

[2022] 145 taxmann.com 602 (Andhra Pradesh)/[2023] 69 GSTL 133 (Andhra Pradesh)/[2023] 96 GST 60 (Andhra Pradesh)[09-12-2022]

GST : Where incorrect details of recipient of supply was mistakenly entered, amount paid against liability could not be considered as tax which was to be refunded; as rule 97A of CGST Rules, 2019 allows for manual filing of refund claim, assessee could not be directed to claim refund through online mode

■ ■ ■

[2022] 145 taxmann.com 602 (Andhra Pradesh)

HIGH COURT ANDHRA PRADESH

Varshan Enterprises

v.

Office of GST Council*

SRI C. PRAVEEN KUMAR AND SRI A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 10637 OF 2021

DECEMBER 9, 2022

Refund - Tax paid by mistake - Petitioner had mistakenly issued invoice with levy of IGST while recipient was located in same State where petitioner was located - Rectification of mistake was not allowed by GST portal as time period for such rectification had expired - Petitioner requested department to either refund amount or adjust same against existing liabilities but assessee was directed to claim refund through online mode by following circular CBEC-20/16/04/18-GST dated 18-11-2019 issued for refund - HELD: Amount paid as tax by furnishing incorrect details could not be considered as tax payable under CGST Act and same could not be retained by department - Refund claim of petitioner of instant type is not covered under said circular - Department could not direct petitioner to make online application when rule 97A allows for manual filing of refund claim - Thus, petitioner should file an application in manual form for refund and department would pass order in accordance with law [Section 54 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 97A of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 24 to 27] [In favour of assessee]

Circulars & Notifications : Circular CBEC-20/16/04/18-GST dated 18-11-2019

CASE REVIEW

Commissioner of CGST & Central Excise v. Shriram Transport Finance Company Limited [\[2021\] 124 taxmann.com 341 \(Bom.\)](#) (para 18) distinguished.

CASES REFERRED TO

Mafatlal Industries Ltd. v. Union of India [1998] 111 STC 467 (SC) (para 5), *Pentacle Plant Machineries (P.) Ltd. v. Office of the GST Council Delhi* 52 (GSTL) 129 (para 10), *Commissioner of CGST & Central Excise v. Shriram Transport Finance Company Ltd.* [\[2021\] 124 taxmann.com 341 \(Bom.\)](#) (para 10), *Laxmi Organic Industries Ltd. v. Union of India* [\[2021\] 133 taxmann.com 65/\[2022\] 89 GST 463 \(Bom.\)](#) (para 10), *Vasudha Bommireddy v. Asstt. CST* [W.P. No. 5980 of 2017, dated 20-12-2019] (para 10), *Cosmol Energy (P.) Ltd. v. State of Gujarat* [\[2021\] 127 taxmann.com 736 \(Guj.\)](#) (para 10), *Union of India v. VKC Footsteps India (P.)*

ORDER

A.V. Ravindra Babu, J. - This Writ Petition, under Article 226 of the Constitution of India, came to be filed by the petitioner for the following relief:

" to issue an appropriate writ, order or direction, more in the nature of Writ of Mandamus, setting aside the communication of the Superintendent of Central GST, Bheemavaram Range *vide* his Reference No: OC No:-151/2021 dated 26-2-2021 and directing the Respondent No:- 1 & the Respondent No:- 2 to permit the Petitioner to rectify the details of the recipient of the services in the form GSTR - 1 for the quarter ending on 30-6-2018 to enable M/s. Vodafone Mobile Services Ltd., Kondla Koya, Telangana State, to claim the credit of IGST of Rs. 7,87,328=78 or to refund the sum of Rs. 7,87,328=78 to the petitioner which is paid on the transactions which are not actually conducted, and pass such other order or orders

2. The facts leading to filing of the present Writ Petition are as follows:

The petitioner is the taxable person under the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act') and the Andhra Pradesh Goods and Services Tax Act, 2017 (for short, 'the APGST Act'), allotted with Goods and Services Tax Identification Number (GSTIN) 37AAPV7646A1ZT. The petitioner is also allotted to the Central State Tax Department and comes under the Bhimavaram Central GST Range headed by the Superintendent of Central Goods and Services Tax. The petitioner is entitled to file quarterly returns. The petitioner has been submitting the common returns and the details of outward supplies regularly both under the APGST Act, CGST Act and also under the Integrated Goods and Services Tax Act, 2017 (for short, 'the IGST Act') electronically through the common portal duly reporting the intra-state supplies of goods and services as mandated and also inter-state supply of goods and services under the IGST Act since July, 2017.

3. The petitioner is engaged in business of supplying telecom pipe laying services in the State of Telangana like M/s. Vodafone Mobile Services Limited, Kandlakoya Village, Medchal Mandal of Telangana State, whose another office is located at Mumbai. The petitioner supplied the cable laying services at Kandlakoya of Telangana State. However, the petitioner erroneously issued two tax invoices covering the said supply of cable laying services to M/s. Vodafone Mobile Services Limited, Mumbai and two other tax invoices in the month of June, 2018 declaring the IGST liability and also issued a credit note No. 10 for total value of Rs. 3,11,619=12 (with IGST Rs. 47,535=12) reducing the original supply consideration charged in the said two tax invoices issued by them to M/s. Vodafone Mobile Services Limited, Mumbai for the tax period June, 2018. The tax invoices issued in March, 2018 are returned in Form GSTR 3B for the tax period of April, 2018 and the petitioner furnished details of such invoices in Form GSTR-1 for June, 2018 and they are returned in both Form GSTR-1 for the quarter ending 30-6-2018.

4. While keying in the said details and returns information in the GST common portal, the GSTIN of M/s. Vodafone Mobile Services Limited, Mumbai *i.e.*, 27AAACS4457Q1ZQ inadvertently keyed in instead of the GSTIN of M/s. Vodafone Mobile Services Limited, Kandlakoya, Medchal Mandal, Rangareddy District, Telangana. In reality, they are inter-state supplies of cable laying services in the State of Telangana. This is purely an inadvertent mistake committed in the tax periods of the GST regime. Because of this human error, the actual recipient of cable laying services from the petitioner at Telangana is not able to claim the credit of the IGST paid by the petitioner. After realising this mistake, the petitioner tried to rectify this mistake in May, 2020 but in vain. The GST common portal is not permitting the same, because the time available for rectification of such mistake is only up to 20-10-2019. The petitioner realized this mistake in May, 2020 when M/s. Vodafone Mobile Services Limited, Kandlakoya, refused to pay the GST amount by correspondingly reducing the subsequent supply consideration payable by it.

5. The petitioner *vide* letter, dated 17-2-2021, requested the Superintendent of Central GST, Bhimavaram Range to either refund the amount in issue or adjust the same to the existing liabilities. The Superintendent has replied *vide* letter, dated 26-2-2021, directing the petitioner to follow the Circular CBEC-20/16/04/18-GST, dated 18-11-2019, which is relating to section 54 of the CGST Act. The said letter of the Superintendent of CGST is wholly untenable, which is nothing but illegal, arbitrary and unjustified. The time limit of two years from the date of payment of the amount in issue towards IGST specified in Section 54 of the CGST Act is not applicable to the present case. There is no possibility for the petitioner to follow the said Circular

practically. Hence, the communication received from the Superintendent of Central GST is nothing but denial of the claim of the petitioner which is illegal, arbitrary and incorrect. It is also against the law declared by the Hon'ble Supreme Court in *Mafatlal Industries Ltd. v. Union of India* [1998] 111 STC 467 (SC). Hence, it is urged that the communication of the second respondent, dated 26-2-2021, is liable to be set-aside and appropriate directions be given to the first and second respondents either permitting the petitioner to rectify the details relating to the recipient of the cable laying services furnished in Form GSTR-1 for the quarter ending 30-6-2018 or direct the second respondent to refund Rs. 7,87,328=78.

6. The respondents got filed counter. It is pleaded that GST refund claims are governed by section 54(1) of CGST Act and 89(2) of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules'). So, the Central Board of Indirect Taxes and Customs, issued the Circular, dated 18-11-2019. The contention of the petitioner that limitation as specified in section 54(1) of the CGST Act is of no application and that limitation is to be governed under section 17(1)(c) of the Limitation Act, 1963 has no merit. It is urged that the decision of the Hon'ble Apex Court in *Mafatlal Industries Ltd.* (first *supra*), cited by the petitioner, has no application to the case on hand. With the above counter, the respondents seek to dismiss the Writ Petition.

7. The petitioner got filed a reply-affidavit refuting the contention of the respondents.

8. Now, in deciding this Writ Petition, the point that arises for consideration is, whether a Writ of Mandamus to set-aside the communication of the Superintendent of CGST, Bhimavaram Range, dated 26-2-2021, and consequently to direct the respondents to permit the petitioner to rectify the details of the recipient of the service in the form of GSTR-1 to enable M/s. Vodafone Mobile Services Limited, Kandlakoya, Telangana State or to refund the sum of Rs. 7,87,328=78 to the petitioner can be issued?

9. Learned counsel for the petitioner would contend that there is no dispute that a human error was committed in keying the GST common portal. The petitioner could realize the mistake only in May, 2020 and thereafter made several attempts to rectify the mistake but in vain as the GST common portal did not allow for such rectification. Accordingly, when the petitioner addressed a letter, dated 17-2-2021, raising various contentions, the second respondent issued the impugned reply, dated 26-2-2021, directing the petitioner to follow the Circular, dated 18-11-2019. It is impracticable for the petitioner to follow the said Circular as after realization of the human error in May, 2020, the GST common portal is not permitting such rectification. He would further contend that the real recipient of service of goods is M/s. Vodafone Mobile Services Limited, Kandlakoya, Telangana but not M/s. Vodafone Mobile Services Limited, Mumbai. So, under Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. Under Section 72 of the Indian Contract Act, 1872, a person to whom money has been paid or anything delivered by mistake or under coercion imposed, shall repay or return it. The amounts that were mistakenly paid, as above, cannot be taken as the amount payable legally to the respondents. He would further contend that by virtue of the Circular, dated 18-11-2019, the Central Board of Indirect Taxes and Customs, with effect from 26-9-2019, permitted certain types of refunds through electronic mode only, which are listed in Para No. 3 from (a) to (l) and the claim of the petitioner would not come under the said purview. Even otherwise, when Rule 97(A) of the CGST Rules, 2017 permitted manual filing, the respondents had no authority to restrict the filing of refunds through electronic mode only. If the respondents permit manual filing, the petitioner would have been in a position to submit his claim manually successfully. So, the inability of the petitioner to submit his claim successfully through electronic mode by following the Circular, does not enable the respondents to contend that the claim of the petitioner is barred by limitation. The amounts that are paid by the petitioner cannot be brought under the purview of the tax legally paid and the amount was remitted on account of a human error, as such the procedure under section 54 of the CGST Act has no application. Even otherwise, the petitioner was prevented from rectifying the mistake, as the above Circular did not permit manual filing under Rule 97A of the CGST Rules.

10. Sri J.N.V. Suresh Kumar, learned counsel for the petitioner, in support of his contention, would rely upon the decision of the Madras High Court in *Pentacle Plant Machineries (P.) Ltd. v. Office of the GST Council* Delhi 52 (GSTL) 129, decisions of the High Court of Bombay in *Commissioner of CGST & Central Excise v. Shriram Transport Finance Company Ltd.* [2021] 124 taxmann.com 341/MANU/MH/0373/2021 and *Laxmi Organic Industries Ltd. v. Union of India* [2021] 133 taxmann.com 65/[2022] 89 GST 463 (Bom.), a decision of the Hon'ble Apex Court in *Mafatlal Industries* (first *supra*), a decision of the High Court of Telangana in *Vasudha Bommireddy v. Asstt. CST* [W.P. No. 5980 of 2017, dated 20-12-2019]/2020-TIOL-397-HC-AP-ST and a decision of the High Court of Gujarat in *Cosmol Energy (P.) Ltd. v. State of Gujarat* [2021] 127 taxmann.com 736/2021-TIOL-1334-HC-AHM-GST.

11. Sri Suresh Kumar Routhu, learned Senior Standing Counsel for CBIT, appearing for the respondents, would contend that it is the duty of the petitioner to follow the procedure as contemplated in the Circular of the year 2019 and his claim falls under section 54 of the CGST Act, which prescribe the period of limitation of two years and the petitioners claim is barred by limitation. According to him, various citations, relied upon by learned counsel for the petitioner, will have no application to the present situation and in support of his contention he would rely upon a decision of the Hon'ble Apex Court in *Union of India v. VKC Footsteps India (P.) Ltd.* [2021] 130 taxmann.com 193 (SC)/[2022] 2 SCC 603. He would further contend that the contention of the petitioner that his claim is within the Limitation Act and is contrary to Section 54 of the CGST Act. With the above contention, he sought for dismissal of Writ Petition.

12. There is no dispute that the real recipient of the goods that are supplied by the petitioner is M/s. Vodafone Mobile Services Limited, Kandlakoya Village, Medchal Mandal, Telangana with specific GSTIN number. Admitted facts are that regarding the invoices that were generated in March, 2018 and two other invoices that were generated in June, 2018 and the credit note bearing No. 10, while uploading the details and returns information in the GST common portal, the GSTIN of M/s. Vodafone Mobile Services Limited, Mumbai was keyed in instead of GSTIN of M/s. Vodafone Mobile Services Limited, Kandlakoya, Telangana.

13. As per Section 54 of the CGST Act, 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. The contention of the petitioner that the error surfaced only in the month of May, 2020 and when they made an attempt to rectify, the GST common portal did not permit them to do so. It was in this background, the petitioner claimed to have addressed a letter, dated 17-2-2021, to the respondents for which they issued a reply directing the petitioner to follow the Circular of the year 2019.

14. Now the grievance of the petitioner is that it is very difficult to follow the said Circular as the GST portal did not permit to rectify the defects. When the letter of the petitioner was so elaborate, respondents simply issued a reply directing the petitioner to follow the Circular of the year 2019. At this juncture, it is pertinent to look into the relevant Rules of CGST, 2017. Chapter 10 of the said Rules relates to refund. Rule 97(A) therein runs as follows:

"97A. Manual filing and processing

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to the rules."

15. Turning to the impugned communication sent by the respondents to the petitioner, it restricts claims of refund only through online. Para No. 3 of the Circular, dated 18-11-2019, reads as follows:

"3. With effect from 26-9-2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically:

- "a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b. Refund of tax paid on export of services with payment of tax;
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f. Refund to supplier of tax paid on deemed export supplies;
- g. Refund to recipient of tax paid on deemed export supplies;
- h. Refund of excess balance in the electronic cash ledger;
- i. Refund of excess payment of tax;

- j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
- k. Refund on account of assessment/provisional assessment/appeal/any other order;
- l. Refund on account of 'any other' ground or reason."

16. As verified from the column in Para No. 3 of the Circular, the claim of the petitioner would not come under the said purview. Apart from these, when Rule 97A permits manual filing also, it is not known why the filing was restricted to electronically in the said Circular. So, the contention of the petitioner that on account of restricting the refund claims to electronically and as he noticed the error only in May 2020, he could not successfully submit the information for rectification appears to be tenable. Now the fact remains that the respondents are compelling the petitioner to follow the Circular of the year 2019 which is virtually impracticable to follow. At this juncture, for better appreciation, we would like to deal with various decisions cited by learned counsel for the petitioner.

17. In *Pentacle Plant Machineries* (second *supra*), the petitioner sought to issue a writ of Mandamus to rectify the mistake in GSTR-1 return, wherein instead of the GST number of the purchaser in Andhra Pradesh, GST number of the purchaser in Uttar Pradesh was mentioned. The Writ Petition was allowed in that regard. The High Court of Madras held that in the absence of enabling mechanism, the assessee should not be prejudiced from availing credit to which they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error which the petitioner should be in a position to rectify the same in the absence of an effective enabling mechanism under statute.

18. In *Commissioner of CGST & Central Excise* (third *supra*), the Bombay High Court held that recovery of service tax on interest for the period prior to 1-3-2006 is without authority of law as such it is not permissible to be relied upon the same. By relying upon the same, the contention of the petitioner appears to be that as they erroneously remitted the amount in the name of wrong person, which cannot be retained by the respondents without any authority of law.

19. Turning to the decision of the Hon'ble Apex Court in *Mafatlal Industries Ltd.* (first *supra*), the constitution bench dealt with the issue regarding the claim of the refund of duty under the Customs and Central Excise and Salt Act.

20. The principle that is relied upon by learned counsel for the petitioner in this regard is doctrine of unjust enrichment. In the above said decision, the Hon'ble Supreme Court referring to section 72 of the Contract Act, held that in such cases assesses can either file a suit under section 72 of the Contract Act or invoke writ jurisdiction of the High Court under Article 226 of the Constitution.

21. In *Vasudha Bommireddy, Hyderabad* (fifth *supra*), the High Court of Telangana was dealing with a case where initially the petitioners purchased some office space under registered sale deed and the fourth respondent therein obtained service tax payable in support of sale of the property on the ground it is considered as commercial construction. Later, the petitioners realized that service tax cannot be levied on that, as such they claimed refund of the amount. Dealing with the same and relying upon a decision of the Madras High Court in *Natraj and Venkat Associates v. Asstt. CST* [[2010](#)], [2 taxmann.com 598](#)/[[2009](#)], [19 STJ 353 \(Madras\)](#)], the High Court of Telangana negated the contention of the respondents holding that the claim for refund cannot be entertained beyond the period mentioned in Section 11(B) of the Central Excise Act, 1944 and accordingly allowed the Writ Petition.

22. In *Comsol Energy (P.) Ltd.* (sixth *supra*), the High Court of Gujarat at Ahmedabad held that Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law and as the amount of IGST collected by the Central Government is without authority of law, the Revenue is obliged to refund the amount erroneously collected. It was further held that Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the CGST Act and the amount so collected by the Revenue without authority of law is not considered as tax collected by them and therefore Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming refund of the amount paid to the Revenue under the mistake of law.

23. In *Laxmi Organic Industries Ltd.* (*supra*), the petitioner failed to upload 'Statement 5B' along with refund applications and he applied manually on 10-6-2021 and 22-6-2021 and they are returned with instructions to follow the Circular No. 125/44/2019-GST, dated 18-11-2019. Then the petitioner filed the Writ Petition contending that Rule 97A of the CGST Rules permits processing of an application for refund manually but not

on the common portal as referred to in the impugned Circular. Ultimately, the Mumbai High Court held that Rule 97A contains a *non-obstante* clause and it intends to override Rules 89 to 97 of the CGST Rules. It further held that if the contention of the respondents that no application in any form other than the online can be received and processed is accepted, Rule 97A would be a dead letter and becomes redundant. Ultimately, the Bombay High Court held that the impugned Circular would certainly be applicable to all applications filed electronically on the common portal, but it cannot affect or control the statutory rule i.e., Rule 97A of the CGST Rules. The Bombay High Court further held that the impugned Circular would have no application to an application for refund, which is filed manually and further permitted the petitioner to file a fresh application for refund manually within fortnight from that date and that the Superintendent shall process the same and ensure that application is taken to its logical conclusion in accordance with law.

24. Having regard to the above decisions, we would like to make it clear that, admittedly, when Rule 97A of the CGST Rules also permits manual filing restriction in Circular, dated 18-11-2019, seeking refund by electronic mode only may not be proper. In the light of the principles stated in the above decisions, the amounts that were paid by the petitioner furnishing the incorrect details cannot be taken as a tax due to the respondents, legally. When such is the scenario, the respondents cannot contend that the claim, if any, of the petitioner, is barred by limitation. In the light of the constitutional bench decision of the Hon'ble Apex Court in *Mafatlal Industries* (first *supra*), one cannot enrich themselves under Section 72 of the Contract Act and they are bound to return the amounts which were paid wrongfully. Hence the contention of learned Standing Counsel for the respondents that in view of decision of the Hon'ble Apex Court in *VKC Footsteps India (P.) Ltd.* (seventh *supra*) the claim of the petitioner is barred by limitation is not tenable. Ergo, it is very clear that the petitioner cannot be compelled to follow the Circular of the year 2019, which debarred the petitioner from manual filing. The petitioner cannot be compelled to do certain things which are impossible to be performed.

25. Viewing from any angle, the respondents cannot retain the disputed amount, that are paid to them, due to inadvertent error while keying the name of M/s. Vodafone Mobile Services Limited, Kandlakoya village, Medchal Mandal, Telangana State.

26. As the Circular of the year 2019 restricts only electronic filing and as the contention of the respondents that the claim of the petitioner is barred by limitation is not acceptable, the respondents cannot retain the amount, which was paid by the petitioner. Under the circumstances, we are of the considered view that the petitioner is entitled to the relief.

27. In the result, the Writ Petition is allowed setting-aside the communication of the Superintendent of Central GST, Bhimavaram Range *vide* his Reference in OC No. 151/2021, dated 26-2-2021, and directing the petitioner to make an application in manual form for refund of the amount to which he is entitled to and the respondents are directed to pass orders in accordance with law, within a period of four (4) weeks thereafter. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

GK

*In favour of assessee.