fIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.33363 of 2022

M/s.Golcha Garments
Represented by its Proprietor
Mr.Gautam Chand Jain
having an office at 2/54-C
Thaneer Pandal Colony
Gandhi Road, Anupparpalayam
Tirupur - 641 652. .. petitioner

Vs.

1. The Joint Commissioner of GST & Central Excise (Appeals)
Coimbatore
No.6/7, A.T.D. Street, Race Course Road
Coimbatore - 641 018.

2. The Proper Officer
Goods and Service Tax Department & Excise
Tirupur Division
1st Floor, Kumaran Shopping Complex
Kumaran Road, Tirupur - 641 601. .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records pertaining to Order-in-Appeal No.87/2022-GST (Appeals) dated 26.08.2022 passed by the 1st respondent and quash the same and direct the respondents to pass orders on the refund application filed by the petitioner under Section 54(3) of Central Goods and Service Tax Act, 2017 read with Rule 89 of Central Goods and Service Tax Rules, 2017 claiming unutilized Inputs tax credit accumulated due to exports made without payment of tax for Rs.7,39,532/- during the period from October 2019 to March 2020 and refund the same to the petitioner.

For Petitioner : Mr.Sanjay Rajpurohit
of M/s.Rajpurohit Law House (Law Firm)
For Respondents : Mr.Rajnish Pathiyil
Senior Panel Counsel for Customs and Indirect Tax

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<u>O R D E R</u>

Captioned main writ petition has been filed assailing an 'order dated 26.08.2022 bearing reference Order-in-Appeal No.87/2022-GST/GST (Appeals)' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity] made by the first respondent.

2. The impugned order is an order made by the first respondent in his capacity as Appellate Authority in an appeal preferred against an order dated 29.03.2021 bearing reference No.ZY3303210406115 made by second respondent in a refund claim.

3. Mr.Sanjay Rajpurohit, learned counsel of M/s.Rajpurohit Law House (Law Firm) for writ petitioner submitted that the impugned order returned a finding in his favour on merits but the remedy has not been granted by the Appellate Authority only on the ground that the appeal is barred by limitation.

4. Mr.Rajnish Pathiyil, learned Senior Panel Counsel for Customs and Indirect Tax accepts notice on behalf of both respondents.

5. Considering the facts and circumstances of the case and the trajectory the matter has taken, counter affidavit from the Revenue Department is not necessary and therefore with the consent of both sides, the main writ petition was taken up.

6. Undisputed facts are that original order made by second respondent is dated 29.03.2021. Three months prescribed period and one month condonable period vide Section 107 of 'the Central Goods and Services Tax Act, 2017' [hereinafter 'C-G&ST Act' for the sake of

convenience and clarity] elapsed within Covid-19 period. To be noted, 'Covid-19 period' is a reference (for convenience) to the period from 15.03.2020 to 28.02.2022 and this period is culled out vide Suo Motu proceedings in ***COGNIZANCE FOR EXTENSION OF LIMITATION, IN RE*** reported in ***(2022) 3 SCC 117*** and series of orders made by Hon'ble Supreme Court in Miscellaneous Applications thereat. Most critical order is dated 10.01.2022 and paragraph relevant to case on hand is sub-paragraph No.3 of paragraph No.5 which reads as follows:

> *'5.3. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.'*

7. In the case on hand, adverting to aforementioned appeal, learned counsel submits that the appeal was preferred on 30.05.2022 at 20:09 hours IST. This is one day beyond the extended period that has been allowed by Hon'ble Supreme Court vide the aforementioned order.

8. Learned Revenue counsel submits that 90 days from 01.03.2022 no doubt, falls on a Sunday i.e., 29.05.2022 but this 90 days period is akin to condonable period and not prescribed period and therefore next working day filing does not save the day for writ petitioner is his further say.

9. This may be an unfortunate case but the law is very well settled that when the last day of the prescribed period falls on a public holiday for the Court or Adjudicating Authority, the act can be done on the next day but when the condonable period falls on a public holiday, the same principle will not apply. Most relevant provisions are Sections 2(j) and 4 of the Limitation Act, 1963 which read as follows:

> *'2 (j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;'*
>
> *'4. Expiry of prescribed period when court is closed.- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the*

suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

Explanation.-A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.'

10. In identical circumstances, this Court had penned a judgment in ***Eagle-Omega*** case ***[General Manager Southern Railway and another Vs. Eagle-Omega and KR and Co., (JV) represented by its Lead Partner Mr.C.Karnan*** reported in ***2020 SCC OnLine Mad 24354 : (2020) 6 CTC 275 : (2021) 1 Mad LJ 47]*** wherein delay in filing an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] left the protagonist of a Section 34 high and dry. The lead case is ***Sagufa Ahmed*** case [***Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others*** reported in ***(2021) 2 SCC 317***].

11. Relevant paragraph in the aforementioned ***Eagle-Omega*** case is paragraph No.29 and the same reads as follows:

*'29. Similarly, the argument of learned Standing Counsel for Southern Railways that **Sagufa Ahmed** case is distinguishable as it centres around suo motu orders passed by Hon'ble Supreme Court during the lock down period is of no avail as Hon'ble Supreme Court has comprehensively considered Sections 2(j) and 4 of Limitation Act as well as Section 10 of GC Act and had made it clear that what was extended by Hon'ble Supreme Court during the lock down is the period of limitation and not the period upto which the delay can be condoned in exercise of discretion conferred by a statute. This is articulated with clarity and specificity in Paragraphs 18 to 21 of **Sagufa Ahmed** case, which reads as follows:*

> *'18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020. It reads as follows:*
>
> *"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not*

have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

*19. But we do not think that the appellants can take refuge under the above order. **What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute**. The above order passed by this Court was intended to benefit vigilant* *litigants who were prevented due to the pandemic and the lock down, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.*

20. It may be useful in this regard to make a reference to Section 10 of the General Clauses Act, 1897 which reads as follows:

*"**10. Computation of time** (1) Where, by any 19 [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all [Central Acts] and,

Regulations made on or after the fourteenth day of January, 1887."

21. The principle forming the basis of Section 10(1) of the

General Clauses Act, also finds a place in Section 4 of the

Limitation Act, 1963 which reads as follows: "

4. ***Expiry of prescribed period when court is closed****.— Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

Explanation.— A court shall be deemed to be closed on any

day within the meaning of this section if during any part of its normal working hours it remains closed on that day." '

(Underlining made by this Court for ease of reference)

12. The above makes the position very clear. Hon'ble Supreme Court has made it clear that what was extended by order of Hon'ble Supreme Court qua Covid-19 period was only the period of limitation and not the period upto which the delay can be condoned in exercise of

discretion conferred by the Statute. Therefore, this Court in the light of the authoritative pronouncement of Hon'ble Supreme Court, finds no grounds to interfere with the order of the first respondent.

13. The argument that impugned order returns a finding in favour of writ petitioner but does not grant relief owing to limitation bar is no argument as law is well settled that when limitation elapses right is not extinguished but remedy is barred.

14. The sum sequitur of the narrative, discussion and dispositive reasoning thus far, leads to the inevitable conclusion that the captioned writ petition fails. Curtains are dropped qua the captioned writ petition. Captioned Writ Petition is dismissed. There shall be no order as to costs.

12.12.2022
(2/2)

Index: Yes/No
Speaking / Non-speaking order

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M.SUNDAR, J.,

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