IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2023

PRONOUNCED ON : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.7661 of 2022
and W.M.P.No.7663 of 2022

David Stansislaus ... Petitioner

vs

The Assistant Commissioner of GST & Central Excise,
TVK Nagar Division – GST,
Chennai North Commissionerate,
Chennai 600 040. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the respondents leading to the issuance of Order-in-Original No.12/2022(ST) dated 16.02.2022 by the respondent and quash the same.

For Petitioner : Mr.Derric Sam
for Adithya Reddy

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel.

O R D E R

The petitioner a proprietor of concern named "J.J.Fabrication" has filed this writ petition against the impugned Order-in-Original No.12/2022(ST) dated 16.02.2022.

2. By the impugned order, the respondent has confirmed the demand proposed in the Show Cause Notice No.10/2021(ST) dated 28.04.2021. By the aforesaid Show Cause Notice, the petitioner was called upon to show cause as to why a sum of Rs.19,57,323/- should not be demanded from the petitioner for the Financial Year 2015-16. The notice appears to have been issued by invoking extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994.

3. The specific case of the petitioner is that the petitioner has not received the aforesaid Show Cause Notice No.10/2021 (ST) dated 28.04.2021. It is submitted that the petitioner was directly called upon to appear for a personal hearing. Therefore, the petitioner appeared before the

respondent who has now passed the impugned order confirming the demand proposed in Show Cause Notice No.10/2021(ST) dated 28.04.2021.

4. It is submitted that the demand proposed in the show cause notice is clearly time barred in view of the limitation prescribed under Section 73(6)(i)(b) of the Finance Act, 1994. It is further submitted that the last date for filing of the returns for the period between 01.04.2015 and 30.09.2015 and for the period between 21.10.2015 and 31.03.2016 covered by show cause notice under the provisions of the Service Tax Rules, 1994 are as under:-

Month	***Due date to file return in Form ST-3***	***Due date to issue show cause notice***	***Date of Show Cause Notice***
Apr,2015 to Sep,2015	25.10.2015	25.10.2020	28.04.2021
Oct.2015 to Mar,2016	25.04.2016	25.04.2021	28.04.2021

5. It is therefore submitted that Show Cause Notice No.10/2021(ST)

issued on 28.04.2021 was clearly barred by limitation under Section 73 (6)(i)(b) of the Finance Act, 1994. Hence, it is submitted that the impugned order passed on the strength of Show Cause Notice issued long after expiry of limitation is liable to be quashed.

6. That apart, it is submitted that even otherwise, the impugned order has not alleged that the petitioner had suppressed the facts to justify the invocation of extended period of limitation prescribed under Section 73(6)(i)(b) of the Finance Act, 1994. Therefore, on this count also the impugned order passed on the strength of Show Cause Notice was liable to be quashed. A reference is made to the decision of the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals** Vs. **CCE** reported in 1995 (78) ELT 401 (SC).

7. It is further submitted that in the taxing matters, this Court is bound by strict rules of interpretation and therefore there is no scope for invoking the extended period of limitation prescribed under the statue. In this connection, a reference is made to the decision of the Hon'ble Supreme Court

in the case of **State of Rajasthan** Vs. **Basant Agrotech India Ltd**, 2014 (302) ELT 3 (SC).

8. Defending the impugned order, the learned Senior Standing Counsel for the respondent would submit that the period of limitation would have expired on 24.10.2020 and on 24.04.2021. However, on account of the outbreak of Covid-19 pandemic, during March 2021 the period of limitation was extended in terms of the decision of the Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C)No.3 of 2020 dated 10.01.2022.

9. The learned Senior Standing Counsel for the respondent has also placed reliance on a Circular dated 25.04.2016 bearing Reference No.C.No.296/07/2016-CZ.9 issued by the Central Board of Excise and Customs. It is submitted that as per the Circular, the time for filing the Returns in Form ST3 was extended from time to time from 25.04.2016 to 29.04.2016. Taking note of the difficulties faced by the taxpayers in the

ACES application, the time for filing returns was also extended from 25.04.2016 to 29.04.2016. Relevant portion of the clarification reads as under:-

> "The Central Government has extended the date of filing of ST-3 returns to 29.04.2016 from 25.04.2016 owing to certain difficulties being faced by the taxpayers in the ACES application. Order 1/2016 – Service Tax dated 25.04.2016 has been issued in this regard."

10. It is therefore submitted that the time for filing the returns of all the assessees stood extended till 29.04.2016. It is submitted that notwithstanding the fact that the time had already expired on the date mentioned above Table on 25.10.2015 and 25.04.2016 for the respective period. It is further submitted that the limitation for invoking the extended period of limitation was saved by the operation of the aforesaid clarification of the CBEC dated 25.04.2016 in Order No.01/2016 -- Service Tax dated 25.04.2016.

11. By way of rejoinder, the learned counsel for the petitioner would submit that even if the above concession was to apply, the period for filing

return for second period only was extended and therefore the demand confirmed for the first period has to be dropped as beyond the provisions of proviso to Section 73 of the Finance Act, 1994.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

13. The limitation for issuing Show Cause Notice expired during the period when the country was under lock down mode due to out break of Covid-19 Pandemic.

14. Taking note of the unprecedented situation, the Central Government had also issued ordinance namely the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

15. Section 6 of the aforesaid ordinance reads as under:-

> Section-6:Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 or

Chapter V of the Finance Act, 1994, as it stood prior to its omission vide Section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July, 2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the **20th day of March, 2020** to the **29th day of June, 2020** or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as-

(a) completion of any proceeding or **issuance of any** order, **notice,** intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the **30th day of June, 2020** or **such other date after the 30th day of June, 2020** as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b)."

16. The Government later issued Notification F.No.CBEC-

20/06/08/2020-GST dated 27th June 2020 and Notification F.No.450/61/2020-Cus.IV (Part-1) 30th September 2020 for extending the time initially from 30th June 2020 as per the Ordinance to 30th September 2020 and thereafter to 31st December 2020 in terms of the above mentioned notifications.

17. Relevant portion from the above notifications reads as under:-

Notification dated 27th June, 2020	***Notification dated 30th September, 2020***
G.S.R. (E).- In exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (2 of 2020), the Central Government hereby specifies that, -	G.S.R. (E).- In exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions)Act, 2020 (38 of 2020), the Central Government hereby specifies that,-
(i)) the 29th day of September, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the	(i) the 30th day of December. 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act. 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act. 1975 (51 of 1975) or Chapter V of the

Notification dated 27th June, 2020	***Notification dated 30th September, 2020***
Finance Act, 1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and	Finance Act, 1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and
(ii) the 30th day of September, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended.	(ii) the 31st day of December 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended.

18. By Circular No.157/13/2021-GST of the Central Board of Indirect Taxes and Customs, GST Policy Wing, dated 20th July 2021, wherein, it has been clarified as under:-

> "3. Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:-
>
> (i) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/applications /suits/ appeals / all other proceedings. All other proceeding

should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/suits/petitions etc. and has not extended it to every action or proceeding under the CGST Act.

(ii) ....

(vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc."

19. The above circular was issued in the light of the decision of the Hon'ble Supreme Court vide its order dated 27.04.2021 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, whereby it restored its previous order dated 23.03.3020 and gave reprieve wherever limitation were expiring. By its order, the Hon'ble Supreme Court clarified as follows:-

"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till

> ***further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.***
> ***We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."***

20. The Hon'ble Division Bench of the Bombay High Court, in **Saiher Supply Chain Consulting Private Limited** Vs. **Union of India, Through the Secretary, Ministry of Law and Justice and another** observed as follows:-

> ***"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."

21. The Hon'ble Division Bench of the Bombay High Court in the above Case, rendered it's decision in the context of circular and the decision of the Hon'ble Supreme Court dated 23rd September 2021 in M.A.No.665 of 2021.

22.Since the Covid-19 pandemic continued even after the aforesaid date, the Hon'ble Supreme Court once again extended the period by its Order dated 10.01.2022 in M.A.No.21 of 2022 in M.A.No.665 of 2021 in SMW(C) No.3 of 2020 [2022(3) SCC 117]. Paragraph 5 of the said Order of the Hon'ble Supreme Court reads as under:-

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A.No.21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. 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.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

23. The decision of the Hon'ble Supreme Court in 2022(3) SCC 117, Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (2 of 20) and the notification issued therein makes it clear that the limitation was saved for issuance of notices and for passing order.

24. Our own High Court in **M/s.GNC Infra LLP, Represented by Partner/Authorized Signatory** Vs. **Assistant Commissioner (Circle), Chennai**, in W.P.Nos.18165 and 18168 of 2021 dated 28.09.2021, has considered the decision of the Hon'ble Supreme Court and the Circular cited above in the context of refund arising under the GST regime and has concluded that refund applications made on 19.04.2021 has to be entertained beyond the two years period.

25. Thus, there is no scope for setting aside the impugned order on the ground of limitation. However, since the order has been passed without following the principle of natural justice and without giving an opportunity to the petitioner to reply to the Show Cause Notice No.10/2021 (ST) dated

28.04.202, Court is inclined to set aside the impugned order and remits the case back to the respondent to pass a fresh order on merits in accordance with law within a period of six months from the date of receipt of a copy of this order.

26. The respondent shall furnish a copy of the Show Cause Notice No.10/2021 (ST) dated 28.04.202, to the petitioner within a period of 30 days from the date of receipt of a copy of this order.

27. The petitioner shall file reply to the Show Cause Notice No.10/2021 (ST) dated 28.04.202, within a period of 30 days from the date of receipt of a copy of Show Cause Notice No.10/2021 (ST) dated 28.04.2021. The respondent shall thereafter endeavour to pass final order on merits and in accordance with law within the aforesaid period of six months from the date of receipt of a copy of this order as ordered above.

28. This writ petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

10.10.2023

Index : Yes/No
Neutral Citation : Yes/No
jas/kkd

To

The Assistant Commissioner of GST & Central Excise,
TVK Nagar Division – GST,
Chennai North Commissionerate,
Chennai 600 040.

C.SARAVANAN,J.

Kkd

Pre-delivery Order in
W.P.No.7661 of 2022

10.10.2023