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[2024] 162 taxmann.com 876 (Andhra Pradesh)[01-05-2024]

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**GST : Where procedural barriers prevented the petitioner from rectifying deficiencies on the GST portal for an ITC refund claim, interest of justice warranted allowing the petitioner to submit the required documents manually, thus the competent authority was directed to consider the refund claim accordingly**

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[2024] 162 taxmann.com 876 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Little Brain Works (P.) Ltd.**

**v.**

**Union of India<sup>\*</sup>**

**RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.**

**WRIT PETITION NO: 14108 OF 2020**

**MAY 1, 2024**

**Adjudication - Refund of Input Tax Credit - Procedural Barriers - Mandamus Issued - Assessee/Petitioner filed writ petition seeking various reliefs, primarily processing of their application for a refund of Input Tax Credit (ITC) amounting to Rs. 40,10,932 for period from April 2018 to March 2019 - Due to closure of GST portal, petitioner was unable to rectify deficiencies noted in the deficiency memos and submit the necessary Letter of Undertaking (LUT) - HELD: Writ Petition disposed of - Court addressed the procedural barriers, emphasizing that procedural rules should not defeat legitimate claims - Assessee/Petitioner is permitted to file a manual application to rectify deficiencies - Competent authority is directed to consider refund application within stipulated period, ensuring justice is served without procedural hindrance [Section 54 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 10 and 11] [In favour of assessee]**

**Samireddy Sai Sarat Chandra** *for the Petitioner.* **Y.V. Anil Kumar** *Central Govt. Counsel for the Respondent.*

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## **ORDER**

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**Ravi Nath Tilhari, J.** - Heard Sri S.Vivek Chandra Sekhar, learned counsel assisted by Sri K.S.Naveen, learned counsel representing on behalf of Sri Sarat Chandra, learned counsel for the petitioner and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax.

2. This Writ Petition under Article 226 of Constitution of India has been filed for the following relief:

"pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions by

- (a) Directing the respondent authorities to process the application that has already submitted by the petitioner for refund of Input Tax Credit for an amount of Rs. 40,10,932 (Rupees Forty Lakhs Nine Hundred Thirty Two) for the period from April, 2018 to March, 2019.
- (b) Alternatively, to issue a writ of mandamus or other appropriate writ, order or direction to respondents to re-open the common portal and allow the petitioner to file the Letter of Undertaking to avail the refund of the input tax credit for the period from April 2018 to

March 2019 and not to charge interest from the petitioner to the extent of that amount so as to prevent the miscarriage of justice;

- (c) In case the respondents are unable to do so *i.e.*, re-open the common portal and allow the petitioner they be directed to entertain the Letter of Undertaking of the petitioner manually/physically with supporting records
- (d) Declare that the Deficiency Memos issued by the Respondent No. 3 1st deficiency memo no. ZA371219002085S dated 31-12-2019 and 2nd deficiency memo ZA3701200007842 dated 17-01-2020 as invalid
- (e) To hold that the petitioner shall not be treated as in default in compliance; To ensure that the petitioner is allowed to pay its taxes on regular electronic system after utilization of the input tax credit
- (f) Any other and further relief deemed just and proper be granted in the interest of justice
- (g) to provide for the cost of this petition and to pass"

3-4. Though many prayers have been made in the writ petition but at the time of arguments learned counsel for the petitioner submits that the respondent authorities may be directed to process the petitioner's application which has already been submitted for refund of Input Tax Credit which may redress the grievance of the petitioner. The prayer (a) is to that effect.

5. On the petitioner's application for refund, a deficiency memo dated 31-12-2019 (Ex.P9) was issued with the remarks that no supporting documents were attached. The Taxpayer was advised to file a fresh refund application rectifying the deficiencies. The petitioner's case is that since the portal was closed, fresh application could not be filed on portal and the deficiencies pointed out could also not be removed and the respondent authorities would not accept manual filing.

6. Learned Government Pleader for Commercial Tax submits that the stand taken in the counter affidavit is the same as in the deficiency memo. He submits that the Letter of Undertaking (LUT) was not uploaded. The fresh application was also filed without filing of LUT which is required under section 16(3)(a) of the IGST Act, 2017 r/w Rules 89 to 96-A of the Central goods and Services Tax Rules, 2017.

7. On 24-4-2024 this Court passed the following order:

"The submission advanced by the learned counsel for the petitioner is that as per Ex.P4, the petitioner had successfully saved GST RFD - 11 - Application for furnishing Letter of Undertaking for export of Goods and Services and the same could be retrieved, but as after receipt of the deficiency memo, the petitioner tried to submit, the portal was closed. He submits that though the application already saved can be retrieved, but it cannot be filed fresh online.

2. On the request made by Sri T. C. D. Sekhar, learned Government Pleader, list on 1-5-2024, to enable him to obtain instructions, if the petitioner's fresh application for furnishing the letter of undertaking can be entertained manually."

8. Learned Government Pleader submits that the claim for refund is to be made on portal and the deficiency required to be removed was also to be on portal. However, it is not contested that as the portal is closed, the petitioner cannot use the portal for the claim in question.

9. The rules of procedure are handmade of justice. They are for effective and timely redressal of the grievance. They are not for destroying the rights or to defeat the legitimate claims. If the petitioner could not do the needful on portal in time for the reasons disclosed, he cannot be denied of his right for consideration of the claim for refund under the statute.

10. Considering the aforesaid, but without entering into the merits of the claim of the petitioner for refund either way, we dispose of the writ petition finally by providing that the petitioner shall be at liberty to file an application for refund completing the requisite documents making good the deficiency as pointed in the deficiency memo, manually, within a period of two (02) weeks along with the copy of this order before the Competent Authority. If any such application is filed or/and deficiency is removed, manually, the petitioner's claim for refund shall be considered and appropriate decision would be taken in accordance with law by the

competent authority within a further period of six (06) weeks. It is made clear that the claim would not be rejected on the ground that the same is made manually.

**11.** Writ Petition is disposed of finally.

No orders as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RITA

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\*In favour of assessee.