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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1718 of 2024(F)

Power Engineering (India) Private
Ltd., Through its Authorised
Representative
Mangesh Sadashiv Dalvi ... Petitioner

Versus

Union of India,
Through the Secretary,
Department of Revenue and 6 Ors. ... Respondents

Mr Bharat Raichandani along with Mr Raj Chodankar, Advocates
for the Petitioner.

Ms Asha Desai, Senior Standing Counsel for Respondent
Nos.1,3,4,5,6.

Ms Akshata Bhat, Additional Government Advocate for
Respondent Nos.2 and 7 (through V.C.).

**CORAM : BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATE : 7th MAY 2025

ORAL ORDER : (Per Bharati Dangre, J.)

1. The petition is filed, being aggrieved by the alleged arbitrary, illegal, highhanded and without jurisdiction action initiated on the part of the respondent no.1 in enacting Rule 96(10) of the Central Goods & Services Tax Rules, 2017 ('CGST Rules', for short). In addition, the challenge is also

raised to the action on the part of respondent no.5, the Superintendent of Central Tax, Panaji-Goa, seeking certain records from the petitioner to ascertain violation of the impugned Rule 96(10) of the CGST Rules.

2. The petitioner is a company engaged in the manufacture of electronic goods and accessories and is registered under the Goods and Services Tax Act, 2017 (GST Act, 2017). It is not in dispute that the petitioner is a 100% Export Oriented Unit (EOU) and in order to manufacture, it imports raw material/inputs without payment of customs duty and IGST, claiming exemption from payment of import duties in terms of the notification dated 31.03.2003, amended from time to time. In the process, the petitioner also procures raw materials/input from the domestic market/suppliers and puts it to use in the manufacturing of the final products, which is ultimately exported. At the time of export, the petitioner pays IGST and, therefore, is entitled for the rebate/refund of the IGST on the products so exported.

3. We have heard Mr Bharat Raichandani for the petitioner, who has taken us through the background facts, since challenge

is raised to Rule 96(10) introduced in the CGST Rules, pursuant to the Notification issued by the Government of India, Ministry of Finance on 09.10.2018, which has substituted Rule 96(10), by clarifying that the persons claiming refund of integrated tax paid on export of goods or services should not have received supplies, thereby exempting the category of goods which were imported as tax free goods and has availed the benefit of the Notification dated 13.10.2017 except in so far as it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

It is the submission of Mr Raichandani, that his larger challenge is to the validity of the Rules, but he has invited our attention to the impugned order dated 10.07.2024, with reference to the subject of 'Verification of IGST Refunds sanctioned from 2017-18 to 2021-22, in violation of Rule 96(10) of the CGST Rules 2017' which has been brought into force with effect from 09.10.2018.

Another point which arises for consideration, according to Mr Raichandani, is whether this Notification will have a

retrospective or prospective effect. In addition, one more point which arises for consideration, is that once the Rule has been omitted with effect from 08.10.2024, whether the adjudication based on the prevailing Rule can continue thereafter.

4. Continuing the narration of the facts, according to Mr Raichandani, the order dated 10.07.2024, which has fastened the liability upon the petitioner by alleging that it had wrongly claimed the refund of Rs.6,88,11,571/- in contravention to Rule 96(10) of the CGST Rules, 2017 and directing him to pay the wrongly availed refund of the aforesaid amount along with the interest and penalty as per Section 74 of the CGST Act, 2017, is itself in violation of the procedure contemplated under Chapter XV of the Central Goods & Services Tax Act, 2017 and in particular sub-section (1), (9) and (10) of Section 73.

Mr Raichandani has fairly submitted before us that if the Court is satisfied that the impugned order does not adhere to the statutory compliance as contemplated under Section 73

then he may not desire that the validity of the Rule as well as the other points that are raised by him, to be gone into.

5. We have perused the impugned order dated 10.07.2024, which is preceded by a communication dated 19.10.2022 by the Superintendent Range-IV (Pernem) Division-I, CGST Goa of the petitioner in regards to the subject 'Verification of IGST Refunds sanctioned from 2017-18 to 2021-22 (violation of Rule 96(10) of CGST Rules 2017)'.

Our attention is also invited to the communication dated 07.11.2023, from the Superintendent Range-IV (Pernem) Division - I, CGST Goa, addressed to the petitioner with reference to the subject of 'Verification of IGST Refunds sanctioned from 2017-18 to 2021-22, alleging that it violates Rule 96(10) of CGST Rules 2017'.

By the said communication, the petitioner was requested to clarify whether it had claimed refund of IGST paid on account of export of goods/services during the period 2017-18 to 2021-22 and if yes then it was asked to furnish the details.

By the said communication, the petitioner was specifically asked, whether it had availed the benefit of Notification

No.78/2017 by the Customs Department as well as the Notification No.79/2017 both dated 13.10.2017 and a query was raised whether the Company has received input supplies, on which the suppliers have taken the benefit of the Notification dated 23.10.2017. The information was sought to be furnished before 24.10.2022.

This was followed by another communication dated 07.11.2023, when the petitioner forwarded its response on 09.05.2023 and the petitioner was requested to provide copies of documents which included purchase bills, vouchers, shipping bills, export invoice as well as the bank statement for the relevant period and also the sanction order issued by the competent GST/Customs Authority.

6. On the petitioner complying with the requisites, by supplying the necessary information, the impugned order was issued on 10.07.2024 and a reading of the order would lead us to an inference that the procedure contemplated under Section 73 or Section 74 of the Act of 2017 has been given a complete go-by.

Section 73 which is included in the Chapter pertaining to “Demands and Recovery”, contemplate determination of tax pertaining to the period up to financial year 2023-24, either not paid or short paid or erroneously refunded or where income tax wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. Sub-section (1) of Section 73 confer power upon a proper officer, to whom it appears that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason, without the involvement of fraud or any wilful misstatement or suppression of facts to evade tax, and this power is permitted to be exercised in the prescribed manner.

The sub-section contemplates that the proper officer shall serve notice on the concerned person, requiring him to show cause as to why he should not pay the amounts specified in the notice along with interest payable thereon under Section 50 and the penalty leviable under the provisions of the Act or the Rules made therein.

The sub-section (2) contemplates that the notice shall be issued at least 3 months prior to the time limit prescribed in sub-section 10 from the issuance of the order, that is 3 years.

Whenever such notice is served, it is also imperative for the proper officer to serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax wrongly availed or utilised for such periods other than the one covered under sub-section (1) on the person charged with tax.

Upon receipt of the notice, it is open to the person to submit his representation and in wake of sub-section (9) of Section 73, the proper officer shall after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher, due from such persons and issue an order.

7. The aforesaid provision, read along with Rule 142 of the CGST Rules, 2017, which has prescribed the format of the notice and order of demand, payable under the Act, definitely has not been followed. The procedure contemplated under

Section 73 of the Act is therefore clearly set out contemplating a show cause notice to be issued as to why the amount should not be paid by the person, who has either not paid the tax or the tax paid is less or erroneously refunded or who has availed the input tax credit or utilised the same, and after affording an opportunity, to make a representation the proper officer shall determine the amount of tax along with the interest and penalty, due from such a person by issuing an order.

Admittedly, the aforesaid procedure as contemplated is not availed into as it is evident that the notices which are issued by the petitioner are not in the form of show cause as neither the amount has been specified in the notice nor it is clearly indicative that a particular amount shall be liable to be recovered from the petitioner as the amount which was already availed by way of refund.

8. The perusal of the impugned order dated 10.07.2024 clearly contain an inference drawn by the officer, without any indication in the previous notices issued to the petitioner about the amount of refund that has been claimed and it being subjected to interest and penalty at what rate. The officer has

arrived at a conclusion on the basis of the bill entry submitted by the petitioner, that during the tax period of claim of refund he had taken the benefit of the Notification dated 13.10.2017 and therefore wrongfully claimed the refund of Rs.6,88,11,571/- which is in contravention with Rule 96(10) of the CGST Rules, 2017.

Had the petitioner being issued a show cause notice as contemplated under sub-section (1) of Section 73, and determination of this show cause notice pursuant to the representation/stand adopted by the petitioner, all the issues pertaining to the applicability of Rule 96(10) of the CGST Rules 2017 would have been open for consideration by the concerned officer. However, since the impugned order has straight away drawn a conclusion that the petitioner had wrongly availed refund, which is liable to be recovered from it along with interest and penalty under Section 74 of the CGST Act 2017, in absence of adhering to the procedure prescribed under the Act of 2017 to be read along with Rules 2017, we are satisfied that the necessary procedure to be followed before the demand is raised and the recovery is ordered, has not been adhered with.

11. Ms Asha Desai, learned Senior Standing Counsel representing the Revenue does not dispute the factual aspect of the matter and she also does not dispute the legal position that if a statute prescribes a particular thing to be done in a particular manner then it has to be done only in that manner and in no other way.

12. In the wake of the aforesaid without touching into the other issues which are raised in the petition particularly the validity of Rule 96(10) of the CGST Rules, 2017 as well as its applicability in the case of the petitioner and by keeping this issue open, we quash and set aside the impugned order dated 10.07.2024 by giving liberty to the Revenue to follow the procedure under Sections 73 and 74 of the Act of 2017, to be initiated by the issuance of show cause notice pursuant to which the petitioner shall be afforded with an opportunity to submit its representation, which shall be subjected to adjudication by the proper officer in accordance with law.

Writ Petition is allowed in the above terms.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.