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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 23rd February, 2023*

\+ **W.P.(C) 14234/2022**

MR BRIJ MOHAN MANGLA ..... Petitioner
Through: Mr. Ankit Sachdeva and Mr. Rajat Bose, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Siddharth Khatana, Senior Panel Counsel for R-1 / UOI.
Mr. Akshay Amritanshu, Mr. Ashutosh Jain, Mr. Samyak Jain and Mr. Divyansh Singh, Advs. for R- 2 to 4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(Oral)*

1. The petitioner has filed the present petition *inter alia* praying that directions be issued to respondent No. 2 and 3 to disburse the refund for the period, May, 2019 to December, 2019, which, according to the petitioner, is payable in implementation of the order dated 20.09.2021 passed by the Appellate Authority, Joint Commissioner (Appeals). The petitioner also claims interest on the amount of refund due.

2. The petitioner is engaged in the manufacturing of various types of liquid printing inks. The petitioner was registered under the Central Goods and Service Tax Act, 2017 (hereafter **'the Act'**) with registration No. 07AAOPB5908Q176.

3. The petitioner claims that during the relevant period (that

is, from May, 2019 to December, 2019), the petitioner was carrying on his business from the premises bearing the address A-80 Block, near Kasturi Ram Public School, DSIDC Industrial Area, Narela, Delhi 110040. The petitioner states that he now carries on the business under the name of M/s Standard Ink from the premises situated at Killa No. 4/24, Village Nathpur, Sonipat, Haryana.

4. It is the petitioner's case that on account of an inverted duty structure, he could not fully utilise his input tax credit and consequently, the same had accumulated to an aggregate figure of ₹74,02,337/- for the period in question (May, 2019 to December, 2019).

5. In view of the above, the petitioner filed separate applications (six in number) for claiming refund. The details of these applications are as under:

Date of filing of refund claim	**Period**	**Amount (in Rs.)**
09.12.2020	May, 2019	8,89,402/-
23.12.2020	June, 2019	7,39,443/-
07.01.2021	July, 2019	10,62,596/-
07.01.2021	Aug, 2019	11,12,574/-
22.01.2021	Sept, 2019	9,72,486/-
16.03.2021	Oct – Dec, 2019	26,25,836/-
Total		74,02,337/-

6. The petitioner's request for refund was not processed and during the period 06.02.2021 to 06.05.2021, six separate Show Cause Notices in Form RFD 08 were issued to the petitioner *inter alia,* calling upon the petitioner to show cause as to why his claims for refund be not rejected for two reasons. First, that

physical verification conducted on the petitioner's premises on 05.02.2021 revealed that the concern was non-existent. And second, that the GSTIN registration of the petitioner was cancelled with effect from 19.02.2021.

7. The petitioner responded to the Show Cause Notices. He claimed that during the relevant period, he was carrying on the business from the premises as declared (A-80 Block, near Kasturi Ram Public School, DSIDC Industrial Area, Narela, Delhi 110040). However, he had subsequently shifted his manufacturing activities to the current location in Haryana (Killa No. 4/24, Village Nathpur, Sonipat, Haryana).

8. The petitioner's explanation was not accepted by respondent No. 3 and he rejected the applications filed in terms of six separate orders in original passed during the period 26.02.2021 to 25.05.2021. The principal reason for rejecting the petitioner's application was that he was not a 'registered person' and therefore, was not entitled to refund under Section 54(3) of the Act.

9. The petitioner filed respective appeals against the orders in original and prevailed in those proceedings. By an order dated 20.09.2021, the appeals filed by the petitioner were allowed. The Appellate Authority accepted that the petitioner was carrying on his business from the relevant premises during the material time and had shifted its premises to Haryana thereafter. The Appellate Authority also found that there was no doubt as to the genuineness of the said claims and the petitioner was a registered person at the time of filing of his applications for refund. Thus, the provisions of Section 54(3) of the Act which enable only a registered person to make a claim for refund, did not in any manner disentitle the petitioner for claiming the refunds.

10. Notwithstanding that the petitioner had succeeded before the Appellate Authority, the respondents did not process the petitioner's claim for refunds.

11. On 29.09.2021, the petitioner filed another application for refund (in Form GST RFD 01) along with an Order in Appeal dated 20.09.2021. The petitioner also enclosed therewith a certificate from a Chartered Account and an undertaking as required. The said application was not processed. Instead, the respondents issued a deficiency memo once again raising the same issues that were conclusively decided by the Appellate Authority by the order dated 20.09.2021. The petitioner responded to the said deficiency memos.

12. In the meanwhile, on 11.02.2021, the respondent also issued a Show Cause Notice calling upon the petitioner to show cause as to why its registration not be cancelled. The petitioner responded to the Show Cause Notice by furnishing a reply on 15.02.2021. However, the Superintendent, *vide* order dated 19.02.2021, cancelled the petitioner's GSTIN registration.

13. The petitioner filed an application for revocation of the cancellation before the Deputy Commissioner, which was also rejected by an order dated 05.04.2021.

14. Thereafter, the petitioner filed an appeal before the Appellate Authority, which was allowed by an order dated 20.10.2021.

15. In terms of the orders passed by the Appellate Authority, the orders rejecting petitioner's application for refund have been set aside. The Appellate Authority has also directed restoration of the petitioner's GSTIN registration.

16. The record also indicates that the petitioner thereafter once again applied for the disbursement of refunds but the said

applications were also not processed on the same pattern: first deficiency memos are issued and thereafter, the applications were rejected.

17. It is in the aforesaid context that the petitioner has filed the present petition.

18. The respondent has filed a counter affidavit once again reiterating its stand that the petitioner's registration is liable to be cancelled as the petitioner was not found functioning at the given address. According to the respondent, if the petitioner's registration is cancelled, the petitioner would no longer be a registered person and therefore, cannot apply for refund under Section 54(3) of the GST Act.

19. It is also stated that the concerned authority has reviewed the orders passed by the Appellate Authority and has directed that an appeals be filed challenging the orders passed by the Appellate Authority directing restoration of registration as well as grant of refunds.

20. It is stated that this is the only reason that the respondents have not processed the petitioner's application for refund.

21. Admittedly, the appeals have not been filed by the respondents as yet. The time for preferring the appeal has also expired. However, the learned counsel for the respondent submits that the appeals would still be in time as in terms of the circular dated 03.12.2019, the time for the Department to prefer an appeal has been extended till three months after the date on which the Tribunal is constituted.

22. It is not necessary for this Court to examine the question whether appeals if and when preferred would be within time. Suffice it to state that the respondent has not secured any order which would, in any manner, stay the operation of the appellate

orders passed by the Appellate Authority.

23. Clearly, it is not open for the respondents to ignore the orders passed by the Appellate Authority merely on the ground that it has decided to appeal those orders. It would be debilitating to the rule of law, if the respondents are permitted to withhold implementation of the orders passed by the authority in this manner.

24. This Court has, in a similar matter (W.P.(C) 5462/2022 decided on 16.02.2023) directed the respondent to comply with the said order notwithstanding its decisions to file an appeal.

25. In view of the above, the present petition is allowed.

26. The respondents are directed to forthwith process the petitioner's claim for refunds including interest.

27. It is clarified that this would not preclude the respondents from availing their remedies against the orders passed by the Appellate Authority in accordance with law. In the event the respondents succeed in upsetting the appellate orders, it would be entitled to take consequential action for recovery of any amount that may have been disbursed albeit, in accordance with applicable law.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 23, 2023
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