
[2024] 163 taxmann.com 144 (Andhra Pradesh)[02-05-2024]

GST: Where assessee's refund claim was rejected on ground that taxpayer had failed to meet deadline of two years for submitting refund application and deficiency memo was issued with advice that a fresh refund application might be filed after removal of deficiencies, since term 'relevant date' requires determination to arrive a conclusion that on what date ship in which goods were loaded left India, it would not be appropriate for instant Writ Court to determine such disputed question of fact; hence, writ petition was to be dismissed

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[2024] 163 taxmann.com 144 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Cherish India Exports

v.

Assistant Commissioner of State Tax*

RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.

WRIT PETITION NO. 10375 OF 2024

MAY 2, 2024

Refund claim - Rejection of - Limitation period - Period January 2022 to March 2022 - Assessee challenged Deficiency Memo (Form GST RFD-03) issued to assessee rejecting assessee's claim for refund of tax - Refund claim was rejected on ground that taxpayer failed to meet deadline of two years for relevant period for submitting application - Deficiency memo was issued with an advice that a fresh refund application may be filed after removal of deficiencies - HELD : Assessee had remedy of appeal against order of rejection of refund and argument advanced was not such an argument, which could not be taken before appellate authority - Further, 'relevant date' requires determination in view of Explanation 2(a)(i) of section 54 on consideration of documents filed by assessee to arrive at a conclusion as to on what date ship in which goods were loaded left India - In exercise of writ jurisdiction, it was not appropriate for Court to determine such question which was a disputed question of fact and requires for its determination evidence - Therefore, writ petition was to be dismissed [Section 54 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 5 to 8] [In favour of revenue]

K Adi Siva Vara Prashad *for the Petitioner*. A.V. Badra Naga Seshayya, Ld. Asstt. Govt. Pleader *for the Respondent*.

ORDER

Ravi Nath Tilhari, J. - Heard Sri K A S V Prasad, learned counsel for the petitioner and Sri Sri A.V.Badra Naga Seshayya, learned Assistant Government Pleader for Commercial Tax for respondent Nos.1 to 3. Notice has been accepted by learned Deputy Solicitor General of India for respondent No.4.

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

"pleaded to issue any order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ or order or direction declaring the Proceedings of the 1st respondent in form GST RFD-03 dated 03.04.2024 (Annexure P-1) for rejection of Refund claim for the Tax period January-2022 to March-2022 relying on the "relevant date" prescribed at explanation (2) of Sec 54 of the Central Goods

and Service Tax Act 2017, without proper consideration of the Application submitted in Form RFD-01 dated 21.03.2024 (Annexure P-2) along with Export Documents and bill of Loading No. ETZTPL.KSP220145 DT. 01.03.2022 (Annexure P-3) and EGM No.241633 dt.09.03.2022 (Annexure P-4) and opportunity of personal hearing as arbitrary, without jurisdiction, against to the principles of natural justice and contrary to the meaning of "relevant date" prescribed at explanation (2) (a) (i) of Section 54 and Rule 92(3) R/w Sec 54 of the Central Goods and Service Tax Act 2017, consequently

- (i) To set aside the impugned proceedings in form RFD-03 dated 03.04.2024
- (ii) To direct the 1st respondent to consider the refund claim of the petitioner
- (iii) To pass"

3. The petitioner is challenging the Form GST RFD-03 dated 03.04.2024 (P1) rejecting the petitioner's claim for refund of tax for the period from January, 2022 to March, 2022. The rejection is on the ground that the taxpayer failed to meet the deadline for submitting the application on 29.02.2024. The deadline for filing the application of two years relevant period, ended on 21.03.2024. The deficiency memo was issued to that effect with an advice to the petitioner that a fresh refund application may be filed after removal of deficiencies.

4. Learned counsel for the petitioner submits that the petitioner's application was within a period of two years from the relevant date under Section 54(1) R/w. Section 54(14) explanation 2(a)(i) of CGST Act. Such provisions read as under:

"54. Refund of tax

(1) 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:

PROVIDED that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [such form and] manner as may be prescribed.

(14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation: For the purposes of this section,-

(2) "relevant date" means-

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India"

5. Learned counsel for the petitioner further submits that the necessary documents were filed before the authority but the same has not been considered and if the same had been taken into consideration, date of the application of refund was within the period of two (02) years from the relevant date.

6. The question involved is whether the petitioner's application was within the period of two years from the relevant date or not. The authority has taken a view that it was beyond the period of two years and barred by limitation. The submission is that the documents filed by the petitioner were not considered.

7. The petitioner has got the statutory alternative remedy of appeal against the order of rejection of claim for refund. The argument as advanced before us, is not such an argument, which cannot be taken before the appellate authority. The 'relevant date' requires determination in view of Section 54(14), explanation 2(a)(i) of the Act on consideration of the documents, as submitted, filed by the petitioner, to arrive a conclusion, on what date the ship in which goods were loaded left India. In the exercise of the writ jurisdiction, this Court considers it not appropriate, at this stage to determine such question which is a disputed question of fact and requires for its determination the evidence. The said exercise, can be done effectively by the appellate authority. Consequently, we are not inclined to entertain the writ petition.

8. At this stage, learned counsel for the petitioner submits that the petitioner may approach the same authority which vide deficiency memo has already provided that the petitioner may file fresh application after removal of the deficiency. He submits that such liberty may also been given to the petitioner.

9. In view of the aforesaid, leaving it open to the petitioner to approach the statutory alternative appellate forum or the competent authority in view of the deficiency memo, as may be advised, this Writ Petition is dismissed, on the ground of availability of statutory alternative remedy.

10. No orders as to costs.

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

AJAY

*In favour of revenue.