

M/S Sterlite Power Transmission Ltd. ... vs The Additional Commissioner (Appeals) on 12 December, 2024

Page 1 of 8

HIGH COURT OF TRIPURA

AGARTALA

WP(C) No.446 of 2023

M/s Sterlite Power Transmission Ltd. represented by Ms. Pooja Khanna, Vice President- Taxation of the Petitioner Company, Having registered office at 4 th Floor, Godrej Millennium 9, Koregaon Road, NA Pune, Maharashtra, 411001. Having local office at A.A. Road, Tripura Furniture, Math Chowmuhani, Agartala, West Tripura-799001

Petitioner(s);

Versus

1. The Additional Commissioner (Appeals), CGST, Central Excise and Customs, 3rd Floor, GST Bhavan, Kedar Road, Machkhowa, Guwahati-781001
2. The Commissioner of CGST, Central Excise and Customs, Office of the Commissioner of CGST, R7HH+4F4, opposite to PWD office, Mantribari Rd. Ext., Agartala, Tripura-799001
3. Union of India, through its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi
4. The Assistant Commissioner of Central Tax, Central GST Division-I, Kiran Medical Building, Jagannath Bari Road, Agartala, Agartala Head P.O., Tripura-799001
5. State of Tripura represented by Secretary Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura-799006
6. The Commissioner of Tax and Excise, Government of Tripura, P.N. Complex, Gurkhabasti, Agartala, West Tripura-799001
7. The Superintendent of State Tax, O/o the Sales Tax Officer, Jurisdiction Charge-VII, Kar Bhawan, Palace Compound, Agartala-799001

Respondent(s).

For Petitioner(s) : Mr. Anil Kr. Bezawada, Advocate,
Mr. S. Mahajan, Advocate.
For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mr. Kohinoor N. Bhattacharyya, G.A.
Mr. Paramartha Datta, Advocate,
Ms. P. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

12/12/2024

Heard Mr. Anil Kr. Bezawada, learned counsel for the petitioner, Mr. Paramartha Datta, learned counsel for the respondents-CGST and Mr. Kohinoor N. Bhattacharyya, learned Government

Advocate for the respondents-State.

2. Petitioner is a registered taxpayer under the Goods & Services Tax Department vide registration No.16AAVCS7209P1ZE. During the tax period March, 2021, his electronic credit ledger was blocked on 20.03.2021 by the SGST authorities [Annexure-2]. A notice in GST ASMT-10 was issued upon him on 20.03.2021 after scrutiny of his returns by the SGST authorities [Annexure-18 to the Rejoinder Affidavit]. After escalating the matter with the SGST authorities, the department finally unblocked the credit on 07.07.2021. Meanwhile to discharge the output tax liability, petitioner made payment of the tax dues for the period March, 2021 while filing GSTR-3B returns through electronic cash ledger. Since the input tax credit accumulated in the electronic credit ledger for the said period could not be utilized, petitioner sought refund in Form-GST-RFD-01 filed in the GSTN portal on 14.07.2021 under the "Others" category vide Application Reference Number (ARN) AA160721000970M [Annexure-9]. Petitioner received an acknowledgment in Form-GST-RFD-02 issued by the Assistant Commissioner, CGST on 18.08.2021 [Annexure-10]. A show cause notice in Form-GST-RFD-08 was issued on 10.09.2021 by the Assistant Commissioner directing him to file a reply as to why the amount of refund claimed should not be rejected since there is no provision in law to refund the tax amount paid against the liability [Annexure-11]. Petitioner filed its detailed response in Form-GST-RFD-09 on 16.09.2021 submitting that the refund application has been correctly filed by the company and should not be rejected on the said ground [Annexure-12]. It contended that the unauthorized blocking of credit by the department led to payment of excess cash through electronic cash ledger for discharge of GST liability for the month of March, 2021 to the tune of Rs.78,20,202/-. Therefore, the refund claimed is valid as per provisions of GST law. It is permissible under the category refund on account of "any other" ground or reason or "refund of excess payment of tax" as per the circular dated 18.11.2019 [Annexure-16]. Petitioner, therefore, claimed refund of the amount equivalent to the tax liability paid through electric cash ledger. However, his claim was rejected by order dated 21.09.2021 contained in Form-GST-RFD-06 on the ground that as per Circular No.125/44/2019-GST dated 18.11.2019, there is no provision for refund of unblocked ITC, as such the refund claim is inadmissible [Annexure- 13]. Being aggrieved by the order of rejection, petitioner filed an appeal in Form-GST-APL-01 on 11.10.2021 praying for refund along with interest on delayed payment [Annexure 14]. After personal hearing, the appeal was rejected by the Additional Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati vide order dated 14.03.2023. Petitioner being aggrieved has assailed the order in appeal dated 14.03.2023 whereby his claim for refund of unutilized input tax credit (ITC) to the extent of 78,20,202/- has been rejected. Petitioner has prayed for a direction upon the respondent-authorities to refund the amount of Rs.78,20,202/- along with interest.

3. Counter Affidavit has been filed by respondents No.1, 2 & 4. Learned counsel for the respondents-CGST submits that under Section 54 of Chapter XI of the CGST Act, 2017, refund is inadmissible under any of the conditions stipulated under Section 54(3)(i) or (ii) as well as in view of Clause 3(a) or (c) or (e) of the CBIC circular dated 18.11.2019 since any such refund of unutilized input tax credit at the end of any tax period could not be made in cases other than (i) zero rated supplies made without payment of tax; (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government

on the recommendations of the Council. Moreover, petitioner has never discharged tax in excess to the liabilities self declared by him. Accordingly, the claim has rightly been rejected. It is submitted that the appellate authority has also observed that the ITC is available to the petitioner for being utilized in later course for discharging further liability. Moreover, it is stated at paragraph 35 of the counter affidavit that the CGST authorities have never invoked Rule 86A against the petitioner for blocking of his ITC. The averments made by the petitioner itself show that representation for blocking and unblocking of ITC was made with the SGST authorities by the petitioner. Therefore, no violation of Article 265 of the Constitution of India by illegal retention of tax allegedly paid in excess can be made out. Therefore, the claim has rightly been rejected by the authorities. Petitioner's claim does not come under any other grounds as per circular dated 18.11.2019.

4. Counter Affidavit has also been filed by respondents No.5 & 6. Learned Government Advocate appearing for the respondents-State has also relied upon the circular dated 18.11.2019 and the order passed by the appellate authority-CGST to submit that there is no provision for refunding ITC if paid in excess in cash to the applicant. It is submitted that notice in GST ASMT-10 was issued under Section 61 of the SGST Act on 20.03.2021 as discrepancies in the return of the taxpayer for the period January, 2021 (difference in liability as per GSTR-1 and GSTR-3B) were found. As a result, the ITC was blocked on 20.03.2021 for certain period to the tune of Rs.78,20,202/-. During that period, officials of the concerned charge visited the registered place of business of the petitioner and asked him to provide documents, but the petitioner failed to provide as those were not available at the principal place of business. He sought time to submit those documents. The taxpayer concerned is registered under Central Administrative Jurisdiction. But during that period i.e. when the ITC of the taxpayer was blocked/unblocked, the state authority had the power to adjudicate the taxpayers registered under Central Administrative Jurisdiction. Therefore, the then Superintendent of State Tax exercised the power to block as well as unblock the ITC of the taxpayer concerned. On 07.07.2021, the same was unblocked by the concerned authority. According to learned Government Advocate, petitioner could have discharged his tax liability afterwards unblocking of ITC without implication of any interest, fine, etc. as per the provisions of GST Act. Petitioner had consciously chosen to discharge his tax liability for the period March, 2021 by payment through electronic cash ledger. However no excess payment of tax was made for seeking refund in terms of Section 54 of the GST Act; neither any of the conditions stipulated under sub-section (3) thereof were satisfied. Therefore, the claim was rightly rejected by the CGST authorities relying upon the circular dated 18.11.2019 as the case of the petitioner did not fall under any of the categories enumerated thereunder. The writ petition is, therefore, devoid of merit and may be dismissed.

5. Mr. Bezawada, learned counsel for the petitioner, has reiterated his submission in reply. He submits that petitioner has not been able to undertake business after March, 2021 as no such contracts have been awarded to him by the State or Central government. Petitioner is essentially engaged in the business of erection of transmission lines. Though petitioner has been participating in the NITs floated by different governments and has continued with the GST registration which is an essential requirement for participation in such NITs, but has been filing nil returns because of absence of any business. However, his unutilized ITC remains in the electronic credit ledger which ought to have been refunded as there are no output tax liability due against him. Therefore, the impugned order may be set aside and the amount of Rs.78,20,202/- may be refunded with interest

in his favour since it is lying in the electronic credit ledger since March, 2021.

6. We have considered the submission of learned counsel for the parties at length and taken note of the pleadings placed from record. We have also examined the relevant provisions of Section 54 under Chapter XI of the CGST Act which relate to "Refund of tax". We have also gone through the impugned order passed by the appellate authority dated 14.03.2023 [Annexure- 1].

In order to claim a refund for unutilized ITC, petitioner was required to satisfy that it falls in the category prescribed under Section 54 of the CGST Act, 2017, specifically Section 54(3) thereof read with Section 54(8). As per sub-section (3), claim for any unutilized input tax credit at the end of any tax period could be made provided that no refund of unutilized ITC shall be allowed in cases other than the following provisions:-

"(i) Zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council"

It is not a case that petitioner has debited the tax dues for March, 2021 both through electronic credit ledger which was lying blocked during that period, and through electronic cash ledger through which he had actually paid. Therefore, there was no duplication or twice payment of the tax for the said tax period. The blocking and unblocking of ITC by the SGST authorities between 20.03.2021 and 07.07.2021 were not subject matter of any litigation where the issue of legality or correctness of such blocking was determined. Petitioner by making payment of tax dues through electronic cash ledger for the tax period March, 2021 had duly discharged his output tax liability as the input tax had already been deposited by his purchaser. The accumulated ITC in his electronic credit ledger in lieu thereof could well be utilized for future tax liability. However petitioner has not been undertaking business since March, 2021 as stated by learned counsel for the petitioner. Therefore the accumulated ITC remains in his electronic credit ledger. In that case, the claim for refund is not made out in terms of Section 54(3) of the CGST Act as none of the enumerated conditions are made out. Petitioner under a misconception of law has sought refund of the accumulated ITC in its electronic credit ledger when there has been no duplication of payment of tax for any tax period. It is up to the petitioner to utilize the unutilized ITC for future tax liabilities.

7. In view of the facts and circumstances discussed above and for the reasons recorded, we therefore do not find any illegality in the impugned order calling for interference in exercise of writ jurisdiction. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ

Pijush/

PULAK BANIK

Digitally signed by PULAK BANIK
Date: 2024.12.19 15:41:49 +05'30'