



\$~36

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 21.11.2023*+ **W.P.(C) 7919/2023****AB ENTERPRISES**

..... Petitioner

Through: Mr. Virag Tiwari & Mr. Ramashish,  
Advs.

versus

**COMMISSIONER OF DELHI GOODS AND  
SERVICES TAX**

..... Respondent

Through: Mr. Rajeev Aggarwal & Ms.  
Samridhi Vats, Advs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition impugning the communication (Form GST RFD-03) dated 06.04.2022 (hereafter '**impugned communication**') informing the petitioner regarding deficiencies in its application for refund of unutilized Input Tax Credit (hereafter '**ITC**').

2. The petitioner assails the impugned communication, essentially, on two grounds. First, that the officer issuing the impugned communication is not authorized or competent to do so. And second, that there is no deficiency in the refund application preferred by the petitioner. The purported deficiencies are beyond the scope of Rule 89(2) of the Central Goods & Services Tax Rules, 2017 (hereafter '**CGST Rules**').



3. The petitioner had filed an application for refund of the unutilized ITC in respect of zero rated supplies (goods exported) to the extent of ₹1,75,83,622/- made in the month of December, 2021. The said application was filed on 24.03.2022 in Form GST RFD-01 claiming refund of an amount of ₹54,86,530/-. Concededly, the said application was accompanied with following documents as noted by the concerned officer and as reflected in the GST portal:

- “1. RFD01
2. Statement 3
3. Computation of Refund Claimed Statement
4. Declaration 54(3)(ii)
5. Undertaking 16(2)(e), section 42 of the SGST/CGST 91(1) of CGST Act,2017.
6. Annexure B/GSTR-2A.
7. A statement mentioning details of invoices and shipping bills.”

4. The petitioner’s application was not processed and the concerned officer issued the impugned communication stating that upon scrutiny of the petitioner’s application, the following deficiencies were noted:

<b>“S. No.</b>	<b>Description (option to choose multiple reasons of discrepancies will be given)</b>
1	Relevant supporting documents not attached
2	Supporting documents attached are incomplete”

5. It is apparent from the above that the impugned communication is bereft on any specific details. It neither sets out the relevant documents that have not been provided nor indicates the documents that are supposedly incomplete. However, the respondent has filed a counter-affidavit indicating that the concerned officer had found that



the following documents – which according to him were required to accompany to the application – were not filed along with the said application:

- “1. Shipping Bills/Transport bills (Lading).
2. Copies of invoices.
3. Statement of 3B.
4. CA audited Certificate.
5. Undertaking Rule 96B of the GST Rules.
6. BRC.”

6. Insofar as petitioner’s first ground of challenge that the impugned communication has not been issued by a competent officer, is concerned, Mr. Tiwari, learned counsel appearing for the petitioner, does not press the same. He has confined the present petition to assailing the impugned communication on the ground that, *ex facie*, the same is not in conformity with the Central Goods and Services Tax Act, 2017 (hereafter ‘**CGST Act**’) and the CGST Rules.

7. It is petitioner’s case that it had filed all the documents, as required to be filed in terms of Rule 89(2) of the CGST Rules, and therefore its application could not be considered as deficient. It was, thus, necessary for the concerned officer to process the said application in accordance with law.

8. It is important to note that the implication of the impugned communication is that the petitioner would be required to file a fresh application for refund in terms of Rule 90(3) of the CGST Rules. Indisputably, the petitioner’s application for refund cannot be termed as deficient if it is in accordance with Rule 89(2) of the CGST Rules and



is accompanied with the documents specified therein. Although, the concerned officer is at liberty to call for further documents to process the claim, the fact that such further documents are not annexed with the application does not render the same deficient.

9. Mr. Aggarwal, does not controvert that the documents referred to in the file noting and also reflected in the GST portal are not covered under Rule 89(2) of the CGST Rules. Concededly, the petitioner had filed all relevant documents that were mandatory in terms of Rule 89(2) of the CGST Rules.

10. This Court had considered a similar issue in *National Internet Exchange of India v. Union of India & Ors.: Neutral Citation No.2023:DHC:6002-DB* and held as under:

“19. An application can be rejected as deficient only where any deficiencies are noted. The contextual reading of Sub-rule (3) with Sub-rule (2) of Rule 90 of the CGST Rules, indicates that the deficiencies referred to in Sub-rule (2) of Rule 90 of the CGST Rules are those that render an application incomplete in terms of Sub-rules (2), (3) and (4) of Rule 89 as stipulated in Sub-rule (2) of Rule 90. Thus, if an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same cannot be rejected, relegating the taxpayer to file afresh. In any view of the matter, the period of processing the said application under Sub-section (7) of Section 54 of the CGST Act, is required to be counted from the said date.

20. However, notwithstanding the fact that the application for refund is complete inasmuch as it is accompanied by the documents as specified in Sub-rule (2) of Rule 89 of the CGST Rules, the proper officer may withhold the processing of refund, if he is not completely satisfied that the same is refundable to the taxpayer. In such circumstances, where the proper officer requires to further verify the claim or is unable



to process it on account of discrepancies noticed by him, he is required to issue notice in Form GST RFD-08 in terms of Sub-rule (5) of Rule 90 of the CGST Rules.”

11. In view of the above, we set aside the impugned communication. We direct the concerned officer to issue the acknowledgement in terms of Rule 90 of the CGST Rules and process the petitioner’s application for refund in accordance with law.
12. It is clarified that this does not preclude the concerned officer from verifying the petitioner’s claim and to seek such further documents or information from the petitioner as may be relevant and necessary to consider the petitioner’s claim for refund.
13. The petition is disposed of in the aforesaid terms.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**NOVEMBER 21, 2023**

‘gsr’