

## Date of fresh application after rectification of deficiencies not to be considered for determining period of limitation for filing refund

(2024) 24 Centax 316 (Ker.)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

GOPINATH P, J.

SALI P. MATHAI

Versus

STATE TAX OFFICER

W.P.(C) No. 739 of 2022, decided on 29-10-2024

**GST : Date of fresh application for refund filed after rectification of deficiencies pointed out in respect of first application cannot be considered for purposes of determining period of limitation for filing application for refund.**

Refund - Limitation period - Rectified application - Original application for refund was filed on 5-4-2021 - Deficiencies were pointed out and fresh application was filed on 30-9-2021 - By time Fresh application was filed, two years limitation period from relevant date was expired and, hence, fresh application was rejected as time barred - HELD : Rule 90(3) of CGST Rules requires filing of a fresh refund application after rectification of deficiencies pointed out in respect of first application - However, said sub-rule does not contemplate that date of fresh application has to be considered for purposes of determining period of limitation for filing an application for refund - Rejection of application for refund could not be sustained in law [Section 54 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017 - Rule 90 of Central Goods and Services Tax Rules, 2017/Kerala State Goods and Services Tax Rules, 2017] [paras 5 and 6]

*In favour of assessee*

REPRESENTED BY : Meera V. Menon and R. Sreejith, Advs. for the Petitioner.

Jasmin M.M., Adv. for the Respondent.

**[Judgment].** - The petitioner has approached this Court being aggrieved by the fact that refund application filed by the petitioner has been rejected by Ext.P4 communication on the ground that it is filed belatedly and beyond the time permitted by Section 54 of the Central Goods and Services Tax/State Goods and Services Tax Acts, 2017 (CGST/SGST Acts).

2. The brief facts of the case are as follows:

The petitioner filed an application for refund on 05-04-2021 seeking refund of an amount of Rs.17,46,210/-. In response to that application, the petitioner was served with Ext.P1(a) communication dated 19-04-2021, informing the petitioner regarding certain deficiencies in the application for refund. The petitioner thereafter filed a fresh application for refund on 30-09-2021. The fresh application was admittedly beyond the time specified in Section 54 of the CGST/SGST Acts and was therefore rejected by Ext.P4.

3. The learned counsel appearing for the petitioner submits that the rejection of the application filed by the petitioner on 30-09-2021 as being time barred with reference to the provisions contained in Section 54 of the CGST/SGST Acts cannot be sustained in law. It is submitted that Section 54 of the CGST/SGST Acts does not contemplate the filing of a second application, and the application for refund filed by the petitioner on 05-04-2021 has to be processed on the petitioner curing all defects which have been pointed out in Ext.P1(a). It is submitted that the requirement in Rule 90(3) of the Central Goods and Services Tax Rules (CGST Rules) to file a fresh application for refund on deficiencies being intimated is not in tune with the statutory provisions. It is submitted that even if a fresh application has to be filed on a deficiency memo being issued to the petitioner, the date of the application will have to be considered as the date of the original application and the date of the second application cannot be taken into consideration for the purposes of determining whether such an application was filed within time or not.

4. The learned Government Pleader strenuously opposes the grant of any relief to the petitioner. The learned Government Pleader referred to the provisions of Section 54 of the CGST/SGST Acts as also to the provisions of sub-rule (3) of Rule 90 of the CGST Rules to contend that the Rules contemplate the filing of a fresh application on deficiencies being noted in respect of the first application and if the petitioner does not file the fresh application within the time limit prescribed in sub-section (1) of Section 54 of the CGST/SGST Acts, the application has to be rejected as time barred. It is submitted that in terms of Ext.P5 notification only the time between the date of the first application and the date of intimation of the deficiencies will have to be excluded from the time prescribed in sub-section (1) of Section 54 of the CGST/SGST Acts.

5. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader and having regard to the facts and circumstances of the case, I am of the opinion that the petitioner is entitled to succeed. Sub- section (1) of Section 54 of the

CGST/SGST Acts reads thus:

"54. Refund of tax.—

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

**PROVIDED that** a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed".

Rule 90 of the CGST Rules deals with acknowledgement of an application for refund. Sub-rule (3) of Rule 90 of the CGST Rules no doubt requires the filing of a fresh refund application after rectification of deficiencies pointed out in respect of the first application. However, the said sub-rule does not contemplate that the date of the fresh application has to be considered for the purposes of determining the period of limitation for filing an application for refund under sub-section (1) of Section 54 of the CGST/SGST Acts. In that view of the matter, I am of the view that the rejection of the application for refund filed by the petitioner by Ext.P4 communication on the ground that the second application filed by the petitioner was beyond the time specified in subsection (1) of Section 54 of the CGST/SGST Acts cannot be sustained in law.

Accordingly, this writ petition will stand allowed, quashing Ext.P4 and directing that the refund application filed by the petitioner shall be treated as one filed on 05-04-2021, and if the petitioner has cured all the deficiencies, the refund application shall be processed in accordance with the law. In the light of the above, I do not find it necessary to consider the challenge to Ext.P5 notification.

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