

ITC for different financial years can be clubbed together for claiming refund under Rule 89(4) of the CGST Rules

The Hon'ble Bombay High Court in the case of *M/s. Sine Automation and Integration (P.) Ltd v. Union of India [Writ Petition No. 4655 of 2023 dated November 29, 2023]* allowed the writ petition and held that, as per Circular 135/05/2020-GST, dated March 31, 2020, ITC for different financial years can be clubbed together for claiming refund under Rule 89(4) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**").

Facts:

M/s. Sine Automation and Integration (P.) Ltd. ("**the Petitioner**") has filed an application for refund of unutilized ITC on export of goods under Letter of Undertaking (LOU). Vide order dated October 11, 2018, the Revenue Department ("**the Respondent**") granted the Petitioner 90 percent of the refund claim as provisional refund under Section 54(3) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). The Petitioner was issued a Show Cause Notice dated November 26, 2018, pertaining to rejection of the refund for the amount of Rs. 21,690/- . Thereafter, the refund sanction order dated December 6, 2018 ("**the Order**") was issued in favour of the Petitioner and after scrutiny, refund of Rs.1,30,08,858/- was sanctioned.

Aggrieved by the Order passed, the Respondent filed an appeal before the Commissioner of CGST. The Commissioner vide order-in-appeal dated September 18, 2020 ("**the Impugned Order**") directed the Petitioner to pay back the amount of refund already sanctioned along with interest.

Aggrieved by the Impugned Order, the Petitioner filed writ petition before the Hon'ble Bombay High Court on the ground that, the Refund Claim has been made by the Petitioner in accordance with Rule 89 (4) of the CGST Rules. The Petitioner has also claimed that the

Respondent has erred in applying the Circular 125/44/2019-GST dated November 18, 2019 (“the Circular”) in the present case.

Issue:

Whether ITC for different financial years can be clubbed together for claiming refund under Rule 89(4) of the CGST Rules?

Held:

The Hon’ble Bombay High Court in ***Writ Petition No. 4655 of 2023*** held as under:

- Opined that, the Petitioner was permitted to club the ITC credit available for the period prior to April 1, 2018, as the ITC with respect to the FY 2017-2018 was available to the Petitioner in the Electronic Credit Ledger. The Respondent was also required to take into consideration the clarifications issued vide Circular 135/05/2020-GST, dated March 31, 2020 (“the Subsequent Circular”) which dilutes the content of the Circular and states that the restriction imposed by the Circular pertaining to the restriction on bunching of refund claims across financial years shall not apply.
- Held that, the Impugned Order is not sustainable and liable to be set aside.
- Directed that, the appeal filed by the Respondent be restored and decided afresh, taking into consideration the effect of the Subsequent Circular.
- Further Directed that, the appeal be decided as expeditiously as possible within a period of four months. Also, it is stated that, till the time appeal is decided, the Respondent shall not take any coercive action on the basis of subsequent orders issued.

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