



\$~18

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

% *Date of Decision: 11.10.2023*

+ **W.P.(C) 12900/2023**

STAR PUBLISHERS DISTRIBUTORS Petitioner
Through: Mr. Rajeev Ahuja, Adv.

Versus

ASSISTANT COMMISSIONER OF CGST,
RANGE 1 & ANR. Respondents
Through: Ms. Neha Malik, 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 dated 30.06.2023 (hereafter '**the impugned order**') whereby the petitioner's appeal against the refund rejection order dated 31.05.2021 was rejected.

2. The petitioner had filed an application seeking refund of Input Tax Credit amounting to ₹13,71,484/- in requisite form (GST RFD-01) on 16.04.2021. The breakup of the refund amount is as under:

| "Refund Period | Amount |
|--------------------------|----------------------|
| 01.06.2018 to 31.03.2019 | 8,75,068.00 |
| 01.04.2019 to 31.03.2020 | 4,96,416.00 |
| Total | 13,71,484.00" |



3. Whilst the petitioner's application for refund for the period 01.04.2019 to 31.03.2020 amounting to ₹4,96,416/- was allowed by an order dated 31.05.2021, the petitioner's application for refund for the period 01.06.2018 to 31.03.2019 amounting to ₹8,75,068/- was rejected on the ground that the petitioner's application was filed beyond the period as stipulated under Section 54(1) of the Central Goods & Services Tax Act, 2017 (hereafter '**the CGST Act**').

4. Aggrieved by the said order, the petitioner preferred an appeal before respondent no.2 (Appellate Authority). The said appeal was disposed of by the impugned order dated 30.06.2023. The Appellate Authority accepted the petitioner's contention that the petitioner's application was not barred by limitation in view of the Notification No.13/2022 - Central Tax dated 05.07.2022, whereby the period with effect from 1st day of March, 2020 to the 28th day of February, 2022 was required to be excluded for the purpose of computing the period under Section 54(1) of the CGST Act. However, the Appellate Authority rejected the appeal on the ground that no documentary evidence was submitted by the petitioner regarding the mode in which the export has taken place and in absence of such details, the commencement date for calculating the limitation period could not be ascertained.

5. The impugned order rejecting the petitioner's appeal is clearly unsustainable for more than one reason. First of all, the Adjudicating Authority had not raised any issue regarding non-furnishing of documents by the petitioner. On the contrary, the Adjudicating Authority had partly allowed the application for refund for the tax



period 01.04.2019 to 31.03.2020.

6. Secondly, the petitioner had also filed a tabular statement clearly indicating the date of the invoices, the date of the shipping bills and the date of receipt of remittances. The petitioner has also filed a copy of the e-mail dated 02.05.2023 enclosing therewith copy of the said statement (Statement No.3). It is not disputed that the said email was sent to the Appellate Authority. It further contended that a similar statement was also filed before the Adjudicating Authority.

7. Section 54(1) of the CGST Act stipulates that an application for refund may be filed within the period of two years from the relevant date. The expression 'relevant date' is defined in Explanation (2) to Section 54 of the CGST Act. Clause (a) of Explanation (2) to Section 54 of the CGST Act is relevant and is set out below:

“(2) “relevant date” means—

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;”

8. In the present case, the statement filed by the petitioner clearly indicates the date on the shipping bills and the invoices. Thus, there is



no ambiguity for computing the period of limitation in reference to the relevant date.

9. The respondents have filed the counter affidavit, however, the same is not on record. On a pointed query by this court, it is not disputed that there is no specific denial of the receipt of the e-mail dated 02.05.2023 annexed by the petitioner to the present petition. Further, as stated above, there was no controversy as to the evidence produced by the petitioner in respect of the exports before the Adjudicating Authority.

10. In view of the above, the present petition is allowed.

11. The respondents are directed to process the petitioner's claim for refund along with applicable interest, if any, within a period of two weeks from today.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 11, 2023

'gsr'

