

Form No. J.(2)
Item No.9

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 02.01.2024

DELIVERED ON: 02.01.2024

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNAM
AND**

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. 1891 of 2023

With

I.A. No. CAN 1 of 2023

With

I.A. No. CAN 2 of 2023

Suchita Millenium Projects Private Limited

Vs.

**Assistant Commissioner of Central Goods
and Service Tax & Central Excise & Ors.**

Appearance:-

Mr. Sandip Choraria

.....for the appellant

Mr. Vipul Kundalia

Mr. Amit Sharma

.....for the UOI

Mr. K. K. Maiti

Mr. Tapan Bhanja

.....for the CGST Authority

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNAM, C.J.)

In Re: I.A. No. CAN 2 of 2023

1. We have heard the learned advocates for the parties.
2. There is delay of 149 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.

3. I.A. No. CAN 2 of 2023 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 1891 of 2023

4. This intra-Court appeal by the writ petitioner is directed against the order dated 28th March, 2023 in W.P.A. 5664 of 2023. In the said writ petition, the appellant had challenged the order dated 25th July, 2022, by which the application filed by the appellant for refund of excess tax paid was rejected. The learned Single Bench had dismissed the writ petition on the ground that the claim for refund was rejected on certain other grounds and if the appellant is aggrieved, he has to avail the alternate remedy available under the CGST Act. Aggrieved by such order, the appellant has filed the present appeal.
5. As could be seen from the show-cause notice dated 7th June, 2022 in GST – RFD-08, the appellant was directed to show-cause as to how the refund application was within time. The appellant submitted its reply contending that as per the order passed by the Hon'ble Supreme Court, the limitation period of 90 days starts from 1st March, 2022 and the application for refund has been filed within time. Further, the appellant placed reliance on the decision of the High Court of Madras in the case of ***M/s. GNC Infra LL Vs. Assistant Commissioner*** and the decision of the High Court of Bombay in the case of ***Saiher Supply Chain Company Vs. UOI Writ Petition (L.) No.1275 of 2021***. The authority, while rejecting the application appears to have been convinced that the appellant is entitled to the benefit of the order passed by the Hon'ble Supreme Court by which the period of limitation under the various statues stood extended. However, the claim

was rejected on a new ground, which was not forming the part of the show-cause notice dated 7th June, 2022 stating that the appellant has not shown the excess payment in either the monthly return i.e. GSTR-3B or annual return i.e. GSTR – 9. This ground appears to have not been specifically mentioned in the show-cause notice dated 7th June, 2022 and therefore, the rejection of the application for claim for refund on the said ground is in total violation of the principles of natural justice.

6. That apart, the appellant had also made a request for postponing the personal hearing by adjournment request dated 14th June, 2022, which has also not been considered.
7. Therefore, we are of the view that the application for refund made by the appellant has to be reconsidered in accordance with law after affording an opportunity of hearing to the appellant.
8. For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition is allowed and the order of rejection of the refund application dated 25th July, 2022 is set aside and the matter stands remanded back to the authority for fresh consideration.
9. The appellant is directed to submit its reply to the allegation that it has not shown the excess payment either in the monthly return or in the annual return and such reply shall be filed within 15 days from the date of receipt of server copy of this order.
10. On receipt of the reply, the authority is directed to fix a fresh date for personal hearing and after hearing the appellant or its authorised representative, pass fresh orders on merits and in accordance with law. So far as the contention that the refund application is time-barred is

concerned, the said issue having been held in favour of the appellant/assessee, the same cannot be reopened by the authority based on this order.

11. Consequently, the connected application (I.A. No. CAN 1 of 2023) stands disposed of.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(SUPRATIM BHATTACHARYA, J.)