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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 28.08.2023*

+ **W.P.(C) 8221/2023**

KS COMMODITIES PRIVATE LIMITED Petitioner
Through: Mr. Karan Sachdev, Mr. Agrim
Arora & Mr. Sumit Khadaria,
Adv.

Versus

ASSISTANT COMMISSIONER DIVISION
CONNAUGHT PLACE CGST SOUTH Respondent
Through: Ms. Sonu Bhatnagar, Ms. Monica
Benjamin & Ms. Nistha Mittal,
Adv.

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-in-Appeal (No.18/2023-24) dated 21.04.2023 (hereafter '**the impugned order**') passed by the Additional Commissioner, CGST Appeals-II, Delhi whereby the petitioner's appeal against an Order-in-Original dated 27.10.2022 passed by the Adjudicating Authority, was rejected.

2. The petitioner is, *inter alia*, engaged in export of agricultural commodities. During the relevant tax period (December, 2021), the petitioner had exported rice and sugar. The petitioner, thus, claims that



it is entitled to refund of Input Tax Credit (hereafter ‘ITC’) in respect of input supplies for exporting the said commodities.

3. The petitioner filed an application for seeking refund of ITC for the zero rated supplies on 19.08.2022. The petitioner’s application dated 19.08.2022 for refund of ITC was considered by the Adjudicating Authority and it proposed to reject the same. Accordingly, the Adjudicating Authority issued a Show Cause Notice dated 04.10.2022 (hereafter ‘SCN’), *inter alia*, raising an issue that the petitioner had procured sugar with the levy of 0.1% GST and had utilized the benefit of the Notification No.41/2017 dated 23.10.2017. The petitioner was called upon to justify whether other conditions as mentioned in the notification aforesaid had been duly complied and fulfilled. It was also proposed that the refund would be restricted to the extent reflecting the petitioner’s return in Form GSTR-2A. In addition, the petitioner was also called upon to provide a reconciliation statement.

4. The petitioner responded to the said SCN by filing a reply dated 17.10.2022.

5. The Adjudicating Authority considered the said reply but rejected the petitioner’s application for refund, *inter alia*, on the ground that the petitioner was unable to co-relate the input supplies respect of which ITC refund claim was made and the export of the commodities.

6. The petitioner appealed against the said order before the Appellate Authority [Commissioner (Appeals)], however, the same



was rejected by the impugned order.

7. The impugned order indicates that the Commissioner has rejected the refund claim on the ground that the petitioner was unable to satisfy that the inputs in respect of which the credit was claimed, was directly co-related to the export of the commodity in question (sugar). The petitioner had also exported rice during the relevant tax period and the Appellate Authority was of the view that the petitioner had not distinguished the inputs in respect of export of rice and export of sugar. It further observed that since the petitioner was granted refund in respect of the inputs for the export of rice, the petitioner's claim for refund in respect of sugar was required to be rejected. The relevant extract of the impugned order reads as under:

“6.1 In view of the above, I find that the appellant is eligible for availing ITC @0.1% under Notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 subject to certain conditions given therein. I find that the adjudicating authority has just mentioned the said conditions in the impugned order however it has not been examined whether the said conditions have been fulfilled by the appellant or not. The adjudicating authority observed that:

“the assesse was requested to explain the co-relation of the input services provided by them to the exports effected in the relevant period. I find that the assesse vide its reply dated 11.10.2022 has submitted that the export of sugar is an ongoing process and the input services mentioned in Annexure-B cannot be restricted to a single month. Hence, I find that the assesse could not substantiate the calculations of ITC in the instant refund claim.”

“I find that the assesse has also effected domestic clearance of goods and export of rice



in the month of December, 2021 in addition to export of sugar. The assessee filed another claim by ARN No. AA070822046559V dated 19.08.2022 for Rs. 2,95,465/- for the same period and the same has been sanctioned to the party vide OIO No. 17/ Refund/ JK/ Div-CP/ 2022-23 dated 19. 10. 2022.”

6.2 With regards to the observation of the adjudicating authority regarding correlation of input services with the export, the appellant has given explanation in respect of transportation services, insurance services, custom house agent, freight forwarder and sugar broker. However, I find that all of the said services, except sugar broker, are also applicable in case of export of rice, which has also been made by the appellant during the claimed period and the refund of which has also been sanctioned to the appellant.”

8. Although the petitioner has a statutory right of appeal in respect of the impugned order, the petitioner is unable to avail of the same as the Appellate Tribunal has not been constituted. It is in the aforesaid context that the petitioner has filed the present petition.

9. It is the petitioner’s case that it had provided the necessary documents and invoices to reflect that the inputs in respect of which refund is claimed, had a direct correlation to the export of sugar.

10. The learned counsel appearing for the petitioner has drawn our attention to a tabular statement, which prima facie, reflect that the inputs in respect of which ITC was claimed were directly related to the export of sugar. The said tabular statement is reproduced below:

“Sl. No.	Input/input services	Particulars	Amount of ITC (in Rs.)



1	Procurement of sugar (Sample Invoices enclosed as Annexure P10)	There can be no doubt that ITC pertaining to procurement of sugar was for export of sugar and not for rice. The documents such as procurement invoices, export invoices, shipping bills etc. leave no doubt that the Petitioner procured and exported sugar.	4,49,753
2	Sugar broker services (Sample invoices enclosed as Annexure P11)	The brokerage services of agents are undoubtedly availed for export of sugar. This is also accepted in the impugned order. However, refund for ITC pertaining to sugar broking services is denied.	170,100
3	Customs House Agent Services (Sample invoices Enclosed as Annexure P12)	For instance, the Shipping bill numbers 6441235 and 6409325 referred in invoices of Customs house agent 'V Arjoon Shipping Private Limited' demonstrate that the goods exported was sugar. These shipping bills indicate the export invoice number which clarifies that the services were availed for export of sugar Further, the shipping bills also indicate the sugar procurement invoices, which confirms that sugar was procured for export purposes.	14,59,278
4	Freight Forwarder services (Sample invoices enclosed as Annexure P14)	Description of goods is shown as 'sugar' and port of loading as Nhava Seva, Maharashtra which establishes input services are used for export of sugar. Petitioner does not export rice from Maharashtra.	16,67,326



		Freight forwarder invoices also indicate the shipping bill number. Therefore, there is no doubt that these services were obtained for export of sugar.	
5	Transport services (Sample invoices enclosed as Annexure P15)	The description of goods shows that 'sugar' has been transported. This establishes the fact that services were undertaken for export of sugar only. Further, the loading and unloading details show that sugar has been procured from Maharashtra from different suppliers of sugar and have been unloaded at Maharashtra.	12,43,707
6	Insurance services of Tata AIG General Insurance Co Ltd (Sample invoices enclosed as Annexure P 16)	The certificate of marine insurance shows the subject matter insured as 'sugar'	45,594
7	Other services (Bank services, health certificate, supervision and analysis) (Sample invoices enclosed as Annexure P 17)	These services are also availed for export of sugar. For an instance, invoices raised by HDFC Bank for export commission and courier charges indicate export invoice number. (Eg. Invoice Reference No: KSC/2021-22/146 can be correlated with Statement 3 filed by the Petitioner along with refund application)	1,08,985
Tota Amount of refund			51,44,743”

11. The learned counsel for the petitioner has also drawn our



attention to various invoices and sample invoices which do, *prima facie*, indicate that the petitioner had produced the relevant material to establish that input supplies in respect of which ITC was claimed were in respect of export of sugar. Neither the Order-in-Original dated 27.10.2022 passed by the Adjudicating Authority nor the impugned order passed by the Appellate Authority discusses the aforesaid invoices and the material produced by the petitioner. None of the said orders indicate any reason as to why the authorities have not considered the said material to be relevant for establishing that the input supplies in respect of which refund was claimed, were directly correlated to export of sugar.

12. In view of the above, the impugned order is set aside. We restore the petitioner's appeal before the learned Appellate Authority for reconsideration on merits. The Appellate Authority shall examine the material relied upon by the petitioner and if the Appellate Authority is of the view that the same cannot be correlated to the export of sugar as claimed by the petitioner, the Appellate Authority will state the reasons for the same.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 28, 2023

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