

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

WRIT PETITION No.12197 OF 2021

ORDER: (*Per Hon'ble Sri Justice A.V.Sesha Sai*)

Heard Sri K.Adi Siva Vara Prasad, learned counsel for the petitioner and Sri Y.N.Vivekananda, learned Government Pleader and the learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs for the respondents.

2. In the present Writ Petition, challenge is to the order dated 30.04.2021 passed by respondent No.1-The Deputy Commissioner of Central Tax, rejecting the refund claim of the petitioner for the tax period, commencing from April, 2018 to January, 2019, relying on "Relevant date" prescribed under explanation (2) of Section 54 of the Central Goods and Service Tax Act, 2017. The petitioner herein is a registered dealer on the rolls of respondent No.1 under the Central Goods and Service Tax Act, 2017, and is engaged in the business of process of raw granite blocks and manufacture and export sales of polished granite slabs/tiles. The petitioner herein claimed refund of Rs.46,72,862/- towards tax period commencing from April, 2018 to March, 2019 in Form RFD-01 dated 13.03.2021 under sub-section (3) of Section 54 of the Central Goods and Service Tax Act, 2017. Respondent No.1 herein acknowledged the same, vide Form RFD-02 dated 26.03.2021. Thereafter, respondent No.1

herein issued a show cause notice in Form GST RFD-08 dated 26.03.2021. In response to the same, the petitioner herein filed a reply on 02.04.2021, wherein the petitioner herein sought to place reliance on the order of the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* dated 08.03.2021. Respondent No.1, by way of an order dated 30.04.2021, which is the subject matter of the present Writ Petition, held that the petitioner herein is entitled for the refund of Rs.6,07,516/- for the period from February, 2019 to March, 2019 as per Rule 89(5) of the Central Goods and Service Tax Rules, 2017, read with Section 54 of the Central Goods and Service Tax Act, 2017, and rejected the claim of the petitioner for the period commencing from April, 2018 to January, 2019. In the above background, the petitioner herein has come up before this Court with the present Writ Petition, obviously, aggrieved by the rejection of his claim by respondent No.1 for the period commencing from April, 2018 to January, 2019.

3. According to the learned counsel for the petitioner, the order of respondent No.1, to the extent the same went against the petitioner herein, rejecting the petitioner's claim for the period commencing from April, 2018 to January, 2019, is illegal, arbitrary and opposed to the provisions of Section 54 of the Central Goods and Service Tax Act, 2017, and Rule 89(5) of the Rules framed thereunder. It is further contended by the

learned counsel that while dealing with the issue, respondent No.1 herein failed to take into consideration the order passed by the Hon'ble Supreme Court of India in Suo Motu Writ Petition (Civil) No.3 of 2020 dated 08.03.2021. It is further contended by the learned counsel that when a similar issue fell for consideration before this Court, this Court, by way of an order dated 08.02.2022 in W.P.No.3049 of 2022, had set aside the order impugned in the said Writ Petition and remanded the matter for fresh consideration. In fact, a copy of the said order passed by a Co-ordinate Bench of this Court in W.P.No.3049 of 2022 is filed along with the reply affidavit of the writ petitioner.

4. While strongly resisting the Writ Petition, it is contended by the learned Senior Standing Counsel, appearing for the respondents, that as the petitioner herein did not make any claim within the time stipulated in the statute, the petitioner herein is not entitled to any relief from this Court under Article 226 of the Constitution of India.

5. The information available before this Court, in clear and vivid terms, reveals that seeking refund of the amount for the period, commencing from April, 2018 to March, 2019, the petitioner herein made an application on 13.03.2021 and there is absolutely no dispute with regard to either submission of the said claim or the receipt of the same by the respondent-authorities. It is also not in dispute that the petitioner herein

filed a detailed reply on 02.04.2021 in response to the show cause notice dated 26.03.2021. A reading of the said reply shows that the petitioner herein also referred to the orders of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020. A perusal of the order under challenge shows that as per the provisions of the statute, in order to get entitlement for refund of the period from April, 2018 to March, 2019, one should have filed an application on or before 19.05.2020. But in the present case, the petitioner herein filed such application on 13.03.2021. In this context, it may be appropriate to apposite to refer to the order of the Hon'ble Supreme Court dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.3 of 2020. The Hon'ble Supreme Court, by way of the aforementioned order, disposed of the said Writ Petition with the following directions:

"1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation

remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 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 provisions (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribed period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

6. It is very much apparent from the above order of the Hon'ble Apex Court that while computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 is liable to be excluded. In view of the said order of the Hon'ble Supreme Court and if the said period is excluded from computation of the period of limitation, the entire claim of the petitioner herein is liable to be accepted. In fact, by placing reliance on the said orders of the Hon'ble Supreme Court, a Co-ordinate Bench of this Court in W.P.No.3049 of 2022, passed an order, setting aside the order impugned in the said Writ Petition and remanded the matter for fresh consideration by the authorities. It is further evident from a perusal of the impugned order that though respondent No.1 herein referred to the order passed by the Hon'ble Apex Court,

respondent No.1 herein did not make any endeavour to consider the directions contained therein.

7. For the aforesaid reasons, this Writ Petition is allowed, setting aside the order dated 30.04.2021 passed by respondent No.1 to the extent of rejecting the claim for the period commencing from April, 2018 to January, 2019 and the matter is remanded to the said extent for consideration and for passing appropriate orders by taking into consideration the directions of the Hon'ble Supreme Court in the order dated 08.03.2021 passed in Suo Motu Writ Petition (Civil) No.3 of 2020. There shall be no order as to costs of the Writ Petition.

As a sequel, interlocutory applications pending, if any, in this Writ Petition shall stand closed.

A.V.SESHA SAI, J

RAVI NATH TILHARI, J

Date: 25.04.2022

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