



(2024:HHC:3331-DB)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7919 of 2022

Decided on: 10.06.2024

M/s AMN Life Pvt. Ltd. ...Petitioner

Versus

Union of India & others ...Respondents

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice
The Hon'ble Mr. Justice Satyen Vaidya, Judge

Whether approved for reporting?

For the petitioner: Mr. Bharat Raichandani, Advocate,
 (through Video Conferencing) and
 Mr.Ishaan Kashyap, Advocate.

For the respondents: Mr. Vijay Arora, Senior Standing Counsel,
 for respondent nos.1, 3 to 5.
 Mr. Anup Rattan, Advocate General with
 Mr. Sushant Kaprate, Additional Advocate
 General, for respondent no.2-State.

M.S. Ramachandra Rao, Chief Justice (Oral)

In this writ petition, the petitioner assails order dt. 28.07.2022 passed by the 5th respondent declining to consider the applications for refund of GST for the financial years 2017-2018, 2018-2019 & 2020-2021 made through an email dt. 30.05.2022 on three grounds (a) that an application form i.e. RFD-01 had not been filed; (b) that the petitioner had got itself registered under the Central Goods and Services Tax Act, 2017 only on 21.10.2020 and had not been registered during the relevant period; and (c) refund applications have to be filed through electronic mode only and manual applications would not be entertained.

2. As regards the first and third contentions are concerned, the petitioner contends that it had informed the respondent on 30.05.2022 vide Annexure P-6 that it got registered with GST in October 2020 pursuant to acquisition of business undertaking from M/s Sozin Flora Pharma LLP, and the eligible ITC reflecting in the Electronic Credit Ledger in the books of Sozin was transferred to it by filing ITC-02; that it therefore wished to file GST refund application under “Inverted Duty Structure” for the financial years 2017-2018, 2018-2019 & 2020-2021, but since its GST registration was effective from October 2020, it was not able to file GST refund applications through online mode, but was forced to apply manually. It therefore stated that it was sending refund applications for the above referred financial years through separate emails and the same be considered.

3. We fail to see why the reasons assigned by the petitioner cannot be accepted for its inability to file refund applications in electronic mode/online mode and why its manual applications cannot be entertained having regard to Rule 97A of the Central Goods and Services Tax Rules, which specifically permits such manual filing of applications. This provision was ignored by the 5th respondent, who has instead placed reliance on a circular dt.

18.11.2019 mandating refund applications to be filed only electronically w.e.f. 26.09.2019.

4. It is elementary that a circular issued by the department cannot go contrary to a rule framed by the competent authority such as Rule 97A, and the 5th respondent ought not to have rejected the applications for refund for the financial years in question on the ground that a particular application form RFD-01 has not been filed or that the applications for refund were filed manually and not in electronic/online mode.

5. As regards this aspect, the Bombay High Court in *Laxmi Organic Industries Ltd. vs. Union of India & others*¹ as well as the Gujarat High Court in *M/s Ayana Pharma Ltd. vs. Union of India*² have held that 97A of Central Goods and Services Tax Rules prevail and would have to be taken into account by the assessing authority and he cannot insist on only electronic filing of refund application.

6. As regards the 2nd ground in the impugned order about the petitioner not being a registered person and therefore not entitled to seek refund under Section 54(3) is concerned, we may

¹2021-TIOL-2248-HC-MUM-GST

²2022-TIOL-715-HC-AHM-GST

refer to sub section (1) of Section 54, which permits any person to make an application for refund of tax.

7. Therefore the 5th respondent could not have refused to entertain the application of the petitioner for refund of unutilized input tax credit on the ground that the petitioner was not a “registered” person at the relevant point of time. The 5th respondent should also have taken note of Rule 41 which deals with instances of transfer of credit on amalgamation/ merger etc. of businesses/companies.

8. In this view of the matter, the Writ petition is allowed; impugned order dt. 28.07.2022 passed by the 5th respondent is set aside and the matter is remitted to the 5th respondent for fresh consideration on merits within four weeks from the date of receipt of copy of this order. The 5th respondent shall also pay costs of Rs.10,000/- to the petitioner within four weeks.

9. Pending application(s), if any, also stand(s) disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Satyen Vaidya)
Judge

June 10, 2024
(vt)