22.09.2026
Item No.9 (DL)
Court No.10
AJ.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

W.P.A. 15845 of 2023

Tirupati Vancom Private Limited & Anr.
-Vs-
The Deputy Commissiioner of State Tax & Ors.

Mr. Avra Mazumder,
Ms. Alisha Das,
Ms. Vedika Agarweal,
Ms. Elina Dey,
Ms. Rupomita Ghosh,
Ms. Saakshi Shaw.
... for the petitioners.
Ms. Manasi Mukherjee,
Mr. Bijitesh Mukherjee.
....for the State.

1. The petitioners in the instant case challenge inter alia, the Order dated 20.05.2022 passed in an application filed for rectification of the Appellate Order dated 19.02.2022.

2. The petitioners are registered under the Goods and Services Tax Act with effect of 01.07.2017 and are engaged in the business of manufacturing and exporting fly ash and fly ash bricks.

3. The petitioners made an application for refund of accumulated / unutilized Input Tax Credit (ITC) of Rs. 49,60,054/- claimed on export of goods without payment of IGST, under Letter of Undertaking, for the period from 01.12.2019 to 31.03.2020 in Form GST RSD-01 on 24.09.2020.

4. On 25.09.2020, the respondent authorities issued a Show Cause Notice in form GST RSD-08 on the GST Portal, alleging it inadmissibility of

refund on the ground that manual shipping bill records were not found in ICEGATE tracking.

5. A further email was sent by the respondent authorities on 25.09.2020 for expeditious disposal of the refund application, requesting inter alia the petitioners to file a summary sheet. Accordingly, the summary sheet was duly filed and forwarded by the petitioners to the concerned authority on 12.10.2020 via email.

6. The petitioners filed a reply electronically in response to the Show Cause Notice dated 25.09.2020. Subsequently, by an Order dated 23.11.2020, the Adjudicating Authority rejected the refund application.

7. Being aggrieved thereby, the petitioners preferred an appeal on 20.02.2021. The said appeal was heard and disposed of on 19.02.2022 by uploading the Order on the portal, thereby affirming the Order dated 23.11.2020 passed by the Adjudicating Authority.

8. Thereafter, a rectification application under Section 161 of the CGST Act was filed on 28.03.2022 on the grounds stated therein and the same was disposed of by the concerned authority on 20.05.2022, which is the subject matter of challenge in the present Writ Petition.

9. The Learned Counsel appearing for the petitioners submit that the impugned Rectification Order dated 20.05.2022 suffers from

perversity and has been passed without proper application of mind. The Appellate Order has been passed verbatim and mechanically reproduces the order passed by the Adjudicating Authority.

10. It is further submitted that the appellate authority had expanded the scope of the Show Cause Notice by going beyond the allegation mentioned therein, which is not permissible in the eye of law. The Appellate Authority has taken certain additional grounds relating to Rule 96A of the CGST Rules, 2017 including Rule 96B and Rule 89(4)(c) which never formed part of the Show Cause Notice, as a result of which the petitioners were unable to rebut the same.

11. Invocation of Rule 96B and Rule 89(4)(c) is not applicable to the present case, as the said provision have come into effect much after the period involved herein i.e. December 2019 to March 2020.

12. In respect of Rule 96A, the Learned Advocate for the petitioners submit that the export has been made within three months from the date of invoice and the same has been duly complied with, as is evident from the confirmation received from the export authority vide letter dated 30.03.2022.

13. Since the exports were made under Letter of Undertaking, the petitioners subsequently furnished evidence relating to export realization.

The alleged delay in updating EGM / ICEGATE cannot ipso facto defeat the substantive claim for refund made by the petitioners.

14. The Learned Counsel appearing for the petitioners contends that the factum of export has been established through Shipping Bills, EGM, Export records and other documentary evidence and thus the substantive tax benefit cannot be denied where actual export is established. The refund cannot be denied merely because of a procedural or technical discrepancy in the Customs/ ICEGATE Portal. The petitioners having established their bonafides to claim the refund, their interest cannot be defeated and they are entitled to have the refund along with interest as contemplated under Section 56 of the CGST Act, 2017 read with corresponding provisions of the WBGST Act, 2017 by computing interest from the date immediately following the expiry of the said period of 60 days i.e. 26.11.2020 till the date of actual grant / realization of the refund which has been withheld by the respondent authorities. Such action of withholding the refunds is de hors the principles of natural justice and violative of Articles 14 and 300A of the Constitution of India and is thus liable to be set aside.

15. The Learned Counsel appearing for the state respondents vehemently opposes the contentions made by the Learned Advocate appearing for the

petitioners and submits that the decision taken by the appellate authority does not suffer from any infirmity or material irregularity and the same has been rightly passed, since the petitioners are not entitled to avail the tax benefit by way of refund, as the petitioners has failed to produce the relevant documents for consideration of their claim of refund of accumulated / unutilized ITC on export of goods for the period from December 2019 to March 2020.

16. The Learned Counsel appearing for the state respondents also raised an objection as to the maintainability of the Writ Petition, since the Appellate Tribunal is functional and the petitioners can prefer an appeal under Section 112 of the CGST / WBGST Act before the Appellate Tribunal for redressal of their grievances.

17. It is further submitted that the scope of invoking Articles 226 of the Constitution of India is very limited and the petitioners have not been able to demonstrate any exceptional circumstances for entertaining the Writ Petition as per the principles laid down in Whirlpool Corporation vs. Registrar of Trademarks.

18. It is further submitted that the appellants failed to produce any domestic sale invoice and also that realization of export proceeds was beyond the stipulated period as laid down under

Rule 96B of the WBGST Rules, since the appellants did not pay tax along with interest as per the said Rule, and as a result of which the turnover of zero rated supply of goods could not be determined.

19. Though the appellants made an attempt to establish that the value was within the range, the same could be substantiated in the absence of supporting documents for the appellate authority to arrive at a conclusion and a logical finding to enable the petitioners to claim the refunds.

20. It is submitted that even before the adjudicating authority, the petitioners could not improve their case with regard to the claim for refund by demonstrating relevant materials to arrive at a conclusive finding.

21. After hearing the rival contention of all the parties and upon perusing the materials on records, this Court has taken note of all the relevant documents including the order passed by the Appellate Authority and the documents annexed to the Writ Petition pertaining to the refund of claim for export of goods to the tune of Rs. 49,60,054/- for the period from December 2019 to March 2020. This Court is of the considered view that the Show Cause Notice forms the foundational basis of the entire proceeding and if any, allegation is made beyond

the Show Cause Notice, it renders the entire procedures OTIOSE as unsustainable in law.

22. The petitioners have already furnished reply to the Show Cause Notice. Since the scope of the Show Cause Notice has been found to be expanded by the Appellate Authority, the petitioners did not get an opportunity to rebut such allegation by filing an appropriate reply to demonstrate their stand with regard to the allegation which have been taken at the stage of appeal.

23. In view of the above, this Court finds that the Orders dated 23.11.2020 and 19.02.2022 passed by the respondent Nos. 1 and 2 are hereby set aside, since the Orders suffers from arbitrariness, illegality and perversity and the same are not sustainable in the eye of law.

24. This Court direct the petitioners to file a comprehensive and detailed reply to the Show Cause Notice dated 25.09.2020, along with detailed submission in respect of the additional grounds taken by the Appellate Authority in the impugned order, mainly on Rule 96A, Rule 96B and Rule 89(4)(c) of the CGST Rules, 2017 corresponding to WBGST Rules, 2017 within a period of 7 days from date before the respondent No. 1 and the same shall be considered and disposed of by passing a reasoned and speaking order in accordance with law within a period of 4

weeks thereafter, after affording an 0pportuntiy of personal hearing to the petitioners and other stakeholders, if any, and such decision shall be communicated within a week thereafter.

25. With the above observations and directions, the Writ Petition stand disposed of without going into the merits of the case.

26. However, it is made clear that the respondent No. 1 shall not be influenced by the observations made hereinabove and shall take an independent decision at the time of adjudication, to arrive at a logical and conclusive finding upon examination and scrutiny of the relevant consignment records, including the applicability of Rule 96A, Rule 96B, Rule 89(4)(c) of CGST /WBGST Rules, 2017 and if the petitioners are found eligible and entitled to refund of accumulated unutilized ITC of Rs. 49,60,054/- claimed on export of goods for the period December 2019 to March 2020, the same shall be disbursed along with interest in terms of Section 66 of the CGST Act, 2017.

27. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Smita Das De, J.)