IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4446 OF 2022
WITH
WRIT PETITION NO.4447 OF 2022
WITH
WRIT PETITION NO.4619 OF 2022

M/s. Dolphin Inks Pvt. Ltd. .....Petitioner

Vs.

Joint Commissioner (Appeals) & Ors. .....Respondents

Mr. J. D'souza a/w. Mr. Harshvardhan Borse i/b. Ms. Kavita Mendis for petitioner in all petitions.
Mr. J.B. Mishra a/w. Ms. Sangeeta Yadav for respondents in all petitions.

CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.
DATED : 17th NOVEMBER 2022

P.C. :

WRIT PETITION NO.4446 OF 2022
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1 Petitioner is impugning an order dated 28th October 2021 passed by respondent no.1 rejecting petitioner's appeal against an order in original passed by the Assistant Commissioner, CGST and Central Excise, Nashik-II Division.

2 The only ground on which the refund application has been rejected in the order in original and in the impugned order is that the

refund claim was filed on 28th August 2021 for the month of June 2019 and hence, it was not filed within two years in accordance with the provisions of Section 54(1) of the Central Goods and Services Tax Act, 2017.

3 This issue has been decided by this Court in ***Saiher Supply Chain Consulting Pvt. Ltd. V/s. Union of India and Anr.***[1], where paragraphs 12 to 14 read as under :

> *"12. It is not in dispute that the first and second refund applications were rejected on the ground of certain deficiencies in those applications filed by the Respondent No.2. The third refund application, which was required to be filed within two years in accordance with the Circular No.20/16/04/18-GST dated 18th November 2019, under Section 54(1) of the Central Goods and Services Tax Act, 2017. The limitation period fell between 15th March 2020 and 2nd October 2021, which period was excluded by the Hon'ble Supreme Court in all such proceedings irrespective of the limitation prescribed under the general law, or Special Law whether condonable or not till further orders/s to be passed by the Hon'ble Supreme Court in those proceedings.*
>
> *13. The Hon'ble Supreme Court by Order dated 23rd September 2021 in Misc. Application No.665 of 2021 issued further directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15th March 2020 till 2nd October 2021 shall stand excluded. Consequently the balance period of limitation remaining as on 15th March 2021, if any shall become available with effect from 3rd October 2021. In view of the said Order dated 23rd March 2020 and the judgment dated 23rd September 2021 passed by the Hon'ble Supreme Court, the period of limitation falling between 15th March 2020 and 2nd October 2021 stood excluded. In our view also, the period of limitation prescribed in the said Circular under Section 54(1) also stood excluded.*
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> *14. In our view, the Respondent No.2 is also bound by the said Order dated 23rd March 2020 and the Order dated 23rd September 2021 and is require to exclude the period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March 2020 and 2nd October 2021, the said period stood excluded. The third refund application filed by the*

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> *Petitioner thus was within the period of limitation prescribed under the said Circular dated 18th November 2019 read with Section 54(1) of the Central Goods and Services Act, 2017. In our view, the impugned Order passed by the Respondent No.2 is contrary to the Order passed by the Hon'ble Supreme Court and thus deserves to be quashed and set-aside."*

4 Therefore, the limitation period having been extended, the Assistant Commissioner, CGST and respondent no.1 ought to have considered the application and not rejected it holding that it was filed beyond the period of limitation.

5 In the circumstances, we pass the following order :

> (a) impugned order dated 28th October 2021 is quashed and set aside;
>
> (b) the refund application dated 28th August 2021 shall be processed by the Assistant Commissioner, CGST and Central Excise, Nashik-II Division within four weeks from today, provided there are no other defects in the refund application. Limitation will not be an issue. If there are any defects, then within two weeks those defects will be identified and petitioner will be informed and directed to rectify those defects.
>
> (c) the refund application to be decided on its own merits.

6 All petitions disposed. No order as to costs.

7 We clarify that we have not made any observation on the merits of the matter.

(A. S. DOCTOR, J.) **(K. R. SHRIRAM, J.)**

Gauri Gaekwad