

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE DR.V.R.K.KRUPA SAGAR**

WRIT PETITION No.30152 of 2021

ORDER:- *(Per Hon'ble Sri Justice C.Praveen Kumar)*

Heard Sri P. Karthik Ramana, learned counsel for the petitioner, learned Government Pleader for Commercial Tax appearing for respondent Nos.1 and 2, Sri N.Harinath, learned Assistant Solicitor General appearing for respondent No.3, and Sri Suresh Kumar Routhu, learned Standing Counsel for Central Board of Indirect Taxes and Customs appearing for respondent No.4, and perused the record. With their consent, this Writ Petition is disposed of at the admission stage.

2. The present writ petition came to be filed seeking the following relief:-

“.....to issue a Writ of Certiorari or any other appropriate writ or order or direction --

(a) declare that the concept of “relevant date” in the Explanation to Section 54 of the Central Goods and Services Tax Act, 2017 has no application to refund claims of Cess under the Goods and Services Tax (Compensation to States) Act, 2017;

(b) or in the alternative, quash the Circular No.157/13/2021-GST dated 20.07.2021 in so far as the quasi-judicial proceedings like refund application is concerned as contrary to the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 dated 27.4.2021 read with final order dated 23.09.2021, as illegal, arbitrary and without authority of law;

(c) to set-aside the order of the 1st Respondent dated 5.10.2021 in rejecting the application of refund as barred by time as being in violation of principles of natural justice, illegal, contrary to law, unsustainable and contrary to the orders of the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020, dated 23.9.2021 in so far as disposal of the refund applications are concerned;

(d) declare that the Petitioner's application for refund filed on 15.9.2021 as filed within time under Section 54 of the Central and State Goods and Services Tax Acts, 2017; and

(e) consequently direct Respondents to process the refund application dated 15.9.2021 for the tax periods 2017-18 & 2018-19 and sanction the refund and pass....."

3. The averments made in the affidavit filed in support of the writ petition show that the petitioner herein, who was engaged in business of trading of coal, claims that he is entitled for refund of tax paid on such supplies, in terms of Section 54 of the Central Goods and Services Tax Act, 2017 [for short, "CGST Act"] and Andhra Pradesh State Goods and Services Tax Act, 2017 [for short, "A.P. G.S.T. Act"] read with Rule 89 of GST Rules. Accordingly, on 15.9.2021, the petitioner filed refund

application for the tax period July, 2017 to March, 2018 and April, 2018 to March, 2019. Thereafter, a notice for rejection of the application for refund was issued on 25.09.2021 for both the years on the ground of limitation for which, a reply came to be filed by the petitioner on 01.10.2021. However, respondent No.1 passed an order on 05.10.2021 rejecting the application for refund, on the ground that the application made by the petitioner is barred by limitation. Since the application came to be made beyond the period of limitation prescribed under Section 54(14) of the CGST Act coupled with Circular, dated 20.07.2021, issued by the Government of India, Ministry of Finance, Department of Revenue, respondent No.1 passed the order, dated 05.10.2021, rejecting the request of the petitioner. Assailing the same, the present writ petition came to be filed.

4. Learned counsel for the petitioner mainly submits that in view of the subsequent Notification, dated 05.07.2022, of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, the rejection of application for refund is bad in law.

5. Learned Government Pleader for Commercial Tax would submit that the order passed by the authorities basing on the

Circular, dated 20.07.2021, cannot be found fault with. He took us through Clause 3(iii) and Clause 4(b) of the said Circular and submits that there is no illegality in the order passed by respondent No.1.

6. A perusal of the material on record would show that the refund application came to be filed by the petitioner on 15.09.2021 for the tax period from July, 2017 to March, 2018 and April, 2018 to March, 2019. Though learned Government Pleader would contend that the said application came to be made beyond the period of limitation, but the learned counsel for the petitioner would submit that a reading of Clause 2 to the Explanation to Section 54 of the CGST Act would show that the 'relevant date' is prescribed only for goods exported out of India, but there is no provision determining the 'relevant date' in respect of the supplies to SEZ units, which are considered as zero-rated sales under Section 16 of the Integrated Goods and Services Tax Act, 2017 [for short, "IGST Act"]. It would be relevant to note that the recent Notification issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, dated 05.07.2022, clearly postulates that in respect of period 1st March, 2020 to 28th February, 2022, the computation of period

of limitation, for filing refund application under Section 54 or Section 55 of the said Act shall stand excluded.

7. In view of the above, it cannot be said that the application for refund was made beyond the period of limitation. Accordingly, the Writ Petition is allowed and the order, dated 05.10.2021, passed by respondent No.1 is set aside and the matter is remanded back to respondent No.1 for consideration afresh in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE DR.V.R.K.KRUPA SAGAR

Date : 23.8.2022
AMD

168

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