

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 18978 of 2021**

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**M/S SUPERNOVA ENGINEERS LIMITED**  
**Versus**  
**JOINT COMMISSIONER (APPEALS)**

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**Appearance:**

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1  
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 2,3,4,5  
NOTICE SERVED BY DS for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**  
**and**  
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 26/08/2022**

**ORAL ORDER**  
**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Heard learned advocate Mr.Anand Nainawati for the petitioner and learned advocate Mr. Nikunt Raval for the respondents.

2. By filing the present petition under Article 226 of the Constitution, the petitioner has prayed to set aside the order dated 29.01.2021 passed by the respondent no.1 - Joint Commissioner (Appeals), Central GST and allow the refund of Rs.17,50,227/-. It is further prayed to hold that the refund claim of the petitioner is not barred by limitation. It is also prayed to remit the case back to the adjudicating authority to decide the refund application on merits.

3. Noticing the facts involved, the Petitioner is a company engaged in the business of manufacturing and supply of genset. The petitioner is registered under the GST Act. During February 2018, petitioner supplied DG Set and panel to a unit of M/s.Newfound Properties & Leasing Pvt. Ltd. situated in the SEZ. Section 16 of the Integrated Goods & Service Tax, 2017, states that the supply made to SEZ unit is treated as zero rated supply. Under Section 54(3) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the "Act"), a registered person can claim refund of unutilised Input Tax Credit.

3.1 For the purpose of claiming refund as above, a registered person has to file an application before expiry of two years from the relevant date. In other words, for claiming refund of unutilised Input Tax Credit for the month of February 2018, the refund claimed would be required to be filed on or before 31.03.2020, i.e., two years from the end of the financial year.

3.2 Section 54 reads as under-

"54. (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 the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming

refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (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:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

3.2.1 Explanation to section 54 defines relevant date and mentions that,

"Relevant date 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"

3.2.2 Above explanation was amended by CGST (Amendment) Act, 2018, which came into force from 01.02.2019, reads as under,

"Relevant date in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) shall be the due date for furnishing of return under section 39 for the period in which such claim for refund arises."

3.2.3 Rule 92 provides for sanction of refund as per section 54(5) of the Act. Rule 92(3) which is relevant, is as under -

"Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable

to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, *mutatis mutandis*, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."

3.3 In terms of the above amendment in the explanation to Rule 54, relevant date for filing the refund application is provided to be two years from the due date of furnishing GSTR 3B returns. In other words, the last date for filing refund application in the month of February 2018 would be 20.03.2020 being two years from the due date of furnishing GSTR 3B returns.

3.4 Against the order dated 05.05.2020, the petitioner filed appeal before the respondent no.1 Joint Commissioner (Appeals) Central GST, who rejected the refund application on 29.01.2021, observing as under -

"8. Further, I find that the appellant can make an application before the expiry of two years from the relevant date. I find that the refund application was filed by the appellant on

02.05.2020 which is time barred. Further, I find that the appellant came with the plea that on account of pandemic COVID-19, the time limit was extended from the 20th day of March, 2020 to the 29th day of June, 2020 upto 30th day of June, 2020 vide Notification No. 35/2020-Central Tax dated 03-04-2020. However, I find that the adjudication authority has given opportunity for submission of documents through personal hearing in support of their claim in respect of time limit. However they have neither submitted any documents nor attended personal hearing as called by the adjudicating authority. The adjudicating authority has therefore rightly decided the matter based on record which were available with him. Further the appellant has not submitted sufficient document to prove that the claim was filed within time limit prescribed. Further, I find that the ground raised by the appellant in respect of relevant date are not proper and legal hence it would not be relevant to go into merit of the time limit according to Notification No. 35/22-Central Tax dated 03-04-2020. Therefore, the decision of the adjudicating authority is proper & as per law."

4. During the pendency of this Special Civil Application, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, issued notification No.13/2022-Central Tax dated 05.07.2022, whereby the computation of period of limitation for filing refund application under Section 54 of the Act came to be excluded from 01.03.2020 to 28.02.2022. The Notification reads as under,

"(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."

5. In the present case, the refund application was filed on 02.05.2020, however in view of the above notification, in particular clause (iii) thereof, the period from 01.03.2020 to 28.02.2022 was excluded from the limitation period. The petitioner would be entitled to the benefit of the same.

6. In above view, the competent authority is directed to reconsider the claim of refund of the petitioner by applying its mind and pass appropriate order following the aforesaid Circular dated 05.07.2022.

7. The petition is disposed of in terms of the above direction.

THE HIGH COURT OF GUJARAT (N.V.ANJARIA, J)

WEB COPY (BHARGAV D. KARIA, J)

BIJOY B. PILLAI