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By Nidhi, Advocate



Judgment No.: 162
Dt.: 29-07-2024



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Judgment Deals With

Revisionary order passed for recovery of erroneous grant of refund was set aside as Supreme Court's extension of limitation periods due to COVID-19 and GST Council's recommendations applied to the petitioner's refund claim.

Section/Rule	Section 54
Authority	Punjab & Haryana High Court
Case Name	Bestways Agencies Private Limited VS Union Of India
Dated	18 th July, 2024
Citation	CWP No. 14121 of 2022

Brief facts of the case:

The petitioner, on account of higher rate of tax on inputs than output, applied for refund of unutilized ITC in terms of Section 54(3) of CGST Act, 2017 read with Circular No. 125/44/2019GST dated 18.11.2019, under Inverted Duty Structure. The jurisdictional Assistant Commissioner after seeking report from Jurisdictional Range Officer and scrutiny of available documents passed Order-in-Original dated 23.11.2020 whereby the refund was sanctioned.

The Revisionary Authority i.e. Joint Commissioner, examined aforesaid Order-in-Original dated 23.11.2020 and found that refund claim for the period from April' 2018 to August'2018 was time barred as petitioner did not file refund claim within the stipulated period i.e. 2 years from the relevant date.

The petitioner filed reply to the show cause notice wherein it was submitted that Supreme Court in *Suo Moto Writ Petition (Civil) No. 03 of 2020* vide orders passed from time to time has extended limitation period on account of Covid-19, thus, refund application was within limitation period.

However, the Revisionary Authority vide order dated 17.11.2021 turned down submissions of the petitioner and held that extension of time lines granted by Supreme Court is applicable in respect of the appeals to be filed before the Appellate Authorities and it is not applicable to any other proceedings under CGST Act.

The Revisionary Authority revised order dated 23.11.2020 passed by Assistant Commissioner and held that refund for the period from April'2018 to August'2018 was time barred and erroneously paid to the petitioner. It further ordered to refund the said amount alongwith interest in terms of Section 73(1) of the CGST Act and imposed penalty under Section 73(9) of the CGST Act.

Contention of the Petitioner:

Revisionary Authority has wrongly revised order passed by Assistant Commissioner. The refund application filed by the petitioner was not time barred.

Supreme Court vide order dated 27.4.2021 has extended limitation period and case of petitioner was squarely covered by said order.

The Department has relied upon Board's circular which was contrary to orders of Supreme Court.

The GST Council in its 47th meeting held on 29.06.2022 has clarified that time period from 01.03.2022 to 28.02.2022 shall be excluded from calculation of limitation period for filing refund.

Findings & Decision of the Court:

The petitioner on account of inverted duty was having accumulated ITC. As per Section 54 of CGST Act, a refund claim in respect of unutilized ITC can be filed within 2 years from the date of furnishing return under Section 39 of the CGST Act. The petitioner preferred refund application on 20.09.2020.

By Notification No.35/2020-Central Tax dated 03.04.2020 read with Notification No. 55/2020-Central Tax dated 27.06.2020, time limit for compliance of any action by an authority or any person falling during the period from 20.03.2020 onwards was increased to 31.08.2020. 2 years period prescribed under Section 54 of CGST Act to claim refund for the period from April'2018 to August'2018 expired on 19.09.2020 whereas petitioner preferred refund application for the said period on 29.09.2020.

The Revisionary Authority relying upon the said circular, formed an opinion that judgment of Supreme Court is not applicable to application seeking refund to quasi judicial proceedings and appellate proceedings. The said order was passed on 27.06.2021 whereas GST Council in its meeting held on 29.06.2022 recommended to exclude period from 01.03.2020 to 28.02.2022 for the calculation of limitation period for filing refund claim

The case of petitioner is squarely covered by recommendations of GST Council. As soon as period from March'2020 to February'2022 is excluded from limitation period prescribed for filing refund claim, the application dated 29.09.2020 filed by petitioner becomes within limitation period as prescribed under Section 53(3) of the CGST Act.

Thus, the impugned order dated 17.11.2021 was set aside.