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

Date of Decision: 19th August, 2025

+ **W.P.(C) 11815/2025 & CM APPL. 48226/2025**

OMEGA QMS.

.....Petitioner

Through: Mr. Puneet Agrawal, Mr. Ketan Jain,
Ms. Sakshi Bisht, Mr. Chetan Kumar
Shukla, Mr. Yuvraj Singh and Ms.
Mansi Khurana, Advs.

versus

COMMISSIONER, CGST, DELHI WEST
& ANR.

.....Respondent

Through: Mr. Gibran Naushad, Sr. Standing
Counsel with Mr. Harsh Singhal and
Mr. Suraj Shekhar Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner challenging the impugned order dated 4th March, 2025 passed under Section 54(11) of the Central Goods and Service Tax Act, 2017 (*hereinafter 'the Act'*), whereby the Commissioner, CGST has withheld the processing and sanctioning of refund to the Petitioner of a sum of Rs. 83,46,169/-.
3. The Petitioner in the present case is engaged in the business of providing technical consultancy service in Management Systems, Quality Assurance and Product Certification in India as well to various foreign clients and has a GST registration bearing no. **GSTIN. 07ABSPG9213C1ZQ**.



4. The brief background of this Petition is that the Petitioner's application for refund for the period **FY 2019-20** was initially rejected by the Adjudicating Authority *vide* Order-in-Original dated 24th August, 2021 (*hereinafter* 'OIO') in the following terms:

"I hereby reject refund claim amounting to Rs.8346169/- filed vide ARNAA070621043100Z dated 22.06.2021 to M/s OMEGA QMS (GSTIN: 07ABSPG9213C1ZQ."

5. However, subsequently the Appellate Authority *vide* the Order-in-Appeal dated 20th June, 2022 (*hereinafter* 'OIA') had set aside the OIO and granted the refund to the Petitioner while *inter alia* holding that the Adjudicating Authority's observation in respect of the Petitioner/Appellant role as '*intermediary*' as well as that the goods were made physically available by the recipient of service to the supplier of service, is devoid of merit. The operative part of the OIA reads as under:

"7. In view of above discussions, analysis and statutory provisions cited above, the appeal filed by the appellant holds merit and deserves to be allowed. Hence, the impugned order is set aside. No order is to interest. The instant appeal is hereby allowed and disposed off in terms of Section 107(12) of CGST Act, 2017."

6. Thereafter, the CGST Department (*hereinafter* 'the Department') decided to file a review against the said Appellate Authority's order and consequently gave an opinion dated 16th December, 2022 under Section 54(11) of the Central Goods and Services Tax Act, 2017 (*hereinafter* 'Review Order'),

(i) affirming the said intention to prefer a review and



(ii) stating that the processing the refund now would be contrary to the interest of the revenue.

7. Based on the said review order, Respondent No.1 issued the impugned order dated 4th March, 2025 withholding the processing of the Petitioner's refund application which was allowed by the Appellate Authority *vide* the OIA dated 20th June, 2022. For ready reference, the operative portion of the impugned order dated 4th March, 2025 is set out below:

“ORDER

In terms of the power vested in me under Section 54(11) of the CGST Act, 2017, I withhold the further processing and sanction of refund of Rs. 83,46,169/- filed by the taxpayer M/s Omega QMS, (GST/N-07ABSPG9213C1ZQ) registered at 9th, 909, HEMKUNT HOUSE, RAJ/NORA PALACE, DELHI, East Delhi, Delhi, 110008 vide ARN - AA071120694296 dated 24.11.2022 consequent to passing of Order-in-Appeal No. 75/2022-23 dated 20.06.2022 till the finality of the Appellate proceeding before GSTAT or High Court or the Supreme Court against the said order or further orders passed by these forums and appealed against before the next Higher Appellate forum, as grant of refund at this stage will adversely affect the revenue in said appeal on account of the malfeasance committed as discussed supra.”

8. Hence the present petition has been filed. It is the grievance of the Petitioner that the Appellate Authority's order has not been challenged or set aside by any forum and thus, it still stands. No order has also been passed in the Review. Ld. Counsel for the Petitioner in this regard submits that the opinion under Section 54(11) of the CGST Act, 2017, is invalid and the refund ought to be processed in accordance with the Order passed by



Appellate Authority.

9. Mr. Naushad, Id. Counsel appearing for the Revenue submits that the Department intends to file an appeal against the OIA dated 20th June, 2022. However, since there is no Appellate Tribunal as on date, the appeal has not been filed.

10. Ld. Counsel for the Petitioner - Mr. Siddhant Sarwal relies upon the decision of the Coordinate Bench of this Court in ***W.P.(C) 14719/2022*** titled ***G.S. Industries v. Commissioner Central Goods and Services Tax Delhi West & Ors*** . to argue that the processing of refund cannot be held back.

11. Mr. Naushad, Id. Counsel seeks to distinguish the ***G.S. Industries*** (Supra) on the ground that in the said case, there was no opinion under Section 54(11) of the Act.

12. Section 54(11) of the CGST Act, 2017, reads as under:

“Section 54 -

xxx

*Section 54(11) - Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending **and** the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.”*

13. A perusal of Section 54(11) of the Act would show that the refund can be held back on the satisfaction of the following two conditions –

- (i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other



proceeding under the Act; and

- (ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.

14. In the opinion of this Court the Department's opinion under Section 54(11) of the Act cannot be relied upon on a standalone basis. In the absence of an appeal or any other proceeding pending, challenging the order of the Appellate Authority, the opinion under Section 54(11) of the Act cannot result in holding back the refund. The refund having been permitted by the Appellate Authority and no Order in Review having been passed, the Department cannot hold back the refund. In ***G.S. Industries (supra)*** the Coordinate Bench has observed as under:

“xxx xxx xxx

7. The petitioner responded to the said Show Cause Notices. Petitioner's explanation was not accepted and by a separate order dated 14.12.2020, the applications for refund were rejected.

8. The petitioner filed separate appeals impugning the orders-in-original dated 14.12.2020, which were disposed of by a common order dated 03.01.2022 (Order-in-appeal No.209-210/2021-2022). The Appellate Authority allowed the petitioner's appeal. It accepted that the petitioner was in existence at the material time, and the findings contrary to the same were erroneous. The Appellate Authority relied upon certain documents, including electricity bills, income tax returns etc. filed by the petitioner. The Appellate Authority also found that the Adjudicating Authority had not provided any basis for observing that the product manufactured by the petitioner required very less or no brass at all.

9. Since the petitioner succeeded in its appeal, the petitioner is entitled to the refund as claimed. However, notwithstanding the same, the refund has not been



disbursed.

10. Ms. Narain, learned counsel appearing for the respondent, submits that the respondent has decided to challenge the Order-in-appeal dated 03.01.2022, and the Commissioner has passed an order dated 19.05.2022, setting out the grounds on which the appeal is required to be preferred against the Order-in-appeal.

11. The principal question that falls for consideration by this Court is whether the benefit of Order-in-appeal dated 03.01.2022 can be denied to the petitioner and the refund amount be withheld solely on the ground that the respondent has decided to file an appeal against the said order.

12. Concededly, the respondent has not filed any appeal against the order-in-appeal dated 03.01.2022, and there is no order of any Court or Tribunal staying the said order. Indisputably, the order-in-appeal dated 03.01.2022 cannot be ignored by the respondents solely because according to the revenue, the said order is erroneous and is required to be set aside.

13. Learned counsel for the parties also pointed out that the said issue is covered by the earlier decision of this Court in Mr. Brij Mohan Mangla Vs. Union of India & Ors.: W.P.(C) 14234/2022 dated 23.02.2023.

14. In view of the above, the present petition is allowed. The respondents are directed to forthwith process the petitioner's claim for refund including interest.

15. It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents prevail in their challenge to order-in-appeal dated 03.01.2022, the respondents would also be entitled to take consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law."

15. This Court has also followed the above decision in ***Shalender Kumar v. Commissioner Delhi West CGST Commissionerate & Ors.*** (W.P.(C))



3824/2025 decided on **3rd April, 2025**).

16. In view of this position, the refund in favour of the Petitioner would be liable to be allowed in terms of the order passed by the Appellate Authority.

17. It is, however, made clear that if in law the Department can still challenge the said Appellate Authority's order, the processing of refund in terms of the today's order of this Court shall be subject to the decision in any appeal. The refund shall be processed along with interest in terms of Section 56 of the Act, within a period of two months and be credited to the Petitioner by 30th September, 2025.

18. If, however, any appeal is filed challenging the Appellate Authority's order by the Department, then the processing of refund in terms of this order, shall be subject to the decision in the appeal.

19. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 19, 2025
dk/Ar.