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CASE LAW UPDATE

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*M/s Gamma Gaana Ltd V/s Union of India
High Court of Allahabad*

Writ Tax No. 173 of 2020

❖ Summary –

- Refund application cannot be rejected merely on the ground of time-delay, ignoring the order of Hon'ble Supreme Court dated 10.01.2022. Hence, the last date for application of such refund shall be, the actual remaining period of time limitation for application, or 90 days, whichever longer, as calculated from 01.03.2022.

❖ Facts –

- Taxpayer filed refund applications for the tax periods April to June, 2018, July to September, 2018 and October to December, 2018 u/s 54(1) of the CGST Act, 2017 on 31.03.2021.
- The concerned assessing officer rejected the application as the extended time period to file such application had end on 30.11.2020.

❖ Taxpayers Argument –

- The taxpayer through its counsel argued that the period between 15.03.2020 to 28.02.2022 has been directed by the Supreme Court to be excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, vide order dated 10.01.2022 in Misc. Application No. 21 of 2022, Suo-Moto Writ Petition (C) No.3 of 2020.



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❖ Taxpayers Argument (Ctd.) –

- Extract of Supreme Court's order:

"Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to disposed of the M.A. No. 21 of 2022 with the following directions:

-- The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

-- Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

-- In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

-- It is further clarified that the period from 15.03.2020 till 28.02.2022 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 provisos (b) and (c) of Section 138 of the Negotiable Instruments Act 1881 and any other laws, which prescribe period (s) of limitation for instituting proceeding, outer limits (within which the court or tribunal can condone delay) and termination of proceedings"

- The taxpayer therefore submitted that that refund application has been arbitrarily rejected



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❖ Department`s Argument –

- Vide Notifications 35/2020, 55/2020, 65/2020 – Central Tax (and corresponding notifications in the UPGST Act), the time period to file such refund application had been extended to 30.11.2020. Since the application was made on 31.03.2021, it was barred by time, hence rejected.
- The Department`s counsel, however, could not dispute the exclusion period from 15.03.2020 to 28.02.2022 as provided by the Supreme Court for the purposes of limitation.

❖ Judgement –

- The High Court found that the refund application of the taxpayer could not have been rejected merely on the ground of delay, ignoring the afore-quoted order of Supreme Court. Given the circumstances, such order of rejection cannot be sustained and was thereby quashed.
- Matter has been remitted back to the Department to decide the refund application in accordance with law, by reasoned and speaking order, expeditiously, after affording reasonable opportunity of hearing to the taxpayer.

❖ Author`s Comments –

- GST practitioners are well aware of situations where the GST portal`s data requirements are inconsistent with the legal provisions. Example: In GSTR 1, original invoice details were compulsorily to be mentioned for Debit/Credit notes, even after the law removing such requirement.
- Similar difficulties may be faced in such refund applications filed in cognizance of this judgement.

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