

CALCUTTA HIGH COURT

W.P.A 2900 of 2023

Mr. Sunil Kumar Poddar-Appellant

Versus

The Additional Commissioner (Appeal) , Siliguri Appeal Commissionerate and Ors.-Respondent

Coram:AMRITA SINHA, J.

Date of order:30/01/2024

Decision-In Favour of Assessee

Held That: The petitioner sought a refund of unutilized Input Tax Credit for zero-rated supply but faced rejection due to failure in uploading shipping details. The court acknowledges the petitioner's genuine shipping bills and directs authorities to reconsider the refund, allowing amendment in Form GSTR-1 within eight weeks, emphasizing the need to accommodate genuine rectifications despite electronic system constraints. The writ petition is dismissed.

Appearance:

Dr. Avinash Podder Mr. Dhiraj Lakhotia Ms. Radhika Agarwal Ms. Khushi Kundu. for the Petitioner.

Mr. Ratan Banik Mr. Bishwaraj Agarwal. For the Respondent

JUDGMENT

1. The petitioner made zero rated supply of goods and seeks refund of the unutilized accumulated Input Tax Credit. He filed Form GST RFD-01 but his prayer stood rejected on the ground that the petitioner failed to upload the shipping details. The appeal preferred before the Additional Commissioner of CGST & CX, Siliguri Appeal Commissionerate also stood rejected vide order dated March 23, 2023.

2. The petitioner is aggrieved by the same. The petitioner has annexed in the writ petition the shipping bills of which he claims refund. As the bills could not be uploaded in the official portal, his claim for refund has been negated.
3. The appellate authority has relied upon the Circular No. 125/44/2019 dated November 18, 2019 wherein it has been clearly mentioned that in case of refund claim on account of export of goods without payment of tax, the shipping bill details shall be checked by the proper officer through ICEGATE SITE wherein the officer will be able to check details of EGM and shipping bill by keying in port name, shipping bill number and date.
4. In the said Circular it has been advised that while processing the refund claims, information contained in Table 9 of Form GSTR-1 of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable.
5. The petitioner has in his grounds of appeal before the appellate authority mentioned that due to wrong appreciation of the provision of law, the shipping details could not be uploaded at the time of seeking refund. Admittedly, the shipping bills were forwarded and annexed at the time of preferring the appeal.
6. The petitioner prays for setting aside the order passed by the appellate authority and further directing refund of the entire amount.
7. Learned advocate representing the CGST authority submits that as the petitioner failed to upload the relevant details in Form GSTR 1, accordingly, the claim of the petitioner stood rejected.
8. There is no provision under which the claim can be revived at this stage.
9. It has been submitted that as law requires submission of the shipping details for obtaining refund, the petitioner was legally bound to supply the details of the shipping bills. On account of non-incorporating the details of the shipping bills in the GSTR-1 in the GSTN portal, the prayer for refund of the petitioner has been rightly rejected. The respondents categorically deny that there was any technical glitch at the time of amendment of the requisite Form as alleged by the petitioner.
10. I have heard the submissions made on behalf both the parties.
11. In the present case, the petitioner has in his possession all the relevant shipping details but for the misconception of law the petitioner did not upload the shipping details at the time of claiming refund in Form GSTR-1.
12. According to the provisions of law, the shipping details are required to be uploaded.
13. It appears that after getting to know the mistake committed by him in not uploading the shipping details, the petitioner at one point of time tried to amend the GSTR-1 for the purpose of incorporating the shipping details, but the same was not permitted in the portal with the remark that ' you have already claimed refund against the shipping bill/bill of export, hence you cannot amend the details.'
14. It appears that on one hand the petitioner is not being permitted to amend the GSTR-1 and on the other hand hardcopies of the shipping bills submitted by the petitioner at the time of preferring appeal is not being considered. The authority at

the time of consideration of the appeal of the petitioner ought to have appreciated that the petitioner will not gain anything by holding back the shipping bills. The petitioner would lose a sum of nearly five crore of rupees on account of not uploading the shipping bills in proper time.

15. It is not the case of the respondents that the shipping bills were generated later on. It is also not the case that the shipping bills are not genuine.

16. If a tax payer possesses the valid shipping bills, but for some reason may not have been able to upload the same in Form GSTR 1 at the time of claiming refund, the law should not be so rigid so as not to permit the claimant to rectify the mistake that has been committed inadvertently. There is nothing on record to show that the petitioner deliberately did not upload the required details.

16. Circular No. 125 relied upon by the respondent authority mentions about the necessary check details which the petitioner ought to have complied with.

17. It has been highlighted by the respondent authorities that presently the entire system is being maintained electronically with hardly any manual intervention and, accordingly, at this stage it is not possible to take into consideration the shipping details of the petitioner manually.

18. The aforesaid contention of the respondents may be true but the authorities ought to have the power to remove difficulties in case a tax payer intends to avail the benefit as mandated in law.

19. Apart from the fact that the petitioner did not upload the shipping details in Form GSTR-1, there is no reason for withholding or rejecting the claim for refund sought for by the petitioner.

20. In view of the above, the respondent no. 2 being the Assistant Commissioner, CGST & Central Excise, Jalpaiguri Division is directed to take into consideration the hardcopy of the shipping bills submitted by the petitioner for consideration of his prayer for refund of the unutilized accumulated Input Tax Credit on account of zero rated supply.

21. The petitioner may be permitted to amend the details in Form GSTR-1 so that the authority can verify the genuineness of the shipping bills. If the bills relied upon by the petitioner are found to be genuine, then the aforesaid respondent shall consider the prayer of the petitioner for refund in accordance with law.

22. Steps shall be taken in the matter at the earliest but positively within a period of eight weeks from the date of communication of this order.

23. The writ petition stands dismissed. Affidavit-of-service filed in Court today is taken on record.

24. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.