BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14817 of 2021
(Through Video Conference)

Tvl.SHREE PINS,
Represented by its Proprietor S.Ananth ... Petitioner

Vs.

The State Tax Officer (Main),
O/o CT New Building,
Vagaikulam, Tenkasi Road,
Ambasamuthiram,
Tirunelveli District. ... Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the respondent in GSTIN.33AQIPA7420QIZQ, vide Order No.ZB3306211220709, dated 09.06.2021 and quash the same and direct the respondent to consider the application for refund the accumulated ITC in petitioner's account in accordance with law.

For Petitioner : Mr.Raja. Karthikeyan
For Respondent : Mr.R.Suresh Kumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the respondent in GSTIN.33AQIPA7420QIZQ, vide Order No.ZB3306211220709, dated 09.06.2021, and quash the same and direct the respondent to consider the application for refund the accumulated ITC in petitioner's account.

2. That the petitioner has been doing the manufacturing and trading of Hair Pins in the mane and style of “SHREE PINS” at No.349, J.J.Nagar, West Colony, Nagankulam, Kalakad, Tirunelveli. The petitioner is registered with the respondent Department holding GSTIN: 33AQIPA7420QIZQ.

3.The petitioner, in order to get back the Input Tax Credit (ITC) due to inverted tax structure for the period covering from April 2018 to February 2019, had to make application within one year period, that is, on or before the end of March, 2019. However, the one year period, starts from March, 2019 ends at March, 2020, but during this period, no such application had been filed, and belatedly, the application was admittedly filed only on 31.03.2021.

4.Having processed the said application, after issuing show cause notice in this regard by the respondent revenue, seeking show cause as to why his application should not be rejected on the ground of delay in filing such application as it is beyond the limitations prescribed under Section 54 (14) (2) of the State GST Act, Revenue has rejected the said application through the impugned order dated 09.06.2021. Challenging the said order, the present writ petition has been filed.

5.Heard Mr.Raja Karthikeyan, learned counsel appearing for the petitioner, who has submitted that, eventhough the petitioner has got time to file such application on or before 31.03.2020, in view of the Pandemic COVID-19, which started in the last week of March, 2020, wherefor the national lock-down was introduced, the petitioner could not make application immediately, therefore, belatedly only on 31.03.2021, such an application was filed. For filing such belated application, the learned counsel appearing for the petitioner has canvassed the point that the Hon'ble Supreme Court in a *suo motu* writ petition in ***SMW(Civil).No.3 of 2020 passed an order on 23.03.2020,*** where all statutory limitations had been extended and such extension had been time and again extended for a period of one year, and therefore, within the extended period, since the application had been made on 31.03.2021, the said application should have been accepted by the respondent revenue, and accordingly, the ITC should have been returned to the petitioner, instead, since the same has been rejected through the impugned order, the learned counsel appearing for the petitioner seeks indulgence of this Court.

6.Per contra, Mr.R.Suresh Kumar, learned Government Advocate, appearing for the respondent would submit that, first of all, the petitioner has got one year limitation upto 31.03.2020, and for the whole one year period, why the petitioner has not chosen to make any application to get refund of ITC has not been explained and moreover, the extension of time was granted by the Hon'ble Supreme Court as has been referred to by the petitioner side, by a *suo motu* action, is only in respect of judicial and quasi-judicial actions and here, the application in question to be made by the petitioner is only related to return of ITC, and therefore, that action since being part of the administrative action, on the part of the respondent revenue, such kind of statutory limitation prescribed under the Act, since has not been expressly extended, the said defence taken by the petitioner cannot be sustained, he contended.

7.The learned Government Advocate would also make a submission that, moreover, all such applications seeking for any refund of any tax, interest, penalty, fees or any other amount, can be made electronically through online mode, as has been contemplated under Rule 89 of the Rules framed under the said Act, and therefore, sitting from any office or residence or any place, such kind of electronic application could have been made, even during the Pandemic period, and moreover, in this case, before Pandemic, there had been almost one year that was available to the petitioner, that is, March 2019 to March 2020, and for the whole one year period, since the petitioner had not chosen to make any application, and for non-making such application for the whole one year period, since the petitioner has not given any reason, much less the plausible reason, the said application filed belatedly after one year, could not be entertained in view of the statutory limitations prescribed in this regard, hence it was rejected, ofcourse vide the impugned order and therefore, the same is to be sustained, he contended.

8.I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9.As has been rightly pointed out by the learned Government Advocate appearing for the respondent, from March, 2019 to March, 2020 more than a year, the petitioner has got plenty and enough time to make an application, that too, through electronic mode by way of online application as contemplated under Rule 89, which reads thus:

> "89.**Application for refund of tax, interest, penalty, fees or any other amount:** (1) Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner."

10. Such an application has not been made within one year period, I have also gone through the affidavit filed in support of this writ petition, where there is no whisper to state that why the petitioner has not chosen to file an application between March, 2019 and March, 2020, that is, before the Pandemic.

11. If there is any plausible reason available for the petitioner, which prevented the petitioner from making application, within one year period, that is, March, 2019 and March, 2020, and thereafter since the Pandemic has come, there could be some justification on the part of the petitioner, however, in the case in hand, absolutely, nothing has come out from the petitioner as to why he has not chosen to make the application within one year, that is, between March, 2019 to March, 2020.

12. Moreover, as has been rightly pointed out by the learned Government Advocate for the respondent, the *suo motu* action taken by the Hon'ble Supreme Court in the order made on 23.03.2021 in the *suo motu* writ petition referred to above, in SMW(Civil).No.3 of 2020, it has been specifically stated that proceedings in respect of Courts/Tribunals across the country including this Court, that is, the Hon'ble Supreme Court, which has been hereby ordered, that a period of limitation in all such proceedings irrespective of the limitation prescribed under the general law or special law, shall stand extended with effect from 15.03.2020, till further orders, and which has been subsequently extended by subsequent orders of the Hon'ble Supreme Court.

13. Therefore, insofar as the proceedings, which are to be taken or initiated or to be filed before the Courts or Tribunal in the nature of judicial or quasi-judicial proceedings, such an extension had been given, therefore, such kind of extension cannot be expected to be applied insofar as the present application, which ought to have been made by the petitioner for getting back the ITC from the respondent, which is the administrative action on the part of the respondent revenue, that too, by way of electronic mode as contemplated under Rule 89 of the Rules concerned, and therefore, the present plea raised by the petitioner, in the considered opinion of this Court, is absolutely not countenanced or accepted and therefore, the same is liable to be rejected.

14. Moreover in the impugned order, the respondent has stated that as against the impugned order, the petitioner can file an appeal before the Deputy Commissioner, GST appeal, Madurai and Tirunelveli, within 90 days from the date of receipt of a copy of this order. The said 90 days period is yet to be over, therefore, in this context, it is open to the petitioner to make an appeal to the Deputy Commissioner, GST appeal, Madurai and Tirunelveli, as provided and in that case, that liberty can very well be taken by the petitioner to prefer an appeal unmindful of the dismissal of this writ petition. Therefore, this Court feel that the writ petition can be dismissed, ofcourse, with the liberty to the petitioner to file an appeal before the Deputy Commissioner GST appeal, Madurai and Tirunvelveli, within the limitation period of three months as contemplated therein.

15. Accordingly, this writ petition is dismissed with the aforesaid liberty to prefer an appeal. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The State Tax Officer (Main),
O/o CT New Building,
Vagaikulam, Tenkasi Road,
Ambasamuthiram,
Tirunelveli District.

+1 CC to M/s.GP (SR-27046[F] dated 24/08/2021)

W.P.(MD)No.14817 of 2021
23.08.2021

MGJ(06.10.2021) 5P 3C