

Refund of ITC cannot be rejected without providing an opportunity of being heard to the assessee

The Hon'ble Rajasthan High Court in *M/s. Chandni Crafts v. Union of India and Anr. [D. B. Civil Writ Petition No. 5460/2020 dated January 17, 2023]* has quashed and set aside the order rejecting the refund claim of accumulated Input Tax Credit (“ITC”) on the grounds that the assessee was not given the opportunity of hearing by the Revenue Department. Further viewed that it is a well settled law that a failure of natural justice in the authority of the first instance cannot be cured by the sufficiency of natural justice in the appellate body. While allowing the writ petition, the Court quashed the impugned order. The matter was remanded back to the adjudicating authority to follow the provisions of Rule 92(3) of the Central Goods and Services Tax Rules, 2017 (“**the CGST Rules**”).

Facts:

M/s. Chandni Crafts (“**the Petitioner**”) had claimed a refund of accumulated ITC for the months of July 2017 and August 2017 amounting to INR 6,07,553/- and INR 8,78,605/-, as per Section 54(3) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) on account of export of goods under the letter of undertaking. The Revenue Department (“**the Respondent**”) partially sanctioned the refund claim vide order dated September 26, 2018, but rejected the refund claim for Integrated Goods and Service Tax (“**IGST**”) and Central Goods and Services Tax (“**CGST**”) vide Order-in- Original dated October 29, 2018 (“**the OIO**”).

Thereafter, the Petitioner preferred an appeal before the Appellate Authority, however, it was rejected vide the Order-in-Appeal (“**the OIA**”) on January 15, 2020.

Being aggrieved, this petition has been filed.

The Petitioner contended, that the refund was rejected without providing the opportunity for a hearing and that the Respondent has violated the provisions of Section 54(3) of the CGST Act

and Rule 92 (3) of the CGST Rules. Further contended that, Rule 92(3) envisages issuance of notice in **Form GST RFD-08** requiring the applicant to furnish a reply in **Form GST RFD-09** and after considering the reply, the order can be made in **Form GST RFD-06** and that no application for refund shall be rejected without giving the applicant an opportunity of being heard. The Petitioner stated that, the Appellate Authority had followed the principles of natural justice while passing the OIA.

The Respondent contended, that the Appellate Authority had considered all the issues raised by the Petitioner and that the mere fact that the respondent did not provide an opportunity of hearing to the Petitioner cannot be the sole reason for questioning the validity of the OIO and the OIA.

Issue:

Whether the rejection of the Petitioner's refund claim for accumulated ITC without providing an opportunity of hearing, violated the provisions of Section 54(3) of the CGST Act and Rule 92(3) of the CGST Rules?

Held:

The Hon'ble Rajasthan High Court in [***D. B. Civil Writ Petition No. 5460/2020***] held as under:

- Analysed Rule 92(3) of the CGST Rules, and noted that, the refund cannot be rejected without giving the applicant an opportunity to be heard.
- Observed that, the Respondent has failed to comply with Rule 92(3) of the CGST Rules.
- Noted that, principles of natural justice were not followed by the Respondent, but the Appellate Authority had adhered to it, however, it did not interfere with the OIO based on the violation of principles of natural justice.
- Relied on the judgment of the Hon'ble Supreme Court in ***63 Moon Technologies Ltd. v. Union of India [(2019) 18 SCC 401]***, wherein, it was noted that the breach or defect in

observing rules of natural justice in the trial, the administrative body cannot generally be cured by observing natural justice at the appellate stage, particularly when a clear statutory right has given at the trial stage of an assessment of compensation first by the prescribed authority and then a right of appeal to the Appellate Tribunal.

- Held that, a failure of natural justice in the authority of first instance cannot be cured by the sufficiency of natural justice in the appellate body, else the same would encourage the tendency of the authorities to give a short shrift to the proceedings before them.
- Remanded the matter back to the Respondent for fresh consideration as per Rule 92(3) of the CGST Rules and passed an order in accordance with the law.
- Quashed and set aside the OIO and the OIA.

Relevant Provisions:

Section 54(3) of the CGST Act:

“Refund of Tax

Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) 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:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. “

Rule 92(3) of the CGST Rules:

“Order sanctioning refund.-

*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.”

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