

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18270 of 2021**

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TTEC INDIA CUSTOMER SOLUTIONS PRIVATE LIMITED
Versus
DEPUTY COMMISSIONER OF SALES TAX, CIRCLE 2

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Appearance:

MS AMRITA M THAKORE(3208) for the Petitioner(s) No. 1
MR TRUPESH KATHIRIYA, AGP. for the Respondent(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 24/12/2021

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is engaged in providing customer solution service and majority of the persons to whom it serves are located outside India. It is engaged in export of services as per the GST legislation. The petitioner opted for the option under Sub-section 3(a) of Section 16 of the Integrated Goods and Service Tax Act, 2017 ('the IGST Act'). The petitioner exports

its services under bond or letter of undertaking without payment of integrated tax and claims refund of unutilised input tax credit.

2. Application for refund of unutilised input tax credit was preferred by the petitioner on 27.01.2021 aggregating to Rs.2,84,04,175/- for the period February, 2019 to March, 2020. This was assigned to the Deputy Commissioner, Sales Tax Circle-2, Ahmedabad. The petitioner also substantiated its claim with necessary documents as sought by the authority, the physical copies of Foreign Inward Remittance Certificates ('the FIRCs' hereinafter) for the payments received during the period of refund application also have been tendered. This has been done

in satisfaction of the authorities in terms of Rule 89(4)(d) of the Central Goods and Services Rules, 2017 ('the CGST Rules, 2017' hereinafter). The FIRC's for the current period and FIRC's for invoices pertaining to the current period for which the payments were received also have been separated.

3. The authority issued a show cause notice on 16/18.03.2021 under Rule 92(3) of the CGST Rules, 2017 in Form GST RFD-08 proposing the rejection of the refund application to the extent of Rs.36,85,893/-. Thus the show cause notice limited itself to the rejection of the refunds to the extent of the said amount of Rs.36,85,893/- out of the total refund claim of Rs.2,84,04,175/-.

4. On 24.03.2021, the petitioner replied, in detailed, to the said show cause notice vide RFD-09 justifying why it is eligible for the refund to the tune of Rs.36,85,893/-.

4.1 During the course of personal hearing, on 24.03.2021 itself, the oral submissions have also been made by the petitioner. The officer concerned proceeded on leave on personal grounds and therefore, the matter was assigned to another officer, who was required to give a fresh opportunity of personal hearing to the petitioner. Couple of times, it had been followed up as due to pandemic, the personal hearing was not allowed, therefore, the request was made through the virtual hearing.

4.2 It is lamented that on 11/13.05.2021, the newly appointed officer, without availing any opportunity of hearing passed an order on 11/13.05.2021 rejecting the entire claim of refund amounting to Rs.2,84,04,175/-.

4.3 On 23.06.2021 the petitioner had attempted to point out the apparent mistake committed in passing the order impugned and sought rectification of the same. However, no response has been received from the respondent.

4.4 Therefore, on 12.08.2021 considering the stringent provisions of limitation for filing an appeal as provided under Section 107 of the Central Goods and Services Act, 2017 and not being conversant with the

decision of the Apex Court and the High Court, the petitioner preferred the appeal in Form GST APL 01 before the Appellate Authority challenging the order, however, the appeal has not been listed for hearing. The petitioner, therefore, is aggrieved and approached this Court.

5. This Court while issuing the notice to the respondent on 08.12.2021 passed the following order:

“1. Petitioner is before this Court seeking following reliefs:

“8. In the aforesaid premises, the petitioner prays as under:

A. This Hon’ble Court be pleased to issue a writ of or in the nature of a mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated May 11/12, 2021 passed by the respondent herein at Annexure D hereto and directing the respondent to restrict himself to the adjudication limited to the scope of the show cause notice dated March 16/18, 2021 at Annexure B hereto which is limited to the balance amount of Rs.,.36,85,893/-.

B. This Hon'ble Court be pleased to issue a writ of or in the nature of a mandamus or any other appropriate writ, order or direction directing the respondent to grant to the petitioner the refund to the tune of Rs.2,47,18,280/- in respect of unutilized ITC on export of services for the period February 2019 to March 2020, pending the fresh adjudication of the show cause notice dated March 16/18,2021 at Annexure hereto which is limited to the balance amount of Rs.36,85,893/-

C. Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay and suspend the operation and implementation of the order dated May 11/13, 2021 passed by the respondent herein at Annexure D hereto and directing the respondent to grant to the petitioner the refund to the tune of Rs.2,47,18,280/- in respect of unutilized ITC on export of services for the period of February 2019 to March 2020, pending the fresh adjudication of the show cause notice dated March 16/18, 2021 at Annexure B hereto which is limited to the balance amount of Rs.36,85,893/-.

D. Ex parte ad interim relief in terms of prayer C hereinabove be granted.

E. Such other and further reliefs as deemed just and expedient be granted.

2. *The main grievance on the part of the petitioner is that the show cause notice had been issued in relation to the disputed refund claim of Rs.36,85,890/-. The proposed rejection of refund application was to that extent. However, the total refund claim of Rs. 2,84,04,175/- crores. The refund claim of the petitioner, rejected in the month of January, 2021, has not been proceeded with, as the order passed by the authority concerned is without availing any opportunity of hearing. There is an additional grievance on the part of the petitioner.*

3. *Notice for final disposal on 17.12.2021.*

4. *On an advance copy, learned Additional Public Prosecutor has appeared. He may take instructions on the returnable date.*

5. *Over and above the regular mode, direct service by way of E-mode or Speed Post is also permitted.”*

6. On due service of notice, the learned AGP, Mr.Trupesh Kathiriya has appeared. Considering the fact that the appeal was already preferred before the Appellate Authority under the statute, the petitioner

chose to withdraw the subject appeal challenging the rejection of the refund order on 20.12.2021.

7. This Court has heard the learned advocate, Ms.Amrita Thakore appearing for the petitioner and the learned AGP, Mr.Trupesh Kathiriya for respondent.

8. Learned advocate, Ms.Amrita Thakore has emphatically urged that there is a clear violation of principle of natural justice and hence, the rejection of the refund claim for the entire sum of Rs.2,84,04,175/- needs urgent indulgence. According to her, the notice itself is for a limited amount of Rs.36,85,893/- by no stage of imagination the entire sum could be covered.

9. Learned AGP, Mr.Kathiriya has no answer for this. He is also aware that the petitioner had chosen the rectification of the order, once, it was disclosed that the order had been passed without availing any opportunity of hearing to the petitioner and that too, rejecting the total amount of refund claim without restricting to the amount of show cause notice.

10. Thus, on due consideration of the oral submissions, material placed on the record and also bearing in mind the settled position of law, this Court is of the opinion that the order impugned needs to be quashed and the matter should be remitted by the officer concerned from the stage where he has not followed the principle of natural justice for the following reasons.

11. It is quite obvious and barely there arises any need for the Court to elaborate that once a show cause notice for the refund claim of Rs.36,85,893/- is issued at the best, the rejection that can be made is for the amount for which the show cause notice is issued and surely not for any higher amount than specified in show cause notice. It is quite obvious that is a gross and apparent mistake that the authority concerned has travelled beyond the scope of show cause notice. That itself is the valid and opt ground for the Court to interfere.

12. So far as the non availment of the opportunity of hearing is concerned, the officer, who has heard the petitioner has not delivered the order and the one who has

passed the order impugned has done so without availing a fresh opportunity to the petitioner. This is a ground which has been raised emphatically before the Court and rightly so. The officer concerned, if had any doubt or question on the issue to be addressed while deciding the matter on merit, the opportunity of hearing to the petitioner could have been given and then the matter ought to have been decided in accordance with law.

12.1 Non availment of the opportunity of hearing, more particularly when it affects adversely the petitioner and exceeds the scope of show cause notice, the order deserves indulgence.

13. Noticing the fact that the grievance is with regard to the non availment of

opportunity of hearing and being a breach on procedural side, let the same be ordered to be cured without quashing and setting aside the show cause notice itself.

13.1. From the foregoing discussion, We deem it appropriate to quash and set aside the order and direct the respondent authority to avail an opportunity to the petitioner in relation to the show cause notice dated 16/18.03.2021 to schedule a day for hearing and if the physical hearing is not permitted, the authority concerned shall virtually hear the petitioner and decide the matter in accordance with law bearing in mind the basic requirement.

14. We have chosen not to enter into the merit any further. However, the officer

concerned cannot overlook the law which is well settled. The petition is accordingly allowed quashing and setting aside rejection order of refund dated 11/13.05.2021 passed by the respondent authority.

15. Over and above the regular mode of service, direct service is permitted through speed post as well as e-mode.

सत्यमेव जयते (SONIA GOKANI, J)

THE HIGH COURT
OF GUJARAT (NISHA M. THAKORE, J)

M.M.MIRZA

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