IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8869 of 2020

Infac India Pvt Ltd.,
Rep. By its Manager – Finance & GST
G.Lakshmi Praba,
No.113, Ellaiamman Koil Street,
Padappai, Sriperumbudur Taluk,
Kanchipuram Dist.,
Tamilnadu – 601 301. .. Petitioner

Vs.

The Deputy Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Irungattukottai Division,
Chennai Outer Commissionerate,
C-48, TNHB Building, Annanagar,
Chennai – 600 040. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in file C.No.IV/10/14/2019-RF relating to Order in Original No.02/2020 (RF) dated 31.01.2020 passed by the respondent and quash the same and direct the respondent to refund the amount of Rs.9,25,366/- adjusted towards interest.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.K.Mohana Murali
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Order-in-Original No.02/2020 (RF) dated 31.01.2020 bearing reference C.No.IV/10/14/2019-RF of the respondent.

2.By the impugned order, the respondent herein has sanctioned a refund of Rs.16,52,157/-, after adjusting a sum of Rs.9,25,366/- as interest due from the petitioner on the amount utilized by the petitioner.

3.The specific case of the petitioner is that the petitioner could have asked for refund of the amount that was lying unutilized in the Personal Ledger Account under the provisions of the Central Excise Act, 1944, as on 30.06.2017.

4.However, by mistake, the petitioner transitioned the amount lying in its Personal Ledger Account on 23.08.2017 as if it were an Input Tax lying unutilized, in accordance with Section 140 of the Central Goods and Services Tax Act, 2017.

5.The further case of the petitioner is that the petitioner had a substantial balance in its Integrated Goods & Services Input Tax Credit Account on the Integrated Goods & Service Tax borne on supplies effected to the petitioner.

6.It is submitted that instead of utilizing the amount of Rs.25,77,523/-, which was wrongly transitioned under Section 140 of the Central Goods and Services Tax Act, 2017 as transitional credit, the petitioner could have utilized Input Tax credit lying unutilized in its Integrated Goods & Services Input Tax Credit Account during the period between 01.11.2018 to 17.02.2019.

7.It is therefore, the case of the petitioner that the issue is neutral and there was no loss to the revenue. It is submitted that in terms of Section 49(5)(B) of the Central Goods and Services Tax Act, 2017, the Input Tax Credit availed on integrated tax has to be first utilized towards integrated tax liability and the remaining amount, if any, can be utilized towards Central Tax or State Tax liability as the case may be.

8.It is submitted that in view of Section 49(5)(A) of the Central Goods and Services Tax Act, 2017, the petitioner would have been entitled to utilize the proportionate Integrated Goods & Services Input Tax Credit towards tax liability and rightly claim refund under Section 142(3) of the Central Goods and Services Tax Act, 2017.

9.The learned Senior Standing Counsel for the respondent on the other hand has submitted that as per Section 50(3) of the Central Goods and Services Tax Act, 2017, for any excess claim of Input Tax credit or excess reduction in output tax liability, interest shall be paid at such rate not exceeding 24%. It is submitted that the GST Acts contemplates to match the Input Tax credit availed by the recipient with the details of outward supply of supplier and the same have been explained in Sections 42 and 43 of the Central Goods and Services Tax Act, 2017.

10.It is further submitted that those tax payers who migrated from VAT and or Central Excise Act, 1944, or Finance Act, 1994 were entitled to carry forward the legacy credit under Section 140 of the Central Goods and Services Tax Act, 2017. It is submitted that the petitioner had an option to carry forward legacy credit in its Electronic credit ledger by

filing TRAN-1. In the present case, the petitioner had carried forward the legacy credit along with PLA balance of Rs.25,77,523/- in contravention of provisions of the Central Goods and Services Tax Act, 2017 for transitional credit.

11.It is therefore submitted that the amount has been rightly credited back to the petitioner after adjusting a sum of Rs.9,25,366/- towards interest on amount of wrong transitioning and utilization of amount in its Personal Ledger Account into electronic credit ledger, which the petitioner was not entitled to do so.

12.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

13.There is no doubt that the petitioner should have claimed refund of the amount lying unutilized in its Personal Ledger Account under Section 11B of the Central Excise Act, 1944, read with Section 142(3) of the Central Goods and Services Act, 2017. Section 142(3) of the Central Goods and Services Act, 2017, reads as follows:

"**142. Miscellaneous transitional provisions**.

(1) ...

(2) ...

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

14.The fact also remains that the petitioner had sufficient balance of Input Tax credit availed on Integrated Tax as borne by the petitioner on the supplies made to the petitioner as per Section 49(5)(B) of the Central Goods and Services Tax Act, 2017. The aforesaid amount has to be first utilized towards the Integrated Tax liability and thereafter towards Central Tax liability and the balance if any lying unutilized towards State Tax.

15.In this case, it is noticed that the Input Tax Credit that was available during the period in dispute between 01.11.2018 to 17.02.2019 was ranging from Rs.10,16,52,423/- to Rs.5,19,08,095/- as detailed below:

Sl.No.	Date	Integrated Tax (in Rs.)
1.	20.11.2018	10,16,52,423.00
2.	19.01.2019	5,19,08,095.00

16.The petitioner could have paid the Central and State GST out of the Input Tax Credit availed on Integrated GST borne by the petitioner. The amount of Rs.25,77,523/- was wrongly transitioned under Section 140 of the Central GST Act, 2017 and was utilized towards Central and / or State GST. It has been allowed to be re-paid *post facto* out of Integrated Input Tax Credit which was lying unutilized. Thus, the tax liability stands squared up.

17.The amount of Rs.25,77,523/- that was wrongly transitioned under Section 140 of the Central GST Act, 2017 and utilized towards tax liability has been also refunded. However, while refunding the amount, a sum of Rs.9,25,366/- was deducted towards interest. Deduction of Rs.9,25,366/- towards interest was unnecessary as there was really no loss to the revenue. It would have been different, if tax liability was

adjusted earlier out of Input Tax credit availed on State GST borne and was utilized for payment of Central GST by the petitioner under the provisions of the Central Goods and Services Tax Act, 2017.

18.Therefore, the impugned order dated 31.01.2020 seeking to adjust a sum of Rs.9,25,366/- towards interest cannot be sustained. To that extent, the impugned order is liable to be modified.

19.Therefore, the Writ Petition deserves to be allowed as prayed for by directing the respondent to refund the aforesaid sum of Rs.9,25,366/- to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

20.Accordingly, the Writ Petition is allowed with the above observations. No costs.

14.09.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Deputy Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Irungattukottai Division,
Chennai Outer Commissionerate,
C-48, TNHB Building,
Annanagar,
Chennai – 600 040.

C.SARAVANAN, J.

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