

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7397 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

M/S GARDEN SILK MILLS LTD

Versus

UNION OF INDIA

Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 11/04/2019

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mr. Nirzar Desai, learned senior standing counsel waives service of notice of rule on behalf of the respondents.

2. By this petition under article 226 of the Constitution of India, the petitioner seeks the following substantive reliefs :

“28. The petitioners, therefore, pray:

a. that this Hon'ble Court be pleased to set aside the impugned orders and allow the refund of Rs.17,55,13,818/-.

b. that this Hon'ble High Court issue a Writ of Mandamus or any other writ, order or direction to respondent No.3 under Article 226 of the Constitution of India to grant the refund of Rs.17,55,13,818/-

c. In the alternative, this Hon'ble Court be pleased to allow the petitioners to take themselves the re-credit of Rs.17,55,13,818/- on the basis of Form GST RFD-PMT 03 issued by the Respondent No.3 in their Electronic Credit Ledger at the time of filing of Monthly Summary Return – GSTR 3B or direct the Respondent No.3 to grant such re-credit immediately in Form GST RFD-01B.”

3. The petitioner is engaged in the manufacture of Polyester Filament based Yarns, Textile-grade Polyester Chips, Grey Fabrics and Finished Fabrics. The products so manufactured by the petitioner are cleared for home consumption or are cleared to Special Economic Zone (SEZ). Section 54(3) of the Central Goods and Services Tax

Act, 2017 (hereinafter referred to as "the CG&ST Act") provides that a registered person may claim refund of any unutilised input tax credit at the end of any tax period, if the registered person has made :

- a) zero rated supplies made without payment of tax;
- b) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or, both as may be notified by the Government on the recommendations of the Council

4. For the period from July 2017 to October 2017, the petitioner filed in all six refund claims under provisions of section 54(3) of the CGST Act on the following grounds:

- i) Refund of accumulated input tax credit on account of inverted duty structure.
- ii) Refund of accumulated input tax credit on account of supplies made to SEZ without payment of tax.
- iii) Refund of accumulated input tax credit on account of exports without payment of integrated goods and services tax.

5. In terms of the procedure envisaged under the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CG&ST Rules") and the relevant

notifications and circulars clarifying the process of manual filing of refund claims in Form GST RFD-01A, the refund claims were manually filed in Form-RFD-01A. Upon submission of such claim, refund ARN receipt was also generated. It is the case of the petitioner that since on-line refund procedure was still facing teething problems, formal refund claim, as instructed, was also filed manually wherein the petitioner submitted the copies of RFD-01A, ARN receipt, copy of Electronic Credit Ledger (ECL) and GSTR-3B filed for the relevant period. The total refund claim of the petitioner was Rs.17,55,13,818/-.

6. Rule 90(3) of the CG&ST Rules provides that where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RF D-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. On 16.1.2018, the third respondent issued six deficiency memos dated 16.1.2018 under Form RFD-03 in respect of six refund applications filed by the petitioner pointing out several deficiencies on scrutiny of the application filed by the petitioner. By the said letter, the third respondent advised the petitioner to file a fresh refund application, after rectification of the above deficiencies. By a letter dated 18.1.2018, the petitioner replied to the deficiency memos and rectified all the deficiencies pointed out by the third respondent. However, it is the case of the petitioner that no acknowledgments were provided by third respondent for such submissions.

7. It is further the case of the petitioner that even subsequently the petitioner provided each and every information and documents, which was sought for by the third respondent. However, no acknowledgment for any such response was provided by the third respondent at any instance. Even after repeated visits to the office of the third respondent and insisting that such acknowledgment be provided, for such submissions.

8. Section 54(6) of the CG&ST Act read with rule 91 of the CG&ST Rules, provides that in case of refund for zero rated supplies ninety percent of the refund so claimed, should be granted on provisional basis within a week. It is the case of the petitioner that in any case under section 54(7) of the CG&ST Act, the proper officer has to issue the order under section 54(5) within sixty days from the date of receipt of the application complete in all respects.

9. The petitioner was awaiting the refund order from the third respondent; however, till 1.3.2018, neither was any refund order passed nor was any further deficiency memo issued by the third respondent. The petitioner was therefore, constrained to inquire about the status of the refund claim. Vide letter dated 1.3.2018 addressed to the third respondent, the petitioner inter alia stated that since the amount of refund claim filed by them was huge and they had also debited the same from the Electronic Credit Ledger, non passing of the order is adversely affecting the working capital of the petitioner. The petitioner, accordingly, requested the third respondent to expedite the disposal of the refund applications. However,

subsequently, by the impugned order dated 7.3.2018, the third respondent rejected the refund claims on the ground that the petitioner has failed to submit compliance/file a fresh refund application within the prescribed time limit, that is, thirty days in terms of Circular No. 17/17/2017-GST dated 15.11.2017 in respect of deficiency memos issued on 16.1.2018. The petitioner by letter dated 13.3.2018 requested the third respondent to follow the proper procedure as envisaged under the provisions of the CG&ST Act read with CG&ST Rules. On 15.3.2018, the petitioner sent a reminder letter to the third respondent reiterating the contents of letter dated 15.3.2018 and also stated that the refund claims were rejected on the grounds not envisaged in law and withholding of credit was contrary to the Government objectives. On 22.3.2018, the officials of the petitioners met the third respondent and requested the finalisation of the refund claims by crediting the Electronic Credit Ledger through the common portal in terms of rule 93(2) of the CG&ST Rules. In furtherance thereof, the petitioner also addressed a letter dated 23.3.2018 to the third respondent. Since there was no response from the third respondent, the petitioner has filed the present petition seeking reliefs noted hereinabove.

10. At the outset Mr. Anand Nainawati, learned advocate for the petitioner submitted that the petitioner is not pressing the reliefs prayed for vide paragraph No.28 (a) and (b) of the petition and has confined the present petition to the relief claimed vide paragraph No.28(c).

10.1 It was submitted that the petitioner is only pressing

the alternative relief of re-crediting the amount of Rs.17,55,13,818/- on the basis of Form GST RFD-PMT 03 issued by the third respondent in their Electronic Credit Ledger at the time of filing of monthly summary return – GSTR 3B or for a direction to the third respondent to grant such re-credit immediately in Form GST RFD-01B. The attention of the court was invited to rule 93 of the CG&ST Rules, 2017 which provides for credit of the amount of rejected refund claim and reads thus:

“93. Credit of the amount of rejected refund claim

(1.) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation: For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.”

10.2 It was submitted that in terms of sub-rule(2) of rule 93, where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, is required to be re-credited to the Electronic Credit Ledger by an order made in Form GST PMT-03. It was submitted that in the present case, the petitioner having given up the challenge to the order rejecting the refund, the respondents are bound to re-credit the amount of Rs.17,55,13,818/- to the Electronic

Credit Ledger by an order made in Form GST PMT-03.

11. On the other hand, Mr. Nirzar Desai, learned senior standing counsel for the respondents, submitted that resort can be made to the provisions of rule 93 of the CG&ST Rules provided that in terms of the Explanation thereto, either the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal. It was submitted that in this case the petitioner has not submitted such undertaking with regard to non-filing of the appeal against the rejection order, and hence, in the absence of the requirements of rule 93 being fulfilled, the question of re-crediting the amount does not arise.

12. In the rejoinder, Mr. Nainawati invited the attention of the court to the status report of the complaint made by the petitioner to the Prime Minister's Office, Exhibit 3 to the affidavit-in-rejoinder, wherein it has been stated that the GST PMT-O3 has already been issued but the rejected amount has not been re-credited in the Electronic Credit Ledger since there is no mechanism to re-credit the rejected amount to the Electronic Credit Ledger of the claimant online on the common portal. It was submitted that re-credit has not been refused on the ground of non-compliance with the provisions of the Explanation to rule 93 of CG&ST Rules but on the ground that there is no mechanism to do so. It was submitted that if there is no mechanism for re-crediting the amount to the Electronic Credit Ledger, the petitioner may be permitted to manually take the credit.

13. In the light of the submissions made by the learned counsel for the respective parties, the sole controversy that remains to be decided in the present case is, whether the petitioner is entitled to re-credit of the amount of Rs.17,55,13,818/- on the basis of Form GST RFD-PMT 03 issued by the respondents in its Electronic Credit Ledger?

14. Sub-rule (2) of rule 93 of the CG&ST Rules provides that where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of the rejection, shall be re-credited to the Electronic Credit Ledger by an order made in FORM GST PMT-O3. The Explanation thereto says that for the purposes of the rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

15. In the present case, it is an admitted position that the petitioner has not filed any appeal, and hence, the question of the appeal being rejected does not arise. Insofar as giving an undertaking in writing to the proper officer that the petitioner shall not file an appeal is concerned, the learned counsel for the petitioner has stated before this court that the petitioner shall not file an appeal against the order rejecting its refund. Moreover, with a view to comply with the requirements of the Explanation to rule 93 of the CG&ST Rules, it would also file an undertaking as required.

16. However, as is apparent from the above referred

status report, the amount has not been re-credited not on account of non compliance with the provisions of the Explanation to rule 93 of the CG&ST Rules, but since there is no mechanism for re-crediting the amount to the Electronic Credit Ledger. In either case, the court is of the view that the petitioner is entitled to the alternative relief prayed for in the petition.

17. For the foregoing reasons, the petition succeeds and is accordingly allowed. The third respondent-Assistant Commissioner, CGST and Central Excise, Division I, Surat, is hereby directed to re-credit the amount of Rs.17,55,13,818/- to the Electronic Credit Ledger on the basis of Form GST RFD-PMT 03. To comply with the provisions of the Explanation to rule 93 of the CG&ST Rules, the petitioner shall file an undertaking as required. In case, it is not possible to re-credit the amount to the Electronic Credit Ledger, the petitioner shall be permitted to manually take credit of the aforesaid amount. This entire exercise shall be carried out on or before 19.04.2019. Rule is made absolute accordingly to the aforesaid extent, with no order as to costs. Direct service is permitted.

(HARSHA DEVANI, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR