

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on : 27.08.2024
Pronounced on:25.09.2024**

**WP(C) No.2025/2020
CM No.7929/2020**

1. M/s Hallmark,
Road No.10, Sidco Complex, Phase-II,
Baribrahamana, District Samba,
through its authorized partner
Vimal Sachdeva, Age 65 years,
S/o Late Sh. Dev Raj,
R/o H.No.30-Extension, Karan Nagar,
Jammu.

...Petitioner(s)

Through: Mr. Vishal Goel and Mr. Dinesh Dogra,
Advocates.

versus

1. Jammu and Kashmir Goods and Services
Tax Department, Jammu-1,
through its Commissioner.
2. Assistant Commissioner,
Goods and Services Tax.

...Respondent(s)

Through: Mr. Jagpaul Singh, Advocate

**CORAM HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan – CJ(A)

1. The petitioner through the medium of present writ petition is seeking to quash deficiency memo (Form-GST-RFD-03) bearing reference No.Z00110200180922 dated 15.10.2020 issued by Assistant Commissioner, Goods and Services Tax, respondent No.2 herein, under Section 54 of Central Goods and Services Tax Act, 2017, whereby the application for refund of GST paid by the petitioner concern has been rejected on the ground of limitation. The petitioner is also seeking a direction to the respondents to process and release the GST refund of petitioner.

2. The facts, as projected in the writ petition, are that the petitioner is a partnership concern engaged in the business of manufacturing of garments under the name and style of M/s Hallmark and is registered under the Central Goods and Services Tax Act, 2017. It is averred that the petitioner concern also transact outside the State by selling the products manufactured by it and every sale made outside the state falls under the category of outward supply and the output tax is charged. In the event of return of the goods, if any, the tax in the shape of GST already deposited, is adjusted in the Tax Liability of the subsequent months. Further, in case on the date of filing of the final return, if any excess deposit of tax is there, a refund of the tax paid-in-excess is claimed.

3. The case of the petitioner concern is that during the months of January, February, March and July, 2018 the goods returned by the customers exceeded the outward supply though the output tax on those returned goods had already been charged by the J&K Goods and Services Tax Department. Since the tax in the shape of GST had already been deposited on those returned goods, the

same was to be adjusted as Tax Liability in the subsequent months. However, the same was not done in respect of those returned goods. Since there was excess deposit of tax by the petitioner concern, therefore, on the date of filing of the final return a refund of the tax paid-in-excess was to be claimed. In the present case, the petitioner concern filed the final GST return on 20.09.2018.

4. The further case of petitioner is that in terms of Section 54 of the Goods and Services Act, 2017, the limitation to file the refund application is two years from the relevant date. The petitioner concern under Rule 89 of Goods and Service Tax Rules, 2017 filed the application under proper format to respondent No.2 for refund of the tax paid-in-advance on 08.09.2020, i.e., within the period of limitation of two years with all requisite documents. The refund calculated was at Rs.2,91,650/-.

5. It is averred that respondent No.2 on 23.09.2020 issued a deficiency memo (Form-GST-RFD-03) under Rule 90(3) thereby demanding supporting documents and advised the petitioner to file fresh refund application after rectification of the deficiencies. Pursuant to the deficiency memo dated 23.09.2020, the petitioner concern filed a fresh refund application to respondent No.2 on 28.09.2020. However, respondent No.2 issued deficiency memo (Form-GST-RFD-03) bearing reference No.Z00110200180922 dated 15.10.2020, whereby the application for refund of GST of the petitioner concern came rejected under Section 54 of Central Goods and Services Tax Act, 2017, i.e., on the ground of limitation. Hence, the present petition.

6. Learned counsel appearing for petitioner concern argued that when respondent No.2 had himself permitted the petitioner concern on 23.09.2020 to file fresh application for refund of GST, he ought to have not rejected the same

on the ground of limitation. He further argued that the deficiency memo issued on 15.10.2020 had been issued beyond the statutory period as permissible under law.

7. Objections have been filed on behalf of respondents. It is averred that as per RFD-01 available on GST portal, the refund application came to be filed by the petitioner concern after two years from the relevant date, therefore, the same was barred by limitation in terms of Section 54 of CGST Act, 2017. It is further averred that Paragraph-9 of Circular No.125/44/2019-GST dated 18.11.2019 does not provide for any provisions/guidelines for issuance of personal hearing in case the tax payer was issued deficiency memo. Further, sub-rule (3) of Rule 90 of the CGST Rules only provides for communication of deficiencies in FORM GST RFD-03.

8. Heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the writ file.

9. Admittedly, neither during arguments nor in the objections the respondents have nowhere denied or disputed as regards the claim of excess deposit of tax by the petitioner concern during the months of January, February, March and July, 2018. The respondents have also not disputed the amount of tax paid-in-excess to the tune of Rs.2,91,650/-, rather respondent No.2 vide deficiency memo dated 15.10.2020 had rejected the application of petitioner concern for refund of GST only on the ground of limitation under Section 54 of Central Goods and Services Tax Act, 2017 (for short, CGST Act of 2017).

10. Therefore, before proceeding further, it would be appropriate to reproduce hereunder the relevant portion of Section 54 of CGST Act of 2017 from GST Manual, 12th Edition, Volume-1:

“Refund of tax.

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.”

11. It would also be relevant to reproduce hereunder Rule 90 of Central Goods and Services Tax Rules, 2017:

“90.(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

12. Admittedly, as per Section 54 of CGST Act of 2017, the application for refund of tax was to be filed before the expiry of two years from the relevant date. In the present case, the “relevant date” was the date of payment of tax in terms of Section 54(14), explanation 2(h), i.e., when the tax payers file the tax return to calculate their tax liability. The respondents also in paragraph-2E of their objections have specifically averred that the last date of filing the refund application is two years from the due date of furnishing of return. The petitioner concern, in the present petition, claims that it filed the final GST return on 20.09.2018. Therefore, in terms of Section 54 of CGST Act of 2017, the application for refund of tax was to be filed before the expiry of two years from the relevant date, i.e., the application was to be filed by or before 19.09.2020. A perusal of annexure IV to the writ petition, i.e., Form-GST-RFD-01 reveals that the petitioner concern filed the application for refund of tax on 08.09.2020, i.e., well before the expiry of two years from the relevant date.

13. However, respondent No.2 issued deficiency memo under Reference No. No.ZZ0109200344454 dated 23.09.2020 mentioning that supporting documents had not been attached with the application dated 08.09.2020. Respondent No.2 also directed the petitioner concern to explain under what circumstance the excess payment had been made and advised the petitioner concern to file a fresh refund application after rectification of above deficiencies.

14. It is to be seen here that respondent No.2 in the deficiency memo dated 23.09.2020 had no where mentioned that the application was barred by limitation in terms of Section 54 of CGST Act of 2017; meaning thereby when

the petitioner concern applied for refund of tax on 08.09.2020 the application for refund was certainly within time from the relevant date. Otherwise, the original application dated 08.09.2020 itself had to be dismissed as barred by time and no occasion had arisen for respondent No.2 to advise the petitioner concern to file fresh application along with supporting documents. Therefore, the first application dated 08.09.2020 was itself within time. Further, a perusal of application dated 08.09.2020 reveals that the petitioner concern had already annexed the supporting documents with the application, i.e., returns for January, February, March, June, July & August, 2018 as well as certificate of CA.

15. Be that as it may, the petitioner concern again filed the refund application on 28.09.2020 again attaching therewith the supporting documents, i.e., returns for January, February, March, June, July & August, 2018; certificate of CA as well as the explanation explaining circumstances under which the excess payment had been made. However, respondent No.2 issued deficiency memo (Form-GST-RFD-03) bearing reference No. Z00110200180922 dated 15.10.2020 under Section 54 CGST of 2017 thereby rejecting the application of petitioner concern for refund of GST on the ground of limitation.

16. It is very strange that in the deficiency memo dated 23.09.2020 the respondent No.2 did not take the ground of limitation or that the original application of petitioner concern dated 08.09.2020 was barred in terms of Section 54 of CGST Act of 2017, which leads to the conclusion that on 08.09.2020 the original application of petitioner concern for refund of GST was within time from the relevant date. However, the application dated

28.03.2020, which was filed on the asking of respondent No.2, was rejected by respondent No.2 only on the ground of limitation. Once the respondents had treated the original application dated 08.09.2020 as within time from the relevant date, then how the second application dated 28.09.2020, which was in continuation to the original application dated 08.09.2020 and was filed only on the advice of respondent No.2, became barred by limitation. Respondent No.2 has also failed to show from which date the application of petitioner concern became barred by time and how respondent No.2 took the relevant date.

17. The annexure attached with the petition reveal that the second application for refund of GST was filed by the petitioner concern only on the advice of respondent No.2 so as to sustain its claim. Therefore, the time limit for refund of GST will be determined from the date the original application came to be filed by the petitioner concern and not from the date of follow-up application. The follow-up application, which came to be filed by the petitioner concern only on the advice of respondent No.2, was in continuation to the proceedings related to the original application, as such the time period to claim the refund of GST was required to be determined based on the original application and not the follow-up application. Therefore, the follow-up application cannot be said to be a new application, rather the same was in continuation to the original application as the proceedings in the first application had not come to an end. If the proceedings under the first application had come to an end, then the second application cannot be taken to be in continuation of the first application. Further, the character or nature of the second application can in no way be said to be different from that of the original application, rather the same was part of the proceedings in

continuation to the first application. Therefore, the claim of petitioner concern can in no way be said to be barred by limitation.

18. What is held by a Division Bench of the High Court of New Delhi in paragraph-25 of WP(C) 871/2022, decided on 09.08.2023, in case, titled as, National Internet Exchange of India vs Union of India & ors., is relevant to reproduce hereunder:

“25. As noted above, in terms of Section 54(1) of the CGST Act, an application is required to be made in the prescribed form and manner before two years from the relevant date. It is clear that the petitioner had complied with the said requirement inasmuch as it had filed an application for refund on 31.10.2019 in the “form and manner” as prescribed in the CGST Act and the CGST Rules. Thus, in terms of Section 54(1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner.”

19. Similarly, what is held by a Division Bench of the High Court of New Delhi in paragraphs-27, 28 & 29 of WP(C) 3550/2023, decided on 06.04.2023, in case, titled as, Bharat Sanchar Nigam Limited vs Union of India & ors., is also relevant to reproduce hereunder:

“27. It is pointed out that the Adjudicating Authority had proceeded on the basis that it had communicated the deficiencies in Form GST RFD 03 on 31.01.2020 electronically and the said deficiency was resolved after the expiry of two years as stipulated in Section 54 of the CGST Act. The Adjudicating Authority had referred to Rule 90(3) of the Rules and had proceeded on the basis that the said Rule provides for filing of a fresh refund application after rectification of deficiencies. And, the date for filing the fresh application was required to be considered for the purpose of limitation.

28. We are of the view that Rule 90(3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application by a taxpayer as *non est*.

29. If the application filed is not deficient in material particulars, it cannot be treated as *non est*. If it is accompanied by the “*documentary evidences*” as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the application is required to be treated as *non est* for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued.”

20. As regards the claim of petitioner concern that no opportunity of being heard was afforded to it by the respondents before rejecting its claim, the respondents in their objections have specifically averred that in terms of Circular No.125/44/2019-GST dated 18.11.2019 the petitioner concern was not entitled for personal hearing. Thus, the respondents have themselves admitted that no opportunity of being heard was afforded to the petitioner concern before rejecting its claim for refund of tax paid-in-advance. Whereas, Rule-92(3) specifically provides that no application for refund shall be rejected without giving the applicant an opportunity of being heard. Therefore, on this score alone the impugned deficiency memo requires to be quashed.

21. Further, a perusal of the objections filed by the respondents reveals that the respondents have miserably failed to justify their action in rejecting the claim of petitioner concern. It seems the objections have been filed only for the sake of objections and was a mere formality; the same seem to be evasive in nature. In the objections the respondents have failed to aver anything about the first application filed by the petitioner concern on 08.09.2020. The objections only say that as per the GST portal the petitioner concern applied on

28.09.2020 and as per Section 54(1) of CGST Act of 2017 the same was barred by limitation and nothing else has been averred to controvert the claim of petitioner concern. A perusal of the objections reveals that the respondents instead of taking a particular stance to controvert the claim of petitioner concern tried to avoid the same by simply averring *no comments*, which leads to the conclusion that the respondents were avoiding to make a direct reply and the same is sufficient for this Court to draw an adverse inference. It seems that before filing the objections the respondents did not go through the case of petitioner concern thoroughly and have taken the matter very lightly.

22. As regards the contention of learned counsel for respondents that the present petition is not maintainable in view of the remedy available under Section 108 of CGST Act of 2017, it is to be seen here that the respondents in their objections have nowhere taken such a stand. Therefore, the respondents at this stage are debarred from taking such a stand.

23. Viewed thus, we deem it proper to allow the writ petition and quash deficiency memo (Form-GST-RFD-03) bearing reference No.Z00110200180922 dated 15.10.2020 issued by Assistant Commissioner, Goods and Services Tax. Ordered accordingly. Respondents, particularly respondent No.2 is directed to process and release the GST refund of petitioner along with interest at the rate of 7% from the date the same fell due to the petitioner concern till the date of its final realization. Connected CM, accordingly, stands disposed of.

24. Since the respondents have wrongfully withheld the amount of tax paid-in-excess by the petitioner concern, they are directed to bear and pay the costs to the petitioner concern through its authorized partner Vimal Sachdeva within

a period of two months from today after proper verification and identification, which are quantified at rupees thirty thousand. It is made clear that in case the respondents fail to deposit the costs in the Registry within the aforesaid period, Registrar (Judicial) is directed to frame a separate robkar against them, and after issuing notice to them, list the same before the Court.

Jammu
25.09.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Chief Justice (Acting)

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No