vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.761 OF 2022

M/s.Interproductee Virtual Labs Pvt. Ltd. ...Petitioner
V/s.
Union of India & Ors. ...Respondents

Mr.Ishan Patkar i/b Mr.Jayesh Rathod for the Petitioner.

Mr.Swapnil Bangur i/b Mr.Satyaprakash Sharma for the Respondents.

CORAM : R.D. DHANUKA &
S.M. MODAK, JJ.
DATE : 11TH FEBRUARY, 2022.
(THROUGH VIDEO CONFERENCE)

P.C. :-

1. Rule. Mr.Bangur, learned counsel for the respondents waives service. By consent of parties, the writ petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a declaration that the Rule 90(3) of the Central Goods and Services Tax Rules, 2017 is *ultra vires* the Constitution of India and shall be struck down. The petitioner also prayed for a writ of mandamus directing the respondent no.1 to withdraw the impugned circular dated 18th November, 2019 to the extent it requires a refund application under Rule 90(3) of the the Central Goods and Services Tax Rules, 2017 to

be filed within the time limit prescribed therein. The petitioner also prayed for a writ of certiorari for quashing and setting aside the impugned order dated 30th April, 2021.

3. We have heard the learned counsel for both the parties. Insofar as prayer clause (c) is concerned, the respondent no.3 passed an order dated 13th November, 2020 and rejected the petitioner's refund application dated 14th October, 2020. The petitioner had originally filed the refund application within the time limit on 30th September, 2020. There were however few deficiencies pointed out by the respondents in the said application. The petitioner accordingly refiled the application twice. The last application was filed on 14th October, 2020. The said application was however, rejected by the respondent no.3 as time bared. The petitioner also filed an appeal against the said order. The Appellate Authority also dismissed the appeal vide order dated 30th April, 2021. The petitioner thus filed this petition.

4. Mr.Patankar, learned counsel for the petitioner invited our attention to various annexures to the writ petition and would submit that the Assessing Officer as well as the Appellate Authority have rejected the last application filed by the petitioner on the ground of limitation. He invited our attention to the order passed by the Hon'ble Supreme Court in Cognizance for Extension of Limitation in Suo

Motu Writ Petition (C) No.(S).3/2020 reported in 2020 SCC OnLine SC 343 and also to the order passed by the Hon'ble Supreme Court in Misc. Application No.665 of 2021 dated 23rd September, 2021. He also placed reliance on the judgment of this Court delivered on 10th January, 2022 in case of ***Saiher Supply Chain Consulting Pvt. Ltd. vs. Union of India*** and would submit that the facts before this Court in this writ petition are identical to the facts in case of ***Saiher Supply Chain Consulting Pvt. Ltd.*** (supra).

5. Mr.Bangur, learned counsel for the respondents submits that the earlier applications filed by the petitioner were rejected on the ground that there were deficiencies. The third refund application was required to be filed within a period of two years under the circular dated 18th November, 2019 under section 54(1) of the Central Goods and Services Tax Rules, 2017. He submits that the third refund application was filed after expiry of two years and not within the time prescribed under the said circular dated 18th November, 2019.

6. This Court after adverting to the order passed by the Hon'ble Supreme Court reported in 2020 SCC OnLine SC 343 and also the order passed in Misc. Application No.665 of 2021 and after considering the identical facts in case of ***Saiher Supply Chain Consulting Pvt. Ltd.*** (supra) has held that while computing the

period of limitation time from 15th March, 2020 and 2nd October, 2021 shall stand excluded in view of the order passed by the Hon'ble Supreme Court on 23rd September, 2021. The time to file the third application by the petitioner in this case fell within the said period considered by the Supreme Court in the said order dated 23rd September, 2021. In our view, the period of limitation thus falling between 15th March, 2020 to 2nd October, 2021 is required to be excluded. If the said period between 15th March, 2020 and 2nd October, 2021 is excluded, the third refund application filed by the petitioner was within the period of limitation prescribed under the said circular dated 19th November, 2029 read with 54(1) of the Central Goods and Services Tax Rules, 2017. There is thus no substance in the submission made by the Revenue.

7. The view taken by the Hon'ble Supreme Court in the orders referred to aforesaid and by this Court in case of Saiher Supply Chain Consulting Pvt. Ltd. apply to the facts of this case and are binding on this Court. Learned counsel for the respondents could not distinguish those orders of the Supreme Court and the judgment of this Court.

8. We accordingly pass the following order :

a). The order dated 30th April, 2021 is quashed and set aside. The third refund application filed by the petitioner on 14th October, 2020 which was filed within the period of limitation is restored to file before the respondent no.3. The respondent no.3 is directed to consider the said third refund application on its own merits and in accordance with law expeditiously without being influenced by the observation made in the impugned order passed by the Appellate Authority and the Assessing Officer and the conclusion drawn therein.

b). The writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

c). It is made clear that we have not gone into the validity of Rule 90(3) of the Central Goods and Services Tax Rules, 2017 or the circular dated 18th November, 2019 in this order and the same can be considered in appropriate matter.

(S.M. MODAK, J.) ***(R.D. DHANUKA, J.)***