

Neutralise alleged excess GST payments through credit note as refund application is time barred

The Hon'ble Madras High Court in ***Quest Global Engineering Services Private Limited vs The Deputy Commissioner of GST and Central Excise [W.P. No. 12105 of 2020 and WMP No. 14844 of 2020 dated December 12, 2021]*** directed the taxpayer/assessee to provide proper credit notes to neutralise the alleged excess GST payment as refund claim filed by the taxpayer/assessee is barred by limitation.

Facts

In this case Quest Global Engineering Services Private Limited ("**the Petitioner**" or "**Transferor Company**"), wrongly paid tax on 'non supply of any services either wholly or partially'. Accordingly, the Petitioner filed for refund claim on filed on May 30, 2020 which was after the time limit given under the Section 54 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

The Petitioner contended that there was a wrong entry, the system picked up wrong invoices in which tax was already paid by the transferor company and reflected in returns.

Accordingly, refund claim under Section 54 of the CGST Act was rejected by the department as it was barred by limitation.

Issue

Whether the Petitioner is entitled to refund claimed beyond the limitation period?

Held

The Hon'ble Madras High Court in ***W.P. No. 12105 of 2020 and W.M.P. No. 14844 of 2020 dated on December 12, 2021*** held as under:

- Noted that, the Petitioner ought to have taken steps for rectifying such entry under proviso to Section 39(9) of the CGST Act.
- The Petitioner has not provided with any records to prove that tax was paid on the wrong entries nor has any evidence to validate that the said client had not benefited from input tax credit ("**ITC**") in light of invoices raised by the Petitioner.
- Directed the Petitioner to get proper credit notes issued to compensate for the alleged overabundance payment while generating and issuing invoices as the refund claim filed by the Petitioner is barred under the limitation period as prescribed under the Section 54(1) CGST Act.

Relevant Provision:

Section 54 of the CGST Act

“54. Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

Explanation.-For the purposes of this section,—

(2) “relevant date” means-

(h) in any other case, the date of payment of tax.”

Section 39(9) of the CGST Act:

“39. Furnishing of returns

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following or the actual date of furnishing of relevant annual return, whichever is earlier.”

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader’s personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of

any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.