IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 192/2023

Reserved on : 09.07.2025
Pronounced on : 30.12.2025
Uploaded on : 02.01.2026
Whether the operative part or full judgment is pronounced : Full

Bharat Oil Traders

…. Petitioner/Appellant(s)

Through:- Mr. Sachin Sharma, Advocate

V/s

Assistant Commissioner & anr.

…..Respondent(s)

Through:- Mr. Rohan Nanda, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AJEEM, JUDGE

JUDGMENT

***Per : Sindhu Sharma*-J**

1. The petitioner submits that it is a partnership firm engaged in the business of refilling and sale of edible oil and ghee, and is duly registered under the State and Central Goods and Services Tax Acts, 2017. The petitioner's business operations involve a situation where the rate of tax applicable on inputs is higher than the rate applicable on outward supplies, resulting in an "Inverted Tax Structure." Consequently, under Section 54(3)(ii) of the CGST/SGST Act, 2017, the petitioner is entitled to claim a refund of the accumulated input tax credit.

2. Section 54 of the CGST Act provides that any person claiming a refund of tax may make an application before the expiry of two years from the "relevant date." For the purpose of refund of unutilized input tax credit under the inverted duty structure, the term "relevant date" is defined in Explanation (2)(e) to Section 54.

3. Up to 31.01.2019, the term "relevant date" was defined to mean "the end of the financial year in which such claim for refund arises." However, by virtue of the Amendment Act No. 31 of 2018, which came into force with effect from 01.02.2019, the definition of "relevant date" was substituted to mean "the due date for furnishing the return under Section 39 for the period in which the claim for refund arises."

4. The petitioner submits that the amended provision of Section 54(1), which came into effect from 01.02.2019, operates prospectively and not retrospectively, unless its retrospective application is beneficial to the assessee. Therefore, for periods where the right to claim refund had already accrued prior to the amendment, the un-amended definition of "relevant date" would continue to apply.

5. It has been submitted that in the present case, the refund claims under Section 54(3)(ii) pertain to the periods 01.07.2017 to 31.03.2019, corresponding to Financial Years 2017–18 and 2018–19 respectively. Accordingly, under the un-amended provisions of Section 54(1), the last date for filing the refund claim for the period July 2017 to March 2018 was 31.03.2020, i.e., two years from the end of the relevant financial year. Subsequent to the amendment, for the period from February 2018

onwards, the refund application could be made before the expiry of two years from the due date for furnishing the return under Section 39. Thus, the application for refund for February 2018 could be filed up to March 2020, for March 2018 up to April 2020, and so on.

6. The petitioner filed its refund application on 02.02.2021. It is submitted that, in view of Notification No. 13/2022 dated 05.07.2022 read with the *suo motu* orders of the Hon'ble Supreme Court excluding the period from 01.03.2020 to 28.02.2022 from the computation of limitation owing to the COVID-19 pandemic, the refund claim filed on 02.02.2021 is well within the prescribed limitation period.

7. The contention of the petitioner is that for the period July 2017 to January 2018, the refund application could have been filed up to March 2020 (i.e., two years from the end of the financial year) under the pre-amended law. For the period February 2018 onwards, the refund application could be made up to March 2020 and thereafter, in terms of the amended provisions prescribing a two-year limitation from the due date of furnishing the return under Section 39. Since the limitation period for both the above periods i.e., July 2017 to January 2018 and February 2018 to March 2019 expired in March 2020, the exclusion granted by Notification No. 13/2022 dated 05.07.2022 read with the Hon'ble Supreme Court's orders (excluding the period from 01.03.2020 to 28.02.2022) squarely applies. Hence, the refund application filed on 02.02.2021 is well within the prescribed limitation period.

8. It has been submitted that the refund application filed by the Petitioner was rejected by respondent No. 1 on the ground of limitation. Further, the refund claim for the period 01.01.2019 to 31.03.2019 was also rejected on the alleged ground of ineligible inputs, without pointing out any specific deficiency on record. The appeal filed before respondent No. 2 was further rejected without considering Notification No. 13/2022 dated 05.07.2022 issued prior to the date of the appellate order dated 30.09.2022.

9. In the objections filed by the respondents, it is submitted that pursuant to the CGST Amendment Act, 31 of 2018 dated 29.08.2018, Section 54 of the CGST Act, 2017 was amended, and the "relevant date" was prescribed as the due date for furnishing the return under Section 39 for the period in which the claim arises. The said amendments were made effective from 01.02.2019, in terms of which the due date for filing the return for the period July 2017 to January 2018 fell prior to March 2020. However, for February 2018 onwards, the due dates for filing returns fell in March 2020 and thereafter.

10. Learned counsel for the respondents submits that in view of the amendment made to Section 54 vide the CGST Amendment Act 31 of 2018 dated 29.08.2018, which came into effect from 01.02.2019, refund claims filed on or after the said date would be governed by the amended provisions of Section 54 of the CGST Act, even if the refund claims pertain to a period prior to 01.02.2019.

11. It has further been submitted that the CBIC, vide Notification No. 13/2022-Central Tax dated 05.07.2022, excluded the period from 01.03.2020 to 28.02.2022 for the purpose of computation of the limitation period for filing refund applications under Section 54 of the said Act, which has retrospective effect from 01.03.2020. In light of the same, it is admitted that, in view of the said Notification, only the refund claim for the period July 2017 to January 2018 would fall beyond the limitation period. The refund claims for the period February 2018 to December 2018 are not time-barred, as the period from 01.03.2020 to 28.02.2022 stands excluded for computation of limitation under Section 54.The Senior Standing Counsel also submits that the refund for the period January 2019 to March 2019 was rejected as the Petitioner had not received any eligible inputs during that period.

12. We have heard the parties concerned.

13. In the present case, the provision of law as relevant is as below:

> ***"54. Refund of tax***
> *(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him,may make an application before the expiry of two years from relevant date in such form and manner as may beprescribed:*
> *Provided …….*
> *(2)……*
> *(3) …….*
> *Provided that no refund of unutilized input tax credit shall be allowed in cases other than-*
>
> *(i) …….*
> *(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputsupplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*
> *…….*
> *Explanation. — For the purposes of this section –*
> *1. ……..*

2. "relevant date" means

……..

Upto 31.01.2019

(e)"in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;"

W.e.f. 01.02.2019

(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];"
CBIC, vide Notification No. 13/2022-Central Tax dated 05.07.2022.

"G.S.R…….(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i)……..

(ii)……..

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020*.*

[F. No. CBIC-20001/2/2022-GST] (Rajeev Ranjan) Under Secretary."

14. The petitioner filed the refund application for the period July 2017 to March 2019 on 02.02.2021. On the issue of limitation, the Senior Standing Counsel has conceded that the refund claims for the period February 2018 to December 2018 are not time-barred, since under the amended provisions effective 01.02.2019, the statutory deadline for filing the refund application for the period February 2018 and thereafter falls within the exclusion period from 01.03.2020 to 28.02.2022, which stands excluded from the computation of limitation under Section 54 in view of

CBIC Notification No. 13/2022–Central Tax dated 05.07.2022. In light of the above, and the position being in consonance with the prescription of the said Notification, it is held that the refund application filed on 02.02.2021 in so far concerns the period of February 2018 to December 2018 is within the permissible time limit and not barred by limitation.

15. With respect to the period July 2017 to January 2018, it is the contention of the petitioner that the amended provisions of Section 54(1), which curtailed the period available for filing refund applications by substituting the definition of "relevant date" with effect from 01.02.2019, operate prospectively and not retrospectively, unless their retrospective application is beneficial to the assessee. Accordingly, for periods where the right to claim refund had already accrued prior to the amendment, the un-amended definition of "relevant date" would continue to apply. By virtue of this, the refund application for the period July 2017 to January 2018 could validly be filed up to March 2020, i.e., two years from the end of the financial year 2017–2018 in which such claim for refund arose. Since the limitation period thus expired in March 2020, it would fall within and consequently enjoy the benefit of the exclusion period prescribed under Notification No. 13/2022–Central Tax dated 05.07.2022, which excludes the period from 01.03.2020 to 28.02.2022 from the computation of limitation.

16. The Senior Standing Counsel, however, contends that in view of the amendment to Section 54 introduced by the CGST Amendment Act 31 of 2018 dated 29.08.2018, which came into effect on 01.02.2019, all refund

claims filed on or after the said date are governed by the amended provisions of Section 54, even if such claims pertain to periods prior to 01.02.2019. Accordingly, it is argued that the due date for filing the return for the period July 2017 to January 2018 fell prior to March 2020, and therefore, lies outside the scope of the exclusion period provided under the said Notification.

17. The issue that therefore arises for consideration is whether the amendment effective from 01.02.2019, which curtailed the period prescribed for filing refund applications, can be applied so as to divest or curtail the vested right of the petitioner in relation to the period preceding the amendment.

18. The right to claim refund with respect to period preceding the amendment cannot be curtailed by the amendment. The amended Section cannot operate retrospectively so as to take away a vested right. This amendment must be treated as prospective unless it is given retrospective effect. The vested right of the petitioner cannot be unilaterally revoked or curtailed by a subsequent amendment to the statute unless the amendment expressly provides for retrospective application. Thus, even though the amendment came into force on 01.02.2019, it cannot curtail the rights vested in the petitioner.

19. In **Harshit Harish Jain & anr. vs. The State of Maharashtra & ors., 2025 INSC 104,** the Hon'ble Apex Court, in a matter regarding rejection of appellants claim for refund of Stamp Duty under the provisions of Maharashtra Stamp Act while considering the issue whether amended

six months limitation introduced by 24.04.2015 amendment to Section 48(1) of the Act governs the appellants' claim for stamp duty refund, when the Cancellation Deed was executed prior to the amendment and registered, i.e., the right to seek refund accrued on the date of execution, thus, invoking the un-amended two years window, has held as under:-

> **"8. ……..Appellants' accrued right to claim a refund arose the moment the Cancellation Deed was validly executed. The legislative scheme governing the earlier proviso to Section 48(1) of the Act, contemplated a broader two-year window. Constricting that window retroactively, merely because registration happened post-amendment, unduly defeats a vested cause of action.**
>
> **9. In M. P. Steel Corporation v. Commissioner of Central Excise, this Court has held that amendment to provision as to limitation is inapplicable to accrued cause of action where the amendment has reduced the period earlier provided. The relevant paras of this judgment have been extracted hereunder:**
>
> > **56. This statement of the law was referred to with approval in Vinod Gurudas Raikar v. National Insurance Co. Ltd. [(1991) 4 SCC 333] as follows : (SCC p. 337, para 7).**
> >
> > > **7. "It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act—subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention New India Insurance Co. Ltd. v. Shanti Misra [(1975) 2 SCC 840 : (1976) 2 SCR 266] . The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The**

respondent filed the application in July 1967. It was held that not having filed a suit before March 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3).” Both these judgments were referred to and followed in Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92] , see para 12.

57. The aforesaid principle is also contained in Section 30(a) of the Limitation Act, 1963:

30. “Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.—Notwithstanding anything contained in this Act— (a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:”

58. The reason for the said principle is not far to seek. Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time barred under the amended provision.

10. Even if one were to hold that the Appellants’ claim is examined under the amended six-month period, we are of the considered opinion that a mere technical delay should not, by itself, extinguish an otherwise valid claim. The scheme of stamp duty refund provisions is designed to ensure fairness when the underlying transaction is rescinded for bona fide reasons. The Appellants were compelled to cancel the purchase due to the developer’s inability to deliver timely possession, and were in no way remiss or at fault.

11. Denying a legitimate refund solely on technical grounds of limitation, especially when the timing of registration fell close to the legislative amendment, fails to strike the equitable balance ordinarily expected in fiscal or quasi-judicial determinations. A measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard citizens from unjust enrichment by the State. It has been laid down by this Court in Bano Saiyed Parwaz

> **v. Chief Controlling Revenue Authority & Inspector General of Registration & Controller of Stamps2 that the limitation provision in stamp law (to seek refund of stamp duty) should not be enforced so as to oust the remedy when the applicant is otherwise not blameworthy."**

20. Thus, even though the amendment came into force on 01.02.2019, it cannot curtail the right which had already vested prior thereto. Therefore, the un-amended definition of 'relevant date' would continue to apply.

21. This apart, amendment to Section 54 which changed the definition of relevant date w.e.f. 01.02.2019 cannot be applied retrospectively to the period prior to the amendment to curtail the petitioner's right to refund within the originally stipulated time. It is well settled that every statute is presumed to operate prospectively unless the same is expressly made retrospective, substantive amendments which alter or curtail the scope of tax payer vested rights are presumed to be prospective unless the legislation unequivocally provides otherwise.

22. In **The State of Maharashtra & ors. vs. Prism Cement Limited & anr. (Civil Appeal No. 13928 of 2015),** the Hon'ble Apex Court has held that :

> **"23. It is a cardinal principle of construction that every statute is prima facie perspective in nature unless it is expressly or by necessary implication made to have retrospective operations. Unless there are words in the statutes sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only.**
> **24. In S.L. Srinivasa Jute Twine Mills (P) Ltd. vs. Union of India & Anr. this Court has quoted the observations of Lopes L.J.: "every statute, it is said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect".**

23. The petitioner's claim for January 2019 to March 2019 was rejected only on the ground that no eligible inputs were received during the said period but no reasoned finding in this regard has been given. The refund claim for July 2017 to December 2018 are not barred by limitation as it falls within the extended limitation period afforded by the aforesaid Notification. The refund claim from January to March 2019 is also not barred by limitation under Section 54. The retrospective application of the amendment would deprive the petitioner to claim refund, as this right had been vested with the petitioner. The claim of the petitioner, therefore, cannot be thrown out solely on technical grounds of delay.

24. In view of the aforesaid facts and circumstances, this petition is allowed. The impugned order dated 30.09.2022 is set aside. The matter is remanded back to respondent No. 2 for fresh determination in light of aforesaid observations and in accordance with law.

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

JAMMU
30.12.2025
RAM MURTI

Shivalee Khajuria
2026.01.02 14:34
I attest to the accuracy and
integrity of this document