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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 4205/2020

JIAN INTERNATIONAL ..... Petitioner
Through: Mr. Rajesh Jain, Advocate with Mr. Virag Tiwari and Mr. Ramashish, Advocates.

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX ..... Respondent
Through: Mr. Anuj Aggarwal, Addl. Standing Counsel for GNCTD.

% Date of Decision: 22nd July, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 15103/2020

Allowed, subject to just exceptions.

W.P. (C) 4205/2020

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed seeking a direction to respondent to grant refund of Rs.9,12,893/- claimed under Section 54 of the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as 'DGST Act')

for the month of August, 2019 as well as the grant of interest in accordance with Section 56 of DGST/CGST Act.

3. Learned counsel for petitioner states that in accordance with Section 54(6) of DGST Act read with Rule 91(2) of Delhi Goods and Services Tax Rules, 2017 (for short "DGST Rules") proper officer is required to refund at least 90% per cent of the refund claimed on account of zero-rated supply of goods or services or both made by registered persons within a period of seven days from the date of acknowledgment issued under sub-rule (l) or sub-rule (2) of Rule 90 of DGST Rules. He states that despite the period of fifteen days from the date of filing of the refund application having expired on 19th November, 2019, the respondent has till date neither pointed out any deficiency/discrepancy in FORM GST RFD-03 nor it has issued any acknowledgement in FORM GST RFD-02.

4. Learned counsel for petitioner further states that even for the refunds for the months of September and November, 2017, petitioner had to file W.P.(C) No.6337/2019 and it was only thereafter the Department had refunded the tax along with partial interest.

5. On the last two dates of hearing, Mr. Anuj Aggarwal, learned counsel for respondent had sought time to obtain instructions. He admits that there has been laxity on the part of the respondent in processing the petitioner's application. He, however, states that a formal deficiency memo will have to be issued as certain documents though annexed with the writ petition had not been uploaded by the petitioner along with its refund application.

6. Having heard learned counsel for the parties, this Court finds that Rules 90 and 91 of CGST/DGST Rules provide a complete code with regard to acknowledgement, scrutiny and grant of refund. The said Rules also

provide a strict time line for carrying out the aforesaid activities. For instance, Rules 90(2) and (3) of the DGST Rules states that within fifteen days from the date of filing of the refund application, the respondent has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02. In the event deficiencies are noted and communicated to the applicant, then the applicant would have to file a fresh refund application after rectifying the deficiencies. The relevant portion of Rule 90 of CGST/DGST Rules is reproduced hereinbelow:-

> "***90. Acknowledgement.-*** *.....*
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> *(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in in sub-section (7) of section 54 shall be counted from such date of filing.*
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> *(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4)of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.*
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> *(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies."*

7. In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST/DGST Act.

8. Admittedly, till date the petitioner's refund application dated 4th November, 2019 has not been processed. As neither any acknowledgment in FORM GST RFD-02 has been issued nor any deficiency memo has been issued in RFD-03 within time line of fifteen days, the refund application would be presumed to be complete in all respects in accordance with sub-rule (2), (3) and (4) of Rule 89 of CGST/DGST Rules.

9. To allow the respondent to issue a deficiency memo today would amount to enabling the Respondent to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules, referred above. This could then also be construed as rejection of the petitioner's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. This would not only delay the petitioner's right to seek refund, but also impair petitioner's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules.

10. Moreover, the respondent's prayer to raise a deficiency memo is a hyper-technical plea as admittedly, all the relevant documents have been annexed with the present writ petition and the respondent is satisfied about their authenticity.

11. Consequently, this Court is of the view that the respondent has lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage.

12. Accordingly, this Court directs the respondent to pay to the petitioner the refund along with interest in accordance with law within two weeks.

13. With the aforesaid directions, present writ petition stands disposed of.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JULY 22, 2020
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