

TAX INFO

Dated 20/09/2022

Latest update on GST Law: **Limitation period should exclude Period from 01.03.2020 to 28.02.2022 for filing of GST Refunds** as given in judgement by **Andhra Pradesh High Court**.

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Name of Petitioner	Gandhar Oil Refinery India Limited
Name of Respondent	Assistant Commissioner of Sales Tax
Court	Andhra Pradesh High Court
Date of Judgement	24.08.2022
Appeal No.	Writ Petition No.24873 of 2022

Brief Facts of the Case Law:

The petitioner was engaged in business of trading of Coal and he filed refund application for the tax period May, 2018 to May, 2019 on 22.09.2021. But a show cause notice was issued to the petitioner on 12.10.2021, proposing to reject the application, on the ground that the application made by the petitioner, is barred by limitation. But, since the application came to be made beyond the period of two years prescribed under Section 54(14) of the CGST Act coupled with Circular dated 20.07.2021, the Department passed the order dated 16.06.2022, rejecting the request of the petitioner. Hence, the present writ petition came to be filed.

Contention of Petitioner:

A perusal of the material on record would show that the refund application came to be made by the petitioner was on 22.09.2021, for the Tax period May, 2018 to May, 2019. A plain reading of the Clause 2 to the Explanation to Section 54 of the CGST Act, show the 'relevant date' is prescribed only for goods exported out of India, but there is no provision determining the 'relevant date' in respect of the supplies to SEZ units, which are considered as zero-rated sales under Section 16 of IGST Act, 2017. It would be relevant to note that the recent Notification issued CBIC, dated 05.07.2022 clearly postulates that the period from 1st March, 2020 to 28th February, 2022, for computation of period of limitation for filing refund application under Section 54 or Section 55 of the said Act shall stand excluded.

In view of the subsequent Notification dated 05.07.2022 issued by the CBIC, the rejection of application for refund is bad in law.

Contention of Department:

The order passed by the authorities was based on the Circular dated 20.07.2021, cannot be found fault with. Going through Clause 3(iii) and Clause 4(b) of the said Circular states that there is no illegality in the order passed by the Department.

Decision of the Court:

It cannot be said that the application for refund was made beyond the period of limitation. Hence, the order under challenge was set aside and the matter was remanded back to the Department, for fresh consideration in accordance with law.

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