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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.04.2024

\+ **W.P.(C) 5412/2024 & CM APPL. 22350/2024**

DMI ALTERNATIVES PRIVATE LIMITED ..... Petitioner

Versus

ADDITIONAL COMMISSIONER CGST APPEALS 1 DELHI & ORS. .... Respondents

Advocates who appeared in this case:

For the Petitioner:	Mr. Sunil Agarwal, Mr. Shivansh B. Pandya, Mr. Utkarsh Tiwari, Mr. Ashutosh Mohan Rastogi and Mr. Dhruv Seth, Advocates.
For the Respondents:	Mr. Arnav Kumar, Senior Standing Counsel with Ms. Aranya Sahay, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order in appeal dated 15.09.2023, whereby the appeal filed by the petitioner impugning order-in-original dated 28.11.2022 was dismissed solely on the ground of limitation.

2. Learned counsel for petitioner submits that the Appellate Authority has erred in not considering the circular dated 25.09.2021, whereby the period of limitation was enhanced.

3. Issue notice. Notice is accepted by learned counsel appearing for respondents. With the consent of parties, the petition is taken up for final disposal.

4. Petitioner while filing the monthly statement of outward supply in Form GSTR-1 for the month of November 2017, declared the total taxable value for intra-State supply of services erroneously under the head of inter-State supply under the Integrated Goods and Service Tax (IGST) instead of intra-State supply under the Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST).

5. Petitioner subsequently realized this mistake and corrected the error and deposited the correct CGST and SGST amount thereby leading to a double deposit of tax, once under the head of IGST and second cumulatively under the head of CGST and SGST.

6. Petitioner thereafter filed an application seeking refund on 11.05.2020, however, by order-in-original dated 28.11.2022, the said application was rejected.

7. Petitioner filed an appeal before the Appellate Authority, however, the Appellate Authority held that the said application seeking refund was belated and as such dismissed the appeal solely on the ground of delay in

filing an application seeking refund.

8. In terms of Section 54 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'Act'), any person claiming refund has to make an application before expiry of two years from the relevant date in such form and manner as may be prescribed.

9. The Appellate Authority in the order in appeal has taken the date of payment of tax under the wrong head, as the relevant date.

10. Reference may be had to circular dated 25.09.2021, issued by the Central Board of Indirect Taxes and Customs, which has issued the clarification in respect of application seeking refund of tax. Reference has been made to Section 77 of the Act wherein tax wrongly collected and paid to the Central Government and the State Government is sought to be claimed. The circular seeks to put to rest the confusion that had arisen with regard to the interpretation of "Relevant Date" i.e. as to whether the Relevant Date would be the date when the tax was paid under the incorrect head or the date when the tax was paid under the correct head.

11. The circular clarifies that the "Relevant Date" would be the date when tax is paid under the correct head. After clarifying the said position, the circular stipulates that in cases where tax payer had made payment under the correct head before the issuance of the subject Notification No.35 of 2021 dated 24.09.2021, the refund application could be filed before expiry of two years from the date of the issuance of the said Notification i.e. from 24.09.2021.

12. In the instant case, petitioner had paid tax under the wrong head on 20.12.2017 and paid tax under the correct head on 19.08.2019.

13. In terms of the clarification issued by circular dated 25.09.2021, petitioner could have filed an application before expiry of two years from the date of payment of tax under the correct head i.e. before expiry of two years from 19.08.2019. However, the circular further clarifies that in cases where payment was made under the correct head prior to issuance of the circular, a further period of two years would be available from the date of circular, which implies that any application seeking refund filed on or before 23.09.2023 in respect of taxes paid under the correct head prior to 24.09.2021 would be considered within time.

14. In the subject case, petitioner filed the first application seeking refund on 11.05.2020, which was rejected on 29.06.2020 and the appeal against the said order was also dismissed on 30.06.2021 i.e. prior to the issuance of the clarification by the circular dated 25.09.2021.

15. After the issuance of the circular, petitioner filed a second application on 14.07.2022, which has been rejected by the order-in-original impugned before the Appellate Authority whose order is impugned before us.

16. Clearly, both the refund applications filed by the petitioner (one on 11.05.2020 and other on 14.07.2022) are covered by the circular dated 25.09.2021 and were within limitation. Consequently, the Appellate Authority has committed an error in not noticing the said circular and

rejecting the appeal holding that the application was beyond time. Accordingly, said order is not sustainable and is set aside. The appeal is restored to its original number on the record of the Appellate Authority. The Appellate Authority is directed to consider and dispose of the appeal on merits in accordance with law.

17. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024
NA