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By Nidhi, Advocate



Judgment No.: 016
Dt.: 22-11-2023



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Judgment Deals With

Section/Rule	Section 54(3)
Authority	Delhi High Court
Case Name	Simran Chandwani VS Principal Commissioner Of CGST, Delhi North & Ors.
Dated	06 th October, 2023

Brief Facts:

The petitioner is engaged in the business of selling footwear which is chargeable to GST at the rate of 5% or 12%, depending on whether the price of the footwear is below ₹1,000/- or above ₹1,000/-. One of the components used in manufacturing of footwear is PVC straps, which is chargeable to GST at the rate of 18%. The petitioner is entitled to a refund of the accumulated unutilized ITC.

One of the suppliers had classified the goods supplied as HSN 6404, which was the code for the finished products (complete shoes). The supplier had charged GST at the rate of 18% and therefore, the concerned officer had questioned the petitioner's claim for the inverted duty structure in respect of the said goods. He reasoned that if the input was the same product as supplied by the petitioner, the goods supplied would not be chargeable to tax at a lower rate.

Thus, the petitioner's claim for refund was rejected by an order dated 05.04.2021.

The petitioner filed an appeal which was rejected by an order dated 18.02.2022. The Appellate Authority held that there was no bar or restriction for the petitioner to trade the items manufactured by it and proceeded on the basis that the petitioner had in fact purchased the complete product from a certain supplier.

Contention of Petitioner:

In respect of the issue with regards to the supplies classified under HSN 6404, the petitioner explained that the said issue arose in respect of supplies made by one supplier namely M/s V. K. Polymers (GSTIN 07AAKPG9643F1ZK).

It was explained that the said supplier had supplied the PVC straps, which were chargeable to GST at

the rate of 18%. Although, the said supplier had charged GST at the correct rate, it had erroneously classified the supplies as HSN 6404 in its invoices instead of HSN 6406. The PVC straps supplied by the said supplier were used in the manufacturing of complete footwear.

The petitioner also produced a certificate from the said supplier (M/s V. K. Polymers) certifying that there was an error in the classification of the goods in the invoices.

Findings & Order:

The Adjudicating Authority had not accepted the petitioner's contention while observing that the petitioner had obtained the declaration just to "shelter their vicious thinking to gain cash refund".

The aforesaid reasoning is based on mere suspicion not on cogent material. There is no dispute that the petitioner is engaged in the manufacturing of footwear. The controversy relates to the six invoices issued by one of the suppliers (M/s V.K. Polymers). Undisputedly, the said supplier had charged the GST at the rate of 18% which is chargeable on PVC straps. The supplies made by M/s V. K. Polymers under the six invoices in question, were below the price of ₹1,000/-. Thus, if the said supplier had supplied a complete product, it would have charged GST at the rate of 5%.

The petitioner had produced a certificate from the said supplier acknowledging that it had incorrectly classified the goods under HSN 6404 instead of HSN 6406. The fact that the GST had been charged by the said supplier at the correct rate, is a material factor to be considered by the Adjudicating Authority.

There is no ground to doubt the petitioner's explanation that the six invoices incorrectly mentions the classification of the goods and therefore, the petitioner ought not to be denied the benefit of the accumulated ITC. The reasoning of the Appellate Authority to deny the entire claim on the basis of the six invoices issued by one supplier is also non- acceptable.

Thus, the matter was remanded to the Adjudicating Authority to consider the matter afresh, with liberty to the petitioner to produce all the documents as to substantiate its claims. The impugned orders dated 05.04.2021 and 18.02.2022 were set aside.