

Denial of ITC refund on the grounds of technical glitches in GSTN software is unfair

The Hon'ble Madras High Court in *Tvl. Mehar Tex v. the Commissioner of CGST & Ors. [W.P.(MD) Nos. 22996, 22999 & 23001 of 2019 and W.M.P.(MD) Nos. 19733, 19736 & 19739 of 2019 dated March,18 2021]* set aside the order rejecting refund claim of CGST and IGST of the assessee wherein, the entire refund liability of Input Tax Credit (“ITC”) got auto populated under a single head i.e. State Goods and Services Tax (“SGST”) instead of SGST, Central Goods and Service Tax (“CGST”) and Integrated Goods and Services Tax (“IGST”). Held that, if the assessee was otherwise eligible to refund, the refund claim ought not to be denied on the ground of technical glitches and error occurred due to auto-population in Goods and Service Tax Network (“GSTN”) software. Nothing can be more unfair.

Facts:

Tvl. Mehar Tex (“**the Petitioner**”) is an exporter and has made zero rated sales during the months of October 2017, November 2017 and February 2018. Accordingly, Petitioner stated that he is entitled to refund claim of SGST for the October month, CGST for the November month and CGST, SGST and IGST for the February month. However, when the refund applications were uploaded, the entire claim got consolidated and figured under the head SGST alone.

While considering the refund applications, the Assistant Commissioner of GST and Central Excise (“**the Respondent**”) restricted the refund claim to the extent of the Petitioner's liability for the respective months only under the head of SGST under Rule 92 of the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”) and issued notice to show cause as to why refund of CGST and IGST should not be rejected. Subsequently the Petitioner replied to the above show cause notice stating that the entire refund claim got auto-populated under a single head of SGST.

However, the Respondent rejected the refund claims made in respect of CGST and IGST on the ground that the Petitioner has not furnished any documentary proof in support of his claims.

Being aggrieved with the order passed by the Respondent, this petition has been filed.

Issue:

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Whether the Petitioner's claim for refund of CGST and IGST can be denied on the ground that the entire refund amount got consolidated under one head i.e. SGST, due to the technical error and new system of software in GSTN?

Held:

The Hon'ble Madras High Court in ***W.P.(MD) Nos. 22996, 22999 & 23001 of 2019 and W.M.P.(MD) Nos. 19733, 19736 & 19739 of 2019 dated March 18, 2021*** held as under:

- Noted that, as per the order passed by the Respondent, the supporting invoices and documents furnished as proof of exports by the Petitioner were in order, therefore, the Petitioner is eligible to get refund claim under all three heads namely IGST, CGST and SGST.
- Observed that, the Petitioner cannot be expected to produce some proof, due to error the error on the part of any software in GSTN, wherein, the entire refund amount of ITC got auto-populated under the head of SGST instead of SGST, CGST and IGST.
- Further, noted that the Petitioner in reply to show cause notice had categorically stated that the entire refund amount got auto-population under single head of SGST. Moreover, the Petitioner had also filed the refund application manually.
- Held that, refund ought not to be denied only on the grounds of technical glitches and error that occurred due to auto-population. Nothing can be more unfair.
- Set aside the order passed by the Respondent to the extent that rejected the refund claim of the Petitioner. Remanded back the matter to the Respondent directed the Respondent to verify the Petitioner's refund claim and accordingly refund the amount to the Petitioner within a period of 8 weeks.

Relevant Provisions:

Rule 92 of the CGST Rules:

"92. Order sanctioning refund.-

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to

which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.

(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.

(2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund.

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.

Provided that the order issued in FORM GST RFD-06 shall not be required to be revalidated by the proper officer:

Provided further that the payment order in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).

(5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.”

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