

Court No. - 38

Case :- WRIT TAX No. - 696 of 2020

Petitioner :- Sahibabad Printers

Respondent :- Additional Commissioner Cgst(Appeals) And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- A.S.G.I.,B.K.Singh Raghuvanshi

Hon'ble Pankaj Bhatia,J.

The present writ petition has been filed challenging the order dated 14.09.2020, whereby the appeal filed by the petitioner challenging the order dated 07.04.2020, passed by the respondent no. 2, has been rejected as well as the order dated 07.04.2020 whereby the application for refund has been rejected by the respondent no. 2. As the tribunal envisaged in the GST Act has not been constituted, the petitioner has approached this court as the petitioner cannot be left remediless.

That facts in brief are that the petitioner claims to be a registered supplier under the GST Act and claims to have done job work on cloth and other suppliers for the period April, 2018 to July, 2018. The petitioner submits that on account of inward supply of inverted rated inputs the petitioner was entitled to refund. As such, he filed an application for refund in Form RFD-01 claiming a refund of Rs. 13,68,758/- under inverted duty structure on the portal for the period April 2018 to July 2018. The said application was allotted a number and was dated 24.02.2020. The respondent no. 2 on 19.03.2020 issued a show cause notice in Form GST-RFD-08 calling upon the petitioner to show cause as to why the refund application may not be rejected. The reason as disclosed in the show cause notice (Annexure-2) is "Other". The said show cause notice is being quoted herein below:-

"FORM-GST-RFD-08

[See rule 92(3)]

Notice for rejection of application for refund

SCN No. : ZY0903200309070

Date: 19/03/2020 3:44 PM

To

09ABCFS0715R1ZR

SAHIBABAD PRINTERS

182/3, G.T. Road, Sahibabad, Ghaziabad, 09,201005

ACKNOWLEDGEMENT NO.....ZT0903200075192

ARN: AA0902200865870 Date : 24/02/2020 12:00 AM

This has reference to your above mentioned application for refund, filed under section 54 of the Act. On examination, it appears that refund application is liable to be rejected on account of the following reasons:

Sr.No	Description (select the reasons of inadmissibility of refund from the drop down)	Amount Inadmissible
1	Other	1368758

*You are hereby called upon to show cause as to why your refund claim, to the extent of the amount specified above, should not be rejected for reasons stated above.
.You are hereby directed to furnish a reply to this notice within fifteen days from the date of service of this notice.*

.You are also directed to appear before the undersigned on 26/03/2020 3:41 PM

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time the case will be decided ex parte on the basis of available records and on merits.

Remark *turnover of inverted rated supply is 36346489/-, whereas as per rfd 01, is 110701018/- which is more pls clarify the same*

Date : 19/03/2020 3:44 PM

Signature (DSC)

Place : DIVISION IV GHAZIABAD Name of Proper HARSH ARDHAN RAI

Designation Assistant Commissioner

Office Address DIVISION IV GHAZIABAD"

The petitioner claims that he could not file reply to the said show cause notice because of lock-down declared on 22nd March, 2020. However, despite there being a lock-down, the respondent no. 2 without giving any opportunity of hearing rejected the refund application vide order passed on 07.04.2020. The petitioner claims that no intimation fixing 07.04.2020 as the date for hearing was ever given to the petitioner. The order rejecting the refund application is on record (Annexure No. 3) and no reason has been assigned in the said order. The said order appears to be recording that the refund application has been rejected, however, the reason for rejection was neither uploaded nor given to the petitioner. As such, the petitioner approached the Help Desk of GST submitting that the order rejecting the refund is not available on the portal. The GST Help Desk vide e-mail dated 16.06.2020 (Annexure No. 4) replied that they are working on the issue and shall update soon. The petitioner claims that on 16.06.2020 he was informed by the Help Desk that the Tax Officer has not attached any document while issuing the RFD-06. As the document had not been uploaded, the petitioner filed a reply, in support of his application seeking refund, on 16.06.2020 and uploaded the same on the portal, which was accepted mainly for the reason that no document rejecting the refund had been uploaded by that date.

The petitioner claims that on 19.06.2020 the respondent no. 2 handed over a copy of the order passed in the case of the petitioner rejecting the refund claim (Annexure No. 7). However, perusal thereof does not show any reason for order being passed by the respondent no. 2 rejecting the refund claim of the petitioner.

The petitioner challenged the said order dated 07.04.2020 (made available on 19.06.2020) by filing an appeal before respondent no. 1, which was dismissed on 14.09.2020 (Annexure No. 9). The appellate order, rejecting the appeal, was passed on the ground that the petitioner had not given any reply to the show cause notice and further it records that even at the appellate stage the appellant did not submit any document to justify the support of refund claim.

The counsel for the petitioner argues that all the documents in support of refund claim were duly filed along with the refund application

and were duly received on 24.02.2020. He further argues that the show cause notice, which is on record, does not even records any reason, as such he was never in a position to submit any reply. He has relied upon the judgment of the Hon'ble Supreme Court in the case of ORYX Fisheries Private Limited vs. Union of India (UOI) and Ors; 2011(1) AWC 849 (SC). The Hon'ble Supreme Court, while considering the requirements of show cause notice, has recorded as under:-

"28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

29. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export development Authority Act, 1972 and as such that Rule is statutory in nature."

On the strength of the said judgment, counsel for the petitioner argues that as the show cause notice was silent, the petitioner could not have been expected to give any reply and further questioning the appellate order he argues that the appellate authority was wrong in recording that no document has been produced, as the application of the petitioner for refund in Form RFD-01 was well with the department.

Sri B.K.S. Raghuvanshi, counsel for the respondent on the other hand has tried to justify the order by saying that once the petitioner had not filed the refund documents, the department was bound to reject the refund claim of the petitioner and the same has been rightly rejected. He has further justified the appellate order by arguing that no error can be found out in the order passed by the appellate authority.

Considering the rival submissions made at the Bar and the judgment of the Hon'ble Supreme Court, I have no hesitation in holding that in quasi judicial proceedings that too relating to financial adjudication, the proposed reasons for rejection should be specifically contained and informed to the assessee so as to enable him to give his reply in a conclusive and reasonable manner. The perusal of the show cause notice in the present case fall short of all the known principles of natural justice and no prudent man could have given reply to the kind of show cause notice, which was served upon the petitioner. For the sole reason that the order rejecting the claim is based upon a silent show cause notice, I have no hesitation in holding that the principles of natural justice

have been violated while adjudication of refund claim of the petitioner.

Accordingly, the order dated 07.04.2020 as well as the appellate order dated 14.09.2020 are set aside. The respondent no. 2 is directed to pass a fresh order on the application of the petitioner, for refund, already filed by the petitioner under Form RFD-01, after supplying all the requisite documents and the ground on which the department proposes to reject the application and after giving an adequate opportunity of hearing to the petitioner in accordance with law. The said application shall be decided as expeditiously, if possible, preferably within a period of three months from the date of filing of the copy of this order.

The writ petition is allowed in term of the aforesaid order.

Order Date :- 14.12.2020

Pkb/