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

WEDNESDAY,THE FIFTEENTH DAY OF OCTOBER
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: 3516 OF 2024

Between:

Commscope India Private Limited, Block-1, Floor 2, 4, My Home Hub, Hitech City, Madhapur, Hyderabad, Telangana 500081 Rep.by its Rakesh Bhanushali

...PETITIONER

AND

1. The Additional Commissioner (Appeals-I), GST and Central Tax, 7th Floor, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad 500004
2. The Deputy/Assistant Commissioner of Central Tax, Gachibowli Division, Rangareddy GST Commissionerate, 1-98/7/43, VIP Hills, Jai Hind Colony, Madhapur, Hyderabad-500081
3. The Commissioner of Central Tax, Rangareddy GST Commissionerate, 1-98/7/43, VIP Hills, Jai Hind Colony, Madhapur, Hyderabad-500081
4. The Union of India, Through the Secretary to Government, Ministry of Finance, North Block, New Delhi 110001

...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 a Writ, Order or direction particularly one in the nature WRIT OF MANDAMUS (a)setting aside the impugned Order bearing Order No. HYD-GST-RRC-APP1-157-23-24 dated 29.09.2023 passed by the Respondent No.1 by disallowing the refund of Rs.1,43,97,841/-for the period October 2021 to March 2022 (b)to uphold the Refund Sanction Order No. ZB3610220047435 dated 01.10.2022 passed by Respondent No.2

IA NO: 1 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 of all further proceedings and abstain from initiation of any coercive measures pursuant to the Impugned Order bearing Order No. HYD-GST-RRC-APP1-157-23-24 dated 29.09.2023 in respect of issues challenged in this writ petition

Counsel for the Petitioner: SRI NARENDRA DAVE REP
SRI. LAKSHMI KUMARAN SRIDHARAN

Counsel for the Respondent Nos. 1to3: Smt. B. SAPNA REDDY SENIOR SC FOR INCOME TAX

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. 3516 of 2024

ORDER:

Sri Narendra Dave, learned counsel appears for M/s. Lakshmi Kumaran & Sridharan, learned counsel for petitioner.

Smt. Bokaro Sapna Reddy, learned Senior Standing Counsel for Income-tax appears for respondents.

2. In the appeal preferred by the department under Section 107(2) of the Central Goods & Services Tax Act, 2017 (for short 'CGST Act') against Refund Sanction Order (RFD-06) dated 07.10.2022, passed by respondent No.2/Refund Sanctioning Authority/original authority - Deputy Commissioner of Central Tax, Gachibowli Division, Rangareddy Commissionerate, the appellate authority *vide* impugned order dated 29.09.2023 has set aside the said order holding that the Refund Sanctioning Authority has erred in classifying the service as export of service without examining nature of service, place of provision of service and without

examining the applicability of sub-sections (3) to (13) of Section 13 of Integrated Goods & Services Tax Act, 2017 (for short 'IGST Act'). Therefore, supply does not qualify as export and refund is erroneous. The petitioner being aggrieved thereto has preferred the instant Writ Petition.

3. Learned counsel for the petitioner has drawn the attention of this Court to the Refund Sanction Order and submitted that sanction of the refund was made after satisfying that the petitioner has made zero rated supply of services and as per the Adjusted Total Turnover calculated in terms of Rule 89(4) of the Central Goods & Services Tax Rules, 2017 (for short 'CGST Rules'), the net input tax credit would be Rs.1,43,97,841/- for which refund was sought. The Refund Sanctioning Authority found that the claim was within the limitation period. The petitioner had filed all the due returns and there were no dues pending for recovery from them. The provisions of unjust enrichment in terms of Section 54(8) of Central Goods & Services Tax Act, 2017 (for short 'CGST Act') were not applicable to the refund application. The refund

amount claimed was found debited from the electronic credit ledger. They have not claimed the refund of ITC on invoices which are not reflected in FORM GSTR-2A and the refund is not barred under the provisions of 2nd and 3rd provisos to Section 54(3) of CGST Act inasmuch as the goods exported are not subjected to export duty and the supplier of goods or services or both has not availed the central tax or claimed refund of the integrated tax paid on such supplies. He thereby sanctioned refund of Rs.1,43,97,841/- in cash to the petitioner in terms of Section 54(8) of CGST Act and 92(1) of CGST Rules. It is submitted that pursuant to the said order, the departmental appeal was filed on two grounds.

> **"Whether the order of the Refund Sanctioning Authority in sanctioning refund of Rs.1,43,97,841/-**
>
> 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?"

Learned counsel for the petitioner has drawn the attention of this Court to the discussions and findings from paras 15 to 23 of the impugned order. It is submitted that a perusal of the observations at para 17 of the impugned order would show that the contention of respondent No.2/appellant that inward foreign remittance during the relevant period were nil, and hence, the total zero rated supply of services for the claim period was 'NIL' and Adjusted total turnover was also 'NIL', was not sustainable and liable for rejection, as per the appellate authority. The appellate authority also found that the contention of respondent No.2 that the Refund Sanctioning Authority had concluded that the place of provision of service is outside India and the supply of service is export, without

examining the nature of service, place of provision of service and without examining the applicability of sub-sections (3) to (13) of Section 13 of IGST Act, was also not correct. He also took note that the petitioner had submitted agreement copy, its incorporation certificate as well as service recipient. The petitioner had also submitted the name change certificates of both the companies. It was further observed from the service agreement that the petitioner desired to obtain information technology services to support their business operations and have necessary resources to provide such services. They have also submitted additional documents about the services provided. However, in a cryptic manner, the appellate authority has concluded that the invoices and agreement show that the petitioner is working as intermediary, an agent of the service recipient. No scrutiny or analysis of the documents submitted has been made by the appellate authority to arrive at the aforesaid conclusion that the petitioner is providing intermediary services in terms of Section 2(13) of IGST Act. Hence, the place of provision of service is India i.e., location of service provider in terms of Section 13(8)(b) of IGST Act.

The appellate authority committed a serious error in setting aside the Refund Sanction Order by holding that the Refund Sanctioning Authority has erred in classifying the service as export of service without examining the nature of service, place of provision of service and without examining the applicability of sub-sections (3) to (13) of Section 13 of IGST Act. It is submitted that the appellate authority does not have the power to remand. The appellate authority therefore, ought to have arrived at independent findings after submission of all relevant documents admittedly whether the petitioner's services did qualify as zero rated supply of services for export. Instead of doing that, by a cryptic non-reasoned order, the appellate authority has straight away held that the petitioner is working as intermediary, an agent of the service recipient. By doing so, the Refund Sanction Order passed by the original authority has been set aside without any application of mind. Therefore, the petitioner has preferred the present Writ Petition.

4. The respondents have filed a counter-affidavit opposing the prayer.

5. Learned counsel for the respondents submits that the claim of refund relates to the taxes paid under the category of "Export of goods/services without payment of tax (accumulated ITC)" for the period from 01.10.2021 to 31.03.2022 for an amount of Rs.1,43,97,841/- in terms of the 1st proviso to Section 54(3)(i) of CGST Act. It is submitted that the departmental appeal was preferred after the review order was passed, at the instance of the jurisdictional Deputy/Assistant Commissioner under Section 107(2) of CGST Act, before the Additional/Joint Commissioner (Appeals-I), Customs & Central Tax, Hyderabad Zone, on the aforestated grounds. It is submitted that the contentions of the petitioner that they fulfill the criteria laid down in GST statute and their supplies do not fall under sub-sections (3) to (13) of Section 13 of IGST Act. The decision of the appellate authority that the nature and the place of supply of services and the supplies are not exports are incorrect. It is further

submitted that the impugned order is well within the jurisdiction of the appellate authority as he passed the same based on the thorough examination of all aspects of the case including classification of services to determine the eligibility of the refund claim. The impugned order has been passed after thorough examination of the facts, documents and legal provisions and is not based on incorrect facts, assumptions or presumptions as alleged by the petitioner. The scope of services provided by the petitioner indicates the petitioner's role as intermediary under Section 2(13) of IGST Act. Therefore, their services qualify as intermediary services. The petitioner facilitates or arranges supplies between them and other parties.

Learned counsel for the respondents submits that the petitioner should have availed the remedy of appeal before GST Tribunal under Section 112 of CGST Act instead of approaching this Court under writ jurisdiction where issues or facts are sought to be raised.

6. We have accorded consideration to the submissions of the learned counsel for the parties. We have referred to the relevant material facts above. We have also perused the order of the Refund Sanctioning Authority and the impugned order passed by the appellate authority. The discussion and findings rendered by the appellate authority in the impugned order from paragraphs 15 to 23 are quoted hereunder:

> "15. I have gone through records of the case, cross objections and submissions at the time of personal hearing, order in original; agreement copies etc.
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> 16. Appellant contended that BRCs have been issued for M/s. Comm Scope India Private Limited, Goa which is an establishment of distinct person under GST and not by the applicant of the refund claim i.e. M/s. Commscope India Pvt. Ltd, Block-1, Floor-2, 4, My Home Hub, Hitech City, Madhapur, Hyderabad, Telangana-500081. All invoices enclosed to the refund application have been raised by Hyderabad office. BRCs do not carry details of the invoices either. In view of the above, it is evident that the tax payer have not received any inward foreign remittance during the relevant period, and hence, the total zero rated supply of services for the claim period is 'NIL' and Adjusted total turnover is also 'NIL'.
>
> 17. As per section 25(5) of the CGST Act 2017 *"Where a person who has obtained or is required to obtain registration in a State or Union territory in*

respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act." Thus Goa and Hyderabad units are distinct persons for the sake of GST Act but not for other laws. BRCs are matching with Invoices. Therefore appellant's contention that inward foreign remittance during the relevant period are nil, and hence, the total zero rated supply of services for the claim period is 'NIL' and Adjusted total turnover is also 'NIL', is not sustainable and liable for rejection.

18. 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, which is not correct.

19. Respondent has submitted agreement copy, incorporation certificate of the respondent as well as service recipient. Respondent has also submitted the name change certificates for both the companies.

20. It is observed from the service agreement that, Commscope Technologies LLC is distributor of telecommunication products. And they desire to obtain information technology services to support their business operations. Respondent has the necessary resources to provide such services. They have submitted additional documents about the services

provided. However from the invoices and agreement provided it is evident that respondent is working as intermediary an agent of the service recipient.

21. It is evident the scope of services clause of agreement, respondent is providing intermediary services in terms of section 2(13) of the IGST Act 2017 Hence the place of provision of service is India i.e. location of service provider in terms of section 13(8)(b) of the IGST Act 2017.

22. Refund sanctioning authority has erred in classifying the service as export of service without examining 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. Therefore supply does not qualify as export and refund is erroneous.

23. In view of the above findings and discussion, I pass the following order;

Order

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

The departmental appeal was preferred on the following two questions.

"Whether the order of the Refund Sanctioning Authority in sanctioning refund of Rs.1,43,97,841/-

iii. **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**

iv. **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?"

The appellate authority has rejected the contention of the department that inward foreign remittance during the relevant period were nil and hence, the zero rated supply of services for the claim period were nil and that the Adjusted Total Turnover is also nil as per the findings at para 17 of the impugned order. The appellate authority also held that the contention of the appellant that the Refund Sanctioning Authority had without examining the nature of service, place of provision of services and without examining the applicability of sub-sections (3) to (13) of Section 13 of the Act, concluded that the place of

provision of service is outside India and the supply of service is export is not correct. It is further evident that the petitioner had submitted agreement copy, its incorporation certificate as well as service recipient and also the name change certificate for both the companies. However, the concluding paragraphs 20, 21 and 22 quoted above do not show any scrutiny or analysis of the documents submitted by the petitioner to reach a conclusion that the Refund Sanctioning Authority had without examining the applicability of sub-sections (3) to (13) of Section 13 of IGST Act held that the supply does not qualify as export and the refund is erroneous. It is trite that the appellate authority does not have the power of remand under Section 107(11) of CGST Act. The appellate authority ought to have examined the documents to come to an independent finding on the issue whether the petitioner's services were in the nature of intermediary or qualify as export of service in terms of sub-sections (3) to (13) of Section 13 of IGST Act which he failed to do.

7. Learned counsel for the petitioner has during the course of submissions, pointed out that on account of passing of the impugned order, the refund claims of the petitioner for subsequent periods such as from October, 2022, to March, 2023 and from April, 2023 to March, 2024, have also been rejected by the Refund Sanctioning Authority without due scrutiny or application of mind. Therefore, it is all the more reason for the petitioner to contest the findings. Learned counsel for the petitioner has also submitted that if the matter is remanded to the appellate authority and an opportunity is given to the petitioner, they would satisfy that the services rendered by them qualify as export services as required under Section 13 of IGST Act.

8. Having regard to the discussion made hereinabove and the reasons recorded, we are satisfied that the impugned order suffers from non-application of mind or non-recording of adequate reasons before setting aside the refund sanction order, by the appellate authority. Therefore, the impugned order is set aside. The matter is remanded to the appellate

authority to pass a fresh order in accordance with law after due notice to the petitioner. Let the petitioner appears before the appellate authority on 27.10.2025.

Accordingly, the instant Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

SD/- A.H.S. GOWRI SHANKAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional Commissioner (Appeals-I), GST and Central Tax, 7th Floor, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad 500004
2. The Deputy/Assistant Commissioner of Central Tax, Gachibowli Division, Rangareddy GST Commissionerate, 1-98/7/43, VIP Hills, Jai Hind Colony, Madhapur, Hyderabad-500081
3. The Commissioner of Central Tax, Rangareddy GST Commissionerate, 1-98/7/43, VIP Hills, Jai Hind Colony, Madhapur, Hyderabad-500081
4. The Union of India, Through the Secretary to Government, Ministry of Finance, North Block, New Delhi 110001
5. One CC to SRI. LAKSHMI KUMARAN SRIDHARAN Advocate [OPUC]
6. One CC to Smt. B. SAPNA REDDY, SC FOR INCOME TAX [OPUC]
7. One CC to DY.SOLICITOR GENERAL OF INDIAOPUC]
8. Two CD Copies

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HIGH COURT

DATED:15/10/2025

ORDER

WP.No.3516 of 2024



ALLOWING THE WRIT PETITION WITHOUT COSTS

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