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CASE LAW UPDATE

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Laxmi Organic Industries Ltd V/s Union of India
High Court of Bombay
Writ Petition No. 7861 of 2021 (November 30, 2021)

❖ Summary –

- Rule 97A providing for manual filing of applications is applicable to refund applications also and CBIC circular prescribing online mode of filing is not applicable to applications filed manually; Refund application filed manually cannot be returned without processing.

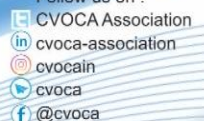
❖ Facts –

- Assessee was a registered tax dealer who had filed refund application online but failed to upload “statement 5B” along with the application.
- Then he filed manual refund application on 10th June, 2021 & 22nd June 2021 for FY 2018-19 and 2019-2020 due to inability to upload “Statement 5B” online.
- Assessee’s applications were returned without being processed with an instruction that in terms of “Circular No 125/44/2019-GST dated 18th November 2019 (hereafter to be referred as “impugned circular”), a refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically, with effect from 26th September 2019
- Being aggrieved by the said rejection, the Assessee filed Writ Petitions before the Hon’ble High Court of Bombay.

❖ Taxpayers Argument –

- The rule 97A of the CGST Rules, 2017 permits processing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate etc. manually and such applications are bound to be accepted.
- As per the terms of rule 97A; a refund application can be filled manually as well, if assessee is not in a position to file the refund application online.

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❖ Taxpayers Argument (Ctd.) –

- The impugned circular would certainly be applicable to all applications filed electronically on the common portal, but not applicable to refund applications filed manually
- Assessee further states that the impugned circular in so far as it creates a condition that the refund application has to be filed online only as being wholly beyond the parent provisions (i.e. Section 54, section 16 and section 168(1) of CGST Act, 2017 and Rule 89 of CGST Rules, 2017) and hence, ultra vires the Act

❖ Department`s Argument –

- The refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically, with effect from 26th September 2019. The procedures are laid down in the impugned circular and same has to be followed.
- Further, departmental officers are bound by the terms of the impugned circular and, therefore, are disabled from accepting the application for refund filed by the assessee manually.

❖ Judgement –

- In terms of sub-rule (1) of rule 89 of CGST Rules, 2017, a refund application could be made by the person eligible therefore electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner
- Adverting to rule 97A, which is the sheet-anchor of the assessee's claim, which was inserted in the CGST Rules by a notification dated 15th November 2017 and is the last rule in Chapter X. Obviously, such insertion was in exercise of the rule-making power conferred on the Central Government by section 164 of the CGST Act.
- Since rule 97A contains a non-obstante clause, it is intended to override rules 89 to 97 of the CGST Rules forming part of Chapter X
- Thus the department's argument that no application in any form other than online can be received and processed is accepted, rule 97A would be a dead letter and rendered redundant



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❖ Judgement (Ctd.) –

- Rule 97A cannot be construed in a manner so as to defeat the purpose of legislation
- Therefore, the impugned circular would certainly be applicable to all applications filed electronically on the common portal, but the impugned circular cannot affect or control the statutory rule, i.e., rule 97A of the CGST Rules or derogate from it
- The writ petition stands allowed subject to terms and conditions as mentioned therein.

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