

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE MANINDER S BHATTI
WRIT PETITION No. 9226 of 2020

Between:-

PRISM JOHNSON LIMITED, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT 305, LAXMI NIWAS APARTMENT, AMEERPET, HYDERABAD – 500016, AND MANUFACTURING UNIT AT VILLAGE – MANKAHARI, PO – BATHIA, DISTRICT – SATNA – 485111 (M.P.) THROUGH ITS AUTHORIZED SIGNATORY, SHRI P. K. SHRIVASTAVA, AGED AROUND 48 YEARS, S/O D. P. SHRIVASTAVA, R/O C-27, PRISM STAFF COLONY, VILL-MANKAHARI, PO BATHIA, DISTRICT -SATNA - 485111 (M.P.)

.....PETITIONER

(BY SHRI M.P. DEVNATH – ADVOCATE WITH SHRI AKSHAY SAPRE - ADVOCATE)

AND

- 1. UNION OF INDIA THROUGH SECRETARY REVENUE/ CHAIRMAN, CENTRAL BOARD OF EXCISE AND CUSTOMS, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI**
- 2. STATE OF MADHYA PRADESH, FINANCE DEPARTMENT, THROUGH THE SECRETARY,**

MANTRALAYA, VALLABH BHAWAN, BHOPAL
(M.P.)

3. ASSISTANT COMMISSIONER, CENTRAL
GOODS & SERVICE TAX, CR BUILDING,
CIVIL LINES, DIVISION - SATNA (M.P.)

.....RESPONDENTS

(RESPONDENT NO.3 BY SHRI ABHIJEET SHRIVASTAVA - ADVOCATE)

WRIT PETITION No. 9231 of 2020

Between:-

PRISM JOHNSON LIMITED, A COMPANY
INCORPORATED UNDER THE COMPANIES
ACT, 1956, HAVING ITS REGISTERED
OFFICE AT 305, LAXMI NIWAS APARTMENT,
AMEERPET, HYDERABAD -500016 AND
MANUFACTURING UNIT AT VILLAGE –
MANKAHARI, PO- BATHIA, DISTRICT
SATNA – 485111, MADHYA PRADESH,
THROUGH ITS AUTHORIZED SIGNATORY
SHRI P.K. SHRIVASTAVA, AGED AROUND 48
YEARS, S/O SHRI D.P.SHRIVASTAVA, R/O C-
27, PRISM STAFF COLONY, VILL-
MANKAHARI, PO BATHIA, DISTRICT SATNA
- 485111 (M.P.)

.....PETITIONER

*(BY SHRI M.P. DEVNATH – ADVOCATE WITH SHRI AKSHAY
SAPRE - ADVOCATE)*

AND

1. UNION OF INDIA, THROUGH SECRETARY
REVENUE/CHAIRMAN, CENTRAL BOARD

**OF EXCISE AND CUSTOMS, MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI**

2. **STATE OF MADHYA PRADESH, FINANCE
DEPARTMENT, THROUGH THE SECRETARY,
MANTRALAYA, VALLABH BHAWAN,
BHOPAL (M.P.)**
3. **ASSISTANT COMMISSIONER, CENTRAL
GOODS & SERVICE TAX, CR BUILDING,
CIVIL LINES, DIVISION-SATNA (M.P.)**

.....RESPONDENTS

(RESPONDENT NO.3 BY SHRI ABHIJEET SHRIVASTAVA - ADVOCATE)

Reserved on	:	03.03.2022
Passed on	:	13.06.2022

Per : Justice Sheel Nagu :

ORDER

Both the writ petitions, namely, W.P. No.9226 of 2020 and W.P. No.9231 of 2020 involve common question of facts as well as law and, therefore, are being decided by this common order.

2. These petitions assail not only the show cause notices issued but also the consequential orders passed by the competent authority refusing claim for refund of accumulated credit of compensation cess.
3. The principal grounds of challenge to the aforesaid show cause notices and subsequent orders are that the refund despite being due to the petitioner in

law has been wrongly denied and the consequential orders of refusal to refund are non-speaking.

4. Learned counsel for Revenue has filed a counter-reply refuting submissions of petitioner by primarily submitting that the impugned consequential orders declining refund contain sufficient reasons to save them from being sacrificed at the alter of natural justice. On merits, the respondents in their counter-reply also submits that the claim for refund made by the petitioner was time barred on the anvil of Section 54 (14) (2) of the Central Goods and Services Tax Act, 2017. It is also submitted by the Revenue that in terms of Section 16(4) of CGST Act, 2017, the claim for refund was untenable on facts and also on law. The Revenue further submits that since the petitioner did not avail the input tax credit of compensation cess on coal during the relevant period, the claim for refund for the financial year 2017-18 and 2018-19 is inadmissible. More so, the Revenue contends that the petitioner submitted the application for refund under the wrong category of “**any other**” whereas the correct category was “**refund of unutilized ITC on account export without payment of tax**”. Lastly, the Revenue objected to the maintainability of this petition for petitioner’s failure to avail the statutory remedy of appeal u/S. 107 of CGST Act.

5. After having heard learned counsel for the rival parties at length and having perused the consequential orders declining refund, it is obvious that said orders contain reasons in the remarks column, which are as follows:

- (i) Refund claim is time barred.
- (ii) Neither ITC of cess availed in GSTR3B nor accumulated of ITC of cess is available in Credit Ledger for relevant period.

(iii) The refund is inadmissible on the anvil of para 43 of Circular No.125/44/2019-GST dated 18.11.2019.

6. In some of the impugned orders, the reasons assigned are either all the above three but in some the reason of claim being time barred is absent.

6.1 In other words, the claim for refund has been declined by assigning reasons which may be cryptic on bare perusal but are sufficient to enable the assessee to know the exact cause for rejection of the claim for refund. The reasons assigned could have been more elaborate but that by itself cannot render the impugned orders vitiated. The reasons assigned are sufficient to save the orders from being sacrificed at the alter of natural justice (non-speaking order). Pertinently, the reasons assigned cannot categorize the impugned orders to be non-speaking since they do not dissuade the assessee from knowing the mind of the adjudicating authority or dissuading from filing an appeal.

7. Certain other reasons have been assigned by the Revenue to support impugned orders, which this Court declines to go into in the face of the unavailed alternative statutory remedy of appeal u/S. 107 of the C.G.S.T. Act.

8. Accordingly, this Court declines interference and relegates the petitioner to avail remedy of appeal u/S. 107 of the C.G.S.T. Act, 2017, which, if availed, within a period of 60 (sixty) days from today, then the same shall be considered and decided on its own merits without being dismissed on limitation alone.

9. With the aforesaid liberty, both the writ petitions stand **dismissed**.

(SHEEL NAGU)
JUDGE

(MANINDER S BHATTI)
JUDGE

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