

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29.03.2023

W.P.(C) 6856/2022

OHMI INDUSTRIES ASIA PRIVATE LIMITED

.... Petitioner

Through: Mr. Sparsh Bhargava, Adv.

versus

ASSISTANT COMMISSIONER, CGST

.... Respondent

Through: Mr. Anish Roy, Senior Standing Counsel, CBIC.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition impugning an order dated 26.11.2021 (Order-in-Appeal No. 384/JC/Central Tax/Appl-I/Delhi/2020) passed by the Appellate Authority whereby the petitioner's appeal against the order dated 30.07.2020 (Refund Rejection Order) was rejected.

2. The petitioner had filed an application dated 29.05.2020 seeking refund of and amount of ₹ 3,99,187/- being the integrated tax paid on the export of services (zero rated supply) in respect of the invoices raised in the month of October 2018. The petitioner had received the Foreign Inward Remittance against the said invoices in November, 2018.

3. The Adjudicating Authority issued a Deficiency Memo calling upon the petitioner to furnish the Foreign Inward Remittance Certificate.

4. The petitioner complied with the same.

5. Thereafter, the Adjudicating Authority issued a Show Cause Notice setting out certain queries with regard to the difference in the payment of tax, and as reflected in 'Annexure B'. The Adjudicating Authority also raised a query on the ground that the Input Tax Credit (hereafter '**ITC**') shown in respect of four invoices was not reflected in the corresponding GSTR 2A of August, 2018 to October, 2018 filed by the petitioner.

6. The petitioner provided the necessary clarifications by a letter dated 21.07.2020.

7. Notwithstanding the same, the Adjudicating Authority rejected the petitioner's claim for refund of integrated tax by the order dated 30.07.2020. The said order passed by the Adjudicating Authority indicates that the Adjudicating Authority had verified that the petitioner had paid integrated tax amounting to ₹12,02,165/- in respect of invoices raised in the month of October, 2018. The same were also reflected in GSTR 3B in respect of the said month.

8. Thus, there is no dispute that the petitioner had discharged his tax liability in relation to zero rated supplies for the month of October, 2018. There was no cavil with regard to the petitioner's entitlement to refund; however, the Adjudicating Authority had while determining the quantum of the refund applied the formula under Rule 89(4) of the Central Goods and Services Tax Rules, 2017 (hereafter '**Rules**') and had rejected the petitioner's claim by referring to Sub-clause (D) of Rule 89(4) of the Rules on the ground that the turnover reflected for the month of October, 2018 ought to be considered as the turnover for the month of November, 2018 when the remittances were received.

9. The relevant extract of the impugned order is set out below:

***"11.1 Consideration of reply in para 2.1***

XXXX XXXX XXXX

b) Now as per **Rule 96(9) read with Sub-Clause (D) of Rule 89(4)** of CGST Rule 2017, the **Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services**, whereas in the instant case the payments received is either in the month of **November 2018 or June 2020** (as stated in 11.1(a)) , both of which is not the refund claimed period (i.e. October 2018).

c) Therefore there is no export of services done during the relevant refund claimed period i.e. in October 2018 as per **Rule 96(9) read with Sub-Clause (D) of Rule 89(4)** of CGST Rule 2017. Since the requirement of export of services itself is not fulfilled during the refund claimed period, and hence the reply of the party in Para 2.1(i),(ii),(iii) is not discussed.

XXXX XXXX XXXX”

10. The petitioner appealed against the said decision *inter alia* contending that the petitioner was seeking refund of integrated tax in respect of zero rated supplies made after the payment of integrated tax under the Integrated Goods and Services Tax Act, 2017 (hereafter ‘**IGST Act**’) and that Rule 89(4) of the Rules did not apply. The petitioner submitted that Rule 89(4) of the Rules applied only for refund in respect to exports made without payment of integrated tax. The petitioner pointed out that it was not seeking refund of accumulated ITC but integrated tax as paid by him and that there was no dispute that the petitioner had discharged his liability of payment of integrated tax.

11. It is relevant to refer to Rule 89(4) of the Rules which reads as under:

“(4) In the case of zero rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula-

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services ) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) “Refund amount” means the maximum refund that is admissible;

(B) “Net ITC” means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) “Turnover of zero-rated supply of services” means that value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

(E) “Adjusted Total Turnover” means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed."

12. The opening sentence of Rule 89(4) of the Rules makes it amply clear that it applies only in cases of zero rated supply of goods or services, without payment of tax under bond or letter of undertaking. We find merit in the petitioner's contention that Rule 89(4) of the Rules is inapplicable to cases of refund of integrated tax paid on zero rated supply.

13. However, the Appellate Authority failed to address the said contention and proceeded to mechanically reject the petitioner's appeal on, *ex facie*, erroneous assumption that the petitioner was seeking refund of accumulated ITC.

14. The relevant extract of paragraph 5 of the impugned order, which reflects the reasoning and the conclusion of the Appellate Authority to reject the petitioner's appeal, reads as under:

**"5.Discussion and Findings:** -I have carefully gone through the facts available on records, appeal memorandum and submission given by the appellant. I find that, M/s. Ohmi Industries Asia Private Limited 4th Floor, 415, International Trade Tower, Nehru Place, Delhi -110019 is registered with the GST department vide GSTN No. 07AABC06743JIZ8. The appellant has filed refund claim vide ARN No. AA0706200269961 dated 18/06/20 amounting to Rs.3,99,187/- on account of ITC accumulated on export of service without payment of tax for the month of October'2018. The Assistant/Deputy Commissioner, Division-Nehru Place, CGST Delhi East Commissionerate vide Order in Original CT/NP/R-169/GST Ref/Ohmi/2020-21 dated 30/07/2020 rejected the refund amounting to Rs.3,99,187/-....."

15. It is clear from the above that the impugned order cannot be sustained.

16. The same is, accordingly, set aside.

17. The appeal filed by the petitioner is remanded to the Appellate Authority to decide afresh in view of the observations made in this order.

18. The petition is disposed of in the aforesaid terms.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J MARCH 29, 2023**