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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) 3917/2020

MEDICAL BUREAU Petitioner

Through: Mr. Rajesh Mahna, Advocate
with Mr. Ruchir Bhatia,
Mr. Mayank Kouts and
Mr. Ramanand Roy, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS
AND SERVICES TAX DELHI NORTH & ORS.

..... Respondents

Through: Mr. Harpreet Singh, Senior
Standing Counsel.

% Date of Decision: 10th November, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.
2. The petitioner by way of the present writ petition challenges the order dated 01st June, 2020 passed by the Appellate Authority whereby the respondent have denied refund due to the petitioner in spite of the fact that the petitioner had made exports of goods outside India and such exports are regarded as zero rated supplies under Section 16 of the Integrated Goods and Services Tax Act, 2017 (for short 'IGST Act') on which the petitioner was entitled to refund of input tax credit under Section 54(3) of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act'). The relevant portion of the impugned order

reads as under:

“8. Summary of decision:- As per notification no. 48/48/2018-Cusoms (NT) dated 04.06.2018 read with circular no. 14/2018-Customs dated 04.06.2018, it was noticed that the export regulations states that "Any IEC holder exporting goods through the FPO, will be eligible for zero rating of exports, by way of IGST refund or discharge of LUT” and same come into force on 21st June 2018. The said circular as made it clear that the facility of IGST Refund or discharge of LUT in case of export made through FPO will not be effective retrospectively. However, the subject refund claims pertained to the period August, 2017 and September, 2017 and hence the supplies made by the appellant during these periods are not 'zero rated' and therefore, in view of the above circular dated 04.06.2018, the appellant is not entitled for refund of Input Tax Credit as the LUT is not discharged.”

3. Mr. Rajesh Mahna, learned counsel for the petitioner states that the refund has been denied to the petitioner on the sole ground that petitioner had exported goods through Foreign Post Offices in August and September 2017, while Notification dated 04th June, 2018 read with Circular No.14/2018-Customs dated 04th June, 2018 has notified exports by post Regulations, 2018 w.e.f. 21st June, 2018 which provides for an entry to be presented to proper officer at the Foreign Post Office of clearance. He submits that the said Notification in no manner whatsoever affects supplies to be regarded as zero rated under Section 16 of the IGST Act read with Section 54(3) of the CGST Act. He also states that the admitted position is that exports had taken place and confirmation from Foreign Post Office was available. He points out that under the old VAT regime, the petitioner had been given refunds.

4. Learned counsel for the petitioner lastly contends that the new procedure for filing postal bill of exports doesn't take away the substantive right to claim refund of input tax credit in respect of zero rated supplies under the Statute.

5. In pursuance to the specific direction given by this Court, the respondent has filed an affidavit dated 22nd October, 2020 clarifying its stand. The relevant portion of the said affidavit reads as under:

“5. That, I further respectfully submit, Circular No.14/2018-Customs dated 4.6.2018 does not determine the eligibility of allowing refunds of ITC on exports, but provides that such refunds are permissible, so as to dispel any doubts in the minds of exporters regarding their eligibility to claim refunds of ITC in case of exports through postal mode. The impugned circular mentions that to facilitate refund of ITC, data will be captured and uploaded through an off-line utility (ICAN-lite) provided by DG (Systems) and it was issued with the objective and purposes of prescribing customs compliances for the exports done under postal mode and not to clarify on the eligibility or otherwise of refunds on such exports. The subject sentence in the circular cited by the adjudicating authorities, "Any IEC holder exporting goods through the FPO, will be eligible for zero rating of exports, by way of IGST refund or discharge of LUT. Those who do not wish to avail this facility or fall in the category of Exempted/Non-Taxable are also permitted to export under the same procedure.", was to make it amply clear that, refund of ITC would also be available, for exports through the postal mode, if otherwise eligible.

6. That, the deponent respectfully submits, the said circular is not intended to be a clarification, much less determination, of the refund issue. The refunds shall be examined with reference to their compliance with the extant provisions, including law and procedures relating to GST & Customs.”

6. Keeping in view of the aforesaid counter-affidavit, the admitted position is that the Circular No.14/2018-Customs dated 04th June, 2018 is neither clarificatory nor it determines the eligibility of allowing refund of Input Tax Credit on exports. In any event, the new procedure cannot be made applicable from a retrospective date.

7. Consequently, the impugned orders dated 01st June, 2020 passed by respondent no.3 as well as the orders dated 11th March, 2019 and 22nd July, 2019 issued by respondent no.2 are set aside and the matter is remanded back to the Original Adjudicating Authority i.e. Assistant Commissioner, who in turn is directed to decide the same in accordance with law within four weeks. Accordingly, the present petition stands disposed of.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

NOVEMBER 10, 2020

AS