

**Court No. - 3**

Case :- WRIT TAX No. - 113 of 2021

Petitioner :- Savista Global Solutions Private Limited

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Nishant Mishra, Tanmay Sadh, Yashonidhi Shukla

Counsel for Respondent :- A.S.G.I., C.S.C., Krishna Ji Shukla, Manu Ghildyal

Hon'ble Naheed Ara Moonis, J.

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Nishant Mishra along with Sri Nikhil Gupta and Ms Vedika Nath, learned counsel for the petitioner and Sri Krishna Ji Shukla, learned counsel for respondent nos.1 and 5 and Sri Manu Ghildyal, learned counsel for respondent nos.2 and 6.

2. Present petition has been filed seeking a mandamus to respondent no.6 to refund to the petitioner Rs.1,28,50,535/- that became due to the petitioner under the order dated 06.01.2020 passed by respondent no.6. That amount of refund relates to the month July, 2019. Since that amount was not refunded to the petitioner which was then known as Nthrive Global Solutions Private Limited, further prayer for award of interest has also been made.

3. Since the refund was not made, the petitioner filed an application seeking refund, on 27.09.2019 before respondent no.6. Under Rule 97A of the Central Goods and Services Tax (CGST) Rules, 2017 (hereinafter referred to as the 'Rules'), it was permissible to file that application, manually. In any case the said application has admittedly been processed. Though, under Rule 54(7) of the Rules, the said application should have been processed and necessary order passed within a period of sixty days, however, the order of refund was passed

beyond that period of sixty days, on 06.01.2020. Therefore, by virtue of Section 56 of the Central Goods and Services Tax Act, 2017, interest @ 6% from the date of expiry of 60 days contemplated under Section 54(7) of that Act, till the date of actual payment of refund, also became due.

4. Admittedly, neither the amount of refund awarded under the order dated 06.01.2020 nor any interest has been paid to the petitioner, till date. By earlier order last opportunity had been allowed to the respondents to either pay up the entire amount or explain their conduct. Neither the amount has been paid up nor any further affidavit has been filed. Accordingly, the matter has been proceeded.

5. Having heard learned counsel for the parties and having perused the record, there is no dispute to the fact that an amount of Rs.1,28,50,535/- is refundable to the petitioner by respondent no.6 for the month of July, 2019. Also, upon exchange of pleadings, there is no dispute that the application for refund was filed by the petitioner manually, on 27.09.2019 yet the same was not processed and the refund was not directed to be paid within a period of sixty days therefrom.

6. Therefore, by way of a legal consequence arising from the plain language of the statute, the respondents have exposed themselves to interest liability @ 6% from the date 27.11.2019 onwards, on the amount of admitted refund Rs.1,28,50,535/-. No amount having been paid even today, the interest liability is continuing.

7. As to the defence set up by the respondents, it is seen that respondent no.6 claims, it had approved the refund on 06.01.2020 itself and he had forwarded the file for

actual payment, to respondent no.5, on 15.01.2020. Therefore, that authority claims no liability to pay interest.

8. Insofar as the respondent no.5 is concerned, Sri Krishna Ji Shukla, learned counsel for the respondents would submit, the refund application and the forwarding letter by respondent no.6 were moved through physical mode and therefore the same could not have been processed by the said respondent no.5. Upon activation of the GST portal on 26.09.2019, the application made by the petitioner and the further process made by respondent no.6 should have been through online mode only. He has vehemently urged that the said deficiency of procedure was intimated by respondent no.5 to the respondent no.6, vide earlier communications dated 20.07.2020 and 27.08.2020. Therefore, he claims no interest is due to the petitioner and that the refund may be paid only after due compliance is made by the petitioner and respondent no.6 by logging in the particulars of the refund and the refund order on the GST portal, through online mode, only.

9. The aforesaid contentions do not bring out any disentitlement of the petitioner either towards the refund of Rs.1,28,50,535/- or the interest payable thereon. The insistence on part of respondent no.5 to have the details of the refund claimed and the refund order passed by respondent no.6, uploaded on the GST portal is an eye wash. Though, the law did contemplate such applications to be made and orders to be passed and also refund to be made through online mode, at the same time, on account of the problems that arose upon the introduction of GST regime, Rule 97A of the Rules was introduced to the Rules 2017 by the Central Goods and Services Tax

(Twelfth Amendment) Rules, 2017. It reads as below :

"97A-Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."

10. Further, the subsequent Circular No.125/44/2019-GST came to be issued on 18.11.2019 prescribing the online mode for such refund applications w.e.f. 26.09.2019. It is of no benefit to the respondents, as in the first place, the said Circular did not and it could not override or negate the effect of law arising from Rule 97A of the Rules. It is a settled principle in law that the delegated legislation would stand on a higher pedestal over a pure administrative instruction.

11. So long as Rule 97A remains on the Rule book, the Circular cannot take away the plain effect of the said Rule 97A. Therefore, the Circular could only provide a directory or an optional mode, to process a refund claim. Second, in any case, since the Circular itself was issued on 18.11.2019 i.e. well after the application dated 27.09.2019 had been filed by the petitioner, the same could not be pressed into service by the respondents. Third, and more crucially, the respondents have themselves processed the application filed by the petitioner and passed the order dated 06.10.2020 directing for refund.

12. Once the application had been processed and or order passed, which has attained finality, the respondents cannot escape the plain effect of the same. They also cannot escape the liability of interest that arises on non-compliance of the same.

13. Though, Sri Krishna Ji Shukla and Sri Manu Ghildyal, learned counsel for the respondents would insist that the respondents only acted in the best interest of revenue and with the sole object to comply the law in letter and spirit at the same time, it gives no relief to the misery caused to the petitioner who has been made to wait for refund for a very long period of almost two years, after complying with the law.

14. Respondent no.6 shall refund the entire amount of Rs.1,28,50,535/- together with interest from the date against 27.11.2019 till the date of issuance of the demand draft @ 6%. The respondents themselves shall have choice to make payment either through online mode or through bank draft within a period of one month from today.

15. As to the inter se differences that may exist between respondent nos.5 and 6, it is left to those parties to resolve it among themselves so that other similar disputes may be resolved in a time bound manner.

16. Accordingly, the writ petition is **allowed**.

17. No order as to costs.

Order Date :- 6.10.2021
S.Chaurasia