

M/S Anya Traders v. Union Of India And 3 Others

WRIT TAX No. 399 of 2022 | Decision: 2023-05-16 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:106160-DB

Court No. - 47

Case :- WRIT TAX No. - 399 of 2022

Petitioner :- M/S Anya Traders Respondent :- Union Of India And 3 Others Counsel for Petitioner :- Utkarsh Malviya, Satya Vrata Mehrotra Counsel for Respondent :- A.S.G.I., Parv Agarwal, Rajshekhar Srivastava

Hon'ble Ashwani Kumar Mishra, J. Hon'ble Vinod Diwakar, J.

Petitioner is aggrieved by an order passed in appeal dated 27.10.2021 by the respondent no. 3, declining the refund of tax claimed by the petitioner on the ground that petitioner belatedly applied for it.

Counsel for the petitioner submits that the application was made during Covid period and dealing with such exigency a subsequent circular has been issued by Central Board of Indirect Taxes and Customs dated 5th July, 2022, whereunder such applications are to be entertained and that the claim of the petitioner for refund is covered by such circular. Reliance is also placed upon an order passed by a coordinate bench in Writ Tax No. 173 of 2022, wherein reliance is placed upon the order passed by the Supreme Court on 10.1.2022 extending the time for making of such applications, which is reproduced hereinafter:-

"This writ petition has been filed praying for the following reliefs:-

(A) Issue an appropriate writ, order or direction declaring Rule 90(3) of the Central Goods and Services Tax Rules, 2017 and corresponding Rule 90(3) of the Uttar Pradesh Goods and Services Tax Rules, 2017 as well as Paragraph 12 of the Circular F. No. 125/44/2019-GST dated 18.11.2019 issued by the respondent no.2, as being ultra vires Article 14 of the Constitution of India and/or ultra vires Section 54 of the Central Goods and Services Tax Act, 2017 and Section 54 of the Uttar Pradesh Goods and Services Tax Act, 2017;

(B) In the alternate, issue a writ, order or direction in the nature of mandamus declaring that the fresh applications for refund made pursuant to deficiency memorandums issued under Rule 90(3) of the Central Goods and Services Tax Rules, 2017 and corresponding Rule 90(3) of the Uttar Pradesh Goods and Services Tax Rules, 2017, will date back to the date of the original application for refund;

(C) Issue a writ, order or direction in the nature of certiorari calling for records and quashing the impugned orders dated 01.07.2021 (Annexure-4) passed by respondent no.4 and consequently, direct respondent no.4 to process the claims of refund of the petitioner sans any objection of limitation"

Sri Nishant Mishra, learned counsel for the petitioner has stated that petitioner does not want to press relief Nos. 'A' and 'B' and thus, the challenge to the validity of the provisions are withdrawn. Accordingly, the relief Nos. 'A' and 'B' are held to have not been pressed by the petitioner.

Petitioner filed refund application for tax period from April to June, 2018, July to September, 2018 and October to December, 2018, which have been rejected by the impugned order, passed by the respondent no.4.

As per impugned order, the period of limitation for filing refund application in terms of Section 54(1) of the CGST/UPGST Act, had expired in September, 2020 and even period extended by the department has also expired on 30.11.2020. Thereafter, petitioner filed refund application on 31.03.2021, which has been rejected by the impugned order on the ground of delay.

Learned counsel for the petitioner submitted that the period between 15.03.2020 to 28.02.2022 has been directed by the Supreme Court to be 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, vide impugned order dated 10.01.2022 in Misc. Application No. 21 of 2022, Suo-Moto Writ Petition (C) No.3 of 2020. He, therefore, submits that refund application has been arbitrarily rejected by the respondent no.4.

Learned Standing Counsel could not dispute the exclusion period from 15.03.2020 to 28.02.2022 as provided by the Hon'ble Supreme Court for the purposes of limitation.

We have carefully considered the submissions of the learned counsel for the parties.

Hon'ble Supreme Court vide its order dated 10.01.2022 directed as under:-

"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 disposed 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 proceeding, outer limits (within which the court or tribunal can condone delay) and termination of proceedings"

The aforequoted order has been passed by Hon'ble Supreme Court due to the prevailing situation on account of the Covid pandemic.

On the fact of the present case, we find that the refund application of the petitioner could not have been rejected by the respondent no.4 merely on the ground of delay, ignoring the aforequoted order of Hon'ble Supreme Court.

Under the circumstances, the impugned order cannot be sustained and is hereby quashed. Matter is remitted back to the respondent no.4 to decide the refund application of the petitioner in accordance with law, by reasoned and speaking order, expeditiously and preferably within six weeks from the date of presentation of copy of the order, after affording reasonable opportunity of hearing to the petitioner.

Subject to the observations made above, the writ petition is disposed of."

Submission is that in view of the circular issued by the Board as also the above adjudication made by this Court, the denial of refund by the respondent is wholly unsustainable.

Sri Parv Agarwal appearing for the department does not dispute the applicability of circular dated 5th July, 2022 as well as the adjudication made by this Court in Writ Tax No. 173 of 2022 in the facts of the present case.

In that view of the matter and for the reasons recorded by this Court in Writ Tax No. 173 of 2022, extracted hereinabove, this writ petition also succeeds and is disposed of on same terms. The order impugned dated 27.10.2021 stands quashed. Respondent no. 4 is directed to revisit the issue in light of the above observations, by passing a fresh order, within a period of six weeks from the date of

presentation of a certified copy of this order.

Order Date :- 16.5.2023 Ranjeet Sahu

2023-05-18T14:29:12+0530 High Court of Judicature at Allahabad