

.... **Petitioner**

1. State of Jharkhand, through the Secretary, Commercial Taxes Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa, P.O.-Dhurwa, P.S. Jagannathpur, District-Ranchi, PIN-834004.
2. Additional Commissioner of State Taxes (Appeals), Jamshedpur Division, Jamshedpur, having its office at Sales Tax Building, P.O. and P.S. Sakchi, Town- Jamshedpur, District-East Singhbhum, PIN Code-831002, Jharkhand.
3. Joint Commissioner of State Taxes, Adityapur Circle, Jamshedpur, having its office at Sales Tax Building, P.O. and P.S. Sakchi, Town-Jamshedpur, District-East Singhbhum, PIN Code-831002, Jharkhand.
4. Deputy Commissioner of State Taxes, Adityapur Circle, Jamshedpur, having its office at Sales Tax Building, P.O. and P.S. Sakchi, Town-Jamshedpur, District-East Singhbhum, PIN Code-831002, Jharkhand.

.... Respondents

.... Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : Mr. Salona Mittal, Advocate
Ms. Amrita Singh, Advocate
For the Resp.-State : Mr. Ashok Kumar Yadav, Sr. S.C.-I
Mr. Aditya Kumar, A.C. to Sr. S.C.-I

C.A.V. ON: 03.03.2025

PRONOUNCED ON:03/04/2025

Per Deepak Roshan, J.

1. The instant writ application has been preferred by the petitioner for following reliefs;

(i) For the issuance of an appropriate writ / order/ direction, or a writ in the nature of certiorari, quashing and setting aside the appellate order dated 25.10.2023 (Annexure 8) and the refund

rejection order in Form RFD-06 dated 16.5.2023 along with a detailed order dated 15.5.2023 (Annexure - 6 and 6/1) since the rejection of refund of the Petitioner is based in extraneous grounds which are beyond the requirements of the CGST Act, the CGST Rules and the binding circulars issued thereunder.

(ii) For the issuance of an appropriate writ / order/ direction, or a writ in the nature in the nature of mandamus directing the Respondents to refund the amount of Rs. 1,23,22,617 along with the stipulated interest under Section 56 of the Central Goods and Services Tax Act, 2017.

(iii) For any other and further appropriate writ (s) or direction(s) or order(s) this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case for doing conscionable justice to the Petitioner.

2. The brief fact of the case as it appears from the pleadings is that the petitioner-Company manufactures steel and sponge iron for which it requires coal as a raw material. The petitioner purchases coal and pays Compensation Cess under Section 8(2) of the Goods and Service Tax (Compensation to States) Act, 2017 and thus the petitioner avails Input Tax Credit of Cess. Petitioner's-Company also export goods under letter of undertaking without payment of tax as a result, there is an accumulation of ITC of Cess.

On 30.01.2023, refund application was filed by the petitioner-Company for the period F.Y.2021-2022 along with all relevant documents for refund of Rs. 1,23,22,617/-. However, on 24.04.2023 a show cause notice was issued to the petitioner-Company why not the refund application filed by the petitioner-Company be rejected. Thereafter, the petitioner immediately filed

the reply to the show cause notice; however, the refund application of the petitioner was rejected on the ground of non-furnishing of documents/certificates. Thereafter, petitioner also filed an appeal, but the same was also rejected.

3. The stand taken by the respondents that the order impugned is an appealable order has no meaning in view of the fact that the “*GST Tribunal*” is still not functional.

The Respondents further tried to defend the order impugned by reiterating the grounds taken in the impugned order and contended that the petitioner has attached samples of invoices showing multiple bills issued by it which shows the export taking place. Since as per the petitioner, it had exported the goods on the basis of letters of undertaking and as such applied for a refund of accumulated cess for a sum of Rs. 1,23,22,617/-, thereafter the show cause notice was issued and the petitioner was asked to provide proof of receipt of payment from exporter within 180 days, proof showing the goods have been exported outside India within a period of 90 days from the date of export invoices, a self-declaration that the assessee has not been prosecuted, undertaking in terms of Section 11(2) of the Compensation of Cess Act and statement in terms of Section 43(c) of 2019 Circular. However, the petitioner did not submitted appropriate reply/documents.

4. After perusing the impugned order of rejection of the refund application and the stand in the counter affidavit, it

appears that on five grounds the said application for refund has been rejected. For brevity the same is quoted hereinbelow:-

(i) Non-furnishing of receipt of payment within 180 days of export;

(ii) Non-furnishing of proof of export within 90 days of invoice;

(III) Non-furnishing of declaration of non-prosecution;

(IV) Non-furnishing of undertaking under proviso to Section 11(2) of the Cess Act;

(V) Non-furnishing of statement as per Para 43(C) of the 2019 Circular.

5. So far as the 1st ground with regards to non-furnishing of receipt of payment within 180 days of export is concerned; it is observed that proof of payment is only required for export of services and not of goods (Refer Rule 89(2)(b) and 89(2) (c) of the CGST Rules).

As a matter of fact, for export of goods, only a reconciliation statement of the Shipping Bill and Export Invoices is required, which has already been annexed to the refund application (Refer-Annexure-9 to the Writ Application). Further, paragraph-48 of the 2019 Circular (Annexure-10), clearly stipulates that "insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon"

Even otherwise, the requirement of payment should be within 9 months of export as per clause A2 of RBI Circular being FED Master Direction No. 16/2015-16 dated 1.1.2016 as amended from time to time (Annexure-11); and the record suggests that all payments have been received by petitioner within 9 months as is evident from Annexure-9 to the writ application.

Consequently, the 1st ground of rejection of “*Refund Application*” with regards to non-furnishing of receipt of payment within 180 days of export has no legs to stand in the eye of law.

6. So far as the 2nd ground of rejection of the Refund Application i.e. non-furnishing of proof of export within 90 days of invoice, it transpires from perusal of Annexure-9, which is the reconciliation statement, that EGM (Export General Manifest) details are given and it is evident that export is within 90 days of invoice.

Even otherwise, Rule 96A-3 clearly stipulates that if goods are not exported within such time, then recovery under Section 79 of the Act may be done. Therefore, specific recourse is available under the Act. Further, paragraph-45 of the 2019 Circular provides that *"as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon"*.

Further, paragraph-4.6 of 2023 Circular also provides that *"as long as goods are actually exported... even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A... the said exporters would be entitled to refund of unutilized input tax credit"*.

Thus, this ground of rejection is also contrary to the aforesaid Circulars of the Respondent Board, which are definitely binding on them. Accordingly, this ground of rejection is also bad in law.

7. So far as the 3rd ground of rejection regarding non-furnishing of declaration of non-prosecution is concerned, on the one hand, no such requirement is prescribed under the Act, still the petitioner gave such declaration in response to the SCN.

Further, paragraph-46 of the 2019 Circular clearly states that *"asking for self-declaration with every refund claim where the exports have been made under LUT, is not warranted"*. Thus, this ground is also inconsistent with their own circular.

8. Likewise, even the 4th ground of rejection regarding non-furnishing of undertaking under proviso to Section 11(2) of the Cess Act, is also not sustainable in the eye of law in view of the fact that proviso to Section 11(2) of the Cess Act only provides that ITC of Cess can be set off against Output Tax Liability of Cess. Since the Petitioner exports goods under Letter of

Undertaking without payment of tax, there is no question of set off.

Even paragraph-42 of the Impugned Circular (Refer Page-116) clarifies that stipulation under the proviso to section 11(2) of the Cess Act would only apply where the registered persons make zero-rated supplies on payment of Integrated tax.

9. Now coming to the last ground of rejection of the “Refund Application” i.e. non-furnishing of statement as per Para 43(C) of the 2019 Circular is concerned, from a bare perusal of the said paragraph of the Circular it clearly transpires that it only applies when there has been a reversal of credit, which is absent in the present case.

Further, the records suggest that along with the refund application, the Petitioner-Company had already submitted a CA certificate (Refer Page-186) stating that the incidence of Compensation of Cess has not been passed on to any person.

10. Having regard to the aforesaid discussions it is clear that the impugned order has no legs to stand in the eye of law as the same is based on extraneous grounds which are beyond the requirements of the CGST Act & Rules and the binding Circulars issued thereunder.

Accordingly, the refund rejection order issued under Form RFD-06 dated 16.5.2023 along with a detailed order dated 15.5.2023 (Annexure - 6 and 6/1) and also the appellate order

dated 25.10.2023 (Annexure 8), are hereby, quashed and set aside.

The Respondents are further directed to refund the amount of Rs. 1,23,22,617/- along with the stipulated interest under Section 56 of the Central Goods and Services Tax Act, 2017, within a period of 12 weeks from the date of receipt/production of copy of this order.

11. Consequently, this writ petition is allowed. Pending I.A.s, if any, also stand closed. No order as to cost.

(M. S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

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