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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 26th September, 2023*

+ **W.P.(C) 12697/2023**

MAHALAXMI EXPORTS THROUGH ITS PROPETOR MR
SUSHIL KOHLI Petitioner

Through: Mr. Rakesh Kumar & Mr.
Subhash Chandra Gupta, Adv.

versus

COMMISSIONER OF DELHI GOODS AND SERVICES
TAX AND ORS. Respondents

Through: Mr. Rajeev Aggarwal, ASC
with Mr. Aadish Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 50155/2023 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Issue notice.
4. The learned counsel for the respondents accept notice.
5. The petitioner has filed the present petition impugning orders dated 28.01.2022 and 11.08.2023.
6. The petitioner is essentially aggrieved by the denial of refund of its unutilised Input Tax Credit (hereafter 'ITC') in respect of zero-



rated supplies.

7. The petitioner had filed an application on 28.11.2021, seeking refund of the unutilised ITC of a sum of ₹6,57,568/- (₹3,28,784/- under the Central Goods and Services Tax Act, 2017 and ₹3,28,784/- under the State Goods and Services Tax Act, 2017), for the period, from 1st April, 2019 to 30th September, 2019.

8. The petitioner's application was acknowledged by the concerned authorities on 30.12.2021 by issuing requisite form (GST-RFD-02). Thereafter, on the same date, the concerned authorities issued a Show Cause Notice (hereafter 'SCN') in Form GST-RFD-08, proposing to reject the petitioner's application as being barred by time.

9. According to the concerned authorities, the petitioner's application was not filed within the stipulated period of two years from the relevant date as required under Section 54(1) of the Central Goods and Services Tax Act, 2017 (hereafter 'CGST Act').

10. The petitioner responded to the said SCN on 13.01.2022. The petitioner contended that the delay was for *bona fide* and genuine reasons as the pandemic was raging since March, 2020 and the petitioner could not file his application for refund, due to the disruption caused as a result of the outbreak of COVID-19.

11. However, the petitioner's refund application was rejected by the impugned order dated 28.01.2022.

12. The petitioner preferred an appeal against the impugned order dated 28.01.2022 passed by the adjudicating authority. However, the appellate authority also dismissed the petitioner's appeal by an order dated 11.08.2023, on the ground that it was barred by limitation.



13. It is the petitioner's case that it was entitled to the refund in view of the orders passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* in *Re: Cognizance for Extension of Limitation*, as well as the notification dated 05.07.2022, issued by the Central Board of Indirect Taxes and Customs ('CBIC').

14. The notification no. 13/2022-Central Tax dated 05.07.2022 expressly provides that the period commencing from the 1st day of March, 2020 to 28th February, 2022, would be excluded, *inter alia*, for the purposes of filing the refund application under Section 54 or Section 55 of the CGST Act.

15. Undisputedly, the petitioner's application for refund was within the time limit as prescribed under Section 54(1) of the CGST Act, if the said period is excluded.

16. The benefit of the said circular has not been provided to the petitioner, as the same was issued after the petitioner's refund application was rejected.

17. In view of the above, the impugned orders are set aside.

18. The petition is, accordingly, allowed.

19. The respondents are directed to process the petitioner's refund application along with the applicable interest within a period of two weeks from today.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 26, 2023/"SS"