

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY SIDE

WRIT PETITION NO. 3058 OF 2022

Priceline.Com Technology India LLP. ... Petitioner.
V/s.
The Union of India and others. ... Respondents.

Mr.Jas Sanghavi with Mr.Ansh Agal i/b. PDS Legal
for the Petitioner.

Mr.J.B.Mishra with Ms.Sangeeta Yadav for the Respondents.

CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.

DATE : 13 December 2022.

ORAL JUDGMENT: (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents
waive service.

2. Heard the learned counsel for the parties.

3. The Petitioner is aggrieved by two orders. One dated 24
January 2022 and other dated 22 February 2022 passed by
Respondent No.2- Assistant Commissioner, CGST & CX partly
allowing the claim for refund.

4. These two orders are in respect of different periods. The first order dated 24 January 2022 deals with the period from April 2018 to March 2019. The second order dated 22 February 2022 deals with the periods from April 2019 to December 2019 and January 2020 to March 2020.

5. As regards the refund claim for the period from January 2020 to March 2020, the same has been granted to the Petitioner and the Petitioner has no grievance about the same.

6. The challenge in this petition is restricted to the remaining two periods that is from April 2018 to March 2019 and April 2019 to December 2019.

7. The Respondents have rejected the claims for the above-mentioned two periods on the ground that they are time barred.

8. Section 54 of the Central Goods and Services Tax Act, 2017 deals with refund of tax. Section 54(1) states that if a refund is sought of any tax, then an application has to be made before the expiry of two years from the relevant date. "Refund" is defined in Explanation (1) to section 54(14) as under:

““refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

“Relevant Date” is defined in Explanation (2) to section 54(14) as under:

““relevant date” means—

- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—*
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or*
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or*
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;*
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;*
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—*
 - (i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or*
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;*
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;*
- (e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for*

furnishing of return under section 39 for the period in which such claim for refund arises;

- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;*
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and*
- (h) in any other case, the date of payment of tax. Refund in certain cases.”*

Thus, there are various categories enumerated above and as to which should be the starting point for the limitation period for each of the category. The impugned orders make no reference to which category the Petitioner's claims would fall and what would be the relevant date i.e. starting point for limitation period for the Petitioner's claim for refund.

9. The Petitioner has relied upon the order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3/2020 (*in Re: Cognizance For Extension of Limitation*) wherein it is stated that the order dated 23 March 2020 extending the period of limitation in the proceedings before the Courts and Tribunals was restored and in continuation of the subsequent orders, lastly dated 23 September 2021, it was directed that the period between 15 March 2020 to 28 February 2022 would stand excluded for the purposes of limitation as may be prescribed in any general or special law in respect of judicial or quasi-judicial proceedings. Pursuant to

this order passed by the Hon'ble Supreme Court a view has been taken by the Division Bench of this Court in in *Saiher Supply Chain Consulting Pvt.Ltd. v. Union of India*¹, and also by other High Courts that the period of limitation for the purpose of refund application also stands extended for the period as directed by the Hon'ble Supreme Court. The learned counsel for the Petitioner states that in view of this law laid down, the impugned orders, rejecting the refund claims of the Petitioner for the periods from April 2018 to March 2019 and from April 2019 to December 2019, be set aside and the Respondents be directed to proceed to examine the claim on merits.

10. For the purpose of ascertaining whether the limitation period in the Petitioner's case stood extended/ protected by the order of the Hon'ble Supreme Court as above, first the relevant date for starting of the limitation will have to be established. The factual position as per the explanation to Section 54 as regards the Relevant Date will have to be determined first and then legal position as laid down in the above decisions can be applied. For the argument of extension of limitation, the basic dates of starting and ending of period of limitation in each case with reference to different categories of the explanation to Section 54 have to be arrived at. No such exercise is carried in the impugned orders on this aspect. Therefore, the law laid down in the above decision cannot be straightway applied unless the basic facts are established.

1 2022 (63) GSTL 415 (Bom.)

11. Therefore, the impugned orders, to the extent of rejection of the refund claims of the Petitioner for the periods from April 2018 to March 2019 and from April 2019 to December 2019, are liable to be quashed and set aside and the applications for these two periods are to be restored to the file of the concerned Assistant Commissioner.

12. Accordingly the impugned orders dated 24 January 2022 and 22 February 2022, to the extent the said orders reject the refund claims of the Petitioner for the period from April 2018 to March 2019 and from April 2019 to December 2019, are quashed and set aside and the applications for these two periods are restored to the file of the concerned Assistant Commissioner.

13. The Assistant Commissioner will examine the case of the Petitioner afresh both on the ground of limitation and on merits in the light of what is observed above. The requisite decision be taken within the period six weeks from today.

14. It is clarified that the order granting refund to the Petitioner as regards the period from January 2020 to March 2020 is maintained.

15. Rule is made absolute in the above terms. Writ petition is disposed of.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)