

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 90 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3076 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 226 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 2815 of 2022

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POOJA DEHY FOODS PVT. LTD. THROUGH ITS DIRECTOR MALANI
KANUBHAI KESHAVBHAI
Versus
UNION OF INDIA

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 1
MR DHAVAL D VYAS(3225) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 21/09/2022
COMMON ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr. Hiren Trivedi for the petitioners and learned advocate Mr. Dhaval Vyas for the respondents, in all the petitions.

2. The prayers in all these petitions are to set aside the order of the Commissioner (Appeals), GST & Central Excise, Rajkot as well as order passed by the Assistant Commissioner, CGST, Division-II, Bhavnagar regarding non-grant of refund of CGST to the petitioners. The petitioners have further prayed to sanction the refund.

3. The prayers taken from the first captioned Special Civil Application No. 90 of 2022 are the following,

(i) to set aside impugned order dated 27.10.2021 passed by learned Commissioner (Appeals), GST & Central Excise, Rajkot (at Annexure-G) and order dated 09.06.2021 passed by Assistant Commissioner, CGST, Division-II, Bhavnagar (at Annexure-E);

(ii) to direct the respondent authorities to immediately sanction the refund of Rs. 29,42,618/- filed vide application dated 30.4.2021 filed in form GST RFD-01A filed bearing Application Reference Number 24AADCP9440MIZ3;

(iii) to direct the respondent authorities to pay interest @ 9% to the petitioner herein on the amount of refund from the date of filling the refund application till the date on which the amount of refund is paid to the petitioner;

4. The ground raised by the authorities in not sanctioning the refund was that the refund applications were belatedly filed under section 54 of the Central Goods and Services Tax Act, 2017.

5. When the petitions come up for consideration, learned advocates for the parties are *ad idem* that in view of the Notification dated 5.7.2022 bearing No. 13/2022 issued by the Central Government in exercise of powers under section 168A of the Central Goods and Services Tax Act, 2017, which excludes the time limit specified for computing of period of limitation in filling the refund application, the claim of the petitioners for

refund was filed within such excluded period.

5.1 The Notification reads as under, in particular clause (ii) of the Notification applies to the case of the petitioners,

NOTIFICATION
New Delhi, the 5th July, 2022
No. 13/2022-Central Tax

G.S.R. 516(E)-In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery erroneous refund;

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with

effect from the 1st day of March, 2020.

[F. No. CBIC-20001/2/2022-GST]
Rajeev Ranjan, Under Secretary

5.2 The above aspect could not be disputed by learned advocate for the respondents. He additionally produced copy of E-mail communication dated 31.8.2022 from the competent authority which confirmed the application of the aforesaid Notification dated 5.7.2021 in the facts of the case of the petitioner to bring the refund claim of the petitioners within time.

6. In light of the above, the competent authority of the respondents is directed to process in accordance with law the claim of refund of the petitioners in each of the captioned petitions treating it within time and grant refund with statutory interest, if the petitioners are found eligible. The exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

7. These petitions stand disposed of in the aforesaid terms.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

C.M. JOSHI