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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No. 12105 of 2020

and

W.M.P.No.14844 of 2020

(Through Video Conferencing)

Quest Global Engineering Services Private Limited,
Represented by its Assistant Manager Finance Ms.Saranya.N
3rd Floor, Block 2 and 9, ELNET Software City,
Rajiv Gandhi Road, Tharamani,
Chennai - 600 113. ... Petitioner

Vs.

The Deputy Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Perungudi Division, Chennai South Commissionerate,
Periyar EVR Maaligai,
No.690, Anna Salai, Nandanam,
Chennai - 600 035. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in Order dated 23.06.2020 passed by the respondent, and quash the same as arbitrary and illegal and to direct the respondent to refund the amount of Rs.19,18,622/-.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Ms.Anu Ganesan
Junior Panel Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondent. I have perused the records and the decisions cited by the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondent. I have also perused the circular dated 29.12.2017 which was furnished today by the learned counsel for the petitioner.

2. The facts are not in dispute. It is the case of the petitioner that the Transferor Company namely the Quest Global



Engineering Private Limited stood merged with the petitioner. It is submitted that the said Transferor Company had raised invoices during the month of June, July, August and September, 2017 on their client/customer namely M/s.Caterpillar India Private Limited and had discharged the Tax liability particularly under the provisions of the Finance Act, 1994 and the respective GST Acts, 2017.

3. It is the specific case of the petitioner that after the amalgamation of the said Transferor Company namely Quest Global Engineering Private Limited with the petitioner, pursuant to the order of the National Company Law Tribunal on 01.10.2017, the data/informations in the system of the said transferor company were integrated with the data/information of the petitioner.

4. It is submitted that by mistake, the system picked the same invoices on which service tax was paid by the transferor company and which were reflected in the returns for the period between June, July, August and September 2017 on 01.11.2017 and tax was paid by the petitioner without either actually supplying service to the their customer or by raising corresponding invoice on the customer.

5. It is further case of the petitioner that all the invoices which are dated 01.11.2017 in the returns were never generated by the petitioner. However, the petitioner ended up paying tax on account of invoice numbers being generated on 01.11.2017.

6. The learned counsel for the petitioner has placed reliance on the following decision and the Central Board of Excise & Customs Circular:-

i. Tamil Nadu Newsprint and Papers Limited Vs Cus., C. Ex. & S.T. SETT.Comm., Chennai, 2021 (377) E.L.T.59 (Mad).

ii. Circular No.26/26/2017-GST dated 29.12.2017.

7. The learned Junior Panel Counsel for the respondent has placed reliance on the following decisions:-

i. Assistant Commissioner of S.T, Chennai Vs Nataraj and Venkat Associates, 2015 (40) S.T.R. 31 (Mad.)

ii.Enmas Andritz Private Limited Vs CESTAT, Chennai, 2017 (6) G.S.T.L. 12 (Mad.)

iii.Indian Oil Corporation Limited Vs Union of India, 2016 (342) E.L.T. 48 (Guj.)

iv.Southern Surface Finishers Vs Assistant Commissioner of Central Excise, Muvattupuzha, 2019 (28) G.S.T.L. 202 (Ker.)

v. Shoppers Stop Limited Vs Commissioner of Customs (Exports), Chennai, 2018 (8) G.S.T.L.



47 (Mad.)

- vi. Commissioner of Customs (Exports), Chennai Vs BPL Limited, 2010 (259) E.L.T. 526 (Mad.)
- vii. Union of India Vs Kirloskar Pneumatic Company, 1996 (84) E.L.T. 401 (SC).
- viii. State of Haryana Vs Hindustan Machine Tools Limited, (2015) 328 E.L.T. 27 (P&H).

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8. The learned Junior Panel Counsel defending the stand of the respondent submits that the petitioner has neither filed any records to substantiate that the tax was paid on an earlier occasion between June, July, August and September 2017 nor has produced any proof to substantiate that the said customer namely M/s. Caterpillar India Private Limited had not availed Input Tax Credit based on the invoice raised by the petitioner.

9. The learned Junior Panel Counsel for the respondent further submits that the limitation under Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) also makes it clear that even if tax was paid by mistake on account of non-supply of any service either wholly or partially, for which no invoices were raised or issued or where a refund voucher had been issued cannot be ignored under explanation to Section 54 of the CGST Act.

10. It is submitted that in this case, the tax was admittedly paid on 01.11.2017. Therefore, the refund claim should have been filed within two year from the date of payment of tax by the petitioner. Since the refund claim was filed on 30.05.2020, long after the expiry of limitation prescribed under Section 54 of the CGST Act, 2017, the respondent was justified in rejecting the refund claim of the petitioner as time barred.

11. The learned Junior Panel Counsel for the respondent also submits that even as per the decision of the Hon'ble Supreme Court in Mafatlal Industries Vs Union of India, 1997 (89) ELT 247 (S.C) except in the case of unconstitutional levy, limitations prescribed under the Act cannot be overlooked. It is further submitted that in this case, admittedly, tax was paid under the provisions of the Finance Act, 1994 and CGST Act, 2017 on 01.11.2017 and therefore the petitioner's refund claim was beyond the period specified under the Act.

12. By way of re-joinder, the learned counsel for the petitioner submits that even as per C.B.E & C. Circular No.26/26/2017-GST, F.No.349/164/2017-GST dated 29.12.2017, the amount paid in excess has to be refunded to the petitioner.

13. It is submitted that all the issues arising out of the difficulties experienced during first year during the



3. Amendment/corrections/rectification of errors:

3.3 The common errors while submitting FORM GSTR-3B and the steps needed to be taken to rectify the same are provided in the table annexed herewith. The registered person needs to decide at which stage of filing of FORM GSTR-3B he is currently at and also the error committed by him. The corresponding column in the table provides the steps to be followed by him to rectify such error."

8. Stage 1 - Confirmed Submission

<https://hcservices.ecourts.gov.in/hcservices/>



16. Explanation to Section 54 of the CGST Act, 2017 defines the expression refund and relevant date for the purpose of the above provision. They are reproduced as under:-

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Explanation: For the purpose of section:-

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).

(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b)

(c)

(d)

(e)

(f) ...

(g) ...

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

17. In this case, the tax was paid on 20.12.2017. Thus, the refund claim if it was to be filed ought to have been filed by the petitioner within the period of limitation prescribed under the Act. The refund claim should have been filed on or before 19.12.2019. However, refund claim was filed only on 30.05.2020. The refund claim was thus beyond the period of limitation prescribed under Section 54 of the CGST Act, 2017.

18. In fact, if there was a wrong entry as was argued, the petitioner should have taken steps for rectification of the returns under proviso to Sub Section (9) to Section 39 of the Act.



19. However, in this case, the petitioner has given a specific date of the invoice ie. 1.11.2017 and paid tax. Therefore, refund under Section 54 of the TNGST & CGST Act, 2017 cannot be entertained by the respondent.

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20. Sub-clause 8 to Section 54 of the Act is attracted only if such claim refund claim is admissible and is made within two years from the relevant date. This is evident from a reading of sub-clause (c) to sub-section 8 to Section 54 of the respective GST enactments which read as under:-

"(8) ...

(a) ...

(b) ...

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued."

21. The circular which has been issued sought to be relied by the learned counsel for the petitioner will apply only in a case where the Company had reported supply twice. However, in this case the petitioner has generated invoice number and date.

22. The option available to the petitioner was to request its customer/client M/s.Caterpillar India Private Limited to issue an appropriate credit notes to neutrilize the alleged excess payment of GST while generating and issuing invoices dated 01.11.2017 details of which was captured in their regular return and tax was paid.

23. The refund claim filed by the petitioner is clearly barred under the limitation prescribed under Section 54(1) of the respective enactments read with explanation (h) which has been extracted above.

24. The petitioner has to workout with its customer/client M/s.Caterpillar India Private Limited and neturalize the incidence of alleged wrong /excess payment of tax.

25. This Writ Petition is therefore liable to be dismissed and it is accordingly dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar



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To

The Deputy Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Perungudi Division, Chennai South Commissionerate,
Periyar EVR Maaligai,
No.690, Anna Salai, Nandanam,
Chennai - 600 035.

+lcc to Mr. Joseph Prabakar, Advocate SR. No.69656

+lcc to Ms. Anu Ganesan, Advocate SR. No.68959

W.P.No.12105 of 2020

and

W.M.P.No.14844 of 2020

VGII (CO)

PR (21/01/2022)