

IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 10.03.2023*

+ **W.P.(C) 10407/2022**

M/S BALAJI EXIM

..... Petitioner

Versus

COMMISSIONER, CGST AND ORS.

..... Respondents

AND

+ **W.P.(C) 10423/2022**

M/S BALAJI EXIM

..... Petitioner

Versus

COMMISSIONER, CGST AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Abhas Mishra, Ms. Aakriti P. Mishra
and Mr. Shyam Bhageria, Advs

For the Respondents : Mr. Aditya Singla, Senior Standing Counsel
with Ms. A. Sahitya Veena, Adv. for R- 1
and 2.

Ms. Nidhi Banga, Senior Panel Counsel, UOI
with Mr. Nishant Kumar, Adv. for R-3.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petitions impugning the common Order-In-Appeal dated 31.03.2022 (Order-In-Appeal No.347-

348/2021-22 – hereafter ‘**the impugned order**’), whereby two separate appeals preferred by the petitioner against the Order-In-Original Nos. ZU0707210034420 dated 03.07.2021 and ZT0707210034442 dated 02.07.2021, respectively were dismissed.

2. Although the petitioner has a statutory right to appeal the impugned order, it is not possible for the petitioner to avail the said remedy as the Tribunal has not been constituted.

3. The petitioner had filed its refund application dated 11.09.2020 (in Form – GST-RFD – 01) seeking refund of the unutilized Input Tax Credit (hereafter ‘**ITC**’) amounting to ₹72,03,961/-, which comprised of Integrated Goods and Service Tax (hereafter ‘**IGST**’) amounting to ₹19,53,062/- and Cess of ₹52,50,899/-. The petitioner also filed another refund application dated 12.09.2020 (in Form GST-RFD – 01) claiming refund of ITC of ₹12,40,270/- comprising of IGST of ₹3,37,174/- and Cess amounting to ₹9,03,096/-. The refund sought was in respect of goods exported by the petitioner.

4. Respondent no.2 issued an acknowledgment (in Form GST-RFD-02) dated 27.09.2020, in respect of the petitioner’s refund application for the amount of ₹12,40,270/-. In respect of the first application dated 11.09.2020, respondent no.2 issued a deficiency memo dated 21.09.2020, *inter alia*, stating that the supporting documents were not uploaded on the GST portal. Accordingly, the petitioner filed another application dated 23.09.2020 along with all documents in support of its refund application. The same was

acknowledged by the respondent on 01.10.2020.

5. The petitioner's applications were not processed as the supplier from whom the petitioner had purchased the goods had allegedly received fake invoices from its suppliers.

6. A search was conducted by the officers of Central GST, Anti Evasion Branch, Delhi West Commissionerate in the premises of the petitioner on 21.10.2020. Thereafter, the petitioner (its proprietor) was summoned to the office of respondent no.1 on 23.10.2020 to tender certain documents.

7. Admittedly, the petitioner (proprietor) appeared before the Superintendent, Anti Evasion Branch on 23.10.2020 and furnished documents as sought for. Notwithstanding the same, the petitioner was issued another summons dated 28.12.2020 for furnishing the documents, which, according to the petitioner, had already been submitted.

8. The petitioner wrote several letters to respondent no.2 requesting for an early disposal of his refund applications. However, his requests were not acceded to.

9. In the meantime, the petitioner became aware of the allegations that its supplier, M/s Shruti Exports, had issued fake invoices and its ITC was blocked. The said supplier had moved the High Court of Calcutta by filing a writ petition seeking unblocking of its Electronic Credit Ledger (hereafter '**ECL**').

10. Show cause notice dated 04.06.2021 was issued by respondent no.2 to the petitioner proposing to reject the petitioner's refund applications. This show cause notice indicated that respondent no.2 had sought a report regarding legitimacy and genuineness of the export of goods from the Customs Station, Kolkata, which were purchased by the petitioner from M/s Shruti Exports (proprietor Sh. Vijander Kumar Goel). In response to the said query, respondent no.2 had received information that the said supplier – M/s Shruti Exports was being investigated by DGGI in connection with fake invoices allegedly issued by it. It was further alleged that M/s Shruti Exports had availed CGST and SGST amounting to ₹1,35,21,489/- and Cess of ₹21,76,132/- on the strength of fake invoices issued by certain persons.

11. The petitioner responded to the said show cause notice on 12.06.2021. The petitioner was also afforded a personal hearing by respondent no.2 on 01.07.2021. During the course of the said proceedings, the petitioner also submitted additional documents in support of its refund claim.

12. The petitioner submitted that he was not concerned with any allegation against its supplier M/s Shruti Exports (proprietor Vijander Kumar Goel) as the purchases made by it were genuine and against genuine invoices. He also pointed out that in WPA No.4006/2020 captioned *Vijander Kumar Goel v. Assistant Commissioner, CGST Central Tax & Anr.*, the Calcutta High Court had passed an order directing unblocking of the ITC of the petitioner therein (Vijander Kumar Goel) and the same was subsequently unblocked.

13. Respondent no.2 rejected the refund applications by an order dated 02.07.2021, essentially, on the same grounds as stated in the show cause notice. Respondent no.2 reiterated that an investigation had been initiated against the supplier (M/s Shruti Exports) from where the petitioner had allegedly procured the goods. The said order indicated that respondent no.2 had received information that M/s Shruti Exports (GST No. 19AFRPG5814N1ZS) had issued the following two invoices to the petitioner in the month of August, 2020:

- (i) Invoice No. SE/32/20.21 dated 29.08.2020; and
- (ii) Invoice No. SE/33/20.21 dated 29.08.2020

14. Although it was confirmed that the said invoices were reflected on the 'AIO' System, the refund applications were rejected for the reason that *"it appeared that they are to be part of a supply chain involving fake Input Tax Credit"*.

15. The petitioner appealed the said orders rejecting its refund applications, which was dismissed by the impugned order.

16. The Appellate Authority held that although the petitioner was in possession of the tax invoices, it could not be said that the petitioner had received the goods. Therefore, one of the conditions as stipulated in Section 16(2) of the Central Goods & Services Tax, 2017 – the taxpayer has received the goods or services or both – was not satisfied. The Appellate Authority concluded that the present case was one of *"goodless supply on the strength of fake invoices"*.

17. It is clear from the above that the petitioner's refund applications were rejected on a mere apprehension that its supplier had issued fake invoices. There is no conclusive finding on the basis of any cogent material that the invoices issued by M/s Shruti Exports to the petitioner are fake invoices.

18. Admittedly, the invoices issued by M/s Shruti Exports are reflected in the AIO System and there is no dispute that M/s Shruti Exports had issued the said invoices. It is also clear that M/s Shruti Exports is a dealer registered with the Goods & Services Tax Department. There is no allegation that the invoices (which include IGST as well as Cess) were not paid by the petitioner. It is also important to note that there is no allegation that the goods in question were not exported overseas. Thus, the petitioner has established not only the fact that the goods have been exported but that it had paid for the same including the IGST and Cess.

19. The respondents filed a counter affidavit enclosing therewith a letter dated 16.04.2021 issued by the CGST Authorities, Kolkata in response to the request of respondent no.2 verifying the existence and genuineness of suppliers. The said letter indicates that M/s Shruti Exports was found to be an existing dealer and its sole proprietor was also a Director of M/s BVN Alloys Pvt. Ltd. Both the dealers were found existing at Room No.464, 4th Floor, 138 Biplabi Rashbehari Basu Road, Kolkata-700001. It was found that M/s Shruti Exports had availed of CGST and SGST totaling ₹1,35,21,489/- and Cess amounting to ₹21,76,132/- from the taxpayers against whom cases were booked for

issuing fake invoices. The said letter set out a tabular statement mentioning the names of six dealers who had allegedly issued fake invoices to M/s Shruti Exports. It was pointed out by the learned counsel appearing for the petitioner that none of the said suppliers, except one, PSSM Commercial Pvt. Ltd., had made any supplies chargeable to Cess. He submitted that, thus, the only invoice in respect of which supplies received by M/s Shruti Exports, which could be assumed to be further supplied to the petitioner, was from PSSM Commercial Pvt. Ltd. However, CGST and SGST paid by PSSM Commercial Pvt. Ltd. was only ₹9,52,220/-.

20. It is also important to note that the supplies, as mentioned in the said letter, were for a period prior to August, 2020.

21. Mr. Singla, learned counsel appearing for the petitioner, handed over a copy of the show cause-cum-demand notice dated 30.11.2022 issued to M/s Shruti Exports and one, Sanjay Kumar Bhuwarka. However, the said show cause notice indicates that it relates to the period from July, 2017 to Financial Year 2019-20. Thus, it could not possibly cover the supplies made to the petitioner.

22. It is apparent that the petitioner's refund applications have been rejected merely because of suspicion without any cogent material. There is no dispute that goods have been exported; the invoices in respect of which the petitioner claims the ITC were raised by a registered dealer; and, there is no allegation that the petitioner has not paid the invoices, which include taxes. Thus, the applications for refund

cannot be denied.

23. There is merit in the petitioner's contention that it is not required to examine the affairs of its supplying dealers. The allegations of any fake credit availed by M/s Shruti Exports cannot be a ground for rejecting the petitioner's refund applications unless it is established that the petitioner has not received the goods or paid for them. In the present case, there is little material to support any such allegations.

24. In *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi & Ors.: 2017 SCC OnLine Del 11286*, a Coordinate Bench of this Court had referred to various authorities and observed as under:

“39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have *bona fide* transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish *bona fide* purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

40. *** *** ***

41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9(2)(g) of the DVAT

Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9(2)(g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.”

25. In view of the above, the petitioner would be entitled to the refund of the ITC on goods that have been exported by it. The present petitions are, accordingly, allowed and the respondents are directed to forthwith process the petitioner’s applications for refund of the ITC including Cess.

26. It is clarified that in the event the respondents are able to find material to establish the allegations regarding non-supply of any goods by M/s Shruti Exports to the petitioner, it would be open for the respondents to initiate such action as may be warranted in accordance with law.

**VIBHU BAKHRU, J**

AMIT MAHAJAN, J

MARCH 10, 2023

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