

2024 TAXONATION 1800 (GUJARAT)**GUJARAT HIGH COURT**

R/SPECIAL CIVIL APPLICATION NO. 2114 of 2021 With R/SPECIAL CIVIL APPLICATION NO. 4111 of 2021 With R/SPECIAL CIVIL APPLICATION NO. 2115 of 2021 With R/SPECIAL CIVIL APPLICATION NO. 2116 of 2021 With R/SPECIAL CIVIL APPLICATION NO. 2117 of 2021

Darshan Processors-Appellant

Versus

Union of India and Ors.-Respondent

Coram: HONOURABLE MR. JUSTICE BHARGAV D. KARIA AND HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date of order: 26/07/2024

Decision: In Favour of Assessee

Held That: The petitioner sought a refund of input tax credit (ITC) under GST. The initial refund application was rejected by the tax authorities on the ground of time-bar. The petitioner challenged this decision, arguing that the original refund application was filed within the prescribed time limit and subsequent clarifications requested by the authorities should not be considered as fresh applications. The court agreed with the petitioner's argument, quashed the order rejecting the refund claim, and directed the tax authorities to reconsider the refund application on its merits.

Appearance:

Hiren J Trivedi (8808)., Tapan N Patel (9185). For the Petitioner

Mr Raj Tanna, AGP. Mr Ankit Shah (6371). Mr HIRAK SHAH For Mr Nikunt K Raval (5558). For the Respondent

JUDGMENT

1. Heard learned advocate Mr. Hiren J. Trivedi for the petitioner, learned advocate Mr. HIRAK SHAH for learned advocate Mr. Nikunt Raval for respondent

no. 2 and learned Assistant Government Pleader Mr. Raj Tanna for the respondent State.

2. Since issue involved in all these petitions is identical, they have been heard together would be disposed of by this common judgment.

3. Rule returnable forthwith. Learned advocate Mr. Hirak Shah for learned advocate Mr. Nikunt Raval waives service of notice of rule on behalf of respondent no. 2 and learned Assistant Government Pleader Mr. Raj Tanna waives service of notice of rule on behalf of the respondent State.

4. For the sake of convenience, facts are noted from Special Civil Application No. 2114 of 2021.

5. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs:

“A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to quash and set aside the impugned order dated 20.02.2020 passed by Assistant Commissioner Central GST & Excise Division-II, Surat (at Annexure-G);

(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to the respondent authorities to immediately sanction the refund of Rs. 1,43,780/- filed vide application dated 17.09.2018 in form GST RFD-01A filed bearing ARN no. AC2407170192753;

(C) YOUR LORDSHIPS may be pleased to direct the respondent authorities to pay interest @ 9% to the petitioner herein on the amount of refund from the date of filing the refund application till the date on which the amount of refund is paid to the petitioner herein, as the same is arbitrarily and illegally withheld by the respondent authorities;

(D) Your Lordships may be pleased to grant an ex-parte, ad interim order in favour of the petitioner herein in terms of prayer clause 'A' and 'B' herein above;

(E) Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your Petitioners shall forever pray.”

6. Brief facts of the case are that petitioner is a partnership firm which is engaged in textile dyeing and printing and is holding GST Registration no. 24AADFK2670H1ZJ.

7. It is the case of the petitioner that the petitioner is eligible to claim refund of accumulated Input Tax Credit due to inverted duty tax structure from July 2017 as per [section 54](#) (3) (ii) of the Central Goods And Service Tax Act, 2017 (For short “CGST Act”).

8. It is the case of the petitioner that due to non availability of refund module on the common portal, vide Circular No. 24/24/2017-GST dated 21.12.2017, it was decided to permit the applications of refund claims manually in Form GST RFD-01 A on account of inverted duty structure and the said circular also clarified that Circular No.17/17/2017-GST dated 15.11.2017 shall also be applicable for processing refund application filed under inverted duty structure.

9. The petitioner therefore, filed GSTR-1 for July 2017 on 26.08.2017 and refund application for July-2017 on 17.09.2018 in Form GST RFD-01A which was accepted and the acknowledgment bearing ARN AC2407170192753 was generated. The petitioner thereafter filed GSTR-3B on 23.11.2017.

10. After filing the refund application online, the petitioner filed the refund application manually before the respondent no.3 Assistant Commissioner of State GST on 26.12.2018.

11. It is the case of the petitioner that in November, 2019 the petitioner came to know that the petitioner was supposed to file the refund before respondent no. 2 - Assistant Commissioner of Central GST & Excise Division-II. Accordingly, petitioner vide letter dated 26.11.2019 requested respondent no.3 to transfer the files pertaining to 2017-2018 to respondent no. 2 and said files were transferred to office of respondent no. 2 on 10.12.2019.

12. Pursuant to such application, respondent no. 2 issued a deficiency memo in Form – GST RFD-03 dated 24.12.2019 asking the petitioner to provide various information/documents i.e.

(i) Credit Ledger from 01.09.2017 to 17.09.2018

(ii) GSTR-2A

(iii) Manual RFD-01A in proper format

(iv) Undertaking to repay refund along with interest in case any amount paid in excess/erroneously etc. The petitioner accordingly provided all the information as required by respondent no. 2 vide letters dated 31.12.2019 and 02.01.2020.

13. Respondent no. 2 however issued a show cause notice being Form-GST-RFD-08 dated 17.01.2020 to the petitioner stating that the time limit for filing refund application is two years from due date of filing return under [section 39](#) of the CGST Act. The petitioner therefore, vide letter dated 24.01.2020 responded to show cause notice stating that after filing the refund application on portal, the petitioner was required to file the same before the jurisdictional officer and the original refund application has been filed on 17.09.2018 before respondent no.3. However, as there was some ambiguity in the jurisdictional officer, the petitioner was asked to file application before respondent no. 2 which was filed by the petitioner on 10.12.2019.

14. Respondent no. 2 vide impugned order dated 20.02.2020 rejected the refund application of the petitioner and insofar as claim of refund of ITC on input service is concerned, respondent no. 2 rejected the refund stating it to be time barred under [section 54](#) explanation (2) clause(e) of the CGST Act.

15. Being aggrieved by the impugned order, the petitioner has preferred the present petition.

16. Learned advocate Mr. Hiren J. Trivedi for the petitioner submitted that in view of circular No. 17/2017 dated 15.11.2017, the petitioner has filed manual application for refund claim as the petitioner is entitled to refund. It was submitted that later on, the respondent authorities have rejected the refund application by the impugned order only on the ground that the same was filed beyond the prescribed period of limitation without considering the fact that as per the said circular, the petitioner was entitled to file the refund application. It was further submitted that the respondent authorities could not have referred to Circular No. 37/2018 to deny the legitimate refund claim of the petitioner as

there is no denial that the petitioner is not eligible for refund for the IGST paid on Zero Rated Supply.

17. Learned advocate Mr. Trivedi referred to and relied upon the decision of this Court in case of *M/s. LA-Gajjar Machineries Private Limited v. Union of India (Judgment dated 27.09.2023 in Special Civil Application No.15782 of 2021)* wherein while relying on subsequent Circular No. 125/2019 and Notification no. 15/2021, it was held that refund application filed originally would be relevant for the purpose of considering the limitation for passing the refund order as provided under section 54 (3) read with explanation thereto of the Act for the relevant period.

18. On the other hand, learned advocate Mr. Hirak Shah for respondent authorities submitted that the refund application filed by the petitioner is prior to Circular No. 125/2019 dated 18.11.2019 which provides for mandatory filing of the refund application through GST portal only with effect from 26.09.2019 and it further provides that refund application shall be considered only if the same is filed after issuance of deficiency memo.

19. Considering the above submissions in facts of the case, it is apparent that the petitioner has filed refund application within the period of two years i.e. for year 2017-2018, refund application was filed on 17.09.2018 and subsequently, fresh refund application was filed after receipt of deficiency memo on 2.01.2020 and therefore, as per the decision of this Court in case of *M/s. LA-Gajjar Machineries Private Limited (supra)*, original refund application filed by the petitioner on 17.09.2018 would be considered as a proper refund application within the period of limitation and fresh refund application filed pursuant to the deficiency memo, would be considered as in continuation of first refund application. This Court in the said judgment held as under:

“[9] Having heard the learned advocates for the respective parties and considering the facts and the provisions of law, which are reproduced hereinabove, short question which arises for consideration is whether the petitioner is entitled to get the refund by considering the period of limitation as explained in the definition of “relevant date” as per the Explanation after sub-section (14) of [Section 54](#) of the CGST Act to be considered from the date of filing of the original refund application or from the date of filing of the rectified refund application after receipt of the deficiency memo from the respondents authorities.

[10] Such question is considered by the Hon'ble Delhi High Court in the case of National Internet Exchange of India (supra), wherein after considering the provisions of Section 54 of the CGST Act and the [Rule 90](#) of the CGST Rules, it was held as under:

“18. It is apparent from the above that once an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same is necessarily required to be accepted.

19. An application can be rejected as deficient only where any deficiencies are noted. The contextual reading of Sub-rule (3) with Sub-rule (2) of [Rule 90](#) of the CGST Rules, indicates that the deficiencies referred to in Sub-rule (2) of Rule 90 of the CGST Rules are those that render an application incomplete in terms of Sub-rules (2), (3) and (4) of Rule 89 as stipulated in Sub-rule (2) of Rule 90. Thus, if an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same cannot be rejected, relegating the taxpayer to file afresh. In any view of the matter, the period of processing the said application

under Sub section (7) of Section 54 of the CGST Act, is required to be counted from the said date.

20. However, notwithstanding the fact that the application for refund is complete inasmuch as it is accompanied by the documents as specified in Sub-rule (2) of Rule 89 of the CGST Rules, the proper officer may withhold the processing of refund, if he is not completely satisfied that the same is refundable to the taxpayer. In such circumstances, where the proper officer requires to further verify the claim or is unable to process it on account of discrepancies noticed by him, he is required to issue notice in Form GST RFD-08 in terms of Sub-rule (5) of Rule 90 of the CGST Rules.

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22. It is clear from the deficiencies as mentioned that the proper officer had noticed certain discrepancies in the documents. In addition, he also required the petitioner to provide certain documents in order to verify its claims for refund. It is also apparent that some of the documents demanded were not relevant as the petitioner's claim was for refund of IGST and not unutilised ITC.

23. The nature of the deficiencies as set out in deficiency memo no. 2 clearly indicate that the application filed by the petitioner was not incomplete in terms of Rule 89 (2) of the CGST Rules. Sub-rules (3) and (4) of Rule 89 of the CGST Rules are not applicable in the facts of the present case. The petitioner had, in terms of Clause (c) of Sub-rule (2) of Rule 89 of the CGST Rules, submitted a statement containing the number and date of invoices and the relevant Bank Realisation Certificates/Foreign Inward Remittance Certificates. It was also accompanied by the necessary declaration as specified.

24. In view of the above, the application for refund filed by the petitioner on 31.10.2019 could not be ignored or disregarded.

25. As noted above, in terms of Section 54 (1) of the CGST Act, an application is required to be made in the prescribed form and manner before two years from the relevant date. It is clear that the petitioner had complied with the said requirement inasmuch as it had filed an application for refund on 31.10.2019 in the "form and manner" as prescribed in the CGST Act and the CGST Rules. Thus, in terms of Section 54 (1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner.

*26. This Court in an earlier decision in **Bharat Sanchar Nigam Limited v. Union of India & Ors.: 2023:DHC:2482-DB** and in similar circumstances held as under:*

"28. We are of the view that Rule 90 (3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application filed by a taxpayer as non est.

29. *If the application filed is not deficient in material particulars, it cannot be treated as non est. If it is accompanied by the “documentary evidences” as mentioned in Rule 89 (2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the application is required to be treated as non est for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89 (2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued.”*

[11] *In view of Notification No.15/2021 dated 18th May 2021, wherein the proviso is added in Rule 90 (3) of the CGST Rules, reads as under:*

“Provided *that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies,”*

It is therefore clear that time period from the date of filing of the refund claim in Form GST RFD-01 till the date of communication of the deficiency in the Form of GST RFD-03 by the proper officer is required to be excluded from the period of two years, as specified in respect of any such fresh refund claim filed by the applicant after rectification of the deficiency. The insertion of proviso to Rule 90 (3) of the CGST Rules is therefore clarificatory in consonance with the objective of Section 54 (1) of the CGST Act. In our opinion, the same would be applicable in the facts of the case also where the rectified refund application filed by the petitioner is within the period of limitation after applying the above provision and shall fall within two years after excluding the period from the date of filing of the refund claim in Form GST RFD-01 till the date of communication in Form GST RFD-03, which is calculated by the petitioner as 26 days as under:

<i>Date of filing the Refund claim</i>	<i>Date of deficiency pointed out</i>	<i>Days to be excluded</i>
<i>16.12.2019</i>	<i>27.12.2019</i>	<i>11</i>
<i>27.01.2020</i>	<i>11.02.2020</i>	<i>15</i>
<i>13.02.2020</i>	<i>Nil</i>	

The refund claim of the petitioner pertains to December 2017, due date of filing return would be 22nd January 2018, two years period of limitation therefore would be over on 22nd January 2020. By adding 26 days as above, last date of filing refund would be 27th February 2020 whereas the petitioner filed second rectified refund claim on 13th February 2020.

[12] Therefore, applying the Circular No.15/2021 also, the refund claim of the petitioner cannot be rejected and the reliance placed by the respondent on Clause 12 of Circular No.125/44/2019-GST dated 18th November 2019 would not be applicable.

[13] Considering the facts of the case where the first deficiency memo dated 27th December 2019 is only for not attaching supportive documents by the petitioner and the first rectified refund application was filed on 27th January 2020 along with requisite documents, as required by the respondents authorities. Thereafter, the second deficiency memo dated 11th February 2020 was issued with the same reasons for providing documents with the remarks "invoice(s) not shown in GSTR-2A but ITC is claimed in Annexure-B, for that eligible documents are not uploaded". The petitioner filed second rectified application on 13th February 2020. Thus, the last date for filing the refund application upto December 2019 was extended upto 22nd January 2020 and considering the period of two years, the limitation period of relevant date would be over on 22nd January 2020 and considering 26 days of issuance of deficiency memo by the respondents authorities and adding the limitation for filing rectification application would therefore extend upto 17th February 2020 (22.01.2020 + 26 days = 17.02.2020). But the petitioner has filed the second rectified application on 13th February 2020 and applying the Notification No.15/2021, refund claim of the petitioner would be within the period of limitation. Therefore, as held by the Hon'ble Bombay High Court in the case of National Internet Exchange of India (supra), in terms of Section 54 (1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner. The Notification No.15/2021 dated 18th May 2021 is issued so that Rule 90 (3) of the CGST Rules operates in accordance with the provisions of Section 54 (1) of the CGST Act and therefore, the same is required to be applied to the facts of the case also.

[14] In view of the foregoing discussion, this petition succeeds. The impugned order dated 9th November 2020 passed by the respondent No.4 – The Joint Commissioner (Appeals) confirming the order dated 11th March 2020 passed by the Deputy Commissioner, Central GST, Division-I, Ahmedabad-South rejecting the application for refund filed by the petitioner on the ground of limitation is hereby quashed and set aside. The refund application filed by the petitioner in Form GST RFD-01 dated 16th December 2019 is restored for consideration of the proper officer a fresh on merits. The respondent – proper officer shall consider the refund application on merits and complete the entire exercise in accordance with law within a period of 12 weeks from the date of receipt of the copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs."

20. In view of above, the petitions succeed and are accordingly allowed. Impugned order dated 20.02.2020 passed by respondent no. 2 rejecting the application for refund filed by the petitioner on the ground of limitation is quashed and set aside and the refund application filed by the petitioner in Form GST RFD-01A as prescribed at the relevant point of time dated 17.09.2018 is restored for consideration of proper officer so as to pass fresh order on merits in accordance with law.

21. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

22. Rule is made absolute to the aforesaid extent no order as to costs.