

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA
REFERENCE NO- SKKA/102/2022**

BASIC INFORMATION

IN THE MATTER OF	SAIHER SUPPLY CHAIN CONSULTING PVT. LTD.
NAME OF Authority	IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Petition/Appeal No.	WRIT PETITION (L.) NO. 1275 OF 2021
Link to	2022-TIOL-48-HC-MUM-GST
Date of Order	10-01-2022
Relevant Section/Rule	Cognizance for Extension of Limitation as provided by the Apex Court would apply for refund applications under GST also.

FACTS IN BRIEF

The petitioner, Saiher Supply Chain Consulting Pvt. Ltd. filed two refund applications as on 21.08.20 and 08.09.20 for refund of GST. Both the applications were rejected vide orders dated 05.09.20 and 23.09.20 respectively, on the ground that there were certain deficiencies. A third application was filed on 30.09.20. This was also rejected, stating that it was required to be filed within two years under Circular No. 20/16/04/18-GST dated 18.11.19 and thus it was time barred. Based on the rule of Cognizance for Extension of Limitation as provided by the Apex Court, the petitioner filed a Writ Petition, under Article 226 of the Constitution of India, seeking for quashing and setting aside the Rejection Order and hence invoking restoration of the third refund application.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while allowing the Writ Petition held as :-
 -The Order passed by the Hon'ble Supreme Court on 23.03.2020 in Re:Cognizance for Extension of Limitation avers that the period of limitation in all the proceedings stand excluded from 15.03.20 till 02.10.21. Accordingly, the outstanding period of limitation will be available with effect from 03.10.21. Furthermore, in cases where the limitation would have expired between the period 15.03.20 till 02.10.21, all persons shall have a period of 90 days from 03.10.21. **In the light of this extension, the third application was not supposed to be rejected.**
 -In the Petitioner's case, the limitation period fell between 15.03.20 and 02.10.21, which was excluded by the Hon'ble Supreme Court with reference to all the proceedings irrespective of the limitation prescribed under the general law. **Consequently, the Order passed by the Respondent was in contrary to the Order passed by the Hon'ble Supreme Court and thus the same was quashed and set-aside. The third refund application was restored and the Respondent was directed to contemplate it on his own merits and in accordance with law expeditiously. Thus, Writ petition was allowed in the aforesaid terms**

OUR COMMENTS

Defying the Order passed by the Hon'ble Supreme Court is inadmissible on the part of the Respondent. The Cognizance for Extension of Limitation Judgement was passed with the objective to circumvent difficulties so that litigants are not required to file proceedings with respect to period of limitation. In the given case, the Respondent disregarded the Order of SC. Reliance has also been placed on the judgement of the Madras High Court in the case of M/s.GNC Infra LLP Vs. Assistant Commissioner (Circle). Thus all refund applications which were made within time limit as per statue u/s 54 of the CGST Act, 2017, however deficiency memo was issued from time to time and when again the application was filed removing the defects, it cannot be held that the new application is time barred as the same has been filed within the extension provided by the Apex Court in this regard. The department is using Rule 90(3) of the CGST Rules, 2017 as a sword to get refund applications time barred leading to litigations of the above sort.