



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2876 OF 2021
WITH
WRIT PETITION NO.2891 OF 2021

Sanjeev Suresh DesaiPetitioner

V/s.

Union of India and Ors.Respondents

Mr. Bharat Raichandani a/w. Mr. Prathamesh Gargate i/b. UBR Legal Advocates for petitioner.

Mr. Jitendra B. Mishra i/b. Mr. P.S. Patkar for respondent nos.1 to 3.

Ms. Jyoti Chavan, Addl. GP for respondent nos.4 and 5.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 24th JUNE 2024

PC. :

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1 Since the pleadings in the petitions are completed, we decided to dispose both the petitions with the consent of the parties by this common order.

2 Petitioner is impugning an order dated 21st September 2019 passed by the Assistant Commissioner, CGST and Central Excise, respondent no.2 and an order dated 25th January 2021 passed by the Commissioner of CGST and Central Excise, respondent no.3 and issued on 27th January 2021.

3 Against the order passed by respondent no.2, petitioner had preferred an appeal before respondent no.3 who rejected the appeal on the

grounds that the appeal ought to have been filed within three months with a provision to extend by one month upon sufficient cause being shown but the appeal was filed about 29 days late and hence, barred by limitation. Respondent no.3 has noted that he did not have power to extend the time limit after the extendable one month period is over. We would agree with respondent no.3.

4 Mr. Mishra submitted that if petitioner has not approached this Court within the time prescribed for filing the appeal, this Court could not exercise its jurisdiction under Article 226 of the Constitution of India.

5 We are inclined to exercise our jurisdiction under Article 226 of the Constitution of India particularly in view of the provisions of Article 300A of the Constitution of India.

6 Here is a case where petitioner is an individual carrying on business in the name and style of M/s. Air Miracle. Petitioner undertakes heating, ventilation, air conditioning and cleanroom projects for hospitals, pharmaceuticals companies, IVF laboratories, biotech laboratories etc. Petitioner had supplied goods to one Export Oriented Unit, viz., Apothecon Pharmaceuticals Pvt. Ltd., and on the supply, petitioner had charged IGST at the rate of 18% p.a. Admittedly petitioner has discharged the IGST liability as well.

7 It is petitioner's case that he was entitled to refund of IGST paid and accordingly filed an application for refund claiming a sum of

Rs.17,52,468/-. This application came to be rejected by an order dated 21st September 2019 passed by respondent no.2. In our view, the rejection order has been passed without giving any reasons and also without application of mind.

8 Mr. Mishra states that petitioner was called upon vide a deficiency memo dated 22nd August 2019 and despite the same, petitioner did not supply the deficient documents. There are averments in the petition that petitioner's representative went twice and on the first occasion petitioner was informed that the concerned officer had gone for training and on the second visit, petitioner was simply handed over copy of the impugned order. There are averments in paragraph 4.11 and paragraph 4.12 of the petition. In the affidavit in reply, these facts have been denied. We do not wish to go into this aspect at this time because no assessee, who is entitled to a large sum of Rs.17,52,468/-, will not submit the further documents called for.

9 We note that the impugned order does not disclose why the refund application has been rejected. Further, the impugned order dated 21st September 2019 appears to be from a template used and though the amount of refund being allowed is Nil, the officer has not bothered to even delete the paragraph that the amount is to be paid to the bank account specified by applicant in his application. The officer, however, has deleted the other portions. Therefore, in our view, there has been even non

application of mind by respondent no.2 and on these grounds alone, the impugned order should be set aside.

10 As regards the second order passed by respondent no.3 on 25th January 2021 and issued on 27th January 2021, respondent no.3 has recorded that there has been a delay of 25 days and also recorded the cause that was being shown by petitioner for the delay. The cause, as recorded in the impugned order issued on 27th January 2021, read as under :

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i. The Appellant being the proprietor was not aware of the procedure to be followed and lacked the legal expertise to follow through on the subject matter.

ii. Being the proprietor and handling various business related matters, find it extremely difficult to follow the procedure as required.

iii. Also GST being a new law, all the procedures required in this connection were relatively new as this was the first time the Appellant had applied for the GST refund.

iv. Also the Appellant was not able to find the proper legal opinion initially to resolve the subject matter and came to know recently, that an appeal had to be filed within 90 days of the rejection order.

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11 We could not blame respondent no.3 because he did not have the power to condone this delay but we have. Our judicial conscience does not permit us to reject this cause shown as bogus particularly in view of the fact that petitioner was an individual and the GST regime was at a nascent stage. Moreover, in both the orders impugned in the petitions there is no whisper about the merits of the application.

12 In the circumstances, we hereby quash and set aside the order dated 21st September 2019 passed by respondent no.2 and order dated 25th January 2021 passed by respondent no.3 and issued on 27th January 2021.

13 The matter is remanded to respondent no.2 for *denovo* consideration. Petitioner shall submit the deficient documents, which it says it attempted to submit on 18th September 2019 and again on 25th September 2019, within one week of this order being uploaded. Respondent no.2 shall pass orders on the refund application in accordance with law but before passing any order, shall give a personal hearing to petitioner, notice whereof shall be communicated atleast five working days in advance. Respondent no.2 shall dispose the refund application on or before 15th August 2024.

14 Both petitions disposed.

15 We clarify that we have not made any observations on how much refund petitioner is entitled to. We have, therefore, kept the merits open to be decided by respondent no.2.

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)