

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**

WP(C) No. 2045/2023 c/w
WP(C) No.1577/2023
WP(C) No. 2044/2023

Reserved on: 20.08.2024
Pronounced on: 31 .08.2024

WP(C) No.2045/2023

V.K.Garments through its proprietor Mr. Vinod Sachdeva SIDCO
Complex Phase II Bari Brahmana District Samba, J&K R/O 30
Ext.Karan Nagar Jammu.

Petitioner

Through: Mr. A.H.Naik Sr. Advocate with
Mr. Sachin Sharma Advocate.

Vs.

1 Union of India through Secretary Department of Revenue Ministry of
Finance North Block New Delhi 110001

2. Commissioner Central Excise/Central Goods and Service Tax
Commissionerate Jammu OB-32 Rail Head Complex Jammu

Respondents

Through Mr. Rohan Nanda CGSC

WP(C) No. 1577/2023

M/S Hallmark through its parner Mr. Vinod Sachdeva SIDCO
Complex Phase II Bari Brahmana District Samba, J&K

petitioner(s)

Through: - Mr. A.H.Naik Sr. Advocate with
Mr. Sachin Sharma Advocate.

Vs.

1 Union of India through Secretary Department of Revenue Ministry of
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Commissionerate Jammu OB-32 Rail Head Complex Jammu

Respondents

Through Mr. Rohan Nanda CGSC

WP(C) No. 2044/2023

Creative Garments through its parner Mr. Vinod Sachdeva SIDCO
Complex Phase II Bari Brahmana District Samba, J&K R/O 30
Ext.Karan Nagar Jammu.

Petitioner

Through: Mr. A.H.Naik Sr. Advocate with
Mr. Sachin Sharma Advocate.

Vs.

1 Union of India through Secretary Department of Revenue Ministry of
Finance North Block New Delhi 110001

2. Commissioner Central Excise/Central Goods and Service Tax
Commissionerate Jammu OB-32 Rail Head Complex Jammu

Through: Mr. Rohan Nanda CGSC

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

WP(C) No. 2045/2023

Sanjeev Kumar J

1 The petitioner is a proprietorship concern and was registered with the Central Excise Department vide Registration No. ADCPS8068DEM002 for manufacturing of readymade garments falling under Chapter 62 of the Central Excise Tariff Act, 1985 ['Act of 1985' for short. The petitioner is aggrieved and has challenged an order dated 02.02.2023 passed by respondent No.2 ['impugned order'] whereby two applications dated 27.12.2022 filed by the petitioner for fixation of special rate of actual value addition for the financial years 2011-2012 and 2012-13 have been rejected being barred by limitation.

3 The short grievance projected by the petitioner is that in terms of Notification No. 56/2002-CE dated 14.11.2002, it was entitled

to 100% refund of the excise duty on the goods manufactured by it. However, vide notification No. 19/2008-CE dated 27.03.2008, the exemption notification issued in the year 2002 was amended and refund of excise duty was restricted to the duty payable on value addition undertaken in the manufacture of the goods. A table was introduced in the original notification containing a rate of value addition for different goods. Furthermore, in terms of clause 2.1 of the Notification dated 27.03.2008, the manufacturer was given an option not to avail the rates specified in the table and apply to the Commissioner for fixation of a special rate representing the actual value addition in respect of goods manufactured and cleared under the Notification. The notification dated 10.06.2008 clearly provided that such an application seeking fixation of special rates must be filed by the manufacturer prior to 30th of September in a particular financial year. The notification No. 19/2008-CE dated 27.03.2008 and notification No. 34/2008-CE dated 10.06.2008 were subject matter of challenge in various writ petitions filed by the aggrieved assessee before this Court.

4 A single Bench of this Court vide its judgment rendered in **Reckitt Benckiser vs Union of India, 2011(269) ELT 194 (J&K)/2010 SCC Online J&K 283** accepted all the petitions and quashed the aforesaid notifications. The petitioner herein also filed OWP No. 804 of 2011 before this Court on similar grounds. Feeling aggrieved by the judgment of Single Bench, Union of India filed Letters Patent Appeals which were disposed by a Division Bench of this Court vide order dated 18.09.2018 by providing that the decision of the Supreme Court in SLP(C) No. 28194-28201 of 2010 and SLP(C)

No. 12392-12399 of 2010 shall govern the case of the parties in LPAs. The issue of limiting the exemption to the value addition was ultimately decided by the Supreme Court in favour of Revenue in case of **Union of India vs VVF Ltd., (2020) 20 SCC 57**. The validity of the amending notifications issued to curtail the benefit of exemption in the North-Eastern States was upheld. After the decision of the Supreme Court which was rendered on 22.04.2020 deciding the issue finally, a cause accrued to the petitioner to make an application for fixation of special rates in terms of the notification of 2008.

5 It is the case set up by the petitioner that formal applications for fixation of special rates could not be filed due to outbreak of Covid-19 pandemic. The applications were, thus, filed without any waste of time on 27.12.2022. It is, thus, the grievance of the petitioner that its applications were dismissed despite the fact that it had amply explained the delay and had brought to the notice of respondent No.2 that the applications filed on 27.12.2022 were in continuation to the applications for refund filed way back in the year 2012 and 2013 and, therefore, there was no delay in making such applications. The respondent No.2, it is contended, brushed aside all these aspects and in a most mechanical manner passed the impugned order holding the applications made by the petitioner barred by limitation.

6 Heard learned counsel for the parties and perused the record.

7 It is not in dispute that prior to issuance of notification dated 27.03.2008, the area-based exemptions of excise duty in favour

of industrial units established in North-Eastern States including State of Jammu and Kashmir were governed by Notification No. 56/2002-CE dated 14.11.2002. As per the said notification, the petitioner-unit was entitled to 100% refund of the excise duty paid on manufacturing and clearing of its excisable goods. It is equally true that, in terms of excise notification No. 19/2008 dated 27.3.2008 read with Notification No. 34/2008-CE dated 10.06.2008 the exemptions were curtailed and restricted only to the extent of value addition. This notification was immediately challenged before this Court and, therefore, remained eclipsed till the matter was finally decided by the Supreme Court on 22.04.2020 in **Reckitt Benckiser's** case (supra). Rightly, as is contended by the petitioner, it could not have applied for fixation of special rates as provided under the Excise Notification of 2008 which was subject matter of challenge in various writ petitions and had been stayed by a Single Bench of this Court. It, therefore, made applications for refund under the excise notification of 2002, the details whereof are given in para (3) of the impugned order. It is also not disputed before this Court that at the time when the Supreme Court settled the matter with regard to exemptions in **VVF Ltd's** case (supra), covid-19 pandemic had engulfed the entire country.

8 Taking note of the situation created by continuous lockdown in the country in view of covid-19 pandemic, the Supreme Court directed all the authorities to exclude the period between 15.03.2020 to 28.02.2020 from computation of limitation. Viewed thus, the petitioner could not have applied for fixation of special rates which right had accrued to it only after the judgment of the Supreme Court rendered in **VVF Ltd.** case (supra) on 22.04.2020. As is clearly

provided in paragraph 2.1 of exemption notification of 2008 read with notification No. 34 of 2008, a manufacturer was given an option not to avail the rates specified in the table of the notification and apply to the Commissioner of Central Excise or Commissioner of Customs and Central Excise as the case may be, for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under the notification subject to certain conditions prescribed in the notification. This option was to be made by the manufacturer by making an application in writing to the Commissioner concerned by or before 30th of September in the relevant financial year. The relevant financial years in the instant case are 2011-12 and 2012-13. It would mean that had there been no litigation and stay of the exemption notification of 2008, the applications for fixation of a special rate for the financial year 2011-12 could have been filed by 30th September, 2011 and by 30th September 2012 respectively. This, however, could not be done for the reasons explained above i.e pendency of litigation and stay of excise notifications No. 19/2008 and 34/2008 by this Court which ended with the Supreme Court deciding the issue finally on 22.04.2020 followed by Covid-19 pandemic. Going by the stipulation contained in the Excise notification No. 19 of 2008 read with notification No. 34 of 2008, the petitioner could have filed such application by 30.09.2022. The Commissioner concerned had the discretion to condone the delay for a further period of 30 days. It would mean that the Commissioners could have, for the reasons explained, condoned the delay and entertained the application if filed by 30.11.2022. The petitioner, however, filed applications seeking fixation of special rates on 27.12.2022. Obviously, the application was delayed

by 27 days. It is true that the Commissioner could not have condoned the delay of these 27 days for the reason that the notification would give him only power to condone the delay up to a period of 30 days. On this score, the Commissioner could have been justified to dismiss the application. The Commissioner has not gone into that aspect of the matter and has even brushed aside the contention of the petitioner that it was entitled to exclude the period between 15.03.2020 to 28.02.2022 and has held the applications filed by the petitioner barred by inordinate delay and laches. Respondent No.2 has found the applications delayed by two years and eight months reckoned from the date of decision of the Supreme Court in the case of **VVF Ltd.**'s case (supra).

9 So far as the conclusion drawn by the Commissioner that the applications were delayed by two years and eight months is concerned, the same is factually incorrect. The Commissioner has not taken note of the fact that the period between 15.03.2020 to 28.02.2022 was required to be excluded in terms of the directions issued by the Supreme Court in reference to Covid-19 pandemic.

10 Viewed from afore-stated position, it is clearly deducible that the petitioner was indeed late for filing applications seeking fixation of special rates and this delay was only to the extent of 27 days only. Ordinarily, when a statute or a notification creating rights and liabilities prescribes a particular period, same is required to be adhered to in letter and spirit. This Court, in the exercise of writ jurisdiction under Article 226 of the Constitution of India would normally honour such prescription of time and would not readily condone the delay as doing so would be acting contrary to what is prescribed in a particular

statute or notification. While considering this aspect, we need to make a distinction between the limitation prescribed by a statute and the period prescribed in a non-statutory order. While, in case of limitation prescribed by a statute, the time prescribed in the statute, including for condonation of delay up to a particular period is required to be respected unless an extraordinary and an exception case is made out for exercise of writ jurisdiction to direct an authority to entertain an application even beyond time. That apart, having regard to the object of granting the area-based exemptions to the industrial units located in specified areas and also having regard to the fact that the entitlement of the petitioner to refund as per the excise notification of 19 of 2008 read with notification No. 34 of 2008 is not disputed, a liberal approach in the matter of condonation of delay is called for.

11 There is yet another aspect of the matter which cannot be lost sight of and it is that the petitioner had filed applications for refund of the excise duty paid during the financial years 2011-12 and 2012-13 in the year 2012 and 2023 itself. These applications were, of course, in respect of claim for refund in terms of excise notification of 2002, for, the amending notifications i.e 19 of 2008 and 34 of 2008 were stayed by this Court in a number of writ petitions and could not have been given effect to. It was only after the decision of the Supreme Court in VVF Ltd's case (supra) rendered on 22.04.2020, the issue came to be settled and the validity of subsequent notifications issued in the year 2008 upheld.

12 Ordinarily, the petitioner, with a view to taking benefit of exemptions under the amending notifications of 2008, should have

made applications seeking fixation of special rates as was provided in the amending notifications immediately after the judgment of Supreme Court in **VVF Ltd's** case (supra). For two years, it could not do so because of pandemic and up to September 2022, he was entitled to apply for as provided under the notifications itself. There is also a provision for condonation of delay in the notifications for a period of one month. As held above, and is reiterated here that the applications filed by the petitioner were delayed by 27 days only. The applications dated 27.12.2022 filed by the petitioner in the given circumstances can be said to be the applications filed in continuation with the applications for refund filed in the year 2012 and 2013. The refund applications were already with respondent No.2 and the two applications which were filed on 27.12.2022 were only for seeking a different mode of computing/determining the excise duty refund payable to the petitioner. Viewed thus, it cannot be said that the applications filed by the petitioner were beyond time.

13 We have also taken note of the fact that it is not the case of the respondents that the petitioner is not entitled to any refund, but it is being shown the door only on the ground that the applications are belated. Once the respondents do not dispute the eligibility of the petitioner to claim refund of excise duty in terms of amending notifications of 2008, it would be travesty of justice if the claim of the petitioner is thrown out on the technical ground of delay. We, therefore, find it a fit case for exercise of extraordinary writ jurisdiction under Article 226 of the Constitution and direct the respondent No.2 to treat the applications filed by the petitioner in time and decide the same on merits. There is another reason for issuance of such direction. A

Division Bench of this Court in **WP(C)s No. 1844 of 2021** and **2520/2022** has already passed similar orders, though the same were passed on the concession of learned counsel appearing for the Revenue that they will consider and decide the applications on merits. On being specifically asked by the Court, learned counsel appearing for the respondents submits that the aforesaid orders have not been further challenged and have been complied with by them. Mr. Rohan Nanda learned counsel appearing for the respondents placed reliance upon a later Division Bench judgment of this Court rendered in WP(C) No. 1739/2023 wherein the Court has, under somewhat similar circumstances, relegated the petitioner therein to the alternative remedy of appeal provided under the Act. Mr. Nanda has also relied upon a judgment of Supreme Court in the case of **State of Maharashtra and others vs. Greatship (India) Limited** (Civil Appeal No. 4956 of 2022, decided on 20.09.2022) to hammer his point that in the face of availability of equal efficacious alternative statutory remedy, the writ petition before this Court is not maintainable.

14 We have given thoughtful consideration to the aforesaid submissions of learned counsel for the respondents and we regret our inability to agree with him. The Judgment in **Greatship (India) Ltd** (supra) does not deal with the issue in the manner we have dealt with in this case. Had respondent No.2 decided the matter on merits or had there been a dispute of fact with regard to the computation of limitation, we would have definitely relegated the petitioner to the alternative remedy provided under the Statute. In the instant case, the Commissioner has failed to take note of a clear directive of the Supreme Court to exclude the period of limitation between 15.03.2020

to 28.02.2022 while computing the limitation provided for filing of any appeal or application before any Court or authority under the statute. The Commissioner also failed to take note of the fact that the petitioner had filed refund appellations in the year 2011 and 2012 itself and made the applications on 27.12.2022 only seeking determination of refund of excise duty in terms of excise notifications of 2008 which were upheld by the Supreme Court in **VVF Ltd.'s** case (supra) on 22.04.2020 only. As a result of this total non-application of mind on the part of the Commissioner, there was a serious miscarriage of justice. That apart, this Court had already decided two petitions on the similar grounds and, therefore, we are of the considered view that relegating the petitioner to alternative remedy would be subjecting the petitioner to uncalled for discrimination. The petitioner needs to be treated at par with the petitioners of WP (C)s No. 1844/2021 and 2520/2022 (supra).

15 In the premises, this petition is allowed. The impugned order dated 02.02.2023 passed by respondent No.2 is quashed. Respondent No. 2 is directed to treat the applications dated 27.12.2022 filed by the petitioner in time and pass fresh orders on merits. We make it clear that we have not given our opinion on merits of the claim of the petitioner.

WP(C) No.1577/2023 & WP(C) No. 2044/2023

The judgment passed in WP(C) No. 2045/2023 hereinabove shall also govern the disposal of WP(C) No. 1577/2023 and WP(C) 2044/2023. Accordingly, the impugned orders passed by respondent No.2 are quashed. Respondent No. 2 is directed to treat the applications

dated 27.12.2022 filed by the petitioners in the aforementioned petitions in time and pass fresh orders on merits.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar
31. .08.2024
Sanjeev

Whether the order is reportable: Yes

