

TAX INFO

Dated 09/01/2023

Latest update on GST Law: **Summary of Notification No.01/2023-Central Tax dated 4th January, 2023 SCN along with a judgement by Bombay High Court.**

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication.

Summary of Notification No.01/2023-Central Tax dated 4th January, 2023

The earlier Notification No. 14/2017-Central Tax, dated the 1st July, 2017 is amended to insert that the officers namely:

1. Additional Assistant Director, GST Intelligence
2. Additional Assistant Director, GST
3. Additional Assistant Director, Audit

are empowered to exercise the **powers of the Superintendent.**

Judgment by Bombay High Court

Name of Petitioner	Priceline.Com Technology India LLP
Name of Respondent	The Union of India
Authority	Bombay High Court
Date of Judgement	16.12.2022
Appeal No.	WRIT PETITION NO. 3058 OF 2022

Brief Facts of the Case Law:

The Petitioner is aggrieved by two orders, one dated 24 January 2022 and other dated 22 February 2022 passed by Assistant Commissioner, CGST partly allowing the claim for refund. The first order dated 24 January 2022 deals with the period from April 2018 to March 2019. The second order dated 22 February 2022 deals with the period from April 2019 to March 2020. As regards the refund claim for the period from January 2020 to March 2020, the same has been granted to the Petitioner and the Petitioner has no grievance about the same. The challenge is restricted to the remaining two periods that is from April 2018 to March 2019 and April 2019 to December 2019. The Department has rejected the claim on the ground that they are time barred.

Contention of the Petitioner:

Section 54(1) states that if a refund is sought of any tax, then an application has to be made before the expiry of two years from the relevant date. "Relevant Date" is defined in Explanation (2) to section 54(14) and there are various categories enumerated in the said explanation and as to which should be the starting point for the limitation period for each of the category. The impugned orders make no reference to which category the Petitioner's claims would fall and what would be the relevant date i.e. starting point for limitation period for the Petitioner's claim for refund. The Petitioner has relied upon the order passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3/2020 (in Re: Cognizance for Extension of Limitation)* wherein it was directed that the period between 15 March 2020 to 28 February 2022 would stand excluded for the purposes of limitation as may be prescribed in any general or special law in respect of judicial or quasi-judicial proceedings. Thus, the period of limitation for the purpose of refund application also stands extended for the period as directed by the Hon'ble Supreme Court. Therefore, the impugned orders, rejecting the refund claims of the Petitioner for the periods from April 2018 to March 2019 and from April 2019 to December 2019, ought to be set aside and the Department be directed to proceed to examine the claim on merits.

Findings and Decision of the Court:

For the purpose of ascertaining whether the limitation period in the Petitioner's case stood extended by the order of the Hon'ble Supreme Court, first the relevant date for starting of the limitation will have to be established. The factual position as per the explanation to Section 54 as regards the Relevant Date will have to be determined first and then legal position as laid down in the above decisions can be applied. For the argument of extension of limitation, the basic dates of starting and ending of period of limitation in each case with reference to different categories of the explanation to Section 54 have to be arrived at. No such exercise is carried in the impugned orders on this aspect. Therefore, the law laid down in the above decision cannot be straightway applied unless the basic facts are established. Therefore, the impugned orders, to the extent of rejection of the refund claims of the Petitioner for the periods from April 2018 to March 2019 and from April 2019 to December 2019, were set aside and the applications for these two periods were restored to the file of the concerned Assistant Commissioner. The Assistant Commissioner will examine the case of the Petitioner afresh both on the ground of limitation and on merits in the light of what is observed above.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>