



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

W.P.Nos.24731, 24105, 24107, 23724, 24736, 23677, 23703, 23705,
23722, 23727, 24087, 24089, 24737, 24739, 24741 and
24743 of 2021

and

W.M.P.Nos.26014, 28460, 28462, 28464, 28465, 28466, 28467,
28468, 28469, 28470, 28471, 28472, 28474, 28475, 28477,
28478, 28481 of 2021

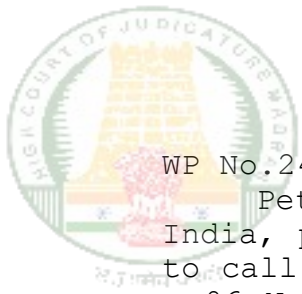
M/s.S.B.Homes,
Rep. By Managing Partner Mr.K.Shabu,
No.124, White House,
Defence Officer Colony,
Ekkatuthangal, Chennai,
Tamil Nadu, 600 032.

... Petitioner's in all WP's

Vs

1. The Commissioner of CGST & C.Ex.,
Chennai South GST Commissionerate,
692, M.H.U. Complex,
GST Nilayam, Nandanam,
Chennai - 600 035.
2. The Assistant Commissioner of CGST & C.Ex.,
Adyar Division,
Chennai South GST Commissionerate,
692, M.H.U. Complex,
GST Nilayam,
Nandanam, Chennai - 600 035.
3. The Assistant Commissioner of CGST & C.Ex.,
Porur Division,
Chennai South GST Commissionerate,
Newry Towers, Second Avenu,
Anna Nagar West,
Chennai - 600 040.

... Respondents in all WP's



WP No.24731 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / 226 / 2018 on 22.7.2018 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24105 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD -06 No.ITC / Guindy / 222 /2018 on 21/07/2018 on the file of the 2nd respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24107 of 2021:-

To call for the records in the refund sanction order in Form RFD -06 No.ITC / Guindy / 221 /2018 on 21/07/2018 on the file of the 2nd respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.23724 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / May / 801 / 2019 dated 01.10.2019 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner.

WP No.24736 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / 224 / 2018 dated 22.07.2018 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.23677 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / SEP / 515/ 2019 dated 11.02.2019 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner.

WP No.23703 of 2021:-

Petition filed under Article 226 of the Constitution of



India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / July / 828 / 2019 dated 01.10.2019 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner.

WP No.23705 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / 220 / 2018 dated 21.07.2018 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner.

WP No.23722 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / 225 / 2018 dated 22.07.2018 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner.

WP No.23727 of 2021:-

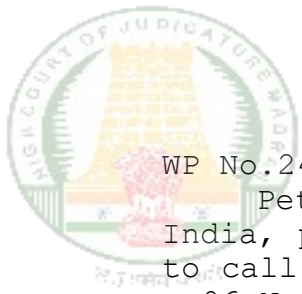
Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD-06 NO.ITC / GUINDY / AUG / 452/ 2018 dated 02.01.2019 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the Petitioner and pass.

WP No.24087 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / MAY / 391 / 2018 dated 07.10.2018 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24089 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / APRIL / 390 / 2018 dated 07.10.2018 on the file of the second Respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.



WP No.24737 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / DEC / 521 / 2019 dated 11.02.2019 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24739 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / 223 / 2018 on 22.07.2018 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24741 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / JUNE / 826 / 2019 dated 01.10.2019 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

WP No.24743 of 2021:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in the refund sanction order in Form RFD - 06 No. ITC / GUINDY / MAR / 389 / 2018 on 07.10.2018 on the file of the second respondent and quash the same and consequentially sanction the full refund amount claimed by the petitioner.

In all WPs.

For Petitioner : Ms.Akila S

For Respondents : Ms.M.Sheela
Senior Standing Counsel
(GST & Customs)
Assisted by Ms.M.Prarthana

COMMON ORDER

This batch of writ petitions have been filed challenging the respective orders passed by the second respondent, under which, the refund application either has been rejected or partly rejected.



2. Since the facts are similar to each of case, for the sake of convenience, the facts relates to W.P.No.24731 of 2021 is traversed herein.

WEB COPY

3. The petitioner's company was registered with GST Department and is allotted to the Central Government for administrative control. The petitioner claimed to have regularly filed the Returns.

4. In respect of claim of Input Tax Credit, the petitioner in each of the case made a refund claim to the Revenue.

5. The application submitted under Section 54 of the Goods and Service Tax Act, for refund, having been considered, was decided and disposed of through the order dated 22.07.2018, which is impugned herein. In the said claim made by the petitioner, though the petitioner made a claim of refund of Rs.3,31,815/-, a sum of Rs.58,233/- was rejected as inadmissible, the remaining amount of Rs.2,73,582/- has been sanctioned.

6. In this context, with regard to the inadmissible portion, for which, the refund claim of the petitioner was rejected that is under challenge in the writ petition on the ground that, before making this rejection in respect of the alleged inadmissible portion, no notice has been served on the petitioner, no opportunity was given to the petitioner to put forth his case and without even giving any reason as to why the particular amount has been inadmissible and accordingly it was rejected, the impugned order was passed rejecting that portion of the claim made by the petitioner, thereby the order impugned is vitiated because of glaring violation of principles of natural justice. Therefore, on this prime ground, the petitioner moved this writ petition and other writ petitions.

7. Reiterating the aforestated, Ms.S.Akila, learned counsel appearing for the petitioner has pointed out that, Rule 92 of the Central Goods and Service Tax Rules, 2017 (in short 'the Rules') speaks about the procedure to be adopted, while ordering sanction of refund, where, the learned counsel relies sub-section (3) of Rule 92 which reads thus:

“(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



WEB COPY

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:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."

8. Since the said sub-rule (3) makes it very clear that, if the proper officer is satisfied that, the whole or any part of the amount claimed as refund is not admissible or not payable, he shall issue a notice in Form GST RFD-08, requiring the applicant to furnish a reply in Form GST RFD-09 within a period of 15 days and thereafter to make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim.

9. Proviso to sub-rule (3) says that, no application for refund shall be rejected without giving the applicant an opportunity of being heard.

10. Relying upon this sub-rule (3) of Rule 92, the learned counsel would contend that, in this case, before passing the order impugned, no notice has been given, no opportunity has been given. Therefore, it is glaring violation of the said Rule, which mandates the respondent Revenue to issue a notice and give an opportunity to the applicant i.e. the petitioner to respond. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned orders in all these writ petitions.

11. Per contra, Ms.M.Sheela, learned Senior Standing Counsel appearing for the respondents, on instructions, would submit that, the order impugned were passed sometime in 2018, against which, within three months period, appeal should have been filed before the Appellate Authority. However, the petitioner has not chosen to file any appeal within time for the reasons best known to him.

12. Now, belatedly after two years, these writ petitions have been filed before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution.

13. The learned Senior Standing Counsel would contend that, it is a settled proposition, even in respect of the alleged ground of violation of principles of natural justice, if at all the litigant wants to invoke the extraordinary jurisdiction of



this Court under Article 226, he must satisfy the Court as to why he has not come to this Court within a reasonable time.

14. In this case, since two years and more the petitioner has been in long slumber and all of a sudden, he approached this Court by invoking the extraordinary jurisdiction and filing these writ petitions belatedly, therefore, on the ground of latches, these writ petitions are liable to be rejected, she contended.

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

16. Insofar as the preliminary objection, which, in fact, is the main objection raised by the respondent side with regard to the latches, this Court feels that, though there is no limitation prescribed under Article 226 for the litigants to approach the High Courts by invoking the extraordinary jurisdiction to issue prerogative writs, it is the self made law or judge made law in various pronouncements of the Hon'ble Supreme Court as well as the various High Courts, that doctrine of latches would definitely be made applicable to cases where Article 226 is invoked belatedly without any plausible reason.

17. However, what is the time limit which can be construed as a belated one or within the reasonable period, depends upon the facts of each and every case, as in these arena there is no hard and fast rule.

18. Here in the case in hand, the Rule, as referred to above, mandates that, a notice should be issued in a particular format giving 15 days time to the applicant to respond in a particular format and only thereafter order to be passed either to accept or reject the refund claim made by the applicant.

19. When such a mandate is available in the Statute, the same has not been followed by the respondents as there is no whisper to show that, there has been a chance of giving any show cause notice or notice or opportunity to the petitioner as contemplated under sub-rule (3) of Rule 92 of the said Rules.

20. Moreover, if we look at the impugned order for instance in the first case which facts were dealt with in the earlier paras that, the inadmissible amount of a sum of Rs.58,233/- has been quoted, where, absolutely no reason has been given by the respondents as to why such amount has been not admitted. Only in order to avoid these kind of orders, the rule contemplates to give an opportunity to the applicant before passing an order to reject or accept. When that being so, in these cases, since



there has been no notice issued to the petitioner before passing the order of rejection with regard to the refund either in full or in part, this Court has no hesitation to hold that, the impugned orders insofar as the rejected portion i.e., inadmissible portion of the refund claim made by the petitioner are infirm and vitiated.

21. In these kind of cases, since the blatant violation of principles of natural justice and also the statutory mandate as contemplated under the Rule referred to above, these kind of cases are entertainable before this Court by invoking Article 226 of the Constitution of India and in these cases, the two years period cannot be construed as a long delay to invoke the doctrine of laches to reject the claim of the petitioner as canvassed by the learned Standing Counsel appearing for the respondents.

22. Therefore, for all these reasons stated above, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That in all these writ petitions, the impugned orders, insofar as the rejection made by the second respondent with regard to the refund claim made in respect of each of the cases, are hereby quashed.

(ii) In respect of the sanctioning of the refund in the very same impugned orders are concerned, that portion are sustained. As a sequel, all these matters are remitted back to the respondents, i.e., the jurisdictional Officer under GST regime, for reconsideration. While reconsidering the issue, the respondent shall scrupulously follow Rule 92(3) of the Central Goods and Service Tax Rules, 2017 and thereafter pass orders after giving a reasonable opportunity of being heard to the petitioner in each of the case at the earliest.

23. With these directions, all these Writ Petitions are ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar



Sgl

To

WEB COPY

1. The Commissioner of CGST & C. Ex.,
Chennai South GST Commissionerate,
692, M.H.U. Complex,
GST Nilayam, Nandanam,
Chennai - 600 035.
2. The Assistant Commissioner of CGST & C.Ex.,
Adyar Division,
Chennai South GST Commissionerate,
692, M.H.U. Complex,
GST Nilayam,
Nandanam, Chennai - 600 035.
3. The Assistant Commissioner of CGST & C.Ex.,
Porur Division,
Chennai South GST Commissionerate,
Newry Towers, Second Avenu,
Anna Nagar West, Chennai - 600 040.

+2ccs to Ms.Akila S, Advocate, S.R.No.8214

W.P.Nos.24731 of 2021 etc. batch

AJB[co]
NSK 10/03/2022