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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4121 OF 2022

Soorajmull Bajinath Private Limited

.. Petitioner

Versus

Union of India & Ors.

..Respondents

Mr. Bharat Raichandani i/by UBR Legal for the petitioner.

Mr. M. P. Sharma a/w Ms.Mamta Omle for respondent nos.1, 3, 4,
5 & 6.

Ms. Nazia Sheikh for respondent no.2-State.

CORAM : M.S.Sonak &
Jitendra Jain, JJ.

DATE : 16 October 2024

P. C. :-

1. Rule. Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

2. The petitioner challenges the order dated 18 August 2021 made by the Joint Commissioner (Appeals) declining refunds to the petitioner.

3. Appeal lies against this order before the GST Tribunal. However, since the GST Tribunal is presently not functioning, the petitioner has instituted this petition.

4. Mr. Dharendra Lal currently holding the post of Commissioner CGST and Central Excise Mumbai Central has filed

affidavit-in-reply on 5 September 2023. The affidavit, in turn, acknowledges that the petitioner is eligible to receive the refunds claimed.

5. In the above regard, we refer to paragraphs 12 to 15 of the said affidavit which read as follows :-

"12. I say that It is observed that the provision of Section 50 of the CGST Act, 2017 have been amended by the Finance Act, 2022 retrospectively w.e.f 01.07.2017. The amended provision reads as under:- (3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such interest on such input wrongly availed and utilised, at such rate not exceeding twenty-four percent as may be notified by the Government on the recommendation of the Council, and the interest shall be calculated, in such manner as may be prescribed.

13. I say that further Rule 88 of the CGST Rules (inserted vide notification no. 14/2022-CT dated 05.07.2022 but w.e.f 01.07.2017) stipulates when the interest becomes payable and prescribes the method of calculating such interest. The relevant portion of Rule 88B is reproduced below;- 88B. Manner of calculating interest on delayed payment of tax.-

(1).....

(2).....

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation. -For the purposes of this sub-rule, -

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

14. I say that on combined reading of the above provisions, it is clear that interest is payable only when the balance in electronic credit ledger falls below the amount of input tax credit wrongly availed. On perusal of the Electronic Credit Ledger (ECL), it is observed that the Petitioner had availed TRAN-1 Credit of Rs.4,43,76,462/- on 22.09.2017. The petitioner has reversed the excess credit of Rs.3,93,30,920/- in the GSTR-3B return of July, 2018. During the intervening period, it is observed that total balance credit available in the ECL was never below the amount (Rs. 3,93,30,920/-) of input tax credit wrongly availed. In view of the above, the Petitioner appears to have availed but not utilised wrongly availed input TRAN-1 credit. I say that petitioner filed TRAN-1 credit of Rs.4,43,76,462/-on 22.09.2017 & then Petitioner filed for reversal of the excess credit only in July, 2018 due to which revenue suffers loss. The petitioner had withheld the notional ITC amount in excess for a period of 11 months. Hence the department levied interest only for wrongfully withholding the notional amount.

15. I say that it is pertinent to note that these provisions have been amended

subsequent to the issuance of order in appeal no. SS/JC/APPEALS-II/MC/2021 dated 18.08.2021 and prior to the filing of the said writ petition. Due to these amended provisions, no interest is payable by the Petitioner in terms of amended section 50(3) of the CGST Act, 2017 on the excess TRAN-1 credit availed & subsequently reversed.”

6. Considering the above affidavit and the position reflected therein, we set aside the impugned order dated 18 August 2021 and direct the respondents to refund to the petitioner the amounts claimed i.e., Rs.9,26,570/- within four weeks from today.

7. Rule is made absolute in the above terms. There shall be no order as to costs considering the fair approach of the respondents and their counsel.

8. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)