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2024:PHHC:131274-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 03.10.2024

M/s Proxima Steel Forge Pvt. Ltd.

. . . Petitioner(s)

Versus

Union of India and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. J.S. Bedi, Advocate
for the petitioner(s).

Mr. Ajay Kalra, Sr. Standing Counsel
for the respondent(s).

SANJEEV PRAKASH SHARMA, J. (Oral)

1. A refund application was filed by the petitioner claiming refund of Rs.2,02,09,111/-. Said refund application was rejected by the then concerned Assistant Commissioner, on the ground of limitation stating that the refund application has been filed after a period of two years, as provided under the Circular dated 20.07.2021.

2. The appeal was preferred by the petitioner, which came to be allowed by the Joint Commissioner vide order dated 29.08.2023 and it was held as under:-

".... Thus, I hold that the refund claim should not have been rejected on the grounds of being time barred. Therefore, I remand back the instant matter to the proper officer to examine the refund application of the appellant afresh and on merits alone. The proper officer shall pass a detailed speaking, order after going through the submissions of the appellant and he shall adhere to the principles of Natural Justice..

4. In view of the above, I pass the following order:-

ORDER

This impugned order is set aside and the appeal filed by



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the appellant is allowed conditionally mentioned in Para 3.2 supra.”

3. The Assistant Commissioner, one Sewa Ram, again heard the application and passed an order, wherein, he mentions a letter sent to the Joint Commissioner seeking clarification or order in appeal, dated 14.12.2023. The Joint Commissioner answered his letter dated 14.12.2023 on 29.12.2023, and rejected the same treating it as beyond the scope of Section 161 of the CGST Act. Thereafter, the concerned Assistant Commissioner has again rejected the refund application being time barred vide his order dated 24.01.2024.

4. In the circumstances, the petitioner has approached this Court challenging the order passed by the Assistant Commissioner dated 24.01.2024.

5. Taking notice of the fact that the Assistant Commissioner in his order dated 24.01.2024, notices that the Joint Commissioner had rejected his application for seeking rectification/clarification of the order passed in appeal, still proceeds to again dismiss the appeal on the ground of limitation, we directed the Commissioner to file an affidavit as to what steps have been taken against his subordinate, who has challenged his authority.

However, no affidavit has been filed by him.

6. We find that the Assistant Commissioner seems to be asserting his authority over and above the order passed in appeal by the Joint Commissioner, who has already observed that the application has to be treated within time and has to be decided on merits.

However, Assistant Commissioner, a subordinate officer has refused to examine the case on merits and again dismissed the application as time barred. Such an approach adopted by the subordinate officer is the result of the virtual failure of system of hierarchy in the CGST.

7. If subordinate officers do not comply with the appellate orders, it



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would be something sort of administrative chaos. Such officers are required to be dealt with by the Department in a strict manner, so that they may not create a precedent for others to start insubordination. It also reflects in general public faith in filing appeals, which would be wavered if the appellate orders are not complied with. Litigation is also forced unnecessarily before this Court. Such insubordination requires to be dealt with more strictness.

8. Accordingly, we direct the Commissioner to take appropriate departmental action against the concerned Assistant Commissioner, Sewa Ram, for his insubordination, by initiating proceedings for major penalty.

We dispose of this writ petition by setting aside the order of Assistant Commissioner dated 24.01.2024 and at the same time, direct the Commissioner to appoint another officer to deal with the application relating to refund of the petitioner, who would decided it purely on merits within a stipulated period of two months.

Misc. application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

October 03, 2024
Mohit goyal

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No