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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3620/2020

ZONES CORPORATE SOLUTIONS PVT. LTD. Petitioner

Through: Mr. Ruchir Bhatia with Mr. Hemant
Gupta, Advocates

versus

COMMISSIONER OF CENTRAL GOODS

& SERVICES TAX DELHI EAST & ANR. Respondents

Through: Mr. Harpreet Singh, Sr. Standing
Counsel for respondents.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE SANJEEV NARULA****ORDER**

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10.07.2020

The petition has been heard by way of video conferencing.

On 19th June, 2020, this Court had passed the following order:-

“The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

It is pertinent to mention that present writ petition has been filed seeking a direction to the respondents to refund Rs.1,40,99,149/- due to the petitioner along with interest which the respondents have failed to release despite two orders dated 23rd July, 2019 passed by the learned Commissioner (Appeals)-I, Delhi, which have attained finality.

In the petition, it has been averred that refund is due to the petitioner under the provisions of the Integrated Goods

and Service Tax Act, 2017 (hereinafter referred to 'IGST Act') and Delhi Goods and Services Act, 2017 on account of exports made by the petitioner and supplies of computer hardware goods made to SEZ units – which are termed as 'zero rated supplies' in GST.

Learned counsel for petitioner submits that withholding of refund due to the petitioner is violative of Section 16 of IGST Act as well as Sections 54 and 56 of the Central Goods and Services Tax, Act, 2017.

Issue notice.

Mr. Harpreet Singh, learned senior standing counsel for respondents accepts notice. He prays for and is permitted to obtain instructions within ten days.

List on 03rd July, 2020.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.”

In pursuance to the aforesaid order, the respondents have filed a short affidavit in which it is stated that inaction on the part of the respondents of not disbursing the refund amount was owing to the non-functioning of the GST Appellate Tribunal which is beyond the control of the answering respondents. Learned counsel for respondents clarifies that the competent authority of the respondents in pursuance to the opinion of the review branch has directed filing of an appeal before the Appellate Tribunal challenging the order in appeal passed by the Commissioner (Appeals).

He also states that the petitioner had not provided the clear description and nature of service alleged to have been exported by it. The portion of the counter affidavit relied upon by him is reproduced hereinbelow:-

“5.As per the agreement entered into between the petitioner and its overseas client, the services to be provided were Business Processing services whereas as per the letter

dated 19.7.2018 filed by the petitioner with the office of the respondent, the services stated to have been exported were I.T. related services. In fact, on the export invoices issued by the petitioner, there was no description or nature of services exported and in turn, the export invoices mentioned services such as rent, maintenance expenses, cab services, pantry and offices expenses on which there is no IGST involved.

6. That, it is further most respectfully submitted, a claimant of refund, in respect of supply to SEZ unit, is required to produce the documents/evidence to substantiate the claim as prescribed under provisions of CGST laws. However, in the instant case, while the Adjudicating Authority asked the petitioner to submit the declaration from the SEZ unit as per Rule 89(2)f of CGST Rule, it failed to submit the same. Further, the learned Commissioner (Appeal) has also remained silent on this aspect of the matter while allowing the appeal of the petitioner and therefore, the same is flawed.

7. That, in view of the above-mentioned facts and circumstances, it is most respectfully prayed, the respondents may be given some time to take recourse to an appropriate legal action against the appellate authority's order and till then, the refund amount as sanctioned by the appellate authority may not be allowed to be disbursed to the petitioner."

From the aforesaid, it is apparent that the petitioner has succeeded in appeal vide order dated 23rd July, 2019. Though nearly a year has passed, yet no proceeding has been filed challenging the said order till date.

In the opinion of this Court, the petitioner cannot be asked to wait endlessly for the respondents to challenge the order dated 23rd July, 2019. Consequently, the present writ petition is disposed of with a direction to the respondents to refund the amount as directed by the Commissioner

(Appeals) vide order dated 23rd July, 2019 within four weeks. During this period, it shall be open to the respondents to file appropriate proceedings in accordance with law. All rights and contentions of the parties including objection, if any, to the maintainability of such proceedings are left open.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JULY 10, 2020

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