

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19196 of 2021**

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M/S SUPERNOVA ENGINEERS LIMITED
Versus
UNION OF INDIA

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Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2,3,4,5

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 27/07/2022**ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

Heard learned advocate Mr.Anand Nainawati for the petitioners and learned advocate Mr.Nikunt K. Raval for the respondents.

1. By this petition, the petitioners have challenged the order in Appeal dated 12th July, 2021 passed by the respondent No.2-Joint Commissioner (Appeals), CGST Appeal Commissionerate, Ahmedabad whereby, the Appeal

filed by the petitioners for refund claimed under Section 16 of the Integrated Goods and Service Tax Act, 2017 (the IGST Act) read with Section 54 of Central Goods and Service Tax Act, 2017 (the CGST Act) was rejected.

2.1. The brief facts giving rise to this petition are that the petitioners are engaged in the business of manufacturing and supply of Diesel Gensets (DG sets) classifiable under Chapter heading 85 of the First Schedule to the Customs Tariff Act, 1975.

2.2. The petitioners are engaged in domestic supply as well as are also exporting the goods as zero-rated supply of the finished goods. The petitioners can export the goods as per the provisions of the IGST Act either on payment of Integrated Goods and Service Tax (IGST) or without payment under Bond or LUT (Letter of Undertaking) as the case may be.

2.3. The petitioners supplied the DG sets amounting to Rs.58,50,000/- on 28.01.2020 to M/s.Quartzkraft LLP situated at SEZ (Special Economic Zone) area with payment of IGST amounting to Rs.10,53,000/-.

2.4. As per Sub-section (3) of Section 16 of the CGST Act, the petitioners were eligible to claim refund of the IGST paid on the goods supplied to SEZ units in accordance with the provisions of Section 54 of the CGST Act as such supply would be treated as zero rated supply as per Section 16(1) of the CGST Act.

2.5. The petitioners thereafter filed an on-line refund application on 30th October, 2020 as per provisions of Section 54(8) read with Rule 89 of the CGST Rules, 2017.

2.6. The respondent No.3-Assistant

Commissioner, Central GST, Division-Kadi, Gandhinagar Commissionerate issued the show-cause notice on the on-line portal on 11.11.2020 proposing to reject refund claim on the ground that the amount of IGST charged on the supply has not been added to the taxable amount and the endorsement of the specified officer of the SEZ was not on the front side.

2.7. The petitioners filed a reply dated 19.11.2020 to the show-cause notice contending inter-alia that the petitioners did not receive the tax amount from the recipient of the goods, therefore, amount of IGST was not added in the total amount after payment of tax. It was submitted that the petitioners have rightly paid IGST to the Government which can be verified from the return filed in Form GSTR-3B. The petitioners also submitted the documents as required by the show-cause notice along with Form GST-RFD-09.

2.8. The respondent No.3 however rejected the refund claim of the petitioners on the ground that the IGST charged by the petitioners on the supply was not added to the taxable amount having Reference No.AA2410201029305.

2.9. The petitioners being aggrieved filed Appeal on 21.04.2021 before the respondent No.2 on the ground that the petitioners are eligible to file refund claim under Section 16 of the IGST Act read with Section 54 of the CGST Act, 2017 and the rules made there under.

2.10. After giving an opportunity of hearing on 08.06.2021 through virtual mode, the respondent No.2 rejected the Appeal filed by the petitioners vide order dated 12.07.2021 on the ground that there was a delay in filing the Appeal before the Appellate Authority.

2.11. Being aggrieved, the petitioners have

filed this petition.

3.1. Learned advocate Mr.Anand Nainawati for the petitioners submitted that the petitioners filed the Appeal within the prescribed period of limitation under Section 107 of the CGST Act read with order passed by the Apex Court in case of *Suo Motu Writ Petition (Civil) No.3 of 2020* with regard to cognizance for extension of limitation in view of the pandemic Covid-19.

3.2. It was submitted that Section 54 of the CGST Act provides for refund of tax paid on account of zero-rated supplies made and as the petitioners supplied DG sets to the SEZ unit, such supply would be treated as zero rated supply as per Section 16(3) of the IGST Act.

3.3. Learned advocate Mr.Nainawati submitted that the petitioners received the order of rejecting the refund claim on 20.11.2020 and time

limit for filing Appeal before the respondent No.2 is three months from the date of communication of the order, however, due to prevailing Covid-19 pandemic situation, the petitioners could not file the Appeal in time. It was submitted that the delay of 62 days in preferring the Appeal ought to have been condoned by the respondent No.2 in view of the order passed by the Apex Court in Suo Moto Writ Petition (Civil) No.3 of 2020 for extension of limitation period in view of the Covid-19 pandemic situation.

3.4. It was pointed out that by the aforesaid order dated 23rd March, 2020 passed by the Apex Court, the period of limitation stands extended in filing petitions/ applications/ suits/ appeals/ all other proceedings irrespective of the period of limitation prescribed under the general or special laws with effect from 15th March, 2020 till further orders which was

extended up to 8th March, 2021 and thereafter, in view of the second wave of the Covid-19 pandemic, the Hon'ble Supreme Court vide order dated 27th April, 2021 restored the earlier order dated 23rd March, 2020 and passed the direction that the period of limitation as prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings whether condonable or not shall stand extended till further orders. It was therefore submitted that in view of the above orders passed by the Hon'ble Apex Court there is no delay in preferring the Appeal.

4.1. On the other hand, learned advocate Mr.Nikunt Raval for the respondent-Authorities submitted that the respondent No.2 has rightly not condoned the delay of 62 days caused in filing the Appeal as it was beyond the power of the Appellate Authority to condone or consider the delay after expiry of four months from the

date of communication of the order under appeal as per the provisions of Section 107(4) of the CGST Act. It was further submitted that even on merits, the petitioners have no case and therefore, the Appeal is rightly rejected.

4.2. It was submitted that the petitioners have not made any submission before the Appellate Authority with regard to the orders passed by the Hon'ble Supreme Court inasmuch as the Hon'ble Supreme Court has been pleased to extend the limitation only qua filing of Appeals/proceedings and not towards the claim of refund such as sought to be filed before the respondent-Authority as per the Circular dated 20th July, 2021 issued on behalf of the Central Board of Indirect Taxes.

5. Having heard the learned advocates for the respective parties, it is not in dispute that the petitioners filed the Appeal before the Appellate

Authority on 21.04.2021 with a delay. The petitioners received the order rejecting the refund claim on 20.11.2020 and therefore the petitioners ought to have filed the Appeal within three months by 19th February, 2021. The Appellate Authority could have condoned the delay of further one month i.e. up to 19th March, 2021. The Appellate Authority refused to condone the delay beyond 19th March, 2021 as per the provisions of Section 107(4) of the CGST Act, which reads as under :

"107(4). The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

6. However, in the peculiar facts of the case, when the petitioners received order rejecting the refund claim in month of November, 2020, the Covid-19 pandemic situation was prevailing. The Hon'ble Apex Court, vide order dated 23rd March,

2020 passed in *Suo Motu Writ Petition (Civil) No.3 of 2020*, while exercising extra-ordinary jurisdiction under Article 141 of the Constitution of India, extended the period of limitation for filing the Appeal which was further extended from time to time which is evident from the order dated January 10, 2022 passed in *Misc. Application No.21 of 2022* in *Misc. Application No.665 of 2021* in *Suo Motu Writ Petition (Civil) No.3 of 2020* as under :

"1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 Pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the *Suo Motu* proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in *Suo Motu Writ Petition (C) NO. 3 of 2020* ; and
- ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in *M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020*; and
- iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the

prevailing conditions, we deem it appropriate to dispose of the M.A. No.21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2099 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of

limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn."

7. As per the aforesaid order, the period from 15.03.2020 till 28.02.2022 stand excluded in computing the period prescribed for limitation. Accordingly, the Appeal filed by the petitioners on 21.04.2021 challenging the rejection of refund claim shall have to be considered within the period of limitation. In view of the aforesaid order passed by the Apex Court, the impugned order passed by the Appellate Authority rejecting the Appeal on ground of limitation is liable to be quashed and set aside.

8. Accordingly, the impugned order dated 12.07.2021 is quashed and set aside and the matter is remanded back to the respondent No.2-Appellate Authority to decide the same on merits

after giving an opportunity of hearing to the petitioners.

9. It is clarified that this Court has not gone into the merits of the matter and contentions raised by both the sides are kept open to be considered by the Appellate Authority to decide the Appeal on merits considering the Appeal of the petitioners as filed within period of limitation. Such exercise shall be completed within a period of twelve weeks from the date of receipt of this order.

10. The petition is accordingly disposed of. Notice is discharged.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

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