

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.12.2023

+ **W.P.(C) 4179/2022**

M/S SETHI SONS (INDIA)

..... Petitioner

versus

ASSISTANT COMMISSIONER AND ORS. Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Aseem Chawla, Mr Basayak Khan,
Ms Pratishtha Choudhary and Mr Aditya
Gupta, Advocates.

For the Respondent : Mr Vijay Joshi, Senior Standing Counsel
(CBIC) with Mr Gurjas Singh Narula,
Advocate.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT**VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition, essentially, aggrieved by the denial of refund of unutilised input tax credit (ITC) accumulated in respect of the Goods and Services Tax paid on inputs in respect of the zero-rated supplies – goods exported without payment of



Integrated Goods and Services tax (IGST) – during the period from July 2017 to March 2018.

2. The petitioner impugns an Order-in-Original dated 11.03.2020 whereby the Proper Officer rejected the petitioner’s application for refund on the ground that it was filed beyond the period of two years as specified under Section 54(1) of the Central Goods and Services Tax Act, 2017 (hereafter ‘**the CGST Act**’).

3. The petitioner appealed the said decision before the Appellate Authority, but was unsuccessful. The petitioner’s appeal was rejected by an Order-in-Appeal dated 06.08.2021, which is also impugned in the present petition. The orders dated 11.03.2020 and 06.08.2021 are hereafter referred to as ‘**the impugned orders**’.

4. Although, the petitioner has a statutory remedy of an appeal before the Tribunal, but he is unable to avail the same as the Tribunal has not been constituted.

Factual Context

5. The petitioner is an individual and carries on the business of, *inter alia*, exporting goods and services under the name of its sole proprietorship concern, M/s Sethi Sons (India).

6. The petitioner had exported eight consignments during the period from July 2017 to March 2018. The first consignment was exported on 08.09.2017 under the export invoice dated 02.09.2017 and the Shipping



Bill dated 04.09.2017. The last of the eight consignments was exported on 29.01.2018, which was covered by export invoice dated 24.01.2018, under a Shipping Bill dated 25.01.2018.

7. The petitioner attempted to file an application for refund of unutilised ITC for the month of August 2017 on 14.05.2018. However, the petitioner could not complete the online filing of this application due to a technical error encountered on the GST portal.

8. The petitioner once again attempted to file an application for refund of unutilised ITC for the month of July, 2017 on 08.08.2018. However, the petitioner was unable to complete the process on account of technical errors encountered on the GST Portal.

9. Aggrieved by being unable to file the applications for refunds online, the petitioner filed a complaint on the GST portal under the GST Redressal Section. The petitioner's complaint was acknowledged and a ticket bearing no.2018080832227 was issued.

10. The petitioner claims that he made several efforts to manually submit its application. However, the concerned officer declined to accept the same. This assertion is disputed by the respondents as the respondents do not have any record of the same.

11. The petitioner made a consolidated application (in FORM GST RFD-01) for the refund of unutilised ITC exports effected during the



financial year 2017-18 on 05.02.2020 claiming a refund of ₹13,43,757/-

12. The petitioner's application for refund under Section 54 of the CGST Act was rejected on the ground that it was filed beyond the period of two years from the relevant date being the date of export of the consignments. The Proper Officer held that since the first consignment was exported on 08.09.2017, the last date for filing an application for refund of unutilised ITC in respect of the said export was 07.09.2019. The last consignment was exported on 29.01.2018 under an export invoice dated 24.01.2018. Therefore, the Proper Officer held that the last date for filing refund in respect of the said exports was 24.01.2020. The Proper Officer further held that the refund claim for the period of July 2017 to March 2018 was required to be filed on or before September 2019 and therefore, the refund was liable to be rejected in terms of Section 54(1) of the CGST Act.

13. The petitioner preferred an appeal, however, the same was also rejected as the petitioner's application for refund was beyond two years from the relevant date, on which the consignments were exported.

Submissions

14. Mr Aseem Chawla, learned counsel appearing for the petitioner contended that the authorities had completely ignored the technical glitches and errors encountered by the petitioner initially at the time of filing monthly refund applications. He contended that the said



applications were within time, however, the petitioner could not complete the filing without any fault on its part and therefore, the petitioner's claim could not be rejected on the ground of limitation. He relied on the decision of the Gujarat High Court in *Ezzy Electricals v. State of Gujarat: R/SCA No. 13091/2020, decided on 16.02.2022*, in support of his contention that the petitioner could not be denied of its entitlement on account of a technical glitch. He referred to the decision of this Court in *Anuj Gupta (Proprietor of M/s Quality Auto Export) v. Commissioner of GST, Delhi North and Ors.: W.P.(C) 16070/2022, decided on 13.01.2023*, whereby this Court had directed the respondents to address the technical problems and process the application for refund filed by the petitioner in that case.

15. He also relied on the decision of the Supreme Court in *Union of India and Anr. v. FILCO Trade Centre Pvt. Ltd. and Anr.: 2022 SCC OnLine SC 1630* in support of his contention that at the material time, the taxpayers could not comply with the requirements on account of the technical glitches and accordingly, the Supreme Court had directed the Department to open a common portal for all assesseees to file forms regarding transition of tax. Lastly, he referred to the decision of this Court in *Indglonal Investment and Finance Ltd. and Anr. v. Income Tax Officer and Ors.: 2011: DHC:3175-DB* and submitted that a right to refund is a vested right and could not be denied on technical grounds.

16. Mr Vijay Joshi, learned senior standing counsel appearing for the respondents countered the aforesaid submissions. He submitted that the



petitioner had faced technical issues in uploading the refund applications on 14.05.2018 and 08.08.2018. A ticket in respect of the petitioner's complaint was also issued on 08.08.2018. However, the petitioner had not filed any claim for refund thereafter. He had done so almost one and a half years later, on 05.02.2020. He contended that in the intervening period, there was no impediment from the petitioner to file its claim for refund. He also contended that to address such issues, the provisions were made to accept applications and returns manually. The said window was opened till 26.09.2019. The respondent also disputed the submissions that the petitioner was advised by the Jurisdictional GST Office to file a refund claim after filing of the annual GST Returns in Form 9 and obtaining the Bank Realisation certificates.

Reasons and Conclusion

17. At the outset, it is relevant to refer to Sub-section (1) of Section 54 of the CGST Act. The same is set out below:

“54. Refund of tax. – (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.”



18. A plain reading of Sub-section (1) of Section 54 of the CGST Act indicates that any person who is claiming a refund of tax or interest, if any, paid on the amount is entitled to make an application before the expiry of two years from the relevant date and in such form and manner as may be prescribed. The term “relevant date” has been defined in Explanation (2) to Section 54 of the CGST Act. Clause (a) of Explanation (2) to Section 54 of the CGST Act is set out below:

“(2) “relevant date” means –

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods, –
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;”

19. In view of the above, there is no cavil that the petitioner was required to make an application for refund under Sub-section (1) of Section 54 of the CGST Act within two years of the goods leaving India or crossing its territorial frontiers.

20. The controversy essentially revolves around whether the petitioner did make an application within the period and/or was



prevented from doing so. It is not disputed that at the material time, there was confusion regarding the implementation of the Goods and Services Tax regime which had been rolled out.

21. In terms of Rule 89(1) of Central Goods & Services Rules, 2017 (hereafter '**the CGST Rules**') any person claiming refund of tax was required to make an application electronically in FORM GST RFD-01 along with the requisite documents.

22. By Notification No. 55/2107-CT dated 15.11.2017, Rule 97A was introduced in the CGST Rules specifying that any reference to electronic filing of an application would also include manual filing. However, it is material to note that Rule 97A of the CGST Rules was introduced after the petitioner had exported some of its consignments.

23. It is also material to note that there were technical glitches in the electronic system of the GST authorities and taxpayers across the board were facing difficulties in electronic filing of returns.

24. The Courts across the country in various decisions recognized the difficulties being faced by various taxpayers. In ***Bhargava Motors v. Union of India & Ors.: 2019: DHC:2602-DB***; the Coordinate Bench of this Court recorded that the petitioner's grievance regarding difficulty in filing the correct credit amount in TRAN-1 form, was a genuine one. And, the same ought not to preclude the petitioner from having its claim examined by the authorities in accordance with law.



25. In *Ezzy Electricals v. State of Gujarat, R/SCA No. 13091/2020, decided on 16.02.2022*, the Gujarat High Court, accepted that the petitioner was at fault while trying to upload Form GST ITC-01 using a ‘wrong offline tool’. However, notwithstanding the same, sustained the petitioner’s right to claim ITC as the same could not be denied on account of a technical glitch. The relevant extract of the said decision is set out below:

“4. To a certain extent, the writ applicant also is at fault because while trying to upload the Form ITC – 01, it appears that a wrong offline tool was used. It is evident from the affidavit-in-reply filed by the department.....

5. Be that as it may, if the writ applicant is otherwise entitled to claim the Input Tax Credit under Section 18(1)(c) of the Act, a technical glitch in the portal should not deprive him of such a claim. It was within the capacity of the department itself to resolve the controversy and see to it that the needful is done.

6. Mr. Uchit Sheth, the learned counsel appearing for the writ applicant is right in his submission that had the department at the earliest point of time brought to the notice of his client about wrong offline tool being used by the writ applicant, then probably, something could have been worked out.

7. Be that as it may, it is for the respondents now to do the needful and ensure that the writ applicant is permitted to upload the Form ITC –01 so as to enable him to claim the Input Tax Credit worth Rs.5 lakh approximately under Section 18(1)(c) of the Act. Mr. Sharma has ensured this Court that the needful shall be done at the earliest.”



26. In *M/s Lenovo India Pvt. Ltd. v. The Joint Commissioner of GST (Appeals-1) & Ors.: 2023 SCC OnLine Mad 7810*, the learned Single Judge of the Madras High Court has held that the period of two years as stipulated in Section 54(1) of the CGST Act is directory and not mandatory. Thus, even if an application is made beyond the period of two years, the taxpayer's claim cannot be denied. We respectfully have reservation regarding this view. However, we do accept that if the taxpayer has made a *bona fide* attempt to make an application but was prevented to do so on account of technical glitches or for any reason attributable to GST authorities, its claim for refund cannot be denied on account of delay.

27. In the present case, there is no dispute that the petitioner had attempted to upload its application for refund but could not do so on account of technical glitches. We find it difficult to accept that the petitioner's legitimate right to seek refund could be foreclosed on account of such technical glitches.

28. In terms of Rule 97A of the CGST Rules (introduced with effect from 15.11.2017), the petitioner could also file the application manually. However, it must be recognized that the period in question was a period of transition. It was fraught with various kinds of difficulties being faced by the taxpayers migrating to the new regime.

29. It is also acknowledged that there were delays in processing refund due to various taxpayers. In the present case, the petitioner has



affirmed that he did not file refund applications manually as he was guided by the jurisdictional GST Officers that the refund claim was required to be filed after the actual GST return in Form GSTR-9 was filed and after obtaining bank realization certificates. The petitioner claims that he filed his return on 30.01.2020 and filed an application for refund immediately thereafter. The respondent has denied that the concerned officer had misguided the petitioner in any manner and there is no record of any advice given by the concerned officer. However, we are inclined to accept the petitioner's version that he had made oral enquiries for filing an application for refund. Ordinarily, this would be no ground to overlook the delay but this Court cannot be oblivious of the fact that during the initial period of the rollout of the GST regime, both taxpayers and the officials of the GST departments had faced innumerable difficulties which were being addressed. Some of the difficulties still persist and are being addressed. In this environment, it is not difficult to accept that a taxpayer would have sought advice from the jurisdictional officers. Undisputedly, the petitioner had acted in a *bona fide* manner.

30. There is no dispute that the petitioner had attempted to file an application for refund on the GST portal twice but its application could not be uploaded on account of technical glitches. It is not disputed that the petitioner had also made a complaint and a ticket for the same was also raised.



31. In the peculiar facts of the case, we are unable to accept that the petitioner's claim for refund is required to be denied on the ground of delay.

32. In view of the above, we direct the proper officer to examine the petitioner's claim for refund and process the same, if it is found that the petitioner is entitled to the same.

33. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 22, 2023
RK/gsr