

Refund application is not barred by limitation, as period from 1st March, 2020 to 28th February, 2022 to be excluded

The Hon'ble Andhra Pradesh High Court in *M/S. Gandhar oil refinery (India) Limited v. Assistant commissioner of sales tax [Writ Petition No.24873 of 2022 dated August 24, 2022]* remanded back the matter to the assessing authority, depending upon the recent notification for fresh consideration in accordance with the law. The Court also stated that the application for refund was not made beyond the period of limitation and therefore, disposed off the writ petition accordingly.

Facts:

M/S. Gandhar oil refinery (India) Limited (“the Petitioner”) is engaged in the business of trading Coal. The Petitioner claimed that he is entitled to a refund of tax paid on such supplies, in terms of Section 54 of the Central Goods and Services Tax Act, 2017 (**“the CGST Act”**) read with Rule 89 of the Central Goods and Service Tax Rules, 2017 (**“the CGST Rules”**).

The refund application filed by the Petitioner dated September 22, 2021, was for the tax period of May 2018 to May 2019. Further, a show cause notice dated November 12, 2021 (**“the SCN”**) was issued to the Petitioner by the assessing authority (**“the Respondent”**), on the ground that the application made by the Petitioner, is barred by limitation.

Since the refund application was filed beyond the period of two years prescribed under Section 54(14) of the CGST Act, the Respondent passed an order dated June 16, 2022 (**“the Impugned order”**) rejecting the refund application of the Petitioner.

Therefore, the Petitioner filed the present writ petition.

Issue:

Whether or not the refund application filed by the Petitioner is barred by limitation according to the recent notification [**Notification no. 13/2022–Central Tax dated July 5, 2022**]?

Held:

The Hon'ble Andhra Pradesh High Court in **Writ Petition No.24873 of 2022 dated August 24, 2022 held as under:**

- **Noted that** the recent Notification dated July 5, 2022, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, postulates that the period from 1st March 2020 to 28th February 2022, for computation of the period of limitation for filing refund application under Section 54 or Section 55 of the CGST Act stands.
- Stated that explanation of Section 54 clause 2 of the CGST Act, shows that the 'relevant date' is prescribed only for goods exported out of India, but, there is no provision determining the 'relevant date' in respect of the supplies to SEZ units. Therefore, the Court mentioned that it cannot be said that the application for a refund was made beyond the period of limitation.
- Disposed off the writ petition and remanded back the matter to the Respondent for fresh consideration in accordance with law.

Our comments:

Relevant date for supplied to SEZ unit has been inserted vide Section 113 of the Finance Act, 2022 yet to be notified as under:

“Explanation.-For the purposes of this section,—

(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input

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services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;”

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