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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2290 OF 2022

44 EMB Studio Private Limited

... Petitioner

V/s.

Union of India and Ors.

... Respondents

Ms. Rutuja Pawar Deswal with Ms. Hetal Laghave for the Petitioner
Ms. Jyoti Chavan, AGP for the Respondents 2 and 3

***CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.***

DATE : 05 APRIL 2023

P.C. :-

Heard the learned Counsel for the parties. Taken up for disposal.

2. The Petitioner is aggrieved by the orders passed by the Sales Tax Officer dated 19 July 2021 and the Deputy Commissioner of Sales Tax (Appellate Authority) dated 29 October 2021 rejecting the application filed by the Petitioner on the ground of delay.

3. The Petitioner is a Private Limited Company engaged in exporting consultation services of embroidery designs. According to the Petitioner, the Petitioner for the supply of services exported under Section 2(6) of the Integrated Goods and Services Tax (IGST) Act, 2017 for September 2018 to October 2019 was entitled to a refund of Rs. 57,80,523/-. The Petitioner applied for a refund on 20 March 2021. The Petitioner had annexed a statement as required under Rule 89(2)(c) of the Central Goods and Services Tax (CGST) Rules, 2017 giving the particulars of the tax paid and the refund claimed.

4. The Respondent – Sales Tax Officer observed that the relevant date for the majority of the invoices is more than two years which is beyond the period of limitation prescribed under Section 54 of the Act, and accordingly, proceeded to pass an order on 19 July 2021 partially rejecting the claim for refund. After that, the Petitioner filed an appeal under Section 107 of the Maharashtra Goods and Service Tax (MGST) Act, 2017. The Petitioner had contended before the Appellate Authority that due to Covid-19 Pandemic, the refund application could not be filed in time.

5. The Appellate Authority rejected the refund claim by the impugned order dated 29 October 2021. Thereafter, the Petitioner is before us by this Petition.

6. The learned Counsel for the Petitioner submitted that though it is correct that for part of the claim which has been rejected refund was sought after a period of two years, however, the period was extended by the orders passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition No. 3 of 2020* extending the period of limitation. The Division Bench of this Court in *Saiher Supply Chain Consulting Pvt. Ltd. v/s. The Union of India* (O.S. WP(L) 1275/21) dated 10 January 2023 has held that these orders apply to the proceedings for a refund before the GST Authorities.

7. Both, before the First Authority and the Appellate Authority, we do not find any reference to these decisions of the Hon'ble Supreme Court. The arguments of the Petitioner, as reflected in the impugned order, are based on the general situation brought about by the Covid-19 pandemic. The implications of the orders passed by the Hon'ble Supreme Court is not considered while calculating the limitation period. The appropriate course of action therefore would be to set aside the impugned order, restore the appeal filed by the Petitioner in respect of the refund which has not been granted and direct the Appellate Authority to examine the aspect of limitation on merits afresh in the light of the decision/order passed by the Hon'ble Supreme Court in the *Suo Motu Writ Petition*.

8. Accordingly, the impugned order dated 29 October 2021 by the Appellate Authority is quashed and set aside, and the Appeal filed by the Petitioner stands restored to file. The Respondent No.3 will decide the Appeal filed by the Petitioner afresh in the light of what is observed above with reference to the extension of limitation as per the order passed by the Hon'ble Supreme Court in the Suo Motu Writ Petition and take a decision on its own merits. We have not concluded this aspect. If Respondent No.3 finds that the claim is within limitation, will proceed to adjudicate the merits of the claim and pass the appropriate order.

9. Subject to earlier time-bound commitments, the Appellate Authority will take the necessary decision within 12 weeks from the date the order is uploaded on the server of this Court.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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