve Bank.

43. Thus, without doubt, the petitioner is entitled for refund. Reference to Circular No.88/07/2019-GST dated 01.02.2019 to concluded



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that the petitioner has not realized the amount in freely convertible foreign exchange therefore cannot be countenanced.

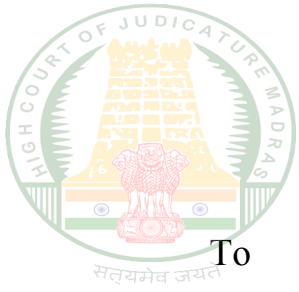
44. Therefore, the impugned order passed by the 1st respondent Additional Commissioner (Appeals I) upholding the orders passed by the 2nd respondent is unsustainable and is therefore liable to be set aside and is accordingly set aside. Consequently, the petitioner is entitled for export of tax paid on export and the unutilized input tax credit used in export of service.

45. In the result, Writ Petition stands allowed. No costs.

16.02.2024

Rgm / krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

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C.SARAVANAN, J.

Rgm / krk

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16.02.2024