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2025:BHC-OS:12187-DB



Chaitanya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3815 OF 2024

Kavita Incorporation

... Petitioner

Versus

Additional Commissioner CGST And
CX, Appeals III, Mumbai And Anr. ...

Respondents

Mr. Ishaan V. Patkar a/w Mr. Vinit V. Raje, Mr. Yeshwant J. Patil
i/b Alaksha Legal, for Petitioner.

Mr. Siddharth Chandrashekhar a/w Ms. Mamta Omle, for
Respondent No.2.

CORAM : M.S. Sonak &
Jitendra Jain, JJ.

DATED : 29 July 2025

P.C.:-

1. Heard the learned counsel for the parties.
2. Rule. The Rule is made returnable immediately, at the request and with the consent of the learned counsel for the parties.
3. This Petition challenges the order-in-appeal dated 22 June 2022 and the order dated 27 October 2021, which is now merged in the Appeal order dated 22 June 2022. By these orders, the

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Petitioner's Refund Application was held to be time-barred and dismissed.

4. The record shows that the Petitioner had applied for a refund in March 2020 for the period from July 2018 to March 2019. This Application and seven re-filings of the said Application were rejected by the Respondents on the grounds of certain deficiencies. The record does not show that the Petitioner was granted any opportunity to correct the so-called deficiencies or was heard on the issue of such deficiencies.

5. The 8th re-filing dated 27 August 2021, seeking refund, was rejected by Respondent No.2, on the ground of limitation, by citing the bar of limitation under Section 52 of the Central Goods and Services Tax Act, 2017 ("CGST Act"),
i.e. two years from the date of export of goods.

6. The Petitioner had first contended that the application was within the limitation and that requiring the Petitioner to constantly clear procedural deficiencies was improper and in breach of natural justice. The Petitioner further relied upon the decision of the Hon'ble Supreme Court in the case of Re: Cognizance For Extension of Limitation¹ and the decision in the case of Saiher Supply Chain Consulting Pvt. Ltd. V/s. Union of India², claiming that the bar of limitation, if applicable, was already extended by the Hon'ble Supreme Court.

¹ (2022) 3 SCC 117

² Writ Petition (OS) No. 1275 of 2021 dt.10.01.2022

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7. The 2nd Respondent, without considering the decision of the Hon'ble Supreme Court and this Court, by order dated 27 October 2021, rejected the application for refund. The Petitioner's Appeal against the said order was also dismissed by the Appellate Authority by order dated 22 June 2022. The Appellate Authority has held that the orders of the Hon'ble Supreme Court and this Court did not apply in such a situation.

8. Mr. Patkar, without prejudice to his contention that Petitioner's 1st Application for refund made in March 2020 should have been reckoned for purposes of limitation, submitted that the decision of the Hon'ble Supreme Court and this Court were clearly applicable. Without further prejudice, Mr. Patkar placed reliance on Notification No. 13/2022 – Central Tax [G.S.R. 516(E)/F.No.CBIC20001/2/2022-GST], dated 05 July 2022, which was clearly applicable.

9. Mr. Chandrashekhar, the learned counsel for the 2nd Respondent, defended the impugned orders based on the reasoning reflected therein. He submitted that the Notification dated 05 July 2022 was neither cited before the 2nd Respondent nor the 1st Respondent. Accordingly, he submitted that this Petition may be dismissed.

10. The rival contentions now fall for our determination.

11. The record does show that the Petitioner's application for refund was initially filed well within the prescribed period of limitation. However, on account of the deficiencies, the Petitioner

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was required to refile the Application on no less than eight occasions. There is no record of compliance with natural justice regarding compliance or the clearing of deficiencies.

12. In any event, instead of going into the issue of whether the date of the initial filing should be reckoned for limitation purposes, we are satisfied that this issue is squarely covered by the Notification dated 05 July 2022.

13. The Notification dated 05 July 2022 excludes the period from 01 March 2020 to 28 February 2022 for computation of the limitation period for filing a refund application under Section 54 or Section 55 of the CGST Act. Irrespective of whether the Petitioner cited or relied upon such Notification, the 1st and 2nd Respondents should have taken cognisance of such Notification and not nonsuit the Petitioner, by citing the bar of limitation.

14. Even the reasoning of the Appellate Authority for not following the decision of the Hon'ble Supreme Court or this Court is not quite appealing. In any event, the Notification dated 05 July 2022 clinches the issue, and based upon the same, the Petitioner's Application could not be held to have been barred by limitation.

15. Accordingly, the impugned order-in-appeal dated 22 June 2022, and the order dated 27 October 2021 are hereby set aside, and the 2nd Respondent is now directed to consider afresh and decide the Petitioner's refund application on merits (and not on limitation), within 60 days from the date of uploading of this order. The 2nd Respondent must hear the Petitioner and pass a reasoned order,

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which must be communicated to the Petitioner within this period of 60 days.

16. If the 2nd Respondent proposes to reject the refund application on any grounds, then a show-cause notice must be issued to the Petitioner so that the Petitioner can respond to the tentative grounds on which the refund application is proposed to be rejected.

17. All this exercise must, however, be completed within 60 days from the date of uploading of this order. The Petitioner must also co-operate with the 2nd Respondent and not seek any undue adjournments or delay in the filing of any response to a show cause notice, if issued.

18. All contentions of all parties on the merits of the refund application are left open.

19. The Rule in this Petition is disposed of in the above terms without any costs order.

20. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J.)