IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY,THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN

WRIT PETITION NO: 11041 OF 2024

Between:

Infor (India) Private Limited, Tower 10, The Sky View, 7th Floor, Sy No.83/1, Madhapur, Raidurg Village, Serilingampally Mandal, Ranga Reddy, Hyderabad, Telangana 500081

...PETITIONER

AND

1. Deputy Commissioner of Central Tax, Gachibowli Division, Rangareddy GST Commissionerate, Hyderabad, Telangana
2. Commissioner of Central Tax, Rangareddy GST Commissionerate, Posnett Bhavan, Ramkote, Tilak Road, Abids, Hyderabad - 500 001
3. Additional Commissioner (Appeals - I), 7th Floor, GST Bhavan, LB Stadium Road, Basheer Bagh, Hyderabad. Telangana - 500 004
4. The Union of India, Represented herein by the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi - 110 001

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ, order or direction, (i) Quashing the impugned order dated 27.09.2023 bearing Order-in-Appeal No HYD-GST-RRC-APP1-125-23-24 (Annexure P-11), passed by the 3rd Respondent (ii) Quashing the review order dated 21.12.2022 bearing Order No. 84/2022-GST (Annexure P-6), passed by the 2nd Respondent (iii) Quashing the authorization order dated 21.12.2022 bearing Order No. 84/2022-GST (Annexure P-7), passed by the 2nd Respondent

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to . Stay the operation of the impugned order dated. 27-09-2023 bearing Order-in-Appeal No. HYD-GST-RRC-APP1-125- 23-24 (Annexure P-11), passed by the 3rd Respondent stay all further proceedings pursuant to the impugned order dated. 27-09-2023 bearing Order-in-Appeal No. HYD-GST RRC-ApP1-125-23-24 (Annexure P-11), passed by the 3rd Respondent; pass an exparte order in terms of VI.1 (a) and (b) above

Counsel for the Petitioner: SRI T. SURYANARAYANA SENIOR COUNSEL REP Ms. K. SRILATHA

Counsel for the Respondent Nos. 1to3: SRI M. P. KASHYAP, SC FOR CENTRAL BORAD OF INDIRECT TAXES

Counsel for the Respondent No.4: Dy. SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION No.11041 of 2024

ORDER:

Heard Mr. T. Suryanarayana, learned Senior Counsel representing Ms. K. Srilatha, learned counsel for the petitioner and Mr. M.P. Kashyap, learned Standing Counsel for the Central Board of Indirect Taxes and Customs for respondent Nos.1 to 3.

2. The petitioner is engaged in exporting of information technology and support services to customers outside India during the period from July, 2021 to February, 2022 (refund period). The petitioner claims to have made export of services under the "Zero-Rated Supply Mechanism" i.e., without charging output tax on exports, as provided in terms of Section 16 of the Integrated Goods and Services Tax Act, 2017 (for short, "the IGST Act"). The petitioner contends that in terms of Section 16(3) of the IGST Act read with Section 54 of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act"), it was eligible to claim refund of the unutilized input tax credit on supply of goods or services or

both having made zero-rated supply of services during that period. The petitioner further filed an application for refund of input tax credit vide Form GST-RFD-01, dated 10.05.2022 and claimed refund of Rs.2,97,88,701/- on the turnover of zero-rated supply of services amounting to Rs.3,65,90,54,093/-.

3. It is the contention of the petitioner that it also furnished documentary evidence supporting its refund claim such as computation statement, input tax credit register, copies of export invoices and corresponding Foreign Inward Remittance Certificates (FIRCs) etc. A show cause notice was issued on 06.06.2022 in Form GST-RFD-08, by respondent No.1 asking the petitioner to show cause as to why refund claim should not be rejected as it had not furnished the documentary evidence regarding the country of incorporation of foreign customers and also certain reconciliation statements. The petitioner furnished the requisite details vide submission dated 21.06.2022. After considering the objections of the petitioner filed in response to the show cause notice, the Refund Sanctioning Authority passed an order on 27.06.2022 in Form GST-RFD-06 sanctioning a refund of Rs.2,92,67,277/-. The

findings of the Refund Sanctioning Authority are extracted hereunder:

> "In light of above details and the documents submitted by them electronically, and the other details available in the common portal, I find that:-
>
> a) the refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.
>
> b) the refund claim has been filed within limitation of time, as provided under Acts,
>
> c) They filed all the due returns and no dues are pending for recovery from the them
>
> d) As provided under Section 54 (8), notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports. Accordingly, the provisions of unjust enrichment are not applicable to present refund application in terms of the provisions of section 54(8) of the CGST Act mentioned above.
>
> e) In terms of sub-rule (3) of rule 89 of CGST Rules, where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. Further, the Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger. Accordingly, the refund amount claimed has been found debited from the electronic credit ledger.

f) They have not claimed the refund of ITC on invoices which are not reflected in FORM GSTR-2A.

g) the refund is not barred under the provisions of 2nd and 3rd proviso to section 54(3) of the CGST Act, 2017 inasmuch as the goods exported out of India are not subjected to export duty, and the supplier of goods or services or both has not availed the drawback in respect of central tax or claimed refund of the integrated tax paid on such supplies."

4. Upon authorization order of the Commissioner, Central Taxes and Customs, dated 21.12.2022 in exercise of powers vested under Section 107(2) of the CGST Act, the Deputy Commissioner of Central Tax preferred an appeal against the refund order dated 27.06.2022 to determine the following questions:

"Whether the order of the Refund Sanctioning Authority in sanctioning refund of Rs.2,92,67,277/-

i. without proper determination of "Turnover of Zero Rated Supply of services" as stipulated in Rule 89(4)(D) of Central Goods and Services Tax Rules, 2017 and "Adjusted Total Turnover" as stipulated in Rule 89(4)(E) of Central Goods and Services Tax Rules, 2017; and

ii. without proper verification of agreements to ascertain the nature of services and Place of provision of service as to whether they constitute "export of services" as per Section 2(6) of the Integrated Goods & Services Tax Act, 2017,

is legal and proper? ".

5. The departmental appeal was decided by the impugned order dated 27.09.2023. Personal hearing was accorded to the petitioner,

who reiterated its cross objections and requested to reject the appeal preferred by the department. The appellate authority arrived at the following findings upon discussion on the case of the parties;

"**Discussions and Findings:**

14. I have gone through records of the case, cross objections and submissions at the time of personal hearing in all the appeals mentioned above.

15. Appellant contended that Refund Sanctioning Authority without examining the nature of service, place of provision of service and without examining the applicability of sub-section (3) to (13) of Section 13 of Integrated Goods & Services Tax Act, 2017, concluded that the place of provision of service is outside of India and the supply of service is export.

16. Respondent has submitted the agreement copy with service recipient and incorporation certificates of the respondent as well as service recipient. As seen from the incorporation certificates service provider and recipient are not mere establishments of distinct person. Respondent has agreed to provide software development services. As per agreement ownership and all other rights of the work product rests with the recipient of the service.

17. From the above terms and conditions of the agreement it is evident that the respondent is providing software services. Respondent is not working as intermediary. Services provided by the respondent are not barred by any provisions of sub section (3) to (13) of section 13 of the IGST ACT 2017 to qualify for export of service. Thus services provided by the respondent qualify for the export of services as per the section 2(6) of the IGST Act 2017.

18. Appellant contended that Refund Sanctioning Authority has not verified the same by seeking any ledger or document from the tax payer, which is necessarily to be verified in terms of Rule 89(4)(D) of Central Goods and Services Tax Rules, 2017. As the turnover of zero rated supply of services is not determined in accordance with the provisions of Rule 89(4) (D) of Central Goods and Services Tax Rules, 2017, the Adjusted

Total Turnover arrived, is also not in accordance with the provisions of Rule 89(4) (E) of Central Goods and Services Tax Rules, 2017

19. As seen from the additional submissions dt. 20.09.2023 there is chartered accountant certificate issued by K Srinivas Murthy stating that no advances have been received during the relevant period of refund. And submitted that the turnover of zero rated supplies for the refund period i.e. July 2021 to feb-2022 is Rs 3,56,13,20,006/-. While refund sanctioning authority in Refund order stated that the turnover of zero rated supplies for the refund period i.e. July 2021 to feb-2022 is Rs 3,65,90,54,093/-

20. From the above mismatch it is evident that the refund sanctioning authority has erred in calculating the turnover of zero rated supply of services in as per the provisions of Rule 89(4)(D) of Central Goods and Services Tax Rules, 2017, therefore Adjusted Total Turnover arrived, is, also not in accordance with the provisions of Rule 89(4)(E) of Central Goods and Services Tax Rules, 2017

21. In view of the above findings and discussion, I pass the following order:

Order

I allow the appeal filed by the department setting aside the order of original authority."

6. Our attention has been specifically drawn to the findings at paragraphs 16 and 17 of the order of the appellate authority where he has held that from the terms and conditions of the agreement submitted by the respondent/petitioner herein with the service recipient and incorporation certificates of the petitioner as well as service recipient, it is evident that petitioner and recipients are not mere establishments of distinct person. Therefore, the petitioner

has provided software services and it is not working as an intermediary. Services provided by the petitioner were not barred by any of the provisions of sub-sections (3) to (13) of Section 13 of the IGST Act to qualify for export of service. Thus, services provided by the petitioner qualify for export of services as per Section 2(6) of the IGST Act.

7. Learned counsel for the petitioner submits that question No.2 framed in the appeal was accordingly answered in favour of the petitioner. From the findings recorded at paragraph 19 of the impugned order, it is submitted that the appellate authority after considering the additional submissions dated 20.09.2023 and the chartered accountant certificate, observed that the turnover of zero-rated supplies for the refund period i.e., July, 2021 to February, 2022 is Rs.3,56,13,20,006/-. While the Refund Sanctioning Authority in refund order has computed it as Rs.3,65,90,54,093/-. It is submitted that the petitioner had submitted the requisite documents such as, the agreement and ledger before the appellate authority. The appellate authority failed to appreciate that the

mismatch in the turnover is not going to deny the claim of refund sought by the petitioner for the period in question.

8. Learned counsel for the petitioner has drawn the attention of this Court to the provisions of Rule 89 in Chapter X of the Central Goods and Services Tax Rules, 2017 (for short, "the CGST Rules") under the heading "Refund" which deals with refund of tax, interest, penalty, fees or any other amount. He has specifically referred to sub-rule (4) thereof, which provides the formula for refund of input tax credit in case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act. He has also referred to sub-clause (E) of sub-rule (4) of Rule 89 of the CGST Rules which provides for computation of the "adjusted total turnover". It is submitted that the petitioner is only a supplier of zero-rated services and not goods. The appellate authority therefore instead of dismissing the appeal after holding that the services provided by the petitioner qualify for export of services in terms of Section 2(6) of the IGST Act ought to have examined the question of admissible quantum of refund on

the basis of the document sought for and supplied by the petitioner. On the basis of the apparent mismatch in the zero-rated turnover supply for the refund period as submitted by the petitioner on the basis of the chartered accountant certificate with that computed by the Refund Sanctioning Authority it should not have denied the refund admissible to the petitioner in totality.

9. Learned counsel for the petitioner has drawn the attention of this Court to the Input Tax Credit (ITC) eligible to the petitioner if the turnover of zero-rated service of supplies is treated as Rs.3,65,90,54,093/-, as computed by the Refund Sanctioning Authority vis-à-vis Rs.3,56,13,20,006/- as furnished by way of certificate of the chartered accountant. The said tabular chart is extracted hereunder:

Particulars	Reference	As per refund sanction order	If lower turnover of zero-rated supply is considered as per the impugned order
Turnover of **zero-rated** supply of services	A	3,65,90,54,093	3,56,13,20,006
Turnover of **non zero-rated** supply of services	B	52,80,18,511	52,80,18,511
Adjusted total turnover	C = A+B	4,18,70,72,604	4,08,93,38,517
Net ITC	D	6,63,14,615	6,63,14,615

Maximum refund admissible	E = Lower of e(i) or e(ii) below	3,08,70,196	3,08,70,196
- Refund amount as per Rule 89(4)	e(i)	5,79,51,888	5,77,52,021
- Balance in Electronic Credit Ledger	e(ii)	3,08,70,196	3,08,70,196
Refund Claimed/ that could have been claimed	F	2,97,88,701	2,97,88,701

10. Based on these submissions, learned counsel for the petitioner has prayed for remand of the matter to the appellate authority to determine the quantum of refund, if any, admissible to the petitioner.

11. Learned counsel for respondent Nos.1 to 3 submits on instructions that on this issue if the Court remands the matter, the appellate authority would determine the issue of quantum of refund due to the petitioner in lieu of the export of service undertaken by it for the period from July, 2021 to February, 2022. Learned counsel for respondent Nos.1 to 3 does not dispute that the appellate authority has rendered the finding that the petitioner is providing software services and is not working as an intermediary and as such qualifies for export of services as per Section 2(6) of the IGST

Act. It is only a question of computation of the amount of refund based upon the adjusted total turnover to be determined in terms of Rule 89(4)(D) and (E) of the CGST Rules.

12. Upon consideration of the submissions of the learned counsel for the parties and the material referred to from the pleadings on record and after perusal of the impugned appellate order, we are of the considered view that since the appellate authority had in answer to question No.2 recorded a finding that the petitioner was qualified for export of service and was not working as an intermediary, it should have upon the submission of the relevant documents, such as agreements and ledger etc., by the petitioner, proceeded to determine the total turnover of zero-rated supply of service under Rule 89(4)(D) of the CGST and the adjusted total turnover under Rule 89(4)(E) of the said Rules. The appellate authority after having taken note of a mismatch in the turnover of zero-rated supplies for the subject period between the certificate of the chartered accountant submitted by the petitioner vis-à-vis the turnover of zero-rated supply computed by the Refund Sanctioning Authority should have come to a finding as to whether

even after the variation in the mismatch of the turnover of the zero-rated supplies whether the petitioner is entitled to seek refund of any amount or not. The appellate authority having failed to undertake this exercise, as required under the law, committed an error in allowing the appeal without determining the question as to whether the petitioner is entitled to refund of any amount for the subject period against its claim of having made zero-rated supply of service, after due scrutiny of the relevant records such as agreement, ledger etc., which the petitioner claims to have submitted before him. The appellate authority under the provisions of Section 107 of the CGST Act does not have the power to remand the matter to the assessing authority to undertake that exercise. Therefore, it was incumbent upon the appellate authority to undertake the said exercise and determine the quantum of refund, if any, admissible to the petitioner or not. Therefore, the matter is remitted back to the appellate authority to decide the issue of determination of the quantum of refund, if any, admissible to the petitioner for the subject period i.e., from July, 2021 to February,

2022 on the basis of its claim that it had undertaken zero-rated supply of services during that period.

13. The impugned order is, accordingly, set aside to the extent of the error indicated hereinabove. Upon remand, the petitioner, if so called upon, shall cooperate in determination of such claim. It is expected that the appellate authority would take a decision within a reasonable time, preferably, within a period of eight weeks from the date of receipt of a copy of this order.

14. Accordingly, the writ petition is allowed. No costs.

Miscellaneous petitions, pending if any, stand closed.

SD/- K.BHAVANI SWAMY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy Commissioner of Central Tax, Gachibowli Division, Rangareddy GST Commissionerate, Hyderabad, Telangana
2. The Commissioner of Central Tax, Rangareddy GST Commissionerate, Posnett Bhavan, Ramkote, Tilak Road, Abids, Hyderabad - 500 001
3. The Additional Commissioner (Appeals - I), 7th Floor, GST Bhavan, LB Stadium Road, Basheer Bagh, Hyderabad. Telangana - 500 004
4. The Secretary, Union of India, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi - 110 001
5. One CC to Ms. K. SRILATHA, Advocate [OPUC]
6. One CC to SRI. M. P. KASHYAP, SC FOR CENTRAL BOARD OF INDIRECT TAXES [OPUC]
7. One CC to Dy. SOLICITOR GENERAL OF INDIA [OPUC]
8. Two CD Copies

B M
TKS

HIGH COURT

DATED:26/08/2025

ORDER

WP.No.11041 of 2024



ALLOWING THE WRIT PETITION WITHOUT COSTS

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ASV
23/9/25