

## SC order extending period of limitation applicable to refund application under GST law – Bombay HC

18 January 2022



## Summary

The Bombay High Court (HC) observed that the limitation period of two years for filing a refund claim application under the GST law fell between 15 March 2020 and 2 October 2021. The Supreme Court (SC) has excluded the period described above in all such proceedings irrespective of the limitation prescribed under the general law or Special Law, whether condonable or not until the SC passes further order in those proceedings. The said SC order also binds the Revenue and, therefore, the limitation period falling between the period mentioned above needs to be excluded. Based on the above, the HC held that the petitioner's refund application was, thus, within the period of limitation prescribed under the GST law and, thus, restored.

## Facts of the case

- The refund claim filed by the petitioner<sup>1</sup> under the GST law was rejected on the ground that the same was time-barred as it was filed after the expiry of two years.
- The Revenue contended that the refund application was required to be filed within the period of two years under the GST law<sup>2</sup>. In the present case, the application was submitted admittedly filed after the expiry of two years.
- The petitioner contended that the extension granted as per the SC<sup>3</sup> by exercising powers under Article 142 read with 141 declaring that the said order was binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities. Therefore, the Revenue could not have rejected the refund application on the ground of limitation.
- Therefore, the petitioner has filed an appeal before the Bombay HC for restoration of the said refund application and for various other reliefs.

## Bombay HC observations and ruling<sup>4</sup>:

- **Limitation period excluded by the SC:** The limitation period falling between 15 March 2020 and 2 October 2021 was excluded by the SC, irrespective of the limitation prescribed under the general law or special law, whether condonable or not, till further order to be passed by the SC in those proceedings.
- **Limitation period prescribed under circular to be excluded:** The Revenue is bound by the order of the SC and is required to exclude the period of limitation falling during the said period. Since the period of limitation for filing the refund application fell between the said period 15 March 2020 and 2 October 2021, the said period stood excluded. The refund application filed by the petitioner, thus, was within the period of limitation prescribed under the said circular.
- **Refund application within period of limitation:** The order of rejection passed by the Revenue is contrary to the order passed by the SC and is accordingly set aside.

<sup>1</sup> SAIHER SUPPLY CHAIN CONSULTING PVT. LTD.

<sup>2</sup> Circular No. 20/16/04/18- GST dated 18 November 2019 read with under Section 54(1) of the Central Goods and Services Tax Act, 2017

<sup>3</sup> Re: Cognizance for Extension of Limitation (Order dated 23rd March 2020), reported in 2020 SCC Online SC 343, in Suo Motu Writ Petition (Civil) No. 3 of 2020

<sup>4</sup> WRIT PETITION (L.) NO. 1275 OF 2021

Further, the refund application filed by the petitioner was restored and the Revenue was directed to consider the same on its merits.

### Our comments

On a similar issue, recently, the Madras High Court in the case of M/s. GNC Infra LLP held that the SC decision extending the limitation period should squarely be applied to refund claim applications under GST law as well. Accordingly, the HC had set aside the refund rejection order and directed the Revenue to examine the refund on its merits.

Thus, the present ruling should provide relief to other businesses, wherein refund claims have been rejected due to the expiry of the limitation period.

Recently, the SC has restored the said order, dated 23 March 2020 and its subsequent orders, dated 8 March 2021, 27 April 2021, and 23 September 2021. The SC has directed that the period from 15 March 2020 till 28 February 2022 shall stand excluded for limitation, as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

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