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

***Date of decision : 31.01.2023***

\+ **W.P.(C) 5845/2022**

M/S SHRI SHYAM FOOTWEAR ..... Petitioner

Through: Dr. G.K. Sarkar, Ms. Malabipa Sarkar & Mr. Prashant Srivastava, Advs.
Mr. Rakesh Kumar, Adv.

versus

THE COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND ANR. ..... Respondents

Through: Mr. Harpreet Singh, Sr. SC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Adv.

**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, *inter alia,* impugning the order dated 09.02.2022 passed by respondent No. 2, and an order dated 17.06.2021 passed by respondent No. 3. Further, the petitioner prays that directions be issued to the respondents to release the unutilised Input Tax Credit aggregating to ₹4,28,400/- (CGST being ₹1,84,800/- and SGST being ₹2,43,600/-).

2. The petitioner had filed a refund application in the relevant form (RFD-01), claiming refund of unutilised Input Tax Credit along with other necessary documents as prescribed under the

Central Goods and Services Tax Act, 2017 (hereafter '**CGST Act**') and the rules made thereunder.

3. The said application was made on 07.04.2021 and the refund pertained to the period of October, 2020 to December, 2020. The online lodging of the form was acknowledged under a receipt bearing No. AA0704210185797. However, the petitioner's request for refund was not acceded to.

4. The concerned authority issued a notice dated 22.05.2021 indicating that the application was defective for the following reason:

> *"1. In Annexure- B (Statement of invoices to be submitted with application for refund of unutilized ITC) submitted incomplete/inappropriate information in column no. 7 - Category of input supplies - Type Input/Input services/Capital Goods as "Goods"."*

5. The petitioner responded to the said notice in FORM-GST-RFD-09 on 07.06.2021. The petitioner accepted the error in filling up the details in column no. 7 and filed a revised Annexure rectifying the information as in Column No. 7.

6. The petitioner claims that the aforesaid reply was uploaded on the portal and is duly reflected but the annexure thereto is not reflected in the portal.

7. Thereafter, the petitioner received an order dated 17.06.2021, rejecting the petitioner's application for refund for the reason as stated in the notice dated 22.05.2021. Apparently, the concerned authority had not taken note of the petitioner's annexure rectifying the necessary form, which was annexed with the reply dated 07.06.2021.

8. The petitioner appealed the said order dated 22.05.2021 to the Joint Commissioner Central Goods and Services Tax Appeal

(Appellate Authority). The petitioner also filed written submissions enclosing therewith a copy of *Annexure B* to the reply submitted earlier, which, according to the petitioner, reflected the correct information.

9. Notwithstanding the same, the petitioner's appeal was rejected by an order dated 09.02.2022, *inter alia*, on the ground that *Annexure B* was not complete in all respect, as was necessary for processing the refund and the petitioner had failed to upload the same at the time of filing of the application.

10. It is apparent from the above that the rectified information as submitted by the petitioner was not taken into account by either of the concerned authorities while considering the petitioner's grievance regarding non-payment of its refund, as claimed.

11. We are of the view that it was essential for the concerned authorities to examine the information as submitted by the petitioner and process its claim for refund in accordance with law. Clearly, the petitioner cannot be penalised for the inadvertent error in submitting an erroneous information against Column No. 7 of its form, which has since been rectified.

12. In view of the above, we set aside the impugned orders dated 17.06.2021 and 09.02.2022 and remand the matter to the Adjudicating Authority to consider the petitioner's response dated 07.06.2021 to the Show Cause Notice dated 22.05.2021 and to decide the matter afresh.

13. The petitioner is also at liberty to submit a fresh copy of the revised annexure to the Adjudicating Authority.

14. The petitioner's application for refund shall be processed within a period of four weeks. If the Adjudicating Authority

contemplates rejecting the petitioner's application for refund for any reason, it shall afford the petitioner, an opportunity to be heard

15. The petition is allowed in the aforesaid terms.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**JANUARY 31, 2023**
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