

Court No. - 39

Case :- WRIT TAX No. - 964 of 2021

Petitioner :- M/S Zest Inc

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- A.S.G.I., Amit Mahajan

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard Shri Shubham Agrawal, learned counsel for the petitioner and Shri Amit Mahajan, learned counsel for the Revenue.

2. Present writ petition has been filed to challenge the orders dated 19.8.2021 and 13.9.2021, whereby, the petitioner's refund applications dated 31.3.2021 and 21.6.2021 (for the period April, 2018 to March, 2019) and refund application dated 30.6.2021 and 24.7.2021 (for the tax period April, 2019 to June, 2019) have been rejected. Thus, the refund claimed Rs.18,60,677/- and Rs.5,04,459/- has been declined for reason of delay.

3. Having heard learned counsel for the parties and having perused the record, undoubtedly the claim for refund should have been made by the petitioner within two years from the relevant date i.e. date of export. The export having been made during the years 2018 and 2019, the refund applications should have been filed by 2020 and 2021. At the same time, it cannot be lost sight that owing to spread of Pandemic Covid-19, first upon orders passed by the Supreme Court, in Public Interest Litigation and then in terms of the Government Notification No.13 of 2022, dated 5th July, 2022, the limitation for the duration 15.2.2020 to 28.2.2022 remained suspended.

4. Seen in that light, the applications for refund were filed by the petitioner not later than 21.6.2021 (for the tax period April, 2018 to March, 2019) and not later than 24.7.2021 (for the tax period April, 2019 to June, 2019).

5. Any doubt that may have existed in that regard, was resolved by a Co-ordinate Bench of this Court in **Gamma Gaana Ltd. vs. Union of India, 2022 (60) G.S.T.L. 224 (All.)**

6. That being the clear position in law, the impugned orders dated 19.8.2021 and 13.9.2021 in so far as they seek to reject the claim for refund of Rs.18,60,667/- (for the period April, 2018 to March, 2019) and Rs.5,04,459/- (for the period April, 2019 to June, 2019), for the solitary reason of delay, cannot be sustained.

7. In his usual fairness, Sri Amit Mahajan, learned counsel for the revenue states that the dates are not in dispute. Therefore, no useful purpose may be served in calling for a counter in such proceeding. Accordingly, the matter has been proceeded. On his part, Sri Shubham Agarwal, learned counsel for the petitioner has not pressed prayer No. 'A'.

8. Accordingly, the orders dated 19.8.2021 and 13.9.2021 are, hereby, set aside and the matter remitted to respondent No.3 i.e. Assistant Commissioner, CGST, Division- (IV) to proceed to pass fresh orders on the refund applications made by the petitioner, without raising any objection as to delay. Such exercise may be completed as expeditiously as possible, preferably, within a period of three months from today, after giving opportunity of hearing to the petitioner, if any part of the claim is proposed to be rejected.

Order Date :- 18.12.2023

Kamarjahan

(R.M.N. Mishra, J.)

(S. D. Singh, J.)