

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR.JUSTICE C.M.POONACHA

WRIT PETITION No.7795 OF 2022 (T-RES)

BETWEEN:

TAFE ACCESS LTD.,
A COMPANY REGISTERED
UNDER THE COMPANIES ACT
NO.53, ST MARKS ROAD
BANGALORE-560 001
REPRESENTED HEREIN BY
ITS DIRECTOR
MR P.B.SAMPATH

... PETITIONER

(BY SHRI. T.SURYANARAYANA, SENIOR ADVOCATE A/W
Ms.TANMAYEE RAJKUMAR, ADVOCATE)

AND:

1. DEPUTY COMMISSIONER OF CENTRAL TAX
NORTH DIVISION-2, NO.29/2
CRESCENT ROAD, 1ST FLOOR
BASAVESWARA BUILDING
(OPP. TO MALLIGE MEDICAL CENTRE)
BANGALORE-560 001

2. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DELHI-110 001

... RESPONDENTS

(BY SHRI. AMIT DESHPANDE, ADVOCATE FOR R1;
SHRI. SHANTIBHUSHAN, ASG FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE TIME LIMITS SPECIFIED IN SECTION 54 OF THE CGST ACT HAS NO APPLICATION TO REFUND CLAIMS UNDER SECTION 19(1) OF THE IGST ACT AND ETC.,

THIS WRIT PETITION COMING ON FOR *PRELIMINARY HEARING*, THIS DAY, **P.S.DINESH KUMAR J.**, MADE THE FOLLOWING:

ORDER

This Writ Petition is filed with following prayers:

"(i) declaring that the time limits specified in section 54 of the CGST Act has no application to refund claims under section 19(1) of the IGST Act;

in the alternative,

(ii) declaring that section 54, to the extent it is made applicable to refunds under section 19(1) of the IGST Act, is ultra vires the Constitution of India;

in the alternative,

(iii) reading down Explanation 2(h) to section 54 of the CGST Act to hold that the "relevant date" in cases of refunds under section 19(1) of the IGST Act would be the date on which the supply on which IGST was erroneously paid was held to be an intrastate supply amenable to CGST/IGST or the date of payment of tax under the correct head;

AND

- (iv) *consequently, quashing the order bearing order no.Manual/32/2020-21/ND2 dated 21.08.2020 (**Annexure A**) passed by the 1st Respondent for the tax periods 2017-18 and allowing the petitioner's refund claim filed on 07.07.2020 (**Annexure d**);*
- (v) *directing the Respondents to forthwith refund an amount of Rs.7,40,972/- together with applicable interest for the tax period 2017-18;*
- (vi) *passing such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interests of justice and equity."*

2. Heard Shri T.Suryanarayana, learned Senior Advocate appearing for the petitioner and Shri Amit Deshpande, learned Standing Counsel for the Revenue.

3. Undisputed facts of the case are, for Assessment Year 2017-18, petitioner has paid IGST¹ of Rs.7,40,972/-. On July 7, 2020, he wrote to the

Deputy Commissioner of Central Tax, Bengaluru, as per Annexure-D stating that by inadvertence, IGST was paid and the same was discovered in the internal audit. Accordingly, petitioner sought for refund of the said amount. A notice dated July 27, 2020, as per Annexure-F was issued and after adjudication, the refund claim has been rejected by the impugned order as per Annexure-A.

4. Shri T.Suryanarayana, learned Senior Advocate submitted that after filing this writ petition, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, has issued a Circular F.No.CBIC-20001/8/2021-GST dated September 25, 2021, clarifying that refund applications must be reckoned before the expiry of two years from the date payment of tax under the correct head. The Assessing Officer has recorded in Para 7 that the correct date of payment of tax is 30.01.2020. Admittedly, application seeking refund has been filed on July 7, 2020. Therefore, petitioner is entitled for refund.

¹ Integrated Goods and Service Tax

5. Shri Amit Deshpande, learned Standing Counsel for Revenue vehemently argued opposing the writ petition contending that the aforesaid circular will have to be read along with Section 54(8) of the CGST Act, 2017². A harmonious reading of the same would show that refund in respect of Section 77 and cannot be applied for Section 54. Further, writ petition is not maintainable as the impugned order is appealable under Section 107 of CGST Act, 2017.

6. In reply, Shri Suryanarayana submitted that in view of the circular issued by the Ministry, petitioner is entitled for the refund.

7. We have carefully considered rival contentions and perused the records.

8. As recorded hereinabove, undisputed facts of the case are, GST³ has been paid for the Assessment year 2017-18 on January 30, 2020 and refund application has been filed on July 07, 2020. In Para 4.2 of the

² The Central Goods And Services Tax Act, 2017

³ Goods and Service Tax

Circular dated September 25, 2021, Ministry of Finance has clarified that the limitation shall be two years from the date of payment of tax. Admittedly, tax has been paid in January 30, 2020. In our considered view, refund application is in time. Though the learned Standing Counsel for the revenue is right in his submission that there is appeal remedy, since petitioner has paid tax twice, in our opinion, relegating petitioner to the Appellate authority would not be just and appropriate. Hence, the following;

ORDER

- (i) Writ petition is ***allowed***;
- (ii) Order dated August 21, 2020 bearing No.Manual/32/2020-21/ND2 passed by the Deputy Commissioner of Central Tax, North Division-2, Bengaluru-respondent No.1 is *quashed*; and
- (iii) Respondent No.1 shall consider petitioner's application and refund the amount within

an outer limit of three months from the date of receipt of a copy of this order.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AV

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