

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 1275 OF 2021

Saiher Supply Chain Consulting Pvt. Ltd.]
A private limited company incorporated in the]
laws of India]
Having its place of business at]
D-902, Times Square Building,]
Marol, Andheri Kurla Road,]
Andheri East, Mumbai – 400 059] ... Petitioner

Versus

1. The Union Of India &]
Through the Secretary,]
Ministry of Law and Justice,]
4th Floor, A Wing, Rajendra Prasad Road,]
Shastri Bhavan,]
New Delhi – 110 001]

2. Assistant Commissioner of CGST]
and Central Excise Division-X,]
Mumbai-East Commissionerate,]
1st Floor, Lotus Info Centre,]
Parel East – 400 012] ... Respondents

Mr.Ishaan Patkar a/w. Ms.Nidhi Shah i/b. Ms.Jindagi Shah for Petitioner.
Mr.N.R. Bubna for Respondent No.1.
Mr.Swapnil Bangur a/w. Mr.L.P. Sawant for Respondent No.2.

CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

DATE : 10th JANUARY 2022.
(Through Video Conference)

ORAL JUDGMENT (PER : R. D. DHANUKA, J.) :-

1. Leave to amend is granted to amend the prayer Clause (c) and to correct the date of third refund application mentioned as '3.9.2020' as '30.9.2020'. Amendment be carried out within a period of two days from today. Re-verification is dispensed with.
2. Rule.
3. Mr.Bubna, learned counsel for Respondent No.1 and Mr.Bangur, learned counsel for Respondent No.2 waives service of notice. By consent of learned counsel for the parties, Petition is heard finally.
4. By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks declaration that, Rule 90(3) of the Central Goods and Services Tax Rules, 2017 is *ultra vires* the Constitution of India and the Central Goods and Services Tax Act, 2017 and consequently strike down the same. The Petitioner also a seeks writ of certiorari for quashing and setting aside the rejection Order dated 26th November 2020 and seeks an Order and direction to restore the third refund application dated 30th September 2020 of the Petitioner filed by the Respondent No.2 and to decide the same on merits.

5. The Petitioner filed the first refund application for the period July 2018 to September 2018 on 21st August 2020 online on the GST portal. The said application however was rejected by the Respondent No.2 on 5th September 2020 on the ground that there were certain deficiencies in the said application.

6. The Petitioner thereafter filed second refund application on 8th September 2020. The Respondent No.2 rejected the said second refund application by pointing out deficiency by Order dated 23rd September 2020.

7. The Petitioner thereafter filed third refund application on 30th September 2020. The Respondent No.2 however rejected the said third refund application by Order dated 26th November 2020 on the ground that the said application was time barred. The Petitioner filed this Writ Petition *inter-alia* praying for restoration of the third refund application and for various other reliefs.

8. Mr.Patkar, learned counsel for Petitioner invited our attention to the impugned Order passed by the Respondent No.2 on 26th November 2020 rejecting the third refund application filed by the Petitioner on the ground of time barred refund application. Learned counsel invited our attention to the Order passed by the Hon'ble Supreme Court on 23rd March 2020 in Re:

Cognizance for Extension of Limitation (Order dated 23rd March 2020), reported in 2020 SCC Online SC 343, in Suo Motu Writ Petition (Civil) No. 3 of 2020, and more particularly paragraph Nos.2 and 3 which read thus :-

- “2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
3. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this Order is a binding Order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

9. Learned counsel also invited our attention to the Order dated 23rd September 2021 in Re: Cognizance for Extension of Limitation (Order dated 23rd September 2021), reported in 2021 SCC Online SC 947, passed by the Hon'ble Supreme Court in Misc. Application No. 665 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020, more particularly paragraph No.8. He submits that, the third refund application filed by the Petitioner on 30th September 2020 was filed between the said period i.e. 15th March 2020 and

2nd October 2021. He submits that in view of the extension granted by the Hon'ble Supreme Court by exercising powers under Article 142 read with 141 declaring that the said Order was binding Order within the meaning of Article 141 on all Courts/Tribunals and Authorities, the Respondent No.2 could not have rejected the third application on the ground of limitation.

10. Learned counsel for Petitioner also placed reliance on the judgment of the Madras High Court delivered on 28th September 2021 in the case of M/s.GNC Infra LLP Vs. Assistant Commissioner (Circle), in W.P.No.18165 & 18168 of 2021, more particularly paragraph Nos.6 to 8 and would submit that, after adverting to the judgment of the Hon'ble Supreme Court in Re: Cognizance for Extension of Limitation passed on 23rd March 2020 the Madras High Court has extended the period of limitation in case of refund application in similar circumstances.

11. Mr.Bangur, learned counsel for Respondent No.2 invited our attention to the reasons recorded by the Respondent No.2 while rejecting the two refund applications filed by the Petitioner and submits that, since those two applications were full of deficiencies, were rightly rejected by the Respondent No.2. He submits that, the third refund application was required to be filed within the period of two years under Circular dated 18th November

2019 under Section 54(1) of the Central Goods and Services Tax Act, 2017. He submits that the third refund application was admittedly filed after expiry of two years.

12. It is not in dispute that the first and second refund applications were rejected on the ground of certain deficiencies in those applications filed by the Respondent No.2. The third refund application, which was required to be filed within two years in accordance with the Circular No.20/16/04/18-GST dated 18th November 2019, under Section 54(1) of the Central Goods and Services Tax Act, 2017. The limitation period fell between 15th March 2020 and 2nd October 2021, which period was excluded by the Hon'ble Supreme Court in all such proceedings irrespective of the limitation prescribed under the general law or Special Law whether condonable or not till further Order/s to be passed by the Hon'ble Supreme Court in those proceedings.

13. The Hon'ble Supreme Court by Order dated 23rd September 2021 in Misc. Application No. 665 of 2021 issued further directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15th March 2020 till 2nd October 2021 shall stand excluded. Consequently the balance period of limitation remaining as on 15th March 2021, if any shall become available with effect from 3rd October 2021.

In view of the said Order dated 23rd March 2020 and the judgment dated 23rd September 2021 passed by the Hon'ble Supreme Court, the period of limitation falling between 15th March 2020 and 2nd October 2021 stood excluded. In our view also, the period of limitation prescribed in the said Circular under Section 54(1) also stood excluded.

14. In our view, the Respondent No.2 is also bound by the said Order dated 23rd March 2020 and the Order dated 23rd September 2021 and is require to exclude the period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March 2020 and 2nd October 2021, the said period stood excluded. The third refund application filed by the Petitioner thus was within the period of limitation prescribed under the said Circular dated 18th November 2019 read with Section 54(1) of the Central Goods and Services Act, 2017. In our view, the impugned Order passed by the Respondent No.2 is contrary to the Order passed by the Hon'ble Supreme Court and thus deserves to be quashed and set-aside.

15. We accordingly pass the following Order :-

- (i) The impugned Order dated 26th November 2020 is quashed and set-aside.
- (ii) The third refund application dated 30th September 2020

annexed at Exh.H to the Petition filed by the Petitioner before the Respondent No.2 is restored to the file of Respondent No.2.

- (iii) Respondent No.2 is directed to consider the said third refund application dated 30th September 2020 on its own merits and in accordance with law expeditiously.
- (iv) Writ Petition is allowed in the aforesaid terms.
- (v) Rule is made absolute accordingly.
- (vi) No Order as to costs.
- (vii) It is made clear that, we have not gone into the validity of the Circular and the Rule 90(3) of the Central Goods and Services Tax Rules, 2017 in this Order and the same can be considered in appropriate case.
- (viii) Parties to act on the basis of an authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]