IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24098 of 2021
and
W.M.P.Nos.25400 & 25401 of 2021

(Through Video Conferencing)

Dow Chemical International Private Limited,
Represented by its Taxation Manager Mr.Abhijnan Mahanta,
Phase-II, L-7, SIPCOT Industrial Park,
Sunguvarchatram,
Mambakkam Post,
Kanchipuram District,
Tamil Nadu - 602106. ... Petitioner

Vs

1.The Union of India,
Represented by its Secretary (Revenue),
Department of Revenue, Ministry of Finance,
North Block,
New Delhi - 110 001.

2.The Joint Commissioner (Appeals),
Office of the Commissioner of GST & CE (Appeals-II),
Newry Towers, 2054, I - Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040.

3.The Deputy Commissioner of CGST,
Sriperumpudur Division,
Chennai Outer Commissionerate,
C-48, TNHB Building, Anna Nagar,
Chennai - 600 040 ... Respondents

Prayer Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to order passed by Respondent No.2 bearing reference Order-In-Appeal No.1&2/2021-JC(GSTA-II) dated 13.01.2021 and quash the same as illegal, arbitrary and unconstitutional, and consequentially permit the petitioner to reinstate the Appeal filed on 05.11.2020 before the Respondent No.2 to consider it on merits.

For Petitioner : Mr.Bharat Raichandani
for MR.A.K.Rajaraman

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel for R2 & R3

ORDER

The petitioner has challenged the impugned order dated 13.01.2021 in Order-In-Appeal No.1&2/2021-JC(GSTA-II).

2. By the impugned order the second respondent/Joint Commissioner has dismissed the appeal filed by the petitioner on the ground of limitation under Section 107 of The Central Goods and Services Tax Act, 2017. The operative portion of the said Act reads as under:-

> "7. In the present case, it is seen that the date of issue of the impugned orders were 15.06.2020. The appellant stated that the impugned orders were communicated to the appellant on 15.06.2020 and the appeals were filed on 05.11.2020. The period of three months expired on 14.09.2020 since the impugned orders were communicated to them on 15.06.2020. However, as per Section 107(4), the appeal may be allowed to be filed within further period of one month. This appeals were filed on 05.11.2020 which is beyond the above statutory time limit of further one month. The statute does not provide any other exception to the time limits prescribed. Thus there is no power to condone the delay beyond one month after expiry of the appeal period of three months by the Appellate Authority. Hence an Appeal filed beyond condonable period is liable to be dismissed as barred by limitation of time."

3. Appearing on behalf of the petitioner, the learned counsel for the petitioner has drawn attention to the decision of the Hon'ble Supreme Court in suo-motu proceedings dated 08.03.2021.

4. The learned counsel for the petitioner submits that as per paragraph 2 of the said order which reads as under:-

> ''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.''

5. It is therefore submitted that the respondent ought to have implemented the order passed by the Hon'ble Supreme Court as on par with the law of the land and binding under Article 141 of the Constitution of India.

6. The learned counsel for the petitioner has further drawn attention to the yet another order of the Hon'ble Supreme Court dated 23.09.2021 in Miscellaneous Application No.665 of 2021 in SMW(C)No.3 of 2020, wherein the time was further extended till 02.10.2021 on account of the Covid-19.

7. The learned Senior Standing Counsel for the respondent submits that appropriate orders shall be passed by this Court in the light of the decisions of the Hon'ble Supreme Court, as the counsel for the respondent has not received instructions from the office of the second respondent.

8. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have perused the order of the Hon'ble Supreme Court dated 08.03.2021 and subsequently extension granted by the Hon'ble Supreme Court on 23.09.2021.

9. The facts indicate that the third respondent had passed an order dated 15.06.2020 at the time when lock down was clamped on account of the out break of Covid-19 pandemic. The petitioner has filed an appeal on 05.11.2020. After the appeal was filed, the Hon'ble Supreme Court has further extended a period of limitation vide order dated 08.03.2021 and 23.09.2021. The second respondent ought to have taken note of the same and numbered the appeal and taken up the appeal for final hearing.

10. As a matter of fact, a Circular dated 20.07.2021 bearing

reference in Circular No.157/13/2021-GST has also been issued wherein clarified the position. Paragraph 4(c) of the said Circular reads as under:

> ''4 (c) Appeals by taxpayers/tax authorities against any quasi-judicial order:
>
> Wherever any appeal is required to filed before Joint / Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.''

11. Considering the same, this writ petition stands allowed by directing the second respondent to take up the appeal filed by the petitioner and consider the same in accordance with law and on merits within a period of sixty (60) days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rgm/jas
To

1.The Secretary (Revenue),
Union of India,
Department of Revenue, Ministry of Finance,
North Block,
New Delhi - 110 001.

2.The Joint Commissioner (Appeals),
Office of the Commissioner of GST & CE (Appeals-II),
Newry Towers, 2054, I - Block, II Avenue,
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3.The Deputy Commissioner of CGST,
Sriperumpudur Division,
Chennai Outer Commissionerate,
C-48, TNHB Building, Anna Nagar,
Chennai - 600 040.

+1cc to Mr.A.K.Rajaraman, Advocate Sr.64772
+1cc to Mr.A.P.Srinivas, Advocate Sr.65477

W.P.No.24098 of 2021
and
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vbm[co]
srg 22/12/2021