
[2022] 144 taxmann.com 98 (Andhra Pradesh)[09-09-2022]

GST : Where refund of excess credit was rejected, however, website was showing sanction of refund and mistake in order not rectified, rejection order was to be set aside and matter was to be remanded for fresh decision

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[2022] 144 taxmann.com 98 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

RK Infracorp (P.) Ltd.

v.

Assistant Commissioner*

C. PRAVEEN KUMAR AND RAVINDRA BABU, JJ.

W.P. NOS. 16262, 16278, 17958 OF 2022

SEPTEMBER 9, 2022

Refund of excess credit - Credit of TDS was lying as excess credit to petitioner in electronic cash ledger - Claim was based on earlier order dated 19-3-2020 approving refund rejected by endorsement, dated 28-5-2022 - Website/portal of department was showing sanction of refund but Form-GST-RFD-08 being notice for rejection of application for refund, was showing that refund claim was rejected under section 54(3)(4) of Andhra Pradesh Goods and Services Tax Act, 2017 for want of documents - Mistake in earlier order was not rectified- Also no notice was issued to assessee prior to passing of order dated 28-5-2022 rejecting request of refund made -Rejection order dated 28-5-2022 was to be set aside and matter was to be remanded back to Assistant Commissioner [State Tax] for fresh decision on petitioner's application for refund of excess balance in electronic cash ledger within 6 months [Section 54 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 8 to 13] [In favour of assessee]

Circulars and Notifications : C.B.I. & C. Circular No. 166/22/2021-GST, dated 17-11-2021

ORDER

C. Praveen Kumar, J. - Since the issue involved in these Writ Petitions being one and the same, they are heard together and disposed of by this Common Order. W.P. No. 17958 of 2022 is taken as a lead petition in deciding the issues involved.

2. The present Writ Petition is filed assailing the Endorsement, dated 28-5-2022, issued by the Assistant Commissioner (State Tax), Kadapa-I Circle, Kadapa, rejecting the request of the Petitioner for refund along with interest, as illegal, improper and incorrect.

3. The facts, in issue, are as under:

- i. The Petitioner was engaged in execution of works contract having its Registered Office at Kadapa, with registration under Central Goods and Services Tax Act, 2017, ['CGST Act'], and State Goods and Services Tax Act, 2017, ['SGST Act'], with effect from 1-7-2017.
- ii. It is said that, the Petitioner availed Input Tax Credit and adjusted the same against an output liability in its monthly returns. It is further stated that, in addition to the amount available as Input Tax Credit, the Petitioner also has credit of TDS by the contractees under Section 51 of CGST Act/SGST Act @ 2%. The amount is said to be lying as excess credit to the Petitioner in the Electronic

Cash Ledger and it does not get adjusted against the output liability, in view of the excess amount lying in the Electronic Credit Ledger. It is said that, the amount credited in the form of TDS is eligible to be refunded to the Petitioner under Section 54(1) of the CGST Act. As the excess amount was lying, in the Electronic Cash Ledger, the Petitioner filed three [03] separate applications for refund of excess credit lying in Electronic Cash Ledger.

- iii. The refund applications were processed by the first Respondent leading to issuance of GST RFD-08 on 5-2-2020, proposing to reject the application for refund, on the ground that the Petitioner has not filed relevant documents, in terms of Section 54(3)(4) of SGST Act. The Petitioner was given time to file reply till 20-2-2020. But, however, the Petitioner failed to submit his explanation. In spite of the same, the first Respondent issued a Refund Sanction Order in GST RFD-06, dated 19-3-2020, for all the three [03] applications. These amounts were to be credited to the bank account specified in the application of the Petitioner. The Order also categorically states that, the application is rejected for an amount of Rupees "Zero".
- iv. Believing that the applications made by the Petitioner were allowed and as the amount was not being credited in spite of sanction, the Petitioner addressed a letter on 11-6-2020 to the first Respondent requesting him to release the refund at the earliest. As there was no response, the Petitioner once again brought to the notice of the first Respondent, the inaction on their part in not releasing the amount in spite of the Order. The said reminder was on 20-5-2022.
- v. The Petitioner also claims to have brought to the notice of the first Respondent the Circular, dated 17-11-2021, issued by CBIC, New Delhi, stipulating that any amount unutilized in Electronic Cash Ledger is to be refunded immediately under Section 54 of the CGST Act. In response to the request made by the Petitioner on 20-5-2022, the first Respondent issued the impugned endorsement observing inter alia that there was no response from the Petitioner for the notice issued in RFD-08; opportunity of personal hearing was not availed by the Petitioner and, accordingly, rejected the request for refund. It was also observed by the first Respondent that due to some technical glitches in the website/portal, the refund rejected amount could not be reflected in Statement No. 4 instead of in Statement No. 3. This endorsement, dated 28-5-2022, is sought to be challenged in this Writ Petition.

4. Sri. S. Dwarakanath Reddy, learned Senior Counsel, appearing for the Petitioner, mainly submits that, the impugned endorsement could not have been passed by the authority as it has no statutory force. He further submits that, the endorsement is silent with regard to the provisions of law under which it is passed. He further submits that, in the applications filed by the Petitioner seeking implementation of the order, the first Respondent issued the endorsement setting aside the earlier order, which virtually amounts to reviewing the Order, and such a request was never made by the Petitioner. He further submits that the Order in Form-GST-RFD-06 clearly indicate that against the column "reason for refund", it has been specifically mentioned that 'refund of excess balance in Electronic Cash Ledger', and also the concluding portion of the Order clearly describe an amount of Rs.85,14,656/- being sanctioned under Sub-section 5 of Section 54 of the Act. He further submits that, even as on today, the website/portal shows acceptance of refund application of the Petitioner. In view of all the circumstances, learned Senior Counsel would contend that the authority erred in issuing endorsement.

5. Sri. Y.N. Vivekananda, learned Government Pleader for Commercial Tax, appearing for the Respondents, opposed the same contending that the application of the Petitioner was not allowed, as there appears to be an error in the Order passed by the first Respondent. He would submit that, the Order relied upon by the learned Senior Counsel also shows that the request of the Petitioner for refund is rejected since the Petitioner has not submitted documents along with reply. In view of the above, he would submit that the order under challenge requires no interference.

6. As stated earlier, the present Writ Petitions came to be filed challenging the endorsement, dated 28-5-2022, issued by the first Respondent, wherein, the request of the Petitioner for refund of excess credit lying in the Electronic Cash Ledger came to be rejected. This Order came to be passed pursuant to representations made by the Petitioner seeking refund of the amount, in view of the approval granted by the first Respondent in its Order, dated 19-3-2020. It is to be noted here that, in-stead of considering the application of the Petitioner for refund, which was made basing on the Order dated 19-3-2020, the impugned endorsement came to be made rejecting the request. It is also to be noted here that, the said endorsement does not reflect any provision of law under which it has been made or passed. It has simply overturned the earlier order, on the ground that due

to some technical glitches in the website/portal, the request for refund amount of Rs.85,14,656/- is reflected in Statement No. 4. Further, as stated above, this endorsement has no statutory force, as it does not reflect the provision of law under which the said endorsement came to be issued. Since, the impugned endorsement came to be made without any statutory basis and as it came to be passed in an application made by the Petitioner seeking refund in view of the earlier order passed, the said endorsement is liable to be set-aside, as bad in law and, accordingly, the same is set-aside.

7. At this stage Sri. Y.N. Vivekananda, learned Government Pleader for Commercial Tax, appearing for the Respondents, would submit that the Order, dated 19-3-2020, passed in favour of the Petitioner was an erroneous one, which is apparent from a reading of the proceedings and the material on record. The same is disputed by Sri.S. Dwarakanath Reddy, learned Senior Counsel, appearing for the Petitioner, stating that, if really it was a mistake, steps should have been taken to get the same rectified, but till date the same is not done.

8. It is true, though the Order was passed on 19-3-2020 sanctioning an amount of Rs.85,14,656/- to the Petitioner under Sub-section 5 of Section 54 of the Act, no effort was made to get the same rectified. But a perusal of the first page of the Order, dated 19-3-2020, clearly gives a reason for rejecting the refund. It has been categorically stated that, as the tax payer has not submitted reply along with documents, the refund claim is rejected. Having said so, in the last page of the Order, the Assistant Commissioner [ST], sanctioned the amount referred to above. It appears that, a mistake has crept in. In-fact, the website/portal of the Department shows sanction of refund and the same is said to have been displayed even now. But, it is also to be noted here that, in Form-GST-RFD-08, which is a notice for rejection of application for refund, it is clearly mentioned that the refund claim is rejected under Section 54(3)(4) of SGST Act, for want of documents.

9. Further, no notice was given to the Petitioner prior to passing of the Order rejecting the request made. On the other hand, the Order, dated 28-5-2022, came to be passed basing on the representation made by the Petitioner. Therefore, the issue as to whether the request of the Petitioner was accepted or not is not clear from the available record.

10. At this stage, learned Senior Counsel appearing for the Petitioner would contend that, the provisions of Section 54(3)(4) of SGST Act, do not apply to the case on hand, as it relates to excess input credit and that the case of the Petitioner falls under Section 54(1) of Act. He further submits that, if the matter is remanded back now for consideration afresh, the Petitioner will be losing interest of two [02] years, since the authority, in all probability, would deal with the request of the Petitioner from the date of Order of this Court unless otherwise it is made clear.

11. Sri. Y.N. Vivekananda, learned Government Pleader for Commercial Tax, appearing for the Respondents, would submit that the matter may be remanded back by treating the application of the Petitioner as made in the year 2020 as the application for refund of excess credit, so that the grievance of the Petitioner that he will be losing interest can be take care of, if any.

12. Having regard to the dispute involved now, namely, as to whether the request of the Petitioner was accepted or not; the Writ Petitions are allowed setting aside the impugned Order, dated 28-5-2022, and the matters are remanded back to the Assistant Commissioner [State Tax] (1st Respondent herein) to deal with the same afresh after accepting the applications filed by the Petitioner in the month of January 2020, for refund of excess balance in the Electronic Cash Ledger, in accordance with law, by giving an opportunity of hearing to the Petitioner, preferably within a period of six [06] weeks from the date of receipt of the Order. No order as to costs.

13. It is needless to mention that, three [03] applications made by the Petitioner on 24-1-2020 vide ARN/RFN Nos.AA3701200188994, AA370120021735P and AA3701200211731, be treated as applications for refund made in the year 2020 itself and if it is found that the Petitioner is eligible for refund of excess credit in the Electronic Cash Ledger, the said amount shall be paid to the accounts of the Petitioner along with interest as prescribed under law.

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

*In favour of assessee.