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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18165 & 18168 of 2021 &
WMP.Nos.19386 & 19389 of 2021

M/s.GNC Infra LLP

Rep. by Partner / Authorized Signatory

A-11, Shivalik, First Floor

New Delhi - 110 017

... Petitioner

Vs

Assistant Commissioner (Circle)

Ekkatuthangal-Commercial Taxes Department

No.46, Pasumpom Muthuramalingam Salai

Taluk Office Building, Chennai - 600 0280. ... Respondent

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, calling for the records of the Respondent in order dated 26.07.2021 & 28/07/2021 in order No.ZB3307211327668, 2B3307211335406 respectively and quash the same and direct the respondent to grant refund of a sum of Rs.2,02,505/- (Rupees Two Lakhs Two Thousand Five Hundred & Five only)& 19,27,539/- respectively.

For Petitioner : Mr. Adithya Reddy

For Respondent : Ms. Amirta Dinakaran
Government Advocate

COMMON ORDER

This common order will govern both the captioned writ petitions and 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of brevity, convenience and clarity).

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 01.09.2021 and 03.09.2021, which read as follows:

'Proceedings made on 01.09.2021:

Subject matter of captioned writ petitions pertains to refund under 'The Central Goods and Services Tax Act, 2017' [hereinafter 'CGST Act' for the sake of convenience and clarity].

2. The critical point pertains to meaning of 'relevant date' in the light of 'The Central Goods and Services Tax (Amendment) Act, 2018' [hereinafter 'CGST (Amendment) Act 2018' for the



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sake of convenience and clarity].

3. Be that as it may, Mr. Adithya Reddy learned counsel for writ petitioner submits that it may not be necessary to go into interpretation of the expression 'relevant date' qua CGST (Amendment) Act 2018 in the light of suo-moto orders of Hon'ble Supreme Court wherein all limitation periods across the Board were extended. In other words, learned counsel submits that if the benefit of suo-moto orders by the Hon'ble Supreme Court made owing to Covid-19 situation is applied to the case on hand, the relevant date issue need not be gone into in this case on hand.

4. Ms. Amirta Dinakaran, learned Revenue counsel who accepts notice on behalf of lone respondent requests time to get instructions and revert to this Court.

5. List in the Admission Board i.e., 'Motion List' day after tomorrow i.e., on 03.09.2021.' 'Proceedings made on 03.09.2021

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 01.09.2021, same set of learned counsel are before this virtual Court.

2. Learned Revenue counsel has since got instructions.

3. Renotified.

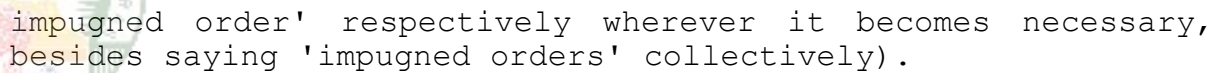
List on 14.09.2021 under the cause list caption 'ADJOURNED ADMISSION'.

3. To be noted, there is one listing on 08.09.2021, but the matter was re-notified and therefore, it is not necessary to capture and reproduce that proceedings.

4. Today in the hearing, Mr. Adithya Reddy, learned counsel for writ petitioner in both the writ petitions and Ms. Amirta Dinakaran, learned Revenue counsel, on behalf of sole respondent in both the writ petitions are before me.

5. As will be evident from the earlier proceedings made in the previous listing, more particularly the listing on 01.09.2021, captioned matters pertain to refund. Before I proceed further, it is made clear that abbreviations and short forms used in earlier proceedings will continue to be used in the instant order also. To be noted, with regard to CGST Act alone instead of earlier short form to contradistinguish between Central General Sales Tax Act and Central Goods and Services Tax Act, 2017 the short form C-GST Act is used.

6. The refund application being application dated 19.04.2021 has been made under Section 54 of C-GST Act. The refund sought for pertains to June of 2018 and August of 2018. The refund applications were rejected vide order dated 26.07.2021 bearing reference No. ZB3307211327668 with regard to I writ petition and vide order dated 28.07.2021 bearing reference No. ZB3307211335406 with regard to II writ petition (hereinafter referred to as 'I impugned order' and 'II



7. The impugned orders are identical. Interestingly, the impugned orders say that refund applications should have been made within two years from the relevant date, but it goes on to say that the refund applications have been 'examined' as the impugned orders say 'upon examination of your application'.

8. With regard to two orders what has already been recorded on 01.09.2021 proceedings are reiterated. Therefore, two orders with regard to June 2018 refund elapsed in July of 2020 and with regard to August 2018 refund it elapsed in August of 2020. Admittedly, the refund applications were made only on 19.04.2021 beyond the two years period. Learned counsel submits that he has the benefit of suo-motu order of Hon'ble Supreme Court dated 27.04.2021 made in Miscellaneous Application No.665/2021 in SMW(c) No.3/2020, a scanned reproduction of which is as follows:





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Ms. Vindhya Mehra, Adv.
Mr. Kartik Lahoti, Adv.
Mr. Rahul Maheshwari, Adv.

Mr. Abhinav Tewari, Adv.
Ms. Eliza Barr, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

This Court took *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country. Consequently, it was directed vide order dated 23rd March, 2020 that the period of limitation in filing petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders.

Thereafter on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The *suo motu* proceedings were, thus, disposed of issuing the following directions:



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"1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 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.

4. The Government of India shall amend the guidelines for containment zones, to state.



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"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

Supreme Court Advocate on Record Association (SCAORA) has now through this Interlocutory Application highlighted the daily surge in COVID cases in Delhi and how difficult it has become for the Advocates-on-Record and the litigants to institute cases in Supreme Court and other courts in Delhi. Consequently, restoration of the order dated 23rd March, 2020 has been prayed for.

We have heard Mr. Shivaji M. Jadhav, President SCAORA in support of the prayer made in this application. Learned Attorney General and Learned Solicitor General have also given their valuable suggestions.

We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the



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order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders 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.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in 5 weeks.



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List the Miscellaneous Application on 19th July, 2021.

(NEELAM GULATI)
ASTT. REGISTRAR-CUM-PS

(RAJ RANI NEGI)
DY. REGISTRAR

9. Post aforementioned orders of Hon'ble Supreme Court, the Central Board of Indirect Taxes (CBIT) issued a circular dated 20.07.2021 in Circular No.157/13/2021-GST. Most relevant part of the circular is Paragraph 4(b), which reads as follows:

'4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorized as follows:

(a)

(b) Quasi-Judicial proceedings by tax authorities:-

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending can continue to be heard and disposed off and the same will be governed by these extensions of time granted by the statutes or notifications, if any.'

10. Therefore, the refund applications made on 19.04.2021 need to be entertained and the order of Hon'ble Supreme Court clearly enures to the benefit of the writ petitioner in the case on hand. To that extent, the impugned orders are wrong.

11. Be that as it may, as the impugned orders, as already alluded to supra, say that they have examined the refund applications, learned counsel for writ petitioner submits that reasons for refund should have been recorded in the impugned orders as that is a requirement ingrained in Rule 92(3) of the 'Central Goods and Services Tax Rules, 2017' [hereinafter 'said Rules' for the sake of convenience and clarity], which



'92. Order sanctioning refund

(1).....

(2)

(3) Where the proper officer is satisfied, for reasons to be recorded in writing that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

12. A scanned reproduction of the impugned orders are as follows:



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	T	I	P	F	O	Total
5. Refund amount against outstanding demand under existing law or under this law. (Refer Form 2)	0.00	0.00	0.00	0.00	0.00	0.00
6. Net amount to be paid.	0.00	0.00	0.00	0.00	0.00	0.00

Note: T stands for Interest, P stands for Penalty, F stands for Fine and O stands for Others

Penalty of an amount of ₹19,27,539.00 to M/s. GNC INFRA LLP having GSTIN: 33AAEP08230A1Z4 under sub-section (9) of Section 54 of the Act.

Note 1: Reasons for Inadmissible Refund amount

Reasons	T	I	P	F	O	Total
Other	1927539.00	0.00	0.00	0.00	0.00	1927539.00

Note 2: Adjusted Outstanding Demand Amount

Note: T stands for Interest, P stands for Penalty, F stands for Fine and O stands for Others

Date: 26/07/2021
Place: ENKATUTHANICAL (C)
Officer: Enkathur Road Building, No. 45, Palampon Muthuvalluram Bazar, Taluk Office Building, P.A. Puram,
Chennai - 60

Name: S. M. Vignesh
Designation: Assistant Commissioner (Circle)

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13. Learned counsel for writ petitioner submits that the writ petitioner falls under Section 54(8)(b) of C-GST Act and therefore, he is entitled to refund, but I refrain myself from expressing any opinion on this aspect of the matter as no reasons have been recorded in writing in the impugned orders.

14. Learned Revenue counsel submits that CBIT circular referred to supra and more particularly, Paragraph 4(b) is indisputable.

15. I propose to send the matter back to the respondent for considering the refund application de novo and make an order inter alia in accordance with Rule 92 of said Rules and Section 54 (8) (b) of C-GST Act by making the following order:

a) Impugned orders being order dated 26.07.2021 bearing reference No. ZB3307211327668 with regard to I writ petition and being order dated 28.07.2021 bearing reference No. ZB3307211335406 with regard to II writ petition are set aside solely on the ground that reasons for rejection of refund have not been recorded in writing in accordance with Rule 92 of said Rules;

b) As already alluded to supra observations in the impugned order that the refund applications are beyond two years qua relevant date is set aside owing to the discussion and dispositive reasoning contained supra in this order;

c) Respondent shall examine the refund applications de novo and make orders afresh inter alia in accordance with Section 54 of C-GST Act and Rule 92 of said Rules;

d) The respondent shall complete the aforementioned exercise as expeditiously as possible i.e., as expeditiously as his business would permit, but in any event, within six weeks from today i.e., on or before 09.11.2021.

16. Captioned writ petitions are disposed of with the above directives. Consequently connected Writ Miscellaneous Petitions are also disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GPA/NST

To

Assistant Commissioner (Circle)

Ekkatuthangal, Commercial Taxes Department

No.46, Pasumpom Muthuramalingam Salai

Taluk Office Building, Chennai - 600 0280.

+1 cc to Mr.Adithya Reddy, Advocate Sr.NO. 50055

+1 cc to Government Pleader(Taxes) Sr.NO.56261

W.P.No.18165 & 18168 of 2021

& WMP.Nos.19386 & 19389 of 2021

BP(CO)A, SK(26, 10.2021)