



\$~28

*

IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 8th July, 2025***

+

W.P.(C) 11287/2023**M/S SISLA LABORATORIES**

.....Petitioner

Through: Mr. Mukesh Chand Gupta & Mr.
Keshav Rai, Advs. (9313281542)

versus

THE DEPUTY COMMISSIONER OF CGST

.....Respondent

Through: Mr. Atul Tripathi, SSC, CBIC with
Mr. Shubham Mishra & Mr. Gaurav
Mani Tripathi, Advs.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present writ petition under Article 226 of the Constitution of India has been filed seeking processing of two refund applications dated 17th May, 2019 and 12th June, 2019 filed by the Petitioner. The details of the said applications are as under:-

<i>Date</i>	<i>Application</i>	<i>Amount</i>
<i>17.05.2019</i>	<i>Application for claiming 17.05.2019 refund u/s 54(3) of the GST Act for the period from <u>July, 2017 to March, 2018</u></i>	<i>Rs. 9,59,252/-</i>
<i>12.06.2019</i>	<i>Application u/s 54(3) of the GST Act on</i>	<i>Rs. 10,65,043/-</i>



	<i>12.06.2019 for the period from <u>June, 2018</u> to <u>March, 2019</u></i>	
--	---	--

3. The grievance of the Petitioner is that though these applications were filed way back in 2019 and a letter to grant the refund has also been written in 2023, the same has not been processed till date. Hence, this petition.

4. On behalf of the Petitioner, Ld. Counsel Mr. Mukesh Chand Gupta submits that the Respondent-CGST Department (hereinafter '*the Department*') initially filed a counter affidavit and thereafter an additional affidavit was also filed. *Vide* the said additional affidavit the Department has now informed the Court and the Petitioner that the first refund application dated 17th May, 2019 was rejected after issuance of a Show Cause Notice (hereinafter, '*SCN*') dated 5th July, 2019 and consequential order dated 19th September, 2019. Both these documents, according to Mr. Gupta, were not uploaded on the portal. Hence, the Petitioner had no knowledge of the same. In respect of the second application dated 12th June, 2019, it is his case that the Department is still saying that the record could not be traced though a deficiency memo was issued.

5. Insofar as the first application is concerned, Mr. Atul Tripathi, Ld. SCC on behalf of the Department submits that though the same was filed in the month of May 2019, supporting documents were filed only in October, 2023. He contends that the Petitioner was aware that it had failed to furnish all the documents in the proper manner and therefore, the error is on the part of the Petitioner. Insofar as the second refund application is concerned, he candidly states that the Department could not trace the deficiency memo which was issued.



6. Heard. Applications for refund are governed by Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter, '*the Act*') wherein under Section 54(1), an application has to be made before the expiry of two years for claiming any refund. The said two years period is to be calculated from the relevant date which is defined in the Act. In terms of Section 54(4) of the Act, the application has to be accompanied by documentary evidence in support of the same. It is only if the amount is less than Rs. 2 lakhs that the said requirement can be dispensed with and the application can proceed on the basis of a declaration. As per Section 54(7) of the Act, the order has to be issued within sixty days from the date of receipt of the application, which is complete in all respects.

7. Rule 90(3) of the Central Goods and Services Tax Rules, 2017 (hereinafter, '*the Rules*') requires that upon the filing of any application, if any deficiency is noted, the same has to be communicated to the applicant in Form GST RFD-03 through the common portal. The period during which the deficiencies are communicated is excluded from the period of two years to be calculated under Section 54(1) of the Act. After the deficiencies are communicated and the same are removed, an acknowledgement *vide* Form GST RFD-02 is issued. Once the deficiencies are removed, the refund is either sanctioned or rejected Form GST RFD-06.

8. In the present case, insofar as the first application is concerned, the Department's stand is that the SCN was issued and no reply was received and the same was rejected. However, the Petitioner's case is that neither the SCN nor rejection order was uploaded on the portal. The refund application, according to the Petitioner, has been decided without giving an opportunity of hearing to the Petitioner. Answering to this contention, Mr. Tripathi



submits that the SCN and the rejection order were, in fact, uploaded on the portal and three dates were fixed for personal hearing *vide* the SCN.

9. Be that as it may, in view of the fact that the final order of rejection has already been passed in this matter on 19th September, 2019 which has come to the knowledge of the Petitioner only on 11th, February, 2025 after filing of the additional affidavit on behalf of the Department, this Court is of the opinion that the Petitioner's remedies cannot be shut out. Accordingly, the Petitioner is permitted to file an appeal challenging the said order before the Appellate Authority under Section 107 of the Act.

10. Let the appeal be filed within one month and if the same is filed within the said period, it shall be adjudicated on merits and shall not be dismissed on ground of limitation.

11. Insofar as the second application is concerned, the stand of the Department in the counter affidavit, is as under:-

*"7. That further, it is submitted that the Hon'ble High Court was appraised vide the Counter affidavit filed by the Respondent that the Petitioner has not submitted the requisite documents in respect of refund application vide ARN AB070319168820Y dt.12.06.2019 for processing of refund claim. **However, despite best efforts no such record could be traced out that RFD-03/Deficiency memo was issued to the taxpayer, at the relevant time.** But it is gathered that the taxpayer has submitted that requisite documents later i.e. on 17.10.2023 but by the time the documents received in this office, the matter was already before the Hon'ble High Court. Therefore, the refund claim could not be processed."*

12. A perusal of the above would show that the stand of the Department is



that the Form GST RFD-03 *i.e.*, the deficiency memo which is stated to have been issued could not be traced. Therefore, there can be no ground on which the refund can be held back to the Petitioner.

13. At this point Mr. Tripathi submits that at the time when the application was filed, no physical copies of the documents was submitted by the Petitioner which was to be submitted physically with the Department.

14. The stand of the Department in its affidavit is not that the documents were not submitted, rather that the deficiency memo is not traceable. In such circumstances, there is no valid ground to hold back the refund. The refund application dated 12th June, 2019 is, accordingly, directed to be processed and the amount to be refunded along with the statutory interest from the date of the second application *i.e.*, 12th June, 2019 within a period of two months.

15. The petition is disposed of in the aforesaid terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 8, 2025
kk/Ar.