

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

Writ Petition No.11424 of 2021

ORDER:- *(per the Hon'ble Sri Justice C. Praveen Kumar)*

Aggrieved by the Order, dated 23.11.2020, passed by the Additional Commissioner [GST-Appeals], the present Writ Petition came to be filed.

2. The petitioner herein is said to be the third largest Private Bank in India providing an entire spectrum of financial services for personal and corporate banking. The petitioner bank is registered in Andhra Pradesh [AP] and also in State of Telangana [TL] with two different GSTN Numbers. With the advent of GST, the petitioner moved from a single centralized registration under Service Tax regime to have State specific GST registrations with separate GST for each State where it conducts business. For the ease of distinguishing and determining the 'Location of Supplier' [LOS] and the 'Place of Supply' [POS], the petitioner tagged all the branches to the respective

States from where the services are provided and pay the taxes from the appropriate State.

(a) It is said that during system configuration at the time of implementation of GST, few business premises located in Telangana State were erroneously tagged to Andhra Pradesh. Thus, the services provided for such office premises in Telangana were alleged to be erroneously mapped as provided in Andhra Pradesh, instead of in Telangana State. As a result of incorrect mapping of few Telangana office premises to Andhra Pradesh, the source system of the petitioner bank wrongly considered the State of Andhra Pradesh as 'LOS' instead of Telangana State, for the services rendered for such premises. However, the Place of Supply was correctly identified as Telangana. It is said that IGST was paid from the AP GST registration on services rendered from such branches in Telangana instead of CGST + SGST from the Telangana registration.

(b) It is also averred that the services provided from the business premises of State of Telangana were wrongly mapped as services provided in business premises provided in the place of Andhra Pradesh, this in turn, mapping of

branches lead to faulty determination of LOS in both the States and wrong mapping as Inter-State supply instead of Intra-State supply. Accordingly, IGST was paid with POS as Telangana from the Andhra Pradesh registration of the petitioner on services rendered from such business premises [which were actually located in Telangana] instead of liability of CGST and SGST [POS Telangana] from TL registration. This incorrect mapping was said to have been identified by the petitioner bank in the year 2019 and in order to correct the tax payment in respective states, the petitioner *suo motu* deposited appropriate CGST + SGST in Telangana for all the tax periods i.e. from July, 2017 to August, 2019, where IGST was wrongly paid from Andhra Pradesh registration.

(c) It is further averred that the petitioner bank has duly paid CGST and SGST *suo motu* in Telangana in cash and have reported the same by filing GST Form DRC 03 in Telangana State. As a result of the same, the petitioner bank has paid tax twice i.e. IGST in Andhra Pradesh from its Andhra Pradesh registration and CGST and SGST in Telangana from its TL registration, for the same services.

(d) Having regard to the above, the petitioner bank filed refund applications for the IGST paid for the years July, 2017 to August, 2019 on 14.02.2020 in Andhra Pradesh. The amount according to the petitioner is Rs.16,90,41,709/-. A Show Cause Notice dated 08.04.2020 was issued calling upon the petitioner, as to why the refund claim should not be rejected on the ground that the refund claim is time barred as per Section 54. A reply came to be submitted by the petitioner on 16.04.2020 explaining the same, but the application came to be rejected on the ground that the claims are time barred and the details regarding excess payment of tax has not been reflected.

(e) Aggrieved by the Order-in-Original passed by the third respondent, the petitioner bank preferred appeals before the Additional Commissioner [Appeals]. After hearing the petitioner on 04.11.2020 and the representative of the petitioner, these appeals were also dismissed. Challenging the same, the present Writ Petition came to be filed, as the Tribunal is not yet constituted.

3. A counter came to be filed by the respondents, disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the claim for refund should be filed as per the procedure prescribed under the provisions of said sections and the entitlement for the refund is subject to the conditions and limitations prescribed under the said section.

4. Though, various grounds are raised, Sri Bharat Raichandrani, learned Counsel for the petitioners mainly submits that in view of the Circular dated 25.09.2021, issued by the Government of India, the authorities erred in rejecting the claim as time barred. He took us through Paras 2.1, 3.1, 3.2, 4.1 and 4.2 of the said Circular to contend that the application filed by them is not barred by limitation.

5. Sri Suresh Kumar Routhu, learned Senior Standing Counsel for the respondents submits that the provisions of Section 54 of CGST Act, prescribe a period of limitation for filing the claim for refund, and the said application has to be made within the said period. Since the impugned claim came to be made beyond the period of limitation i.e.

beyond the period of two years, the authorities rightly rejected the same. Apart from that he would also submit that all the necessary documents as required for making a claim, more particularly, the Invoice Bills etc. and the details of the branches in respect of which, incorrect payments took place. According to him, except making a bald statement that GST payments were made in the state of Andhra Pradesh, which was required to be paid in the State of Telangana, no documentary evidence to that effect came to be filed. According to him, out of nine claims made, six claims pertain to period July, 2017 to December, 2017 and as such, the refund claim submitted in the month of February, 2020 is barred by limitation and in so far as the other claims are concerned, he would submit that no material has been placed in support of the same. For all the aforesaid reasons, Sri Suresh Kumar Routhu, learned Senior Standing Counsel would submit that there are no merits in the writ petition, and the same is liable to be dismissed.

6. The point that arises for consideration is, ***whether the application made by the petitioner is barred by limitation and whether all the documents as required are filed along with the said refund applications?***

7. It is no doubt true that Section 54 of the CGST Act, 2017 deals with 'Refund of Tax'. It is also not in dispute that the said application must be made within a period of two years from the relevant date in such form and manner prescribed. But, at the same time, it is to be noted that the Government of India, Ministry of Finance issued a Circular dated 25.09.2021 on this aspect. The subject in the said Circular relates to "Refund of Tax" specified in Section 77(1) of CGST and Section 19(1) of IGST Act. It would be just and proper to refer the Circular dated 25.09.2021, which reads as under:-

"Circular No.162/18/2021-GST

F.No.CBIC-20001/8/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
* * * *

New Delhi, dated the 25th September, 2021

To,

The Principal Chief Commissioners/Chief
Commissioners / Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/Directors General (All)

Madam/Sir,

Subject:Clarification in respect of refund of tax
specified in Section 77(1) of the CGST Act and
Section 19(1) of the IGST Act – Reg.

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 reads as follows:

“77. Tax wrongfully collected and paid to Central Government or State Government – (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed.**

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”

Section 19 of the IGST Act, 2017 reads as follows:

“19. Tax wrongfully collected and paid to Central Government or State Government:--(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject to such conditions as may be prescribed.**

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

Dealing with the word ‘subsequently held’ in the two Sections referred to above, a clarification was given, which is in Para-3 of the said Circular. The same reads as under:-

“3. Interpretation of the term “subsequently held”

3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/assessment/audit/investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

3.2 In this regard, it is clarified that the term “subsequently held” in Section 77 of CGST Act, 2017 or under Section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.”

8. Similarly, Para-4 of the said Circular deals with relevant date for claiming refund under Section 77 of the CGST Act/Section 19 of the IGST Act, 2017, which reads as under:-

“4.1. Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under Section 77 of the CGST Act and Section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) vide notification No.35/2021-Central Tax dated 24.09.2021.

The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

“(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFT-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

4.2. The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under Section 77 of CGST Act/Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under Section 77 of the

CGST Act/section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification i.e. from 24.09.2021.”

9. A reading of the Circular No.162/18/2021-GST and Column No.3 of 4.3 relating to refund claim, it is clear that if “A” has paid tax under a correct head before issuance of Notification No.35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification). In case, the adjudicating authority holds that the transaction as an inter-State supply and if ‘A’ pays IGST in respect of transaction on 10.05.2019, the last date for filing refund application would be 23.09.2023. However, if a particular person pays IGST on the same transaction on 10.11.2022 i.e. after issuance of Notification No.35/2021, the last date for filing would be 09.11.2024. Relying upon the said Circular and transactions and having regard to the above Circular issued, the learned counsel for the petitioner seeks remand of the matter, but the same is opposed strenuously by Sri Suresh Kumar Routhu, learned Senior Standing Counsel for the respondents.

10. It is also to be noted here that the impugned order was passed on 23.11.2020 and this Circular came to be issued on 25.09.2021 giving a clarification as to the date for claiming refund under Section 89 of the CGST Act, and Section 19 of the IGST Act, 2017. But the entire counter of the respondents was only in relation to Section 54 of the CGST Act, even the authority who passed the impugned order could not have considered the Circular issued by the Ministry of Finance in September, 2021, as the same was not issued by the date of the impugned order.

11. Since the issue involved relates to period of limitation in filing the refund application, coupled with the documents to be filed, it would be just and proper, in our view, to remand the matter back to the authority i.e. third respondent/Assistant Commissioner Central Tax, to deal with the refund application in the light of the Circular No.162/18/2021-GST dated 25.09.2021, issued more particularly with regard to the applicability of the Circular issued by the Government, and then pass orders in accordance with law.

12. With the above directions, the writ petition is ***disposed of***. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE A.V. RAVINDRA BABU

Date: 29.09.2022

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(per the Hon'ble Sri Justice C. Praveen Kumar)
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