

GST Refund Application: Andhra Pradesh High Court Excludes Period From 1st March, 2020 to 28th February, 2022 For Limitation

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**IN THE HIGH COURT OF ANDHRA PRADESH
C. PRAVEEN KUMAR; J., A.V. RAVINDRA BABU; J.**

Writ Petition No.24873 of 2022; 24.08.2022

M/s. Gandhar Oil Refinery (India) Limited versus Assistant Commissioner of Sales Tax

ORDER

Heard Sri P. Karthik Ramana, learned counsel for the petitioner and Sri T.C.D. Sekhar, learned Government Pleader for Commercial Tax, appearing for the respondents and perused the record, and with their consent, the writ petition is disposed of at the admission stage.

2. The present writ petition came to be filed, seeking the following relief:-

“(a) to *set aside* the Circular No.157/13/2021-GST dated 20.07.2021 in so far as the quasi-judicial proceedings like refund application is concerned as contrary to the order of the Hon’ble Supreme Court in *Suo Motu Writ Petition (Civil) No.03 of 2020* dated 27.04.2021 read with final order dated 10.01.2022; and

(b) to *set aside* the order of the first respondent dated 16.06.2022 in rejecting the application of refund as barred by time as illegal, improper and incorrect in view of the orders passed by the Hon’ble Supreme Court.”

3. The averments made in the affidavit filed, in support of the writ petition, show that the petitioner herein, who was engaged in business of trading of Coal, claims that he is entitled for refund of tax paid on such supplies, in terms of Section 54 of the Central Goods and Services Tax Act, 2017 [for short, “CGST Act”] and Andhra Pradesh State Goods and Services Tax Act, 2017 [for short “APSGST Act”] read with Rule 89 of GST Rules. Accordingly, the petitioner filed refund application for the tax period May, 2018 to May, 2019 on 22.09.2021. But, however, a show cause notice was issued to the petitioner on 12.10.2021 by the first respondent, proposing to reject the application, on the ground that the application made by the petitioner, is barred by limitation. In the said notice the first respondent asking the petitioner to furnish a reply, as to why his request should not be rejected. But, since the application came to be made beyond the period of two years prescribed under Section 54(14) of the CGST Act coupled with Circular dated 20.07.2021, issued by the Government of India, Ministry of Finance, Department of Revenue, the first respondent passed the order dated 16.06.2022, rejecting the request of the petitioner. Assailing the same, the present writ petition came to be filed.

4. Learned counsel for the petitioner mainly submits that in view of the subsequent Notification dated 05.07.2022, Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, the rejection of application for refund is bad in law.

5. Sri T.C.D. Sekhar, learned Government Pleader for Commercial Tax, would submit that the order passed by the authorities basing on the Circular dated 20.07.2021, cannot be found fault with. He took us through Clause 3(iii) and Clause 4(b) of the said Circular and submits that there is no illegality in the order passed by the first respondent.

6. A perusal of the material on record would show that the refund application came to be made by the petitioner was on 22.09.2021, for the Tax period May, 2018 to May, 2019. Though, learned Government Pleader would contend that the said application came to be made beyond the period of two years, but the learned counsel for the petitioner would submit that, a reading of the Clause 2 to the Explanation to Section 54 of the CGST Act, show the 'relevant date' is prescribed only for goods exported out of India, but, there is no provision determining the 'relevant date' in respect of the supplies to SEZ units, which are considered as zero-rated sales under Section 16 of the Integrated Goods and Services Tax Act, 2017 [for short, "IGST Act"]. It would be relevant to note that the recent Notification issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, dated 05.07.2022 clearly postulates that the period from 1st March, 2020 to 28th February, 2022, for computation of period of limitation for filing refund application under Section 54 or Section 55 of the said Act shall stand excluded.

7. In view of the above, it cannot be said that the application for refund was made beyond the period of limitation. Hence, the order under challenge is *set aside* and the matter is remanded back to the first respondent, for fresh consideration in accordance with law. Accordingly, the writ petition is ***disposed of***. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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