



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 36200 OF 2023
WITH
WRIT PETITION NO. 4454 OF 2024
WITH
WRIT PETITION NO. 4467 OF 2024
WITH
WRIT PETITION NO. 4804 OF 2024
WITH
WRIT PETITION NO. 4911 OF 2024
WITH
WRIT PETITION NO. 5111 OF 2024
WITH
WRIT PETITION NO. 3440 OF 2025

K Line India Pvt. Ltd.

...Petitioner

Vs

Union of India & Ors.

...Respondents

Mr. Bharat Raichandani a/w. Mr. Suraj Ghadigaonkar for the petitioner.

Mr. Subir Kumar a/w. Ms. Niyanta Trivedi for the respondent.

Mr. Himanshu Takke, AGP for the State in WPL/36200/2023, WP/4454/2024 and WP/4911/2024.

Mr. Mohit Jadhav, Addl. G.P. for the State in WP/4467/2024 and WP.4804/2024.

Mr. Amar Mishra, AGP for the State in WP/5111/2024.

Ms. Jaymala Ostwal, Addl. G.P. for the State in WP/3440/2025.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 15 APRIL 2026.

Oral Judgment (Per G.S. Kulkarni, J.)

1. These petitions, filed by the common petitioner, involve common questions of law and fact, hence they are being disposed of by this common order.

Writ Petition (L) No. 36200 of 2023 is argued as a lead matter. For convenience, we refer to the facts of the said petition in adjudicating the present batch of

petitions.

2. The issue which falls for consideration of this Court in the present proceedings pertains to the action of the department in rejecting the petitioner's refund application, by an order in original. The said order was assailed by the petitioner by filing appeals, however, the appeals came to be rejected by the impugned order dated 31 July, 2023, on the ground that they were barred by limitation in view of the provisions of Section 107(1) of the CGST Act, 2017.

3. The facts relevant for the adjudication of these petitions need to be set out: The petitioner is a company engaged in the business of providing bulk carrier, container carrier and shipping services at various ports in India. The petitioner contends that in December 2017, it supplied services to SEZ unit, which were zero-rated supplies, on payment of IGST. Consequently, the petitioner contends that it became entitled to the refund of tax so paid. Accordingly, on 28 August, 2018, the petitioner filed refund application in respect of such IGST paid for December, 2017, in Writ Petition (L) No. 36200 of 2023, amounting to Rs.2,70,040/-. The petitioner contends that the said refund application was required to be considered and decided in accordance with the procedure as prescribed under Rule 92 of the CGST Rules, 2017, which provides for 'issuance of an order sanctioning the refund'. More importantly, it is the petitioner's case that, read with the proviso thereto, the said provision mandates that, in the event the refund, or any part thereof, is found to be inadmissible, the petitioner must be informed by issuance of a deficiency memo and be afforded an opportunity of a

hearing.

4. It is the petitioner's case that overlooking such mandate of Rule 92, respondent no. 4, without issuing any deficiency memo or show cause notice, passed an ex-parte order dated 13 September, 2019 rejecting the refund application. Such order was received by the petitioner on 25 September, 2019. The petitioner contends that the said order was not uploaded on the GST portal., however, it is not in dispute that the order was physically served on the petitioner and duly received. In these circumstances, the petitioner states that on 31 January, 2020, i.e., approximately three months after the passing of order of rejection of the refund applications, the petitioner sought to rectify the refund application and accordingly submitted the requisite documents. It also transpired that on 12 February, 2020, the petitioner filed a fresh refund application. Significantly, on 27 February, 2020, the designated officer issued a deficiency memo on the fresh refund application as filed by the petitioner, as also called upon the petitioner to furnish a copy of the appeal order in its favour. The said deficiency memo is required to be noted, which reads thus:

**"FORM-GST-RFD-03
(See rule 90(3))
Deficiency Memo**

Reference no.: ZY2702200348857

Date: 27/02/2020 6:01 pm

To
27AADCK3559Q1ZU
K LINE INDIA PRIVATE LIMITED
UNIT NO. 1001, C WING, 10TH FLOOR
MARATHON FUTUREX,
MAFATLAL MILLS COMPOUND
N M JOSHI MARG, LOWER PAREL,
Mumbai City, 27, 400013

Subject : Refund Application Reference NO. (ARN) AA270220042534P
dated 27/02/2020 6:01 pm – reg.

Sir/Madam, This has reference to your above mentioned application filed under section 54 of the Act. Upon scrutiny of your application, certain deficiencies have been noticed below:

Sr.No.	Description (select the reason from the drop down of the Refund application)
1	Others

You are advised to file a fresh refund application after rectification of above deficiencies.

Remarks : Assessee has not provided copy of appeal order in their favour.

Date : 27/02/2020 6:01 pm
Place: DIVISION III

Signature(DSC)
Name of Proper Officer: Durgesh Yadav Salunke
Designation : Assistant Commissioner
Office Address : DIVISION III"

5. However, a further action on the deficiency memo was not taken. As the deficiency memo recorded that the petitioner was required to provide a copy of the order in appeal, it appears that the petitioner was advised to file an appeal before the First Appellate Authority assailing the refund rejection order dated 13 September, 2019, which came to be filed on 27 March, 2023. The said appeal was admittedly filed beyond the period of limitation as prescribed under Section 107 of the CGST Act. The appeal, along with an application for condonation of delay, was filed manually for the reason that the original order rejecting the petitioner's refund application was not uploaded on the GST portal.

6. By the impugned order dated 31 July, 2023 (issued on 11 August, 2023), the Appellate Authority rejected the petitioner's application on the ground that it was filed beyond the prescribed period of limitation, as the petitioner had not

approached the appropriate authority seeking condonation of the delay, which, in the present case, exceeded 39 months. The operative order is required to be noted, which reads thus:

“6. **ORDER**

By respectfully following the above judgments, I hold that this appellate authority cannot condone delay beyond further period of one month as prescribed under proviso to Section 107(4) of the Act. Thus, the appeal filed by the appellant is required to be dismissed on the grounds of limitation as not filed within the prescribed time limit in terms of the provisions of Section 107 of the CGST Act, 2017. I, accordingly, dismiss the present appeal.”

7. It is in these circumstances, the present petition is filed praying for the following substantive reliefs, which read thus:

“(a) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions set aside and quash the impugned order-in-appeal dated 31.07.2023 issued by Respondent No. 3 (Exhibit "A1");

(b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions set aside and quash the impugned ex-parte refund rejection order 13.09.2019 issued by Respondent No. 4 (Exhibit "A2");

(c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions hold that the limitation period for filing the appeal under Section 107 of the CGST Act, 2017 commence only from the date of uploading the adjudication order on GST portal;

(d) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions condone the delay, if any, in filing of appeal before the Respondent No. 3;

(e) that this Hon'ble Court be pleased to issue a Writ of certiorari/mandamus or any other appropriate Writ/order/direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after perusing the same direct the Respondent No. 3 & 4 to sanction the refund, along with interest forthwith;"

8. Mr. Raichandani, learned counsel for the petitioner, submits that the initial order rejecting the petitioner's refund application is defective and not in accordance with the requirements of Rule 92 of CGST Rules, 2017. He contends that once the original order rejecting the refund application was void *ab-initio* and, consequently, non est, the petitioner ought not to be barred from pursuing its refund application and more particularly, in the peculiar facts of the present case, where the department itself accepted the subsequent refund application and issued a deficiency memo dated 27 February, 2020, which has not been taken to its logical conclusion. He fairly submits that although the petitioner was advised to file an appeal against the rejection order, such appeal in the circumstances was filed belatedly. He submits that in the fact situation, the petitioner deserves to be granted condonation of delay, by this Court exercising its jurisdiction under Article 226 of the Constitution of India, especially when the initial order of rejection itself is non-est and void *ab initio*.

9. Thus, Mr. Raichandani's contention is two fold, firstly, that the original order dated 13 September, 2019 rejecting the refund application (dates of the order may vary in other petitions, though the orders are identical) is void *ab initio*, and therefore there was no bar on the petitioner pursuing its claim for refund. He submits that in fact, the department entertained the subsequent

refund application dated 12 February, 2020, on which a deficiency memo was issued to the petitioner, which has not been taken to the logical conclusion. Secondly, this is a fit case for the Court to exercise jurisdiction under Article 226 of the Constitution to hold that the appeal filed by the petitioner ought to be adjudicated on merits after condoning the delay.

10. Thus, if the contention of Mr. Raichandani is considered on both the counts, the effect is that the designated officer, namely, the Deputy Commissioner needs to consider the refund application in accordance with law and pass an appropriate order as mandated by law in the facts and circumstances of the case. In support of his submission that the impugned rejection order is required to be held to be non-est and/or void ab initio, Mr. Raichandani has placed reliance on the decision of the co-ordinate Bench of this Court in **M/s. Knowledge Capital Services Pvt. Ltd. vs. Union of India & Ors.**¹, in which the Court considered the purport and requirement of Rule 92(3) of the CGST Rules, 2017 in the Designated Officer passing an order sanctioning refund, to the effect that it would be incumbent for the Designated Officer to provide a deficiency memo, as also it would be necessary to grant an opportunity of personal hearing before the refund application is rejected. According to Mr. Raichandani, in the present case, there is certainly a breach of Rule 92(3), as neither a deficiency memo was issued nor any hearing granted to the petitioner prior to the rejection order dated 13 September, 2019.

¹ 2023 (4) TMI 752

11. On the other hand, Mr. Subir Kumar, learned counsel for the respondent has supported the impugned order. He submits that the Appellate Authority has rightly rejected the appeal on the ground that it was barred by delay and there was no jurisdiction to condone the period of such delay. He would submit that the original order would be required to be held to be appropriate, hence the petitioner was not entitled for refund. Mr. Subir Kumar, however, would not dispute that the petitioner has filed subsequent refund application on which a deficiency memo was issued. Mr. Subir Kumar would also be not in a position to justify from the record that while passing the order dated 13 September, 2019, the Designated Officer complied with the mandate of Rule 92 of the CGST Rules.

12. Having heard learned counsel for the parties and having perused the record, we find that the present proceedings are quite peculiar. There appears to be substance in the contention of Mr. Raichandani that the ex-parte refund rejection order dated 13 September, 2019 cannot be regarded as valid when tested on the anvil of Rule 92(3) of the CGST Rules. There is nothing on record to indicate that the Designated Officer has issued any deficiency memo prior to rejecting the refund application of the petitioner. Admittedly, no hearing was granted to the petitioner before passing the order.

13. Further, although the order was physically served on the petitioner and an appellate remedy was available, it is relevant that the period from March 2020 was affected by the Covid-19 pandemic. In regard to the said period, the Supreme

Court passed orders extending the period of limitation (see **Re : Cognizance for Extension of Limitation²**). Thus, although the petitioner filed an appeal and belatedly, we find substance in the petitioner's contention that once the original order is void *ab initio* and non-est in law, the subsequent refund application filed by the petitioner, on which the deficiency memo was issued and which was not rejected by the department, ought to be valid and taken to its logical conclusion, in accordance with law.

14. As the Designated Officer has already issued deficiency memo dated 27 February, 2020, we find ourselves in agreement with the petitioner's contention referring to the decision of the co-ordinate Bench in **M/s. Knowledge Capital Services Pvt. Ltd.** (supra) wherein the Court considered the obligation which would be required to be discharged by the designated officer in considering the refund application and passing an order sanctioning the refund, namely, the requirement of issuing of the deficiency memo and an opportunity of a hearing be granted to the petitioner before the application is to be rejected. Admittedly, such requirements were not complied.

15. Thus, we are of the opinion that the petitioner ought not to suffer injustice on a too pedantic view of the matter, as in our opinion, strict adherence to the rules was certainly a *sine qua non* insofar as the initial decision taken on the refund application was concerned, which has not been adhered in passing the said order dated 13 September, 2019. It is also not the case that the petitioner was

2 (2020) 19 SCC 10

sleeping over its rights when the petitioner immediately moved an application dated 31 January, 2020 seeking to rectify the refund application and making a fresh application immediately on 12 February, 2020 which was just a month prior to the beginning of the Covid-19 pandemic, and on which the deficiency memo dated 27 February, 2020 was issued. In these circumstances, in our opinion, the application of the petitioner for refund ought to have been considered, when the same was sought to be entertained by the Designated Officer.

16. There is one more aspect, which we need to note that as per the requirements of law, the rejection was required to be uploaded on the GST portal, which was not uploaded in the present case. This was also pointed out by the petitioner to the designated authority and to the appellate authority.

17. Thus, taking an overall view of the matter, in our opinion, it would be necessary that the basic rights of the petitioner/assessee as conferred by law would be required to be recognized, namely, that the petitioner's refund application would be required to be dealt only in the manner as the rules (supra) would provide, as held by this Court in **M/s. Knowledge Capital Services Pvt. Ltd.** (supra). This more particularly, when in the present case it is clear that the petitioner was asserting its rights and was pursuing the matter throughout in the manner, the law needs to recognize. In such circumstances, in our opinion, the refund application as filed by the petitioner subsequent to the rejection dated 13 September, 2019 on which a deficiency memo has been issued, needs to be taken to its logical conclusion and decided in accordance with law. We are, accordingly,

inclined to dispose of these petitions considering the peculiar facts of the case in terms of the following order:

ORDER

(i) The refund application dated 12 February, 2020 as filed by the petitioner on which deficiency memo dated 27 February, 2020 was issued and/or the subsequent applications filed by the petitioner seeking refund, be decided by the Designated Officer in accordance with law within a period of six weeks from the date the copy of this order is presented.

(ii) An order be passed on such refund application as per the provisions of rules and more particularly, Rules 90 and 92 of the CGST Rules without being influenced by the order dated 13 September, 2019 as also the order passed by the Appellate Authority dated 31 July, 2023.

(iii) All contentions of the parties on such proceedings are expressly kept open.

18. The petitions stand disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)