

## **Refund cannot be denied for an inadvertent error which was subsequently rectified**

The Hon'ble Delhi High Court in the matter of *M/s. Shri Shyam Footwear v. the Commissioner of Central Goods and Services Tax and Anr. [W.P. (C). 5845 of 2022 dated January 31, 2023]* has set aside the order of the Revenue Department rejecting the refund application of the assessee on the grounds that the rectified information submitted by the assessee was not taken into account while passing such order. Held that, the assessee cannot be penalised for an inadvertent error in submitting an erroneous information, which had already been rectified. Further that, it is essential for the Revenue Department to examine the information as submitted by the assessee and process its claim for refund of unutilized Input Tax Credit (“ITC”) in accordance with law.

### **Facts:**

M/s. Shri Shyam Footwear (“**the Petitioner**”) had filed a refund application pertaining to the period of October – December, 2020 in **FORM-GST-RFD-01** on April 7, 2021 claiming unutilised ITC as prescribed under the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”). The Revenue Department (“**the Respondent**”) denied the refund application on the ground that it was defective.

Consequently, a Show Cause Notice dated May 22, 2021 (“**the Impugned SCN**”) was issued highlighting the error made by the Petitioner. The Petitioner responded to the Impugned SCN in **FORM-GST-RFD-09** on June 7, 2021, accepting the error. Further, the Petitioner vide an annexure rectified the error on the Goods and Service Tax (“**GST**”) Portal. The Petitioner claimed that the reply to the Impugned SCN was reflected on the GST Portal but the annexure thereto was not reflected.

Being aggrieved, this petition has been filed.

The Petitioner contended that the Respondent had not taken note of the rectified information and issued an order dated June 07, 2021 (“**Order-in-Original**”) rejecting the refund claim. Further, the Petitioner had preferred an appeal before the Appellate Authority but it was rejected vide an order dated February 09, 2022 (“**Order-in-Appeal**”), but it was rejected on the ground that annexure was incomplete and it was necessary for processing the refund, and further, the Petitioner had failed to upload the same at the time of filing of the application.

**Issue:**

Whether the Order-in-Original and the Order-in-Appeal passed without taking into consideration the rectified information submitted by the Petitioner sustainable?

**Held:**

The Hon’ble Delhi High Court in ***W.P.(C) 5845/2022*** held as under:

- Observed that, the rectified information as submitted by the Petitioner was not taken into account while passing the Order-in-Original and the Order-in-Appeal.
- Noted that, it was essential for the Respondent to examine the rectified information submitted by the Petitioner and process its claim for refund in accordance with law.
- Held that, the Petitioner cannot be penalised for its inadvertent error in submitting the erroneous information, which was already rectified.
- Set aside the Order-in-Original and Order-in-Appeal.
- Remanded the matter back to the Respondent for fresh consideration.
- Permitted the Petitioner to submit a fresh copy of the rectified information to the Respondent.
- Directed the Respondent to process the refund within a period of 4 weeks.

- Further directed the Respondent to afford an opportunity of hearing to the Petitioner, in case the application for refund is rejected for any reason.

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