

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13709 OF 2022

Tejus Vertrage Infra LLP ... Petitioner
versus
Union of India & Ors. ... Respondents

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Mr. Bharat Raichandani with Mr. Rishabh Jain i/b. UBR Legal Advocates for the Petitioner.

Mr. Vijay H. Kantharia with Ms. Maya Majumdar for the Respondents.

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**CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.**

DATE : 23 FEBRUARY 2023

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioner is aggrieved by the order dated 25 February 2022 passed in appeal by Respondent No.5- Additional Commissioner (Appeals-II), Central Tax, Pune confirming the Order-in-Original dated 23 July 2022. By the impugned order, Respondent No.5 has rejected the refund claim of the Petitioner primarily on the ground that the refund claim is beyond the period of two years as prescribed under section 54 of the Central Goods and Service Tax Act, 2017.

3. The observations made by the Assistant Commissioner, while referring the claim of the Petitioner, in paragraph 10 of the order read thus:

“10. Whereas, Para 4 (a) of the Circular No. 157/13/2021- GST dated 20.07.2021 issued CBIC reads as -

Para 4 (a): Proceedings that need to be initiated or compliances that need to be done by the taxpayer:-

These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various orders of the Hon’ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

In view of the Para 4 (a) of the Circular No. 157/13/2021- GST dated 20.07.2021 as explained above, the Hon’ble Supreme Court Orders dated 08.03.2021 or 27.04.2021 is not applicable in the instant case as the compliances i.e. filing of refund need to be done by the tax payers which is governed only by the statutory mechanism and time limit provided extensions granted under the statute itself.”

(emphasis supplied)

The Assistant Commissioner, therefore has proceeded on the basis that for the refund claims the decision of the Hon’ble Supreme Court in a *Suo Motu Writ Petition (C) No. 3 of 2020* is not applicable.

4. This interpretation of the Officers was considered by two Division Benches of this Court, first in the case of *Saiher Supply*

*Chain Consulting Pvt. Ltd. Vs. The Union of India and Another*¹ and second in the case of *Priceline.Com Technology India LLP Vs. The Union of India and Others*² and it is held that the period of limitation which was extended under the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 also apply to the claim for refund. The learned Counsel for the Petitioner states that the decision of the Division Bench in the case of *Saiher Supply Chain Consulting Pvt. Ltd. (supra)* was challenged by the Respondent -Union of India and a Special Leave to Appeal (C) No (s.) 12404 of 2022 was dismissed on 29 July 2022.

5. In light of this position, we set aside the impugned order and restore the refund claim of the Petitioner to file of the Assistant Commissioner, who will examine the case of the Petitioner on the basis of the order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 and the subsequent orders passed in Suo Motu Petition. The Assistant Commissioner will consider the case of the Petitioner afresh, both on the ground of limitation and on merit in the light of what is observed above. The requisite decision be taken within the period of six weeks from today.

6. The writ petition is disposed of in above terms.

ABHAY AHUJA, J.

NITIN JAMDAR, J.

1 2022-TIOL-48-HC-MUM-GST

2 2023- TIOL-35-HC-MUM-GST