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EXTENSION OF LIMITATION BY HON'BLE SC DUE TO COVID 19 – IMPLICATIONS FOR GST REFUNDS

Prologue

COVID – 19, in its many avatars and many waves of attack (comparable only to Mahmud of the Ghaznavid Empire), has left an indelible and in many cases irreparable impact on many of our lives. The World of GST is no exception to this.

On account of the pandemic situation and resultant difficulties that may be faced by litigants in filing their petitions/applications/suits/ appeals/all other proceedings, the Hon'ble Supreme Court vide order dated 23.03.2020 in *Suo Motu W.P (C) 3/2020* had ordered that all limitations (whether condonable or not) under General and Special Laws shall stand extended, w.e.f. 15th March 2020 till further orders. This order will have implications for various proceedings under the GST Law, However, in this article, the author tries to examine the implications of the said Order on Refund **Applications** under GST Law.

Summary of Hon'ble SC's *Suo Moto* Order(s)

The Hon'ble Supreme Court vide order dated 23.03.2020 in *Suo Motu W.P (C) 3/2020* has ordered as follows –

*"This Court has taken **Suo Motocognizance** of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their **petitions/applications/suits/ appeals/all other proceedings** within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State)....*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, **it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.."***

The Hon'ble Supreme Court further observed as follows – *"..We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that **this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.***

Thereafter on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The suo-motu proceedings were, thus, disposed of issuing the following directions –

- “1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply

Due to the 2nd wave of Covid in India and Surge in cases, the Apex Court vide order dated 27.04.2021 restored the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or whether condonable or not, shall stand extended till further orders as follows -

*“We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, **shall stand extended till further orders.**”*

*We have passed this order in exercise of our powers **under Article 142 read with Article 141 of the Constitution of India.** Hence it shall be a binding order within the meaning of Article 141 on all Courts/ Tribunals and Authorities.”*

Applicability to Refund Matters

Whether the said order will also cover Refund applications u/s 54 of the GST Act r/w Rules 89 / 96 / 96A of the CGST Act, 2017, among other point to be considered.

Sec. 54(1) specifies that, 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 2 years from the relevant date in such form and manner as may be prescribed. The 2nd Explanation to Sec. 54 defines “Relevant Date” under various situations.

It is important to note that in this context, the Govt. has issued notifications in light of the 2nd wave of COVID and Notification 24/2021 CT (amending Notfn. No. 14/2021 – CT, dt.01.05.2021), which prescribes a blanket relaxation u/s 168A, as under –

*(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the **15th day of April, 2021 to the 29th day of June, 2021**, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, **shall be extended upto the 30th day of June, 2021**, including for the purposes of –*

- (a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority,*

commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

- (b) *filing of any appeal, reply or **application** or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above; but, such extension of time shall not be applicable for compliances under certain sections under which refund application is not excluded, and thereby covered by the said Notification*

In this context, one has to appreciate whether when already the Impugned SC order in the same domain, is still in force, where does the above Notfn. No. 24 r/w Notification No 14 of 2021 stand? And is there an apparent conflict between the said notification and the Order of the Hon'ble SC (Interestingly similar notification u/s 168A issued during the 1st Wave of COVID in 2020, but it seems only now the Litigant and the Dept. have woken up to this apparent conflict)

Interestingly, the Press Release of the 43rd GST Council meet (where the above notification was recommended), in Para 3D, remarks as follows –

“Relaxations under section 168A of the CGST Act: Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from 15th April, 2021 to 29th June, 2021, to be extended upto 30th June, 2021, subject to some exceptions.

[Wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply]”

It is also information available with the author, that legal opinion obtained by the Commercial Taxes Department in a few states, have categorically addressed this very same point and have opined that the impugned extension order of the Hon'ble SC, would be applicable to the Refund application also.

The Tamil Nadu CTD Dept., in its instructions to its filed formations dated 07.04.2021, in the context of admitting Revocation of time barred Regn. cancellation applications, in Para 6, remarks –

“The Proper Officer being Quasi Judicial Authority and Deputy Commissioner, GST Appeals, Joint Commissioner, GST Appeals, being Judicial Authorities are also bound by the Order of the Supreme Court and hence for the purpose of Revocation of Cancellation of Registraion issued under GST Act, 2017 the following instructions are issued...”

To complicate things further, the Circular No. 157/13/2021-GST [F. NO. CBIC-20006/10/2021], dt. 20-7-2021, has been issued by the CBIC after obtaining a Legal Opinion on the said matter.

The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:—

- (i) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/applications/suits/appeals/all other proceedings. All other proceedings should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/suits/petitions etc. and has not extended it to every action or proceeding under the CGST Act.
- (ii) For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) 3 of 2020* vide order dated 27th April 2021. Thus, as on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc., and not to original adjudication.

- (iii) Various Orders and extensions passed by the Hon'ble Supreme Court would apply only to acts and actions which are in nature of judicial, including quasi-judicial exercise of power and discretion. Even under this category, Hon'ble Supreme Court Order, applies only to a lis which needs to be pursued within a time frame fixed by the respective statutes.
 - (iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.
 - (v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.
 - (vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc.
4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:—
- (a) ***Proceedings that need to be initiated or compliances that need to be done by the taxpayers:— These actions would continue to be governed only by the statutory mechanism and time limit provided/extensions granted under the statute itself.*** Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/compliances on part of the taxpayers.
 - (b) ***Quasi-Judicial proceedings by tax authorities:*** The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may *inter alia* include ***disposal of application for refund***, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.
- Similarly, appeals which are filed and are pending, can continue to be heard and disposed off ***and the same will be governed by those extensions of time granted by the statutes or notifications, if any.***
- (c) ***Appeals by taxpayers/tax authorities against any quasi-judicial order:—*** Wherever any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.
5. ***In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws (admittedly, in the view of the Department, Refund applications will also be excluded from the benefit of the impugned SC order)***

Epilogue

The Author, has so far consciously stopped short of giving his opinion on the above matter or has not attempted to interpret the impugned order of the Supreme Court and its interplay with the above notification and circulars issued. But this apparent conflict, throws the following important questions –

1. What is the position of the said circular and notification issued by the Department, in light of the Suo Moto order of the Hon'ble SC.
2. Can a circular issued by the CBIC override or abridge the relief granted by the Impugned Order of the Hon'ble Supreme Court?
3. If not, is the CBIC in violation of Contempt of the Impugned Order of the Hon'ble Supreme Court?
4. Without prejudice to the above, is the impugned Circular in violation of Article 14 of the Constitution of India, since the said Circular purports to discriminate against certain Litigants, by artificially excluding them from the benefit of the impugned SC order?
5. Will the artificial distinction between – (a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers, (b) Quasi-Judicial proceedings by tax authorities and (c) Appeals by taxpayers/tax authorities against any quasi-judicial order, created by the Impugned Circular, stand the test of reasonable classification / intelligible differentia for the purpose of Article 14 of the Constitution?

It is not as though the COVID Pandemic affected different litigants and different proceedings, differentially. No wonder they call nature the great leveller!

Disclaimer:

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