

TAX INFO

Dated 10.10.2022

Latest update on GST Law: **Matter remanded back when GST Refund Sanction Order was passed erroneously but funds were not released** as given in judgement by **Andhra Pradesh High Court**.

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Name of Petitioner	RK Infracorp Private Limited
Name of Respondent	Assistant Commissioner of State Tax
Court	Andhra Pradesh High Court
Date of Judgement	09.09.2022
Appeal No.	W.P. No. 17958of 2022

Brief Facts of the Case Law:

The Petitioner was engaged in execution of works contract and had availed Input Tax Credit and adjusted the same against an output liability in its monthly returns. In addition to the amount available as Input Tax Credit, the Petitioner also has credit of TDS by the contractees under Section 51 of CGST Act/ SGST Act @ 2%. The amount is said to be lying as excess credit to the Petitioner in the Electronic Cash Ledger and it does not get adjusted against the output liability, in view of the excess amount lying in the Electronic Credit Ledger. The amount credited in the form of TDS is eligible to be refunded to the Petitioner under Section 54(1) of the CGST Act. As the excess amount was lying, in the Electronic Cash Ledger, the Petitioner filed three [03] separate 3 applications for refund. The refund applications were processed by the Department leading to issuance of GST RFD-08 on 05.02.2020, proposing to reject the application for refund, on the ground that the Petitioner has not filed relevant documents, in terms of Section 54(3)(4) of SGST Act. The Petitioner was given time to file reply till 20.02.2020. But, however, the Petitioner failed to submit his explanation. In spite of the same, Department issued a Refund Sanction Order in GST RFD-06, dated 19.03.2020, for all the three [03] applications. The Order also categorically states that, the application is rejected for an amount of Rupees "Zero". Believing that the applications made by the Petitioner were allowed and as the amount was not being credited in spite of sanction, the Petitioner addressed a letter on 11.06.2020 to the Department requesting him to release the refund at the earliest. As there was no response, the Petitioner once again brought to the notice of the Department, the inaction on their part in not releasing the amount in spite of the Order. The said reminder was on 20.05.2022. The Petitioner also brought to the notice of the Department, the Circular, dated 17.11.2021, issued by CBIC, New Delhi, stipulating that any amount unutilized in Electronic Cash Ledger is to be refunded immediately under Section 54 of the CGST Act. In response to the request made by the Petitioner on 20.05.2022, the Department issued the impugned endorsement observing that there was no response from the Petitioner for the notice issued in RFD-08; opportunity of personal hearing was not availed by the Petitioner and, accordingly, rejected the request for refund. It was also observed by the Department that due to some technical glitches in the website/portal, the refund rejected amount could not be reflected in Statement No. 4 instead of in Statement No. 3. The endorsement, dated 28.05.2022, was sought to be challenged in this Writ Petition.

Contention of the Petitioner:

The impugned endorsement could not have been passed by the authority as it has no statutory force. The endorsement is silent with regard to the provisions of law under which it is passed. In the applications filed by the Petitioner seeking implementation of the order, the Department issued the endorsement setting aside the earlier order, which virtually amounts to reviewing the Order, and such a request was never made by the Petitioner. The Order in Form-GST-RFD-06 clearly indicate that against the column "reason for refund", it has been specifically mentioned that 'refund of excess balance in Electronic Cash Ledger', and also the

concluding portion of the Order clearly describe an amount of Rs.85,14,656/- being sanctioned under Section 54(5) of the Act. Even as on today, the website/portal shows acceptance of refund application of the Petitioner. Thus, the authority erred in issuing endorsement. It has simply overturned the earlier order, on the ground that due to some technical glitches in the website/portal, the request for refund amount of Rs.85,14,656/- is reflected in Statement No. 4. Since, the impugned endorsement came to be made without any statutory basis and as it came to be passed in an application made by the Petitioner seeking refund in view of the earlier order passed, the said endorsement was liable to be set-aside, as bad in law and.

Contention of the Department:

The request of the Petitioner for refund was rejected since the Petitioner has not submitted documents along with reply. The Order, dated 19.03.2020, passed in favour of the Petitioner was an erroneous one, which is apparent from a reading of the proceedings and the material on record.

Findings and Decision of the Court:

If really it was a mistake, steps should have been taken to get the same rectified, but till date the same is not done. It is true, though the Order was passed on 19.03.2020 sanctioning an amount of Rs.85,14,656/- to the Petitioner under Section 54(5) of the Act, no effort was made to get the same rectified. It appears that, a mistake has crept in. In-fact, the website/portal of the Department shows sanction of refund and the same is said to have been displayed even now. But it is also to be noted here that, in Form-GST-RFD-08, which is a notice for rejection of application for refund, clearly mentioned that the refund claim is rejected under Section 54(3)(4) of SGST Act, for want of documents. Further, no notice was given to the Petitioner prior to passing of the Order rejecting the request made. On the other hand, the Order, dated 28.05.2022, came to be passed basing on the representation made by the Petitioner.

The Court set aside the impugned Order, dated 28.05.2022, and the matter was remanded back to the Assistant Commissioner [State Tax] to deal with the same afresh after accepting the applications filed by the Petitioner in the month of January 2020, for refund of excess balance in the Electronic Cash Ledger, in accordance with law, by giving an opportunity of hearing to the Petitioner, preferably within a period of six [06] weeks from the date of receipt of the Order. The three [03] applications made by the Petitioner on 24.01.2020 vide, be treated as applications for refund made in the year 2020 itself and if it is found that the Petitioner is eligible for refund of excess credit in the Electronic Cash Ledger, the said amount shall be paid to the accounts of the Petitioner along with interest as prescribed under law.

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