

PRIMARY DETAILS

Main Number	WP 24873/2022	US Number	WPSR 30224/2022
Petitioner	M/s. Gandhar Oil Refinery India Limited,	Respondent	Assistant Commissioner of Sales Tax,
Petitioner Advocate	KARTHIK RAMANA PUTTAMREDDY	Respondent Advocate	
Case Category	NON-SERVICE	District	VISAKHAPATNAM
Filing Date	25/07/2022	Registration Date	06/08/2022
Listing Date	22/08/2022	Case Status	DISPOSED
Disposal Date	22-08-2022	Diposal Type	DISPOSED OF NO COSTS
Purpose	ADMISSION	Scrutiny Officer name	SRAO
Hon'ble Judges	The Honourable Sri Justice C.PRAVEEN KUMAR,The Honourable Sri Justice A V RAVINDRA BABU		

Category

Category	WP	Sub Category	CUSTOMS AND CENTRAL EXCISE (MISC.MATTERS)
Sub Sub Category	-		

IA DETAILS

IA Number	Filing Date	Advocate Name	Misc.Paper Type	Status	Prayer	Order Date	Order
IA 1/2022	06/08/2022	KARTHIK RAMANA PUTTAMREDDY	Suspension Petition	Pending	IA PRAYER	-	
IASR 55281/2022	25/07/2022	KARTHIK RAMANA PUTTAMREDDY (15292)	Suspension Petition	PENDING FOR SCRUTINY			

USR Details

USR Number	Advocate Name	USR Type	USR Filing Date	Remarks
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CONNECTED MATTERS

Connected Case Number

VAKALATH

Advocate Code	Advocate Name	P/R No.	Remarks
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LOWER COURT DETAILS

PRAYER

pleased to issue a Writ of certiorari or any other appropriate writ or order or direction set aside the Circular No 157/13/2021 GST dated 20 7 2021 in so far as the quasijudicial proceedings like refund application is concerned as contrary to the order of the Honble Supreme Court in Suo Motu Writ Petition Civil No 3/2020 dated 27 4 2021 read with final order dated 10 1 2022 to set aside the order of the 15 Respondent dated 16 6 2022 in rejecting the application of refund as barred by time as illegal contrary to law unsustainable and contrary to the orders of the Honble Supreme Court in Suo Moto Writ Petition Civil No 3 of 2020 dated 10 1 2022 in so far as disposal of the refund applications are concerned and declare that the Petitioners application for refund filed on 22 9 2021 as within time under Section 54 of the Central and State Goods and Services Tax Acts 2017 and consequently direct Respondents to process the refund application in terms of the provisions of the Act and pass

PETITIONER(S)

S.No	Petitioner(S) Name
1	M/s Gandhar Oil Refinery India Limited Rep by its Deputy Manager Accounts Mr Nirmal Ranjan Mallik 501 Fourth C Scape Apartments R K Beach Road Paridurangapuram Visakhapatnam 530 003

RESPONDENT(S)

R.No	Respondent(S) Name
1	Assistant Commissioner of Sales Tax China Waltair Circle Visakhapatnam
2	State of Andhra Pradesh Rep by its Principal Secretary to Government Revenue CII Department Secretariat Velagapudi Amaravathi Guntur District
3	Central Board of Indirect Taxes and Customs GST Policy Wing Government of India Ministry of Finance New Delhi
4	Union of India Rep by its Secretary Ministry of Finance 3rd Floor Jeevan Deep Building Sansad Marg New Delhi 110 001 Respondents

ORDERS

Order on	Judge Name	Date of Orders	Order Type	Order Details
WP 24873/2022	The Honourable Sri Justice C.PRAVEEN KUMAR,The Honourable Sri Justice A V RAVINDRA BABU	2022-08-10	Court Proceedings	View
WP 24873/2022	The Honourable Sri Justice C.PRAVEEN KUMAR,The Honourable Sri Justice A V RAVINDRA BABU	2022-08-24	Final Order	View

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

Writ Petition No.24873 of 2022

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

Heard Sri P. Karthik Ramana, learned counsel for the petitioner and Sri T.C.D. Sekhar, learned Government Pleader for Commercial Tax, appearing for the respondents and perused the record, and with their consent, the writ petition is disposed of at the admission stage.

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

“(a) to *set aside* 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.03 of 2020 dated 27.04.2021 read with final order dated 10.01.2022; and

(b) to *set aside* the order of the first respondent dated 16.06.2022 in rejecting the application of refund as barred by time as illegal, improper and incorrect in view of the orders passed by the Hon'ble Supreme Court.”

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

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[for short, “CGST Act”] and Andhra Pradesh State Goods and Services Tax Act, 2017 [for short “APSGST Act”] read with Rule 89 of GST Rules. Accordingly, the petitioner filed refund application for the tax period May, 2018 to May, 2019 on 22.09.2021. But, however, a show cause notice was issued to the petitioner on 12.10.2021 by the first respondent, proposing to reject the application, on the ground that the application made by the petitioner, is barred by limitation. In the said notice the first respondent asking the petitioner to furnish a reply, as to why his request should not be rejected. But, since the application came to be made beyond the period of two years 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, the first respondent passed the order dated 16.06.2022, 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,

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.

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5. Sri T.C.D. Sekhar, 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 the first respondent.
6. A perusal of the material on record would show that the refund application came to be made by the petitioner was on

22.09.2021, for the Tax period May, 2018 to May, 2019. Though, learned Government Pleader would contend that the said application came to be made beyond the period of two years, but the learned counsel for the petitioner would submit that, a reading of the Clause 2 to the Explanation to Section 54 of the CGST Act, show 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 the period from 1st March, 2020 to 28th February, 2022, for computation of period of limitation for filing refund application

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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. Hence, the order under challenge is *set aside* and the matter is remanded back to the first respondent, for fresh consideration in accordance with law. Accordingly, the writ petition is ***disposed of***. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE A.V. RAVINDRA BABU

Date: 24.08.2022

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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

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(per the Hon’ble Sri Justice C. Praveen Kumar)

Date: 24.08.2022

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