



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 22309 OF 2024

Raiden Infotech India Private Ltd.,]
Unit No.9, Corporate Park II,]
9th Floor, VN Purav Marg,]
Regus Chembur, Mumbai]
Maharashtra – 400 071] ...Petitioner

Versus

1. The State of Maharashtra]
Represented by its Principal Secretary,]
Department of Finance,]
Mumbai – 400032]

2. The Deputy Commissioner,]
Chakala – 501, Nodal-12]
Large Taxpayer Unit,]
D-10, 3rd Floor, GST Bhavan,]
Mazgaon,]
Mumbai – 400 010]

3. Union of India]
Represented by the Secretary]
Department of Revenue]
Minsitry of Finance]
North Block]
New Delhi – 110 001] ...Respondents

Adv Darius B Shroff, Senior Advocate, a/w Jasmine Dixit,
Mahir C. i/b UBR Legal Advocate, for the Petitioner.
Mr Amar Mishra, AGP, for the Respondent-State.

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

DATED: 14 December 2024

Oral Judgment (per M.S. Sonak J.):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of land with the consent of the learned counsel for the parties.
3. The challenge in this petition is to the impugned order dated 30 April 2024, which rejected the petitioner's application for a refund.
4. Mr Shroff submits that though this order is appealable, this is a case of breach of natural justice. He submitted that even if the violation of natural justice is not considered for a moment, still, a case of remand is made out. He submits that the appeal is rejected due to some alleged procedural deficiencies. But no deficiency memo was ever given, and the Petitioner was denied the opportunity of refiling the appeal after clearing the shortcoming. Mr Shroff relies on the decision of this Court in **M/s Knowledge Capital Services Private Limited Vs. Union of India and Ors.**¹, in which, it is provided that in case of deficiencies in the refund application, a deficiency memo in form GST RFD 03 is required to be issued, and the applicant can then exercise the option of withdrawing such application and filing a fresh application after clearing the deficiencies. He submits that since this was not done in the present case, the impugned order must be set aside, and directions similar to those issued in paragraph 19 of the *M/s Knowledge Capital Services Private Limited (supra)* must be issued.

¹ Writ Petition No. 61 of 2023 decided on 29 March 2023

5. Mr Mishra, learned counsel for the respondent, submits that a necessary show-cause notice was issued to the petitioner, inter alia requiring the petitioner to show cause why the refund application should not be rejected on the grounds of deficiencies. He submits that despite such a notice, no cause was shown, and therefore, the impugned order was made.

6. We have considered the rival contentions and perused the record.

7. *M/s Knowledge Capital Services Private Limited (supra)*, after referring to the relevant legal provisions, does hold that the deficiencies in the refund application have to be brought to the notice of the applicant in form GST RFD 03 so that the applicant can take steps as permissible under the law in that regard. In this case, there is no record of such deficiency memo or notice in terms of GST RFD 03 being issued to the petitioner.

8. At the same time, Mr Mishra is justified in contending that a show cause notice was issued to the petitioner, and the petitioner avoided or failed to respond to such show cause notice. The conclusion recorded in the impugned order reads as follows: -

“Conclusion:

This office had called upon you to show cause as to -

1. Why the transaction of supply of ‘Infrastructure Support Services’ should not be considered as the transaction of taxable supply as it has been established that the said supply has a ‘Place of Supply’ in India and cannot termed as transaction of ‘Zero Rated Supply’?

2. Why tax under CGST/MGST/IGST should not have been levied on the transactions of supply of infrastructure support services to Google Singapore as the place of supply has been determined to be located in Mumbai i.e. Maharashtra?

3. Why the supply of making available the immovable property to Google Singapore should not be taxed as the place of supply for supply of services related to immovable property is the location of the immovable property which is in Mumbai?

4. Why your claim for refund should not be rejected as the refund has been claimed of accumulated ITC on account of Zero Rated Supply and the said supply has not been found to be qualified for being termed as 'Zero Rated Supply of Services'?

5. Why your claim for refund should not be rejected as there is no money realization occurring during the relevant period which causes the turn-over of zero rated supply of services as Zero and hence the amount of refund that can be granted u/R 89(4) is also Zero?

But you have neither responded to the said Show Cause Notice by filing your reply in RFD 09 nor have you appeared for personal hearing on the appointed day and there has been no response from you on this matter except a request for extension in which you had requested for an extended period till 17.04.2024 for submission of your reply but you still haven't undertaken to file any reply in this matter. It shows that you have nothing to say on this matter and hence the next step in the direction of the rejection of the said refund claim by issuing a Rejection Order in RFD 06 is being taken."

9. Thus, though prima facie GST RFD 03 may not have been issued to the petitioner, even the petitioner failed to avail of the opportunity granted to the petitioner to raise such contentions in response to the show cause notice. Merely seeking adjournments and then contending that adjournment applications were not responded to or decided one way or the other is not grounds to complain about any failure of natural justice. In this case, the petitioner must accept the blame for

not responding to the show cause notice within the time granted and raising the contentions which have now been raised before us after the impugned order was made. Since there was no response we cannot fault the respondents for making the impugned order.

10. The interest of justice in such a situation would require the petitioner to pay costs of Rs.2,00,000/- within 4 weeks from today to the 2nd respondent. Subject to depositing such costs within 4 weeks from today, given the peculiar circumstances and the fact that no GST RFD 03 was issued to the petitioner, we set aside the impugned order dated 30 April 2024 and restore the petitioner's refund application made in form GST RFD 01 to the file.

11. Upon such restoration, 2nd respondent will process the petitioner's application in terms of law and decide whether the petitioner is entitled to refund on its own merits. If there are any deficiencies in the petitioner's application, the petitioner must be intimated under form GST RFD 03. Upon such intimation, it shall be open to the petitioner to exercise the option the law allows.

12. If the costs are indeed paid within 4 weeks from today to the 2nd respondent, then the further exercise we directed must be completed within 3 months of such costs being paid.

13. We clarify that we have not examined the merits of the refund application, and, therefore, all contentions of all parties in that regard are kept open.

14. The Rule is made absolute in the above terms subject to payment of costs. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)