

Court No. - 39

Case :- WRIT TAX No. - 954 of 2019

Petitioner :- M/S Desai Brothers Limited Ratanpur

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shubham Agrawal, Pooja Talwar

Counsel for Respondent :- C.S.C., A.S.G.I., Devendra Gupta

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vinod Diwakar, J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Ankur Agarwal, learned Standing Counsel for the revenue.

2. Present petition has been filed seeking a direction upon the Assistant Commissioner (Incharge), State Tax, Mobile Squad Unit II, Muzaffarnagar to grant refund of Rs. 47,32,040/- recovered from the petitioner on 15.03.2018, upon encashment of the bank guarantee furnished by the petitioner to secure its interest *qua* the penalty order dated 09.03.2018.

3. Undisputedly, the petitioner is an ex-UP dealer. It was transporting certain quantities of '*beedi*' from West Bengal to Haryana, using the State of U.P. as a transit State. On 22.02.2018, the aforesaid consignment of goods loaded on the truck bearing registration No. WB 11 B 2531 was detained by respondent no. 3 on the allegation of improper documentation giving rise to further allegation of smuggling of those goods inside the State of U.P.

4. Consequently, the goods were seized on 22.02.2018. That seizure order gave rise to further order under Section 20 of the IGST Act read with Section 129(3) of the UP GST Act, 2017 (hereinafter referred to as the '*Act*'). Consequently, tax Rs. 23,66,020/- and equal penalty, totaling to Rs. 47,32,040/- was demanded from the petitioner.

5. It is the petitioner's case that it furnished security in the shape

of bank guarantee for the above amount, on 15.03.2018. Before the petitioner could have availed any remedy in appeal, that Bank Guarantee is disclosed to have been encashed on that date itself, at the instance of respondent no. 3. Encashment of the bank guarantee is not in dispute. Thus, the entire disputed amount of tax and penalty stood recovered by respondent no. 3.

6. In any case, the petitioner challenged the order dated 09.03.2018 by means of First Appeal No. GST - 67 of 2018 (A.Y. 2017-18). The same was allowed, vide order dated 18.03.2019. The operative portion of that order, reads as below :

"अपील स्वीकार की जाती है तथा विवादित आदेश से निर्धारित कर रु० 23,66,020.00 एवं निर्धारित अर्थदण्ड रु० 23,66,020.00 कुल रु० 47,32,040.00 समाप्त किया जाता है। इस संबंध में अधिक जमा धनराशि, यदि कोई हो, तो वह अपीलार्थी को वापसी योग्य है।"

7. It is thereafter, the petitioner-assessee's real troubles began inasmuch as though the appeal order was never challenged by the State and though more than four years have passed since then, the said order has not been given effect to. Neither, the principal amount Rs. 47,32,040/- has been refunded to the petitioner nor any interest has been paid thereon.

8. As to the reason for delay in processing the claim for refund, it appears, the State respondents are of the view that such refund may have been granted only if the petitioner had made an application for refund on the online form RFD-01. Since that compliance of law has not been made, the claim for refund has not been honoured, till date.

9. Learned counsel for the petitioner has referred to the provisions of Section 54(1) read with sub-Section 7 and Section 56 of the Act. She has also relied on the provisions of Rule 97-A of the UP GST Rules, 2017 (hereinafter referred to as the 'Rules').

10. On the strength of those provisions of law, it has been pointed out, the petitioner was effectively prevented from moving the online application owing to technical glitches that existed on the GSTN portal. Relying on the pleadings made in paragraph no.23 of the writ petition and its lack of denial in the counter affidavit, it has been then submitted, the petitioner had moved its physical application to claim the refund within the statutory period of 60 days, by filing such application before respondent no.3 on 02.04.2019. Further, applications filed by it on 15.04.2019, 29.05.2019 and 04.07.2019 remained unattended.

11. Referring to Rule 97-A and relying on its interpretation made by a division bench of this Court (to which one of us was a member), it has been submitted, in **Savista Global Solutions Pvt. Ltd. Vs. Union of India & 5 Ors. (Writ Tax No. 113 of 2021)**, Rule 97-A of the Rules has been clearly read to permit a physical application to be filed. Referring to another decision of a co-ordinate bench of this Court in **M/S Alok Traders Vs. Commissioner Commercial Taxes & 2 Ors., 2022 UPTC [111] 845**, it has been further submitted, the respondents do stand exposed to interest liability for the delay caused.

12. On the other hand, learned counsel for the revenue would contend, since the primary scheme of the Act is to entertain application through online mode, the delay was caused since the petitioner failed to file online application over a long period of time despite certain communications sent to it to move such application through online mode.

13. Having heard learned counsel for the parties and having perused the record, the primary facts giving rise to the claim of refund are not in dispute in the present case. The appeal order dated 18.03.2019 has long attained finality. It clearly contains a recital to refund the amount of Rs. 47,32,040/-. Therefore, by

way of a right, that amount cannot be retained by the State. Only procedural requirements were required to be completed for its refund to be made.

14. As to procedure, Section 54 of the Act required the petitioner to move an application in the prescribed form and manner within two years from the refund being becoming due. By virtue of Section 54(7) of the Act, that claim ought to have been dealt with and disposed of within 60 days of its receipt. It is also not in dispute, by virtue of Section 56, any delay beyond statutory period of 60 days in dealing with the claim for refund, the revenue entailed the interest liability @ 6% from the end of period of 60 days.

15. As to the maintainability of the refund claim made by the petitioner, it is not in doubt, the petitioner did make an offline application claiming such refund on 02.04.2019. Rule 97-A of the Rules, reads as below :

"97-A. 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."

16. The instant Rule had been considered by a co-ordinate bench of this Court in **Savista Global Solutions Pvt. Ltd. (supra)**, wherein it was observed as under :

"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."

17. In the first place, there is no contrary opinion existing and perhaps none may arise as the language of the statute as it stands admits of no doubt. As to the filing of physical/offline application on 02.04.2019, there is no doubt raised by the revenue. Therefore, that application had been filed within the statutory period of two years from the date when the refund became due i.e., upon the first appeal order dated 09.03.2018 being passed. Therefore, the revenue authorities were obligated in law to deal with that application in terms of Section 54(7) of the Act, within a period of 60 days. Failing that, the revenue further became exposed to discharge interest liability on the delay in making the refund at the statutory rate from the end of 60 days from 02.06.2019.

18. Accordingly, a writ of mandamus is issued to respondent no. 3 to dispose of the petitioner's refund claim application dated 02.04.2019 in light of the observations made above and to pay up the amount of refund claim together with statutory interest, within a period of three months from today.

19. In view of the above, present petition is **allowed**. No order as to costs.

Order Date :- 10.8.2023

Abhilash

(Vinod Diwakar, J.) (S. D. Singh, J.)