

Revenue Department cannot retain any amount that has been erroneously paid as tax

The Hon'ble Andhra Pradesh High Court in *M/s. Varshan Enterprises v. Office of the GST Council [Writ Petition No.10637 of 2021, dated December 12, 2022]* held that the Revenue Department cannot retain any amount that has been paid as tax as a result of any inadvertent error and the error committed by the assessee being accidental shall have the opportunity to rectify it.

Facts:

M/s. Varshan Enterprises (“**the Petitioner**”) is involved in the business supplying telecom pipe-laying services in Telangana and had provided its services to M/s Vodafone Mobile Services Limited with office located in Telangana (“**Vodafone, Telangana**”). M/s Vodafone Mobile Services Limited also has an office in Mumbai, Maharashtra (“**Vodafone, Mumbai**”). The Petitioner erroneously issued two tax invoices in June, 2018 to Vodafone, Mumbai instead of Vodafone, Telangana, by entering the GSTIN of Vodafone, Mumbai, while entering the details and returns information on the GST common portal. Due to such error, Vodafone, Telangana was unable to claim the Input Tax Credit (“**ITC**”) on the IGST paid by the Petitioner.

However, the Petitioner tried to rectify its mistake in May, 2020 but it was available for rectification only up to October 20, 2019. The Petitioner vide letter dated February 2, 2021 requested the Revenue Department (“**the Respondent**”) to either refund the amount or adjust the same with existing liabilities. In reply, The Respondent directed the Petitioner to adhere to the process specified in *Circular CBEC-20/16/04/18-GST, dated November 18, 2019* (“**the Circular**”).

The Respondent contended that the Petitioner's claim was time-barred by limitation because it violated Section 54 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) which set a two-year limitation period.

Issue:

Whether the Respondent was correct in denying the rectification of the details and the refund amount, under Section 54 of the CGST Act which erroneously paid by the Petitioner?

Held:

The Hon'ble Andhra Pradesh High Court in ***Writ Petition No.10637 of 2021*** held as under:

- Observed that, when Rule 97A of the Central Goods and Service Tax Rules, 2017 (“**the CGST Rules**”) allows manual filing, but restricts to file the same by electronic means on the common portal, as per the Circular.
- Stated that, the amounts that were paid by the Petitioner, furnishing the incorrect details cannot be taken as a tax due to the Respondents, legally. Further, the Respondent cannot contend that the claim of the Petitioner, is barred by limitation. Further, the Petitioner cannot be compelled to follow the Circular, which debarred the Petitioner from manual filing and be compelled to do certain things which are impossible to be performed.
- Further noted that, the amount that was paid by the Petitioner while providing erroneous details cannot be considered as tax owed to the Respondent and hence the Petitioner cannot be barred by limitation.
- Relied on the judgment of the Hon'ble Supreme Court in the matter of ***Mafatlal Industries Limited v. Union of India [111 STC 467 SC dated December 19, 1996]***, wherein it was held that one cannot enrich themselves and is bound to return the amounts which were paid wrongfully, therefore, the assessee cannot be prejudiced from availing credit to which they are entitled to.
- Held that, the Respondent cannot retain the disputed amount that are paid to them, due to inadvertent error and the error committed by the Petitioner was accidental and hence it should have the opportunity to rectify it.
- Further held that, the Petitioner is not barred by limitation.

- Directed the Petitioner to file a manual application for the refund of the amount. Further directed the Respondent to issue orders accordingly within four weeks.

Relevant Provisions:

Para No. 3 of the Circular:

“With effect from 26.09.2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically:

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;*
- b. Refund of tax paid on export of services with payment of tax;*
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;*
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;*
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;*
- f. Refund to supplier of tax paid on deemed export supplies;*
- g. Refund to recipient of tax paid on deemed export supplies;*
- h. Refund of excess balance in the electronic cash ledger;*
- i. Refund of excess payment of tax;*
- j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;*
- k. Refund on account of assessment/provisional assessment/appeal/any other order;*
- l. Refund on account of “any other” ground or reason.”*

Rule 97A of the CGST Rules:

“Manual filing and processing. –

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.”

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