

TAX INFO

S. No. 034 Dated 03.06.2023

Latest update on GST Law: **GST refund cannot be withheld in view of Department's decision of filing appeal against appellate order granting refund to the assessee as given in judgement by Delhi High Court.**

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Name of Petitioner	Mr. Brij Mohan Mangla
Name of Respondent	Union of India
Authority	Delhi High Court
Date of Judgement	23.02.2023
Appeal No.	W.P.(C) 14234/2022

Brief Facts of the Case Law:

The petitioner is engaged in the manufacturing of various types of liquid printing inks. The petitioner was carrying on his business from the premises bearing the address A-80 Block, near Kasturi Ram Public School, DSIDC Industrial Area, Narela, Delhi, 110040. The petitioner states that he now carries on the business from the premises situated at Killa No. 4/24, Village Nathpur, Sonipat, Haryana. It is the petitioner's case that on account of an inverted duty structure, he could not fully utilise his ITC and consequently, the same had accumulated to an aggregate figure of ₹ 74,02,337/- for the period May, 2019 to December, 2019. The petitioner filed 6 separate refund applications filed during the period 09.12.2020 to 16.03.2021.

6 separate SCN in RFD-08 were issued calling upon the petitioner to show cause as to why his claims for refund be not rejected for two reasons. First, that physical verification conducted on the petitioner's premises on 05.02.2021 revealed that the concern was non-existent. And second, that the GSTIN registration of the petitioner was cancelled with effect from 19.02.2021. The petitioner responded to the SCN stating that he had subsequently shifted his manufacturing activities to the current location in Haryana. However, Department rejected the applications filed in terms of six separate orders in original passed during the period 26.02.2021 to 25.05.2021. The principal reason for rejecting the petitioner's application was that he was not a 'registered person' and therefore, was not entitled to refund under Section 54(3) of the Act.

The petitioner filed respective appeals against the orders in original and by an order dated 20.09.2021, the appeals filed by the petitioner were allowed. The Appellate Authority accepted that the petitioner was carrying on his business from the relevant premises during the material time and had shifted its premises to Haryana thereafter. The Appellate Authority also found that there was no doubt as to the genuineness of the said claims and the petitioner was a registered person at the time of filing of his applications for refund. Thus, the provisions of Section 54(3) of the Act which enable only a registered person to make a claim for refund did not in any manner disentitle the petitioner for claiming the refunds.

On 29.09.2021, the petitioner filed another application for refund in RFD-01 along with an Order in Appeal dated 20.09.2021. The said application was not processed. Instead, the Department issued a deficiency memo once again raising the same issues that were conclusively decided by the Appellate Authority by the order dated 20.09.2021. The petitioner responded to the said deficiency memos.

Also, on 11.02.2021, the Department also issued another SCN calling upon the petitioner to show cause as to why its registration not be cancelled. The petitioner responded to the SCN by furnishing a reply on 15.02.2021. However, the Superintendent, vide order dated 19.02.2021, cancelled the petitioner's GSTIN registration. The petitioner filed an application for revocation of the cancellation which was also rejected by an order dated 05.04.2021. Thereafter, the petitioner filed an appeal before the Appellate Authority, which was allowed by an order dated 20.10.2021.

In terms of the orders passed by the Appellate Authority, the orders rejecting petitioner's application for refund have been set aside. The Appellate Authority has also directed restoration of the petitioner's GSTIN registration.

The record also indicates that the petitioner thereafter once again applied for the disbursement of refunds but the said applications were also not processed on the same pattern: first deficiency memos are issued and thereafter, the applications were rejected. Thus, this petition was filed.

Contention of the Department:

The petitioner's registration is liable to be cancelled as the petitioner was not found functioning at the given address and if the petitioner's registration is cancelled, the petitioner would no longer be a registered person and therefore, cannot apply for refund under Section 54(3) of the GST Act.

The concerned authority has reviewed the orders passed by the Appellate Authority and has directed that an appeals be filed challenging the orders passed by the Appellate Authority directing restoration of registration as well as grant of refunds. Therefore, the Department have not processed the petitioner's application for refund.

Findings and Decision of the Court:

The appeals have not been filed by the Department as yet. The Department has not secured any order which would, in any manner, stay the operation of the appellate orders passed by the Appellate Authority. It is not open for the Department to ignore the orders passed by the Appellate Authority merely on the ground that it has decided to appeal those orders. It would be debilitating to the rule of law, if the Department is permitted to withhold implementation of the orders passed by the authority in this manner.

Thus, the Court directed the Department to comply with the said order notwithstanding its decisions to file an appeal. The Department is directed to process the petitioner's claim for refunds including interest. It was clarified that this would not preclude the Department from availing their remedies against the orders passed by the Appellate Authority in accordance with law. In the event the Department succeed in upsetting the appellate orders, it would be entitled to take consequential action for recovery of any amount that may have been disbursed albeit, in accordance with applicable law.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>