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10-Wp-2157-2021.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2157 OF 2021

- | | | | |
|----|---------------------------|---|-----------------|
| 1. | C.P. Ravindranath Menon |] | |
| 2. | Sindhu Ravindranath Menon |] | ... Petitioners |

Versus

- | | | | |
|----|---|---|-----------------|
| 1. | Union Of India |] | |
| | Ministry of Finance, (Department of Revenue) |] | |
| | Aayakar Bhavan, 2 nd Floor, |] | |
| | Maharshi Karve Road, New Marine Line, |] | |
| | Mumbai – 400 020. |] | |
| 2. | Commissioner of GST & Central Excise |] | |
| | Division-V, Navi Mumbai Commissionerate |] | |
| | 16 th Floor, Satra Plaza, Palm Beach Road, |] | |
| | Sector – 19/D, Vashi, Navi Mumbai – 400 705. |] | |
| 3. | Deputy Commissioner of GST & Central Excise |] | |
| | Division-V, Navi Mumbai Commissionerate |] | |
| | 16 th Floor, Satra Plaza, Palm Beach Road, |] | |
| | Sector – 19/D, Vashi, Navi Mumbai – 400 705. |] | |
| 4. | Superintendent of GST & Central Excise |] | |
| | Range – III, Division-V, |] | |
| | Navi Mumbai Commissionerate |] | |
| | 16 th Floor, Satra Plaza, Palm Beach Road, |] | |
| | Sector – 19/D, Vashi, Navi Mumbai – 400 705. |] | |
| 5. | Godrej Redevelopers (Mumbai) Pvt. Ltd. |] | |
| | A Subsidiary of Godrej Projects Development |] | |
| | Pvt. Ltd., A Company incorporated under the |] | |
| | Companies Act, 1956, having registered Office |] | |
| | at Godrej One, 5 th Floor, Pirojshanagar, |] | |
| | Eastern Express Highway, Vikhroli (E.), |] | |
| | Mumbai – 400 079. |] | ... Respondents |

Mr.Subit Chakrabarti i/b. Vidhii Partners for Petitioners.
Mr.Sham V. Walve a/w. Ms.Sangeeta Yadav for Respondent Nos.1 to 4.
Mr.Abhijeet K. Mangade for Respondent No.5.

**CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.**

DATE : 14th FEBRUARY 2022.

ORAL JUDGMENT (Per : R. D. DHANUKA, J.) :-

1. Rule. Mr.Walve, learned counsel for Respondent Nos.1 to 4 waives service. Mr.Mangade, learned counsel for Respondent No.5 waives service.
2. By consent of learned counsel for the Parties, the Petition is heard finally.
3. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the Order dated 18th February 2021 passed by the Respondent No.3, rejecting the application filed by the Petitioner on the ground that the refund claim application was not filed electronically, which was mandatory with effect from 26th September 2019 and onwards in accordance with Circular No. 125/44/2019-GST dated 18th November 2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing.
4. The Petitioner had entered into an Agreement for Sale on 10th May 2018 with Respondent No.5, which was duly registered. The Respondent

No.5 paid GST as per Tax Invoice in the sum of Rs.18,26,412/-. It is the case of the Respondent No.5 that, since the loan was not sanctioned in favour of the Petitioner by the bank, said Agreement for Sale has been terminated. However, the parties have not entered into 'Deed of Cancellation' till date. The statement made across the bar and in the Affidavit-in-Reply are accepted.

5. On 4th September 2020 the Petitioner preferred an application to the Respondent No.3 in Form GST-RFD-01-A and enclosed all other particulars and evidence for refund of the GST paid by the Respondent No.5, which was collected from the Petitioner. On 6th January 2021 the Petitioner No.1 received a letter from the Respondent No.2 seeking information as to whether the Respondent No.5 has sought refund of GST in respect of the same transaction. The Petitioner informed the Respondent No.2 by an email sent on the same date that the Respondent No.5 had not sought any refund for the said amount, which was claimed by the Petitioner.

6. On 18th February 2021, the Respondent No.2 rejected the application for refund made by the Petitioner under Section 54 of the Central Goods and Services Tax Act, 2017 (for short, 'C.G.S.T. Act') on the ground that the refund application was not filed electronically and not in compliance with the Circular dated 18th November 2019. The Petitioner thus filed this Writ Petition *inter-alia* praying for a writ of certiorari for quashing and setting the Order dated 18th February 2021 passed by the Respondent No.3 and for writ

of mandamus directing the Respondent Nos.2 and 3 to consider and process the application for refund dated 4th September 2020 filed by the petitioner.

7. The Writ petition is opposed by the Respondent Nos.1 to 4 by filing Affidavit-in-Reply. In so far as the Respondent No.5 is concerned, the Respondent No.5 has not applied for any refund in respect of Agreement entered into between the Petitioner and the Respondent No.5. In para (g) of the Affidavit-in-Reply, it is stated that the Respondent No.5 has already shared a draft Deed of Cancellation with the Petitioner on 9th March 2021. The Petitioner has not come forward for execution and registration of 'Cancellation of Deed'.

8. Learned counsel for the Petitioner invited our attention to the correspondence exchanged between the parties and would submit that the Respondent No.5, who had collected GST from the Petitioner on the said Agreement for Sale, has admittedly deposited the said amount with the Respondent Nos.1 to 4. Though the said Agreement is proposed to be cancelled by the Respondent No.5, admittedly the Respondent No.5 has not claimed any refund paid by the Respondent No.5 to the Respondent Nos.1 to 4. The Petitioner is thus entitled to claim refund of the said GST paid by the Respondent No.5 after collecting the same from the Petitioner on the said Agreement for Sale.

9. In support of this submission, learned counsel placed reliance on Section 54(1) of the C.G.S.T. Act and would submit that the Petitioner being any person claiming refund of any tax and interest paid on his behalf is entitled to make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. He submits that, since the Petitioner paid the said GST on the said Agreement for Sale, the Petitioner is eligible to apply for refund under Section 54 of the said C.G.S.T. Act.

10. Learned counsel placed reliance on the Rule 89 of the C.G.S.T. Rules 2017 and would submit that by virtue of explanation (ii) to Rule 89(ii), the amount of tax has been recovered from the Petitioner by the Respondent No.5 and thus it shall be deemed that the incidence of tax has been passed on to the ultimate consumers. He submits that the Petitioner being the ultimate consumer, the Petitioner is entitled to claim the benefit of said GST paid by the Respondent No.5.

11. Learned counsel also placed reliance on Rule 97A of the said C.G.S.T. Rules and would submit that the reference to electronic filing of an application under Chapter X would include manual filing of the said application. He submits that the impugned Order passed by the Respondent No.3 is contrary to the Rule 97A of the C.G.S.T. Rules.

12. During the course of arguments Mr.Raichandani, a counsel of this Court assisted the learned counsel for the Petitioner and furnished a copy of the unreported judgment dated 30th November 2021 of this Court delivered in *Writ Petition No. 7861 of 2021, Laxmi Organic Industries Ltd. Vs. Union of India & Others.* The learned counsel for the Petitioner heavily placed reliance on the said judgment dealing with Rule 97 (A) of the C.G.S.T. Rules and also various other provisions relating to refund of G.S.T..

13. Mr.Walve, learned counsel for the Respondent Nos.1 to 4 on the other hand placed reliance on the stand taken by his clients in the Affidavit-in-Reply filed in this Writ Petition. He submits that the Petitioner not having filed the GST refund application electronically, the Petitioner is not entitled to claim refund. He tried to justify the impugned Order passed by the Respondent No.3.

14. Learned counsel for the Respondent No.5 stated that, no reliefs are sought by the Petitioner against the Respondent No.5. Respondent No.5 has not made any claim for refund of GST paid by his client on the said Agreement of Sale between the Petitioner and the Respondent No.5. He submits that, even otherwise the time for applying for refund of GST by the Respondent No.5 paid on the said Agreement for Sale has already expired. Respondent No.5 does not propose to make any claim for refund of GST.

15. It is not in dispute that, the Respondent No.5 had collected GST from the Petitioner on the said Agreement for Sale and has deposited the said amount with Respondent Nos.1 to 4. It is also not in dispute that the Respondent No.5 did not make any application for refund of the GST on the said Agreement for Sale. Respondent No.5 also did not propose to make any claim for refund of GST paid by it.

16. A perusal of the Order passed by the Respondent No.3 indicates that the Respondent No.3 has not rejected the said application for refund filed by the Petitioner under Section 54 of the said C.G.S.T. Act on the ground that the Petitioner is not entitled to apply for refund under any of the provisions of the said C.G.S.T. Act or the applicable Rules. The said Order dated 18th February 2021 indicates that the application for refund is rejected only on the ground that the said refund claim application is not filed electronically and in accordance with Circular dated 18th November 2019 issued by the Government of India. We are thus not inclined to allow the learned counsel for the revenue to agitate the issue across the bar that the Petitioner is not eligible to apply for refund. Be that as it may, we do not propose to go into the issue of eligibility of the Petitioner to make an application for refund at this stage.

17. A Division Bench of this Court in the case of *Laxmi Organic Industries Ltd.* (*supra*) has dealt with identical facts and after construing

Section 168 of the C.G.S.T. Act, Rule 89 and Rule 97A of the C.G.S.T. Rules has held that the plain and simple construction of Rule 97A is that despite Rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X, any reference to electronic filing of application on the common portal shall, in respect of that process or procedure, include manual filing of the said application. This Court rejected the similar stand taken by the learned counsel for Revenue and held that Rule 97A can not be construed in a manner as sought to be canvassed by the learned counsel for Revenue so as to defeat the purpose of Legislation. This Court accordingly held that the impugned Circular would certainly be applicable to all application filed electronically on the common portal but the impugned Circular cannot affect or control the statutory rule i.e. Rule 97A of the C.G.S.T. Rules or derogate from it.

18. This Court accordingly quashed and set-aside the impugned Order therein and clarified that the said Circular shall be applicable only to applications filed electronically on the common portal but would have no applicability to an application for refund which is filed manually. Then Court permitted the Petitioner therein to file an application afresh for refund manually within a period of 14 days and directed the Superintendent to process the same and to take it its logical conclusion in accordance with law within two months from the date of receipt of such application for refund.

19. In our view the judgment of the Division Bench of this Court in the case of **Laxmi Organic Industries Ltd.** (*supra*) would squarely apply to the facts of this case. In our view the Circular placed in service by the Respondent No.3 would not bar the application for refund filed manually. In this case the Petitioner even otherwise could not have filed application electronically, not having registered under the said C.G.S.T. Act. The Petitioner in this case has already filed an application manually. In our view the impugned Order passed by the Respondent No.3 is contrary to the principles laid down by this Court in the case of **Laxmi Organic Industries Ltd.** (*supra*) and contrary to Rule 97A read with Rule 89 of C.G.S.T. Act.

20. We accordingly pass the following Order.

- (i) The impugned Letter/Order dated 18th February 2021 passed by the Respondent No.3 is quashed and set-aside.
- (ii) The application dated 4th September 2020 annexed at Exh.D to the Petition is restored to the file before the Respondent No.3.
- (iii) Respondent No.3 is directed to consider the said application on its own merits without being influenced by the observations made and the conclusions drawn in the impugned Order dated 18th February 2021.
- (iv) It is made clear that, this Court has not expressed any views on the issue, as to, whether the Petitioner is at all entitled to apply

for refund of the GST paid by the Respondent No.5 or not. The said issue is kept open.

- (v) Respondent No.3 shall decide the application of refund within 8 weeks from today.
- (vi) The Order that would be passed shall be communicated to the Petitioner within one week from the date of passing of the said Order.
- (vii) If the application for refund filed by the Petitioner is allowed, the Respondent No.3 shall release the amount of refund to the Petitioner within two weeks from the date of passing of such Order. If the application for refund made by the Petitioner is rejected by the Respondent No.3, the Petitioner would be at liberty to file appropriate proceedings.
- (viii) Writ Petition is allowed in the aforesaid terms.
- (ix) Rule is made absolute. No Order as to costs.
- (x) Parties to act on an authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]