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

Date of decision: 15th May, 2025

+ **W.P.(C) 3713/2025 & CM APPL. 17335/2025**

M/S K-NXT LOGISTICX PRIVATE LIMITEDPetitioner

Through: Mr. Siddharth Malhotra, Advocate

versus

UNION OF INDIA AND ANRRespondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Harsh Singhal, Advocates

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-M/s K-NXT Logisticx Pvt. Ltd. under Article 226 of the Constitution of India *inter alia* seeking a direction to the Respondent No. 2 department (*hereinafter, 'department'*) to sanction the refund claim of the Petitioner amounting Rs. 19,09,038 /- along with applicable interest in terms of Section 56 of the CGST Act.
3. The case of the Petitioner is that it is engaged in rendering freight forwarding services to various clients in India and abroad. The Petitioner procures various input services from various dealers in respect of domestic sales and discharges GST liability at 18%. It is stated that usually, the



Petitioner has an excess balance and unutilized Input Tax Credit (‘ITC’) exists in favour of the Petitioner. The present petition relates to the unutilized ITC for the period January, 2023.

4. It is further stated that the Petitioner filed a refund claim on 7th April, 2023. Thereafter a Show Cause Notice was issued on 30th May, 2023 (*hereinafter, the ‘Show Cause Notice’*) and the Petitioner filed an online reply to the same. However, during the pendency of the Show Cause Notice, the refund claim was rejected vide order dated 12th June, 2023 passed by the Office of Assistant Commissioner, Central Tax GST West, Rohini, Delhi. This order was challenged by the Petitioner before the Appellate authority. The Appellate authority allowed the refund claim on 16th January, 2024. The operative portion of the said order reads as under:-

“8. The appeal filed by M/s K-NXT Logisticx Private Limited, 4th Floor, House No.23, BLK-C, PKT-11, Sector-5, Rohini, North-West Delhi, Delhi-110085 against Order-In-Original Nos. DL/GST/West/Roh/R-108/K Next Logistics Limited/Refund/2023-24 dated 12.06.2023 is hereby allowed and disposed of in terms of Section 107(12) of CGST Act, 2017.”

5. In the meantime, after the Appellate authority’s order, it is stated that the Petitioner repeatedly made representations. However, the refund has not been granted. Hence, the present petition.

6. The case of the department is that by exercising powers under Section 54(11) of the CGST Act, 2017, the order under appeal has been reversed in the following terms:

*“ 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 filed by the taxpayer M/s. K-NXT Logisticx*



Pvt. Ltd., IGSTIN- 07MKCK0356L7ZA) registered at 4th floor, House No 23, BLK-C, PKf-71, Sector 5, Rohini, North West Delhi, Delhi-110085 vide ARN-M070224O05149X dated 02.02.2024 consequent to passing of Order-in-Appeal No. 24UADqcentrul Tax-II/Delhi/23-24 doted 76.07.2024 till the finality of the Appellate proceedings before GSTAT or HiSh Court or the Supreme Court against said order or further order 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.”

7. The position under Section 54(11) of the CGST Act, 2017 has been recently considered by this Court in ***Shalender Kumar v. Commissioner Central Goods and Services Tax Delhi West & Ors.*** in W.P.(C) 3824/2025 dated 3rd April, 2025 wherein the Court observed as under:

“ ...

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) 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) 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. 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.

16. 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 CGST Act, 2017, within a period of two months.

17. In the opinion of this Court, considering the fact that refund amounts are payable with interest for the delayed period for paying the refund, it would in fact be contrary to the interest of the Department itself to hold back the refund inasmuch as if any appeal is filed and the order of the Appellate Authority is reversed, then the same would also bind the Petitioner."

8. In view of the above settled legal position, under Section 54(11) that the opinion of the Department cannot be relied upon on a stand-alone basis, without any challenge to the order by the Appellate Authority, it is directed that the refund amount be released in favour of the Petitioner along with statutory interest.

9. 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.

10. The petition is disposed of in these terms. Pending application(s), if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 15, 2025/SV/rks