



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3595 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

=====

Approved for Reporting	Yes	No
		✓

=====

M/S VARIDHI COTSPIN PRIVATE LIMITED

Versus

UNION OF INDIA & ORS.

=====

Appearance:

MR HARDIK P MODH(5344) for the Petitioner(s) No. 1

MS SHRUNJAL T SHAH ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 3

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1,3,4,5

=====

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 07/10/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Hardik Modh for the petitioner and learned Assistant Government Pleader Ms. Shrunjal T. Shah for the respondents.

2. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Shrunjal Shah waives service of notice of Rule for

the respondents.

3. Having regard to the controversy involved which is in narrow compass, this matter is taken up for hearing with the consent of learned advocates for both the parties.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :

“11(a) This Hon’ble Court may be pleased to declare that Para No. 12 to Circular No. 125/44/2019-GST dated 18.11.2019 (Annexure-D so far as it relates to directing to file the rectified refund claim within a period of 2 years of the relevant date as defined in Explanation after sub-section 14 of Section 54 of the CGST Act is ultra vires to Section 54 of the CGST Act, 2017;

(b) that this Hon’ble Court be pleased to issue a writ of certiorari or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction calling upon the required proceedings in relation to the impugned order in Form RFD-06 on 24.11.2023 vide Order No. ZD241123035802V (Annexure-Q) and after going the legality and propriety thereof, to quash the impugned order dated 24.11.2023 issued by the respondent no. 5;

(c) that this Hon’ble Court be pleased to issue a Writ of mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction, directing the Respondent to entertain the refund filed in prescribed Form RFD-01 online portal for the month of December, 2017 to the extent of Rs.83,51,438/- along with interest at appropriate rate as deemed fit by this Hon’ble Court;

(d) that this Hon’ble Court be pleased to direct the Respondents, by themselves, their servants and agents, pending the hearing and final disposal of the Petition to sanction the refund claim filed in Form RFD-01 online portal for the month of December 2017 to the extent of Rs.83,51,438/- along with interest with such terms and conditions as deemed fit by this Hon’ble Court;

5. The brief facts leading to filing of the writ petition is that the petitioner is a private limited company engaged in the business of textile products and registered with Gujarat Goods and Service Department under the provisions of the Central Goods and Services Tax Act, 2017 (For Short “the CGST Act”). The petitioner procures capital goods from the domestic and international market. The petitioner has been granted license under the Export Promotion Capital Goods Scheme prescribed under Chapter 5 of the Foreign Trade Policy 2015-20. Section 147 of the CGST Act provides that the Government may notify certain supplies of goods as deemed exports. It is the case of the petitioner that in view of the Foreign Trade Policy 2015-20, the petitioner procured the goods from the domestic market for the purpose of export. The petitioner thereafter filed refund application under Section 54 of the CGST Act in Form RFD-01 for the amount of IGST paid on the procurement of the capital goods from the domestic market. The petitioner claimed refund to the tune of Rs.83,51,438/- by filing Form RFD-01 on 13.11.2018.

5.1. Subsequent to the filing of the refund application, the



petitioner again filed rectified refund claim in Form RD-01 on 28.12.2019. Against the first rectified refund application, a deficiency memo in Form GST RFD-03 was issued by the respondent under Rule 90(3) of the Central Goods and Services Tax Rules, 2017 (For Short “the CGST Rules”) alleging that the petitioner had not furnished certain declarations and documents. It is the case of the petitioner that pursuant to the issuance of deficiency memo, due to pandemic of Covid-19, the proceedings came to stand still.

5.2. Thereafter, the petitioner again preferred second rectified refund application in Form RFD-01 under Section 54 of the CGST Act on 31.05.2021 along with all the necessary documents. After the verification of the second rectified refund application, the respondent issued acknowledgment in Form RFD-01 on 19.06.2021 evidencing that the refund application was complete and there was no document left out for claiming the refund. However, on the same date i.e. on 19.06.2021, a show cause notice in Form RFD-08 was issued by the respondent seeking to show cause as to why the refund application should not be rejected. It is the case of the



petitioner that on 13.07.2021, the respondent rejected the second rectified refund application in Form RFD-06, which has led to filing of the writ petition being Special Civil Application No. 2767 of 2023 before this Court. This Court vide order 21.02.2023 quashed the order dated 13.07.2021 rejecting the refund application, on the ground of violation of principles of natural justice and the matter was remanded back to the respondent for fresh adjudication. It was further directed to the respondent to complete the entire proceedings within the limit limit of 12 weeks from the date of the order.

5.3. Pursuant to the order passed by this Court, the petitioner preferred third rectified refund application in Form RFD-01 on 16.08.2023, which according to the petitioner was in continuation of the earlier refund application dated 31.05.2021.

5.4. Thereafter, the respondent issued a show cause notice dated 27.09.2023 seeking to show cause as to why the refund application should not be rejected, more particularly, on the ground that as per the provisions of Section 54(1) of the CGST Act, the application for refund was not within the prescribed



time limit. In response to the said show cause notice, a detailed reply was filed by the respondent on 12.10.2023.

5.5. It is the case of the petitioner that without affording any opportunity of being heard, the refund application in Form RFD-06 came to be rejected vide order dated 24.11.2023. Being aggrieved and dissatisfied with the impugned order dated 24.11.2023 passed by the respondent, the petitioner preferred an appeal before the appellate authority as per Section 107 of the CGST Act. It is the case of the petitioner that the circular which is impugned in the present writ petition would not permit the appellate authority to allow the refund application and the refund application will be rejected on the ground of limitation itself. In view of such circular, the present writ petition is preferred challenging the impugned order dated 24.11.2023 rejecting the refund application in Form RFD-06. However, it has been categorically accepted by learned advocate Mr. Modh that the prayer challenging the circular would not be pressed by the petitioner.

6. Learned advocate Mr. Hardik Modh for the petitioner

submitted that the respondent no. 5 ought to have appreciated the fact that the petitioner had filed the refund application of deemed exports within the time limit as prescribed in the definition of “relevant date” defined under Explanation after Section 54(14) the CGST Act while rejecting the refund claim dated 16.08.2023 on the ground of limitation.

6.1. It is further submitted that as per Rule 90(3) of the CGST Rules, and after rectification of the deficiency if any pointed out by the authorities upon filing of the refund claim, a fresh refund application is required to be filed by the applicant. In the instant case, the petitioner has filed the rectified refund application from time to time. It is, therefore, submitted that once the original refund application is filed within the time period as prescribed, the subsequent filing of rectified refund application cannot be considered as separate legal proceedings.

6.2. Learned advocate Mr. Hardik Modh further submitted that the respondent ought to have appreciated the intention of the legislature for invoking limitation period in respect of the refund claim under Section 54 of the CGST Act as well as the

procedure for filing fresh refund claim under Rule 90 of the CGST Rules. Learned advocate Mr. Hardik Modh submitted that in catena of decisions it is held that the time limit is required to be computed from the date on which refund claim was originally filed by the applicants.

7. In support of his submissions, learned advocate Mr. Hardik Modh has placed reliance on the following decisions :-

1. In case of ***M/s. Ktex Non-Woven Pvt. Ltd. v. Union of India*** reported in **2023(9) TMI 1147- Gujarat High Court.**
2. In case of ***Oil and Natural Gas Corporation Ltd. v. Union of India*** reported in **2017 (354) E.L.T. 21 (Guj.)**
3. In case of ***Joshi Technologies International v. Union of India*** reported in **2016 (339) E.L.T 21 (Guj.)**
4. In case of ***Binani Cement Ltd. v. Union of India*** reported in **2013 (288) E.L.T. 193 (Guj.)**
5. In case of ***Commr. Of C. Ex (Appeals) Bangalore v. KVR Constructions*** reported in **2012 (26) S.T.R. 195 (Kar.)**
6. In case of In case of ***National Internet Exchange of India v. Union of India & Ors.*** reported in **2023 (8) TMI 1211.**
7. In case of ***M/s. La-Gajjar Machineries Pvt. Ltd. v. Union of***



India & Ors., rendered in Special Civil Application No. 15872 of 2021 dated 27.09.2023.

8. In case of **M/s. Darshan Processors v. Union of India** rendered in Special Civil Application No. 2114 of 2011 dated 26.07.2024.

8. *Per contra*, learned Assistant Government Pleader Ms. Shrunjal Shah for the respondents relying upon the affidavit-in-reply filed on behalf of the respondents contended that after correction, the deficiency application is treated as fresh refund application and it ought to have been submitted within a period of two years of the relevant date as defined in the explanation after sub-section (14) of Section 54 of the CGST Act. Learned Assistant Government Pleader Ms. Shrunjal Shah has relied upon the averments made in the affidavit-in-reply more particularly paragraph 5.5 and 5.6 which reads as under :-

“5.5 In this regard, it is pertinent to mention that filing of fresh refund application is required under Rule 90(3) only and the said rule clearly provides that where any deficiencies are noticed in the refund application, the proper officer shall communicate the deficiencies to the application in Form GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. The said para of Circular essentially mentions the same that post rectification of deficiency, a fresh refund application has to be filed. Now, if the refund application is treated as fresh, it also implies that the time limit as prescribed under Explanation to Section 54 shall apply in a natural manner.

5.6. In this regard, reference is invited to the sub-section (7)

of Section 54 which provides that the refund has to be sanction within 60 days from the date of receipt refund application complete in all respects. Therefore, it can be said that Rule 90(3) is in alignment of sub-section (7) of Section 54 as an incomplete application of refund cannot be considered to be an application for refund and cannot be acknowledged.”

8.1. In wake of such submissions, learned Assistant Government Pleader Ms. Shrunjal Shah has requested that the petition does not deserve consideration and the same may be dismissed in limine.

9. Having heard the learned advocates for the respective parties and having perused the material on record, the core question for consideration is that subsequent to the refund application triggered with deficiency memo issued in Form RFD-03 is merely continuation of proceedings or fresh cause. In the instant case, the first deficiency memo was issued on 09.01.2020. It is therefore clear that time period from the date of filing of the refund claim in Form GST RFD-01 till the date of communication of the deficiency in the Form of GST RFD-03 by the proper officer is required to be excluded from the period of two years, as specified in respect of any such fresh refund claim filed by the applicant after rectification of the deficiency. However the issue is no more res integra with the decision of

this Court in case of ***M/s. La-Gajjar Machineries Private Limited v. Union of India & Ors.*** rendered in *Special Civil Application No. 15782 of 2022 dated 27.09.2023*, wherein it is observed as under :-

"[9] Having heard the learned advocates for the respective parties and considering the facts and the provisions of law, which are reproduced herein-above, short question which arises for consideration is whether the petitioner is entitled to get the refund by considering the period of limitation as explained in the definition of "relevant date" as per the Explanation after sub-section (14) of Section 54 of the CGST Act to be considered from the date of filing of the original refund application or from the date of filing of the rectified refund application after receipt of the deficiency memo from the respondents authorities.

[10] Such question is considered by the Hon'ble Delhi High Court in the case of National Internet Exchange of India (supra), wherein after considering the provisions of Section 54 of the CGST Act and the Rule 90 of the CGST Rules, it was held as under:

"18. It is apparent from the above that once an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same is necessarily required to be accepted.

19. An application can be rejected as deficient only where any deficiencies are noted. The contextual reading of Sub-rule (3) with Sub-rule (2) of Rule 90 of the CGST Rules, indicates that the deficiencies referred to in Sub-rule (2) of Rule 90 of the CGST Rules are those that render an application incomplete in terms of Sub-rules (2), (3) and (4) of Rule 89 as stipulated in Sub-rule (2) of Rule 90. Thus, if an application is complete in terms of Sub-rule (2), (3) and (4) of Rule 89 of the CGST Rules, the same cannot be rejected, relegating the taxpayer to file afresh. In any view of the matter, the period of processing the said application under Sub-section (7) of Section 54 of the CGST Act, is required to be counted from the said date.

20. However, notwithstanding the fact that the application for refund is complete inasmuch as it is accompanied by the documents as specified in Sub-rule (2) of Rule 89 of the CGST Rules, the proper officer may withhold the processing of refund,

if he is not completely satisfied that the same is refundable to the taxpayer. In such circumstances, where the proper officer requires to further verify the claim or is unable to process it on account of discrepancies noticed by him, he is required to issue notice in Form GST RFD-08 in terms of Sub-rule (5) of Rule 90 of the CGST Rules.

** * **

22. It is clear from the deficiencies as mentioned that the proper officer had noticed certain discrepancies in the documents. In addition, he also required the petitioner to provide certain documents in order to verify its claims for refund. It is also apparent that some of the documents demanded were not relevant as the petitioner's claim was for refund of IGST and not unutilised ITC.

23. The nature of the deficiencies as set out in deficiency memo no.2 clearly indicate that the application filed by the petitioner was not incomplete in terms of Rule 89(2) of the CGST Rules. Sub-rules (3) and (4) of Rule 89 of the CGST Rules are not applicable in the facts of the present case. The petitioner had, in terms of Clause (c) of Sub-rule (2) of Rule 89 of the CGST Rules, submitted a statement containing the number and date of invoices and the relevant Bank Realisation Certificates/Foreign Inward Remittance Certificates. It was also accompanied by the necessary declaration as specified.

24. In view of the above, the application for refund filed by the petitioner on 31.10.2019 could not be ignored or disregarded.

25. As noted above, in terms of Section 54(1) of the CGST Act, an application is required to be made in the prescribed form and manner before two years from the relevant date. It is clear that the petitioner had complied with the said requirement inasmuch as it had filed an application for refund on 31.10.2019 in the "form and manner" as prescribed in the CGST Act and the CGST Rules. Thus, in terms of Section 54(1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner.

26. This Court in an earlier decision in Bharat Sanchar Nigam Limited v. Union of India & Ors.: 2023:DHC:2482-DB and in similar circumstances held as under:

"28. We are of the view that Rule 90(3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application filed by a taxpayer as non est.

29. If the application filed is not deficient in material particulars, it cannot be treated as non est. If it is accompanied by the "documentary evidences" as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the application is required to be treated as non est for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued."

[11] In view of Notification No.15/2021 dated 18th May 2021, herein the proviso is added in Rule 90(3) of the CGST Rules, reads as under:

***"Provided** that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies,"*

It is therefore clear that time period from the date of filing of the refund claim in Form GST RFD-01 till the date of communication of the deficiency in the Form of GST RFD-03 by the proper officer is required to be excluded from the period of two years, as specified in respect of any such fresh refund claim filed by the applicant after rectification of the deficiency. The insertion of proviso to Rule 90(3) of the CGST Rules is therefore clarificatory in consonance with the objective of Section 54(1) of the CGST Act. In our opinion, the same would be applicable in the facts of the case also where the rectified refund application filed by the petitioner is within the period of limitation after applying the above provision and shall fall within two years after excluding the period from the date of filing of the refund claim in Form GST RFD-01 till the date of communication in Form

GST RFD-03, which is calculated by the petitioner as 26 days as under:

<i>Date of filing the Refund claim</i>	<i>Date of deficiency pointed out</i>	<i>Days to be excluded</i>
<i>16.12.2019</i>	<i>27.12.2019</i>	<i>11</i>
<i>27.01.2020</i>	<i>11.02.2020</i>	<i>15</i>
<i>13.02.2020</i>	<i>Nil</i>	

The refund claim of the petitioner pertains to December 2017, due date of filing return would be 22nd January 2018, two years period of limitation therefore would be over on 22nd January 2020. By adding 26 days as above, last date of filing refund would be 27th February 2020 whereas the petitioner filed second rectified refund claim on 13th February 2020.

[12] Therefore, applying the Circular No.15/2021 also, the refund claim of the petitioner cannot be rejected and the reliance placed by the respondent on Clause 12 of Circular No.125/44/2019-GST dated 18th November 2019 would not be applicable.

[13] Considering the facts of the case where the first deficiency memo dated 27th December 2019 is only for not attaching supportive documents by the petitioner and the first rectified refund application was filed on 27th January 2020 along with requisite documents, as required by the respondents authorities. Thereafter, the second deficiency memo dated 11th February 2020 was issued with the same reasons for providing documents with the remarks "invoice(s) not shown in GSTR-2A but ITC is claimed in Annexure-B, for that eligible documents are not uploaded". The petitioner filed second rectified application on 13th February 2020. Thus, the last date for filing the refund application upto December 2019 was extended upto 22nd January 2020 and considering the period of two years, the limitation period of relevant date would be over on 22nd January 2020 and considering 26 days of issuance of deficiency memo by the respondents authorities and adding the limitation for filing rectification application would therefore extend upto 17th February 2020 (22.01.2020 + 26 days = 17.02.2020). But the petitioner has filed the second rectified application on 13th February 2020 and applying the Notification No.15/2021, refund claim of the petitioner would be within the period of limitation. Therefore, as held by the Hon'ble Bombay High Court in the case of National Internet Exchange of India (supra), in terms of Section 54(1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents

or material to satisfy himself that the refund claimed was due to the petitioner. The Notification No.15/2021 dated 18th May 2021 is issued so that Rule 90(3) of the CGST Rules operates in accordance with the provisions of Section 54(1) of the CGST Act and therefore, the same is required to be applied to the facts of the case also."

10. For the foregoing reasons, and in view of the decision rendered by this Court in *M/s. La-Gajjar Machineries Pvt. Ltd. (supra)*, the petition succeeds. The impugned order dated 24.11.2023 passed by the respondent rejecting the application of refund in Form RFD-06 filed by the petitioner on the ground of limitation is hereby quashed and set aside. The third rectified refund application dated 16.08.2023 is restored for consideration of the proper officer afresh on merits. The respondent - proper officer shall consider the refund application on merits and complete the entire exercise in accordance with law within a period of 12 weeks from the date of receipt of copy of this order.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

phalguni