IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11253 and 11259 of 2022
and
W.M.P.Nos.10815, 10817, 10819 and 10820 of 2022

M/s.Date Rooms Sterling Pvt Ltd,
Rep by its Director Kousik Ganesh
1st Floor, No.9D, Kamalabai Street,
T.Nagar,
Chennai – 600 017. ... Petitioner in both W.Ps.

Vs.

The Deputy Commissioner of GST and Central Excise,
Thyagaraya Nagar Division,
Chennai South Commissionerate,
No.692, MHU Complex,
Anna Salai,
Nandanam,
Chennai – 600 035. ... Respondent in both W.Ps.

Prayer in W.P.No.11253 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned order of rejection of the refund claim of Rs.13,37,248/- in No.GSTIN:33AAFCN8848P1Z0 in FORM-GST-RFD-06 dated 13.03.2022 passed by the respondent and quash the said rejection order and thereby direct the respondent to refund the said amount of Rs.13,37,248/- with appropriate interest.

Prayer in W.P.No.11259 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned order of rejection of the refund claim of Rs.2,30,006/- in No.GSTIN:33AAFCN8848P1Z0 in FORM-GST-RFD-06 dated 13.03.2022 passed by the respondent and quash the said rejection order and thereby direct the respondent to refund the said amount of Rs.2,30,006/- with appropriate interest.

For Petitioner (in both W.Ps) : M/s.R.Sri Visvapriya

For Respondent (in both W.Ps) : Mr.M.Santhanaraman Senior Standing Counsel

COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. In these Writ Petitions, the Petitioner has challenged the Orders dated 13.03.2022 passed by the Respondent rejecting the refund claims filed by the Petitioner for the export made between April, 2019 – March,

2020 and February, 2019 – March, 2019 respectively (hereinafter referred to as Impugned Orders).

3. The details of the Impugned Orders dated 13.03.2022 in the Writ Petitions are tabulated below:-

S.No.	Writ Petition No.	Period	Amount claimed
1	11253	April, 2019 - March, 2020	Rs.13,37,248/-
2	11259	February, 2019 - March, 2019	Rs. 2,30,006/-

4. The Petitioner is a Company developing and exporting software registered under the GST Act as 'Service provider and others' with Registration No.33AAFCN8848P1ZO. The Petitioner filed its refund claims for the period between April, 2019 – March, 2020 and February, 2019 – March, 2019 before the Respondent on 02.01.2020.

5. The facts on record reveal that the Petitioner was issued with Deficiency Memos on 17.01.2020, 25.02.2020, 31,03,2021 and 01.04.2021 for the refund claims filed by the Petitioner for the aforesaid period. It is also that the Petitioner had replied to the aforesaid Deficiency Memos issued by the Respondent.

6. This being the case, the Respondent issued Show Cause Notices dated 22.02.2022 to the Petitioner stating why the refund claims filed by the Petitioner for the aforesaid period cannot be barred by limitation. The Petitioner replied to the Show Cause Notices dated 22.02.2022 on 07.03.2022.

7. However, without considering the reply of the Petitioner to the Show Cause Notices dated 22.02.2022, the Respondent passed the Impugned Orders rejecting the refund claims of the Petitioner for the aforesaid period on the ground that the refund claims of the Petitioner are barred by limitation.

8. The case of the Petitioner is that the Respondent has computed the period of limitation from the date of rectifying the deficiency by the Petitioner raised by the Respondent on the refund claims initially filed by the Petitioner on 02.01.2020 for the aforesaid period which contrary to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017').

9. It is the case of the Petitioner that the refund claims for the aforesaid period was initially filed by the Petitioner well within the period of limitation as stipulated in Section 54 of the CGST Act, 2017 viz., on 02.01.2020. Therefore, it is submitted that the denial of export benefit to the Petitioner by the Respondent is unsustainable.

10. The learned counsel for the Petitioner further submitted that the denial of the export benefit by rejecting the refund claims of the Petitioner by the Respondent is without any basis and contrary to the provisions of Section 54 of the CGST Act, 2017.

11. The learned Senior Standing Counsel for the Respondent on the other hand would submit that these Writ Petitions are devoid of merit and is liable to be dismissed. It is further submitted that even otherwise, the Petitioner has an alternate remedy under Section 107 of the CGST Act, 2017 before the Appellate Commissioner.

12. That apart, it is submitted by the learned Senior Standing Counsel for the Respondent that the Respondent has passed the Impugned Orders strictly in accordance with proviso to Rule 90(3) of the CGST Rules, 2017. It is further submitted that as per Section 54 of the Act, the refund claim has to be made in the form and manner as may be prescribed in CGST Rules, 2017 and therefore, it is submitted that there is no scope for interference with the Impugned Orders on merits.

13. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

14. Under Section 54(3) of the CGST Act, 2017, a registered person is entitled to a refund of tax paid by them on inward supplies of goods or services or both.

15. For the purpose of reckoning the limitation, the definition of **“relevant date”** in Clause 2 to Explanation to Section 54 of the CGST

Act, 2017 is relevant. The expression **"relevant date"** is defined as follows:

> *"(2) "relevant date" means—*
>
> *(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—*
>
> > *(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or*
> >
> > *(ii) if the goods are exported by land, the date on which such goods pass the frontier; or*
> >
> > *(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;*
>
> *(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;*
>
> *(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;*
>
> *(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—*
>
> > *(i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or*
> >
> > *(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;*
>
> *(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;*
>
> *(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;*

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
(h) in any other case, the date of payment of tax"

16. As per Clause 2 to Explanation to Section 54 of the CGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid, may make an application before the expiry of two years from the **"relevant date"** in such form and such manner as may be prescribed.

17. The Central Government in exercise of its power under Section 164 of the CGST Act, 2017 had framed the Central Goods and Service Tax Rules, 2017. The Respondent has invoked proviso to Rule 90(3) of the CGST Rules which states that if the refund claim filed originally was returned and thereafter not presented in time and the period of two years as is contemplated under Section 54(1) of the CGST Act had expired, the refund claims are to be rejected. Proviso to Rule 90(3) of the CGST Rules inserted vide Notification No.15/2021 – CT dated 18.05.2021 reads as under:-

*"**90. Acknowledgement***

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

17A. Rule 90(3) of the Act, is intended to implement the requirement of Section 54(1) of the CGST Act, 2017. It cannot be interpreted to de-nude the substantial benefits that are available under the Act. Therefore, the benefit of refund which are otherwise available if the refund claim was filed at the first instance within the time prescribed in the Act, cannot be denied.

18. There is no dispute that the Petitioner had filed the refund claims on the exports within the period of limitation prescribed under Section 54 of the CGST Act, 2017.

19. In **National Internet Exchange of India** Vs. **Union of India and Others** 2023 SCC OnLine Del 5203/(2023) 77 GSTL 502, the Delhi High Court had held that such registered person has to make an

application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

20. In paragraph Nos.26 and 27 of the aforesaid decision, the Delhi High Court has held as under:-

> *"26. As noted above, in terms of Section 54(1) of the CGST Act, an application is required to be made in the prescribed form and manner before two years from the relevant date. It is clear that the petitioner had complied with the said requirement inasmuch as it had filed an application for refund on 31.10.2019 in the "form and manner" as prescribed in the CGST Act and CGST Rules. Thus, in terms of Section 54(1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner.*
>
> *27. This Court in an earlier decision in Bharat Sanchar Nigam Limited Vs. Union of India: 2023 DHC 2482-DB and in similar circumstances held as under:*
>
> *"28. We are of the view that Rule 90(3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application filed by a taxpayer as non est.*
>
>> *28. If the application filed is not deficient in material particulars, it cannot be treated as non est. If it is accompanied by the "documentary evidences" as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the application is required to be treated as non est for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule*

> *89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued."*

21. Thus, under similar circumstances, the Court in the aforesaid case had held that the substantial benefit of refund cannot be denied merely because the defects raised by the Respondent Department was rectified beyond the period of limitation as prescribed in the Act and the Rules.

22. Further, the purpose of granting export incentives by way of refund under Section 54 of CGST Act,2017 read with Section 16 of IGST Act, 2017 is to encourage exporters to claim refund of tax paid either on the input services or goods used in the export goods and services or on the tax paid on such supplies by such exports.

23. Therefore, there is no justification to deny the benefit of refund claim to the Petitioner, as the initial refund claim was filed within the stipulated period. The purpose of excluding the time taken from the date of deficiency till the date of representation at best can be pressed against

the Assessee from claiming any interest on account of delay in the grant of refund. It cannot certainly come in the way of grant of refund of tax under Section 54(1) of the Act.

24. Under these circumstances, Impugned Orders passed by the Respondent is liable to be quashed and allow these Writ Petitions with consequential relief to the Petitioner.

25. Accordingly, the Impugned Orders dated 13.03.2022 passed by the Respondent are hereby quashed. The Respondent is directed to refund the Petitioner with sum of Rs.13,37,248/- (Rupees Thirteen Lakhs Thirty Seven Thousand Two Hundred and Forty Eight Only) with appropriate interest in respect of refund claims covered by W.P.No.11253 of 2022 and a sum of Rs.2,30,006/- (Rupees Two Lakhs Thirty Thousand and Six Only) with appropriate interest in respect of refund claims covered by W.P.No.11259 of 2022.

26. It is made clear that the Respondents can however exclude the period taken by the Petitioner in rectifying the defect raised by the Respondent in the Original Refund Claim of the Petitioner while calculating the period of interest.

27. In the result, these Writ Petitions are allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

28.11.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To
The Deputy Commissioner of GST and Central Excise,
Thyagaraya Nagar Division,
Chennai South Commissionerate,
No.692, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.

C.SARAVANAN, J.

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W.P.Nos.11253 and 11259 of 2022

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