

TAX INFO

Dated 18/01/2023

Latest update on GST Law: Information regarding **Limitation period for the Refund application cannot be overlooked except for unconstitutional levy** as given in **Judgement by Madras High Court**.

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Name of Petitioner	Quest Global Engineering Services Private Limited
Name of Respondent	Deputy Commissioner
Court	Madras High Court
Date of Judgement	21/12/2021
Appeal No.	W.P.No.12105 of 2020

Facts of the Case:

The Transferor Company namely the Quest Global Engineering Private Limited stood merged with the petitioner. The said Transferor Company had raised invoices during the month of June, July, August and September, 2017 on their customer namely M/s. Caterpillar India Private Limited and had discharged the tax liability.

After the amalgamation of the said Transferor Company namely Quest Global Engineering Private Limited with the petitioner and pursuant to the order of the National Company Law Tribunal on 01.10.2017, the data/information in the system of the said transferor company were integrated with the data/information of the petitioner. By mistake, the system picked the same invoices on which service tax was paid by the transferor company and which were reflected in the returns for the period between June, July, August and September 2017. On 01.11.2017, tax was paid by the petitioner without either actually supplying service to their customer or by raising corresponding invoice on the customer. All the invoices which are dated 01.11.2017 in the returns were never generated by the petitioner. However, the petitioner ended up paying tax on account of invoice numbers being generated on 01.11.2017. The refund claim was filed on 30.05.2020 which was rejected on ground that the refund claim should have been filed within two year from the date of payment of tax by the petitioner but the refund claim was filed on 30.05.2020, long after the expiry of limitation prescribed under Section 54 of the CGST Act, 2017. Also, the petitioner has neither filed any records to substantiate that the tax was paid on an earlier occasion between June, July, August and September 2017 nor has produced any proof to substantiate that the said customer namely M/s Caterpillar India Private Limited had not availed Input Tax Credit based on the invoice raised by the petitioner. The Petitioner referred to the Circular No.26/26/2017-GST dated 29.12.2017 claiming the amount paid in excess has to be refunded to the petitioner. He pointed out at the issues arising out of the difficulties experienced during first year during the implementation of GST.

Decision of the Court:

The option available to the petitioner was to request its customer M/s. Caterpillar India Private Limited to issue appropriate credit notes to neutralize the alleged excess payment of GST while generating and issuing invoices dated 01.11.2017 details of which was captured in their regular return and tax was paid.

As per **the decision of the Hon'ble Supreme Court in Mafatlal Industries Vs Union of India**, except in the case of unconstitutional levy, limitations prescribed under the Act cannot be overlooked. The tax was paid on 01.11.2017 but the refund claim was filed only on 30.05.2020 and therefore the petitioner's refund claim was beyond the period specified under the Act.

The refund claim filed by the petitioner is clearly barred under the limitation prescribed under Section 54(1).

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