

IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

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W.P.Nos.8869 and 8871 of 2023

W.P.No.8869 of 2023

Between:

Qualcom India Private Limited.

Petitioner

VERSUS

Deputy Commissioner (ST)(FAC) and Ors.

Respondents

W.P.No.8871 of 2023

Between:

Microsoft Global Services Center
(India) Pvt Ltd.

Petitioners

VERSUS

State of Telangana and Ors.

Respondents

COMMON ORDER PRONOUNCED ON: 20.032024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P. SAM KOSHY, J

N. TUKARAMJI, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI
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! Counsel for Petitioner(s) : Mr. Karan Talwar

^Counsel for the respondent(s) : Mr. Swaroop Oorilla for respondent
Nos.1 to 3

Mr. Gadi Praveen Kumar for respondent
No.4

<GIST:

> HEAD NOTE:

? Cases referred

- 1) 2019 (28) GSTL 386 (Guj.)
- 2) Writ Petition No.11421 of 2014 dated 19.01.2015
of the Bombay High Court
- 3)21 (50) G.S.T.L. 269 (Bom.)
- 4) 2011 (273) E.L.T. 3 (S.C.)
- 5) 2016 (333) E.L.T. 193 (S.C.)
- 6) 2023 (383) E.L.T. 39 (Bom.)
- 7) 2020 (39) G.S.T.L. 385 (Del.)
- 8) 2023 (11) TMI 958 – DELHI HIGH COURT

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

WRIT PETITION Nos.8869 and 8871 of 2023

COMMON ORDER : *(per Hon'ble Sri Justice P.SAM KOSHY)*

These two writ petitions have been filed by the two establishments where the question of law needs adjudication is, whether the petitioners herein are entitled for interest under Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017') on the delayed granting of refund of Input Tax Credit (for short, 'ITC') claimed under Section 54 of the CGST Act, 2017.

2. Heard Mr. Karan Talwar, learned counsel for the petitioner, Mr. Swaroop Oorilla, learned Special Government Pleader for State tax for the respondent Nos.1, 2 and 3; and Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for the respondent No.4.

3. The broad facts, for convenience without referring to the dates as the issues are in common, are that, the petitioners had filed a refund claim petition before the respondents claiming for refund of the unutilized ITC. Upon raising the said claim, the respondents issued a deficiency memo to which the petitioners

promptly replied. Subsequently, show causes notices were issued to which also the petitioners replied and finally orders were passed rejecting the refund claims. The rejection of the refund claims was subjected to challenge in the appeals and the appeals filed by the petitioners were substantially allowed and refund amounts were also disbursed.

4. Later on the petitioners moved applications with the respondents requesting them for grant of interest on the amount refunded by them for the period it was withheld by the Department resulting in delayed releasing. In spite of persistent efforts by the petitioners, the interest on the delayed refunded amount was not granted. The request finally stood rejected by the Department vide orders dated 09.05.2022 and 19.02.2023 respectively, which are under challenge in the instant writ petitions.

5. It is in this factual backdrop that the question of law which needs adjudication has been framed as is reflected in the initial part of this order.

6. For proper understanding of the dispute, it would be more appropriate at this juncture to take note of the provision of Section 56 of the CGST Act, 2017, which for ready reference is reproduced herein under:

“56. Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 to any application is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government of the recommendations of the Council shall be payable in respect of such refund [for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed]:

PROVIDED that where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation : For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).”

From plain reading of the aforesaid Section there is absolutely no ambiguity so far as the intention, object and purpose of enactment of the said provision. The heading of the said Section itself says ‘Interest on delayed refund’ which by itself leads to the only conclusion that can be drawn that of interest automatically accruing on the delayed refund made by the Department. The very

Section starts with the wordings that of any tax ordered to be refunded is not refunded within the stipulated period of time, interest at such rate shall be payable on the said refund amount.

7. Similarly, the proviso also to the said Section clearly envisages that of any claim of refund which arises from an order passed by the Adjudicating Authority or Appellate Authority or Appellate Tribunal or for that matter any Court of law and if the refund is not made within sixty (60) days, the said amount of refund would also carry interest at such rates notified by the Government.

8. In the given factual and statutory provisions, we are of the considered opinion that the Section, the proviso and its explanation provided to the Section does not provide for any circumstances or situation under which the delayed refund not attracting interest. If we also look into the provisions of Rule 94 of the CGST Rules, 2017, the said provision also provides for certain periods which shall not be included in the period for which the interest is payable. This in other words also means that interest on the delayed refund is automatic. As soon as there is a delay in refund of the money to the applicant beyond the period stipulated under Section 56 or where any amount is due and payable to the applicant under Section 56 and if the said amount of refund gets

delayed, the said amount shall automatically be entitled to carry interest.

9. There can be no dispute or doubt so far as a provision of grant of interest in a particular statute is concerned. The same has to be treated as a beneficial legislation and should be enforced non-discriminately. Since there is a specific provision under Section 56 for grant of interest only in the event of delay in making of the refund by the Department, the said statutory prescription carries an obligation to pay interest.

10. What is also required to be appreciated is that there was no reason or material available with the Department for not releasing refund amount promptly. There was no preventive or prohibitory order or any such restrictive directions from any Court of law in their favour from making refund within the stipulated time. In the said circumstances, non-granting of interest in such a case would amount failure to discharge statutory duty/obligation by the refund sanctioning authority.

11. There is a catena of decisions of the Hon'ble Supreme Court and also practically of every High Court wherein it has been consistently held that in the event of there being a delay on the part of the Department in making necessary refund as quantified

by the Department themselves within a stipulated period or within a reasonable period of time, the said amount shall carry interest. Such decisions have been passed even under the other statutes dealing with tax.

12. The Gujarat High Court in the case of **Saraf Natural Stone vs. Union of India**¹ in paragraph Nos.22 to 25 held as under:

“22. The position of law appears to be well-settled. The provisions relating to an interest of delayed payment of refund have been consistently held as beneficial and non-discriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision.

23. The respondents have not explained in any manner the issue of delay as raised by the writ-applicants by filing any reply.

24. The chart indicating the delay referred to above speaks for itself.

25. In the overall view of the matter, we are inclined to hold the respondents liable to pay simple interest on the delayed payment at the rate of 9% per annum. The authority concerned shall look into the chart provided by the writ applicants, which is at Page-30. Annexure-D to the writ application and calculate the aggregate amount of refund. On the aggregate amount of refund, the writ applicants are entitled to 9% per annum interest from the date of filing of the GSTR-03. The respondents shall undertake this exercise at the earliest and calculate the requisite amount towards the interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ applicants within a period of

¹ 2019 (28) GSTL 386 (Guj.)

two months from the date of receipt of the writ of this order.”

13. Similarly, the Bombay High Court also in the case of **National Leather Cloth Mfg. Co. vs. Union of India and Ors**² in paragraph No.7 has held as under:

“7. The balance claim that remains is of interest on this sum. **If the statute provides that in the event, amount is not paid within a specified time, then, the Revenue will have to pay interest, unless and until, the Revenue was able to obtain any preventive or prohibitory order and directions. It cannot refuse to release the sum in favour of the Appellants. The Revenue could have released the sum without prejudice to its rights and contentions and subject to the pending proceedings in this Court and equally the Tribunal.**”

14. The Bombay High Court in the case of petitioner themselves in **Qualcom India Pvt. Ltd. vs. Union of India**³ has under the provisions of Section 11B and Section 11BB of the Central Excise Act which are para material provisions to Section 54 and Section 56 of the GST Act observed as under:

“Once there is delay in payment of refund within 3 months from the date of receipt of application, rigour of section 11BB sets in and payment of interest on the delayed refund becomes obligatory, whicy follows automatically; as a matter of law;

² Writ Petition No.11421 of 2014 dated 19.01.2015
of the Bombay High Court

³ 2021 (50) G.S.T.L. 269 (Bom.)

Non-granting of interest in such a case would amount to failure to discharge statutory duty/obligation by the refund sanctioning authority;”

15. On the said finding, the Bombay High Court held that the petitioner would be entitled for interest on delayed refund. The question as to whether the payment of interest would accrue from the date of the original application or from the date the deficiencies memos were removed, the landmark decision in this is case is that of **Ranbaxy Laboratories Ltd. vs. Union of India**⁴ wherein in paragraph Nos.11, 13 and 15 dealing with the para materia provision under the Central Excise law has held as under:

“**11.** At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1988, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted “automatically” for any refund sanctioned beyond a period of three months.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

⁴ 2011 (273) E.L.T. 3 (S.C.)

“Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of *J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs* reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date of receipt of the application. Thus, the said decision is of no avail to the revenue."

16. The said principles of law has been further reiterated by the Hon'ble Supreme Court in the case of **Union of India vs. Hamdard (Waqf) Laboratories**⁵ and again by the Bombay High Court recently in the case of **M & G Global Services Pvt. Ltd. vs. Union**

⁵ 2016 (333) E.L.T. 193 (S.C.)

of India⁶ wherein in paragraph Nos.11 and 12 it has been held as under:

“11. As held by the Apex Court in *Ranbaxy* (supra), a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied; and there is no room for any of intendment. The liability of the revenue to pay interest under Section 11BB of the Act commenced from the date of expiry of three months from the date of receipt of application for refund under Section 11BB(1) of the Act.

12. The Division Bench of this Court in *Swaraj Mazda Limited v. Union of India* [2009 (235) E.L.T. 788 (Bom.)] also held that perusal of Section 11BB shows that if any duty recovered is found to be refundable, still the payment is not made within a period of three months from the receipt of application for refund then interest is liable to be paid. Even in that case revenue had taken the stand that the applications for refunds initially filed by petitioner were incomplete. The Court rejected this objections and held interest was payable on the refund. Paragraph 2 and 8 of the said judgment *Swaraj Mazda* (supra) reads as under:

“2. Thereafter, the petitioner wrote letters to the authorities claiming interest under the provisions of Section 11BB of the Central Excise Act. There was no response to those letters for a long time, but ultimately by letter dated 1-1-2004 the petitioner was informed that the petitioner is not entitled to payment of any interest on the refund claim under Section 11BB of the Act. Against that letter, an appeal was filed before the Commissioner, Central Excise (Appeals). That appeal was rejected by order dated 20-12-2005, and therefore, a revision was filed before the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue. That revision has been rejected by the order which is impugned in this petition. That Joint Secretary has held that the applications for refunds initially filed by the petitioner were incomplete and that those applications got completed only after the order was

⁶ 2023 (383) E.L.T. 39 (Bom.)

passed in the appeal dated 30-7-1999, and that payment of refund has been made within three months thereof, and therefore, no interest is payable to the petitioner.

8, Now it will be necessary to see the provision of Section 11BB of the Act which reads as under:

Section 11BB Interest on delayed refunds. – If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. – Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.”

Perusal of the above provision shows that if any duty recovered is found to be refundable still the payment is not made within a period of three months from the receipt of application for refund then interest is liable to

be paid. Perusal of the above provision makes it clear that liability to pay interest arises on expiry of period of three months "from the date of receipt of application under sub-section (1) of Section 11B. We have already referred, to above as to how application under Section 11B is to be made, therefore, unless a finding is recorded that the application that was filed by the petitioner under Section 11B cannot be termed as an application made under Section 11B, liability to pay interest after expiry of period of three months from the date of receipt of that application cannot be denied. Firstly there is no such finding recorded in the order impugned and secondly on close examination of the order of the appellate authority dated 30-7-1999 we find that it cannot be said that the application filed by the petitioner for refund was found to be so incomplete that it would not be termed as an application at all. The revisional authority in the order impugned has observed that the appellate authority found that a certificate from the authority was found necessary for establishing correlation by the appellate authority. Perusal of the order of the appellate authority does not show that production of the certificate was necessary for establishing correlation. Correlation was to be established by looking at the chassis number in the duty paying document executed at the time of payment of duty on the chassis with engine and the chassis number mentioned in the duty paying document executed at the time of payment of duty on the bus. The documents evidencing payment of duty at both the occasions were already available on record because it is only on the basis of those two documents that the Assistant Commissioner had recorded finding that the duty has been paid on both the occasions. It is, thus clear that the correlation could be established only on the basis of those two documents which were on record. A certificate was required to be submitted, by the appellate authority only to enforce the fact that the duties have been paid at both the places. We thus find that the finding recorded in the order impugned that the applications for refund made by the petitioner were incomplete on the date of which they were received, is not sustainable and is contrary to the record and, therefore, is liable to be set aside.

(Emphasis supplied)

The Apex Court dismissed SLP [2010 (253) E.L.T. A19 (S.C.)] filed by Union of India against this judgment of the Bombay High Court.”

17. As regards the issue whether for differing the payment of interest or for delaying the period from which interest would become applicable deficiencies memos being issued, it would be relevant to take note of a decision of the Delhi High Court in the case of **Jian International vs. Commissioner of Delhi Goods and Services Tax**⁷ wherein in paragraph Nos.7 to 9 it has been held as under:

“7. In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST/DGST Act.

8. Admittedly, till date the petitioner’s refund application dated 4th November, 2019 has not been processed. As neither any acknowledgement in FORM GST RFD-02 has been issued nor any deficiency memo has been issued in RFD-03 within timeline of fifteen days, the refund application would be presumed to be complete in all respects in accordance with sub-rule (2), (3) and (4) of Rule 89 of CGST/DGST Rules.

9. To allow the respondent to issue a deficiency memo today would amount to enabling the Respondent to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules, referred above. This could then also be construed as rejection of the petitioner’s initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. This would not only delay the petitioner’s right to seek refund, but also impair petitioner’s right to

⁷ 2020 (39) G.S.T.L. 385 (Del.)

claim interest from the relevant date of filing of the original application for refund as provided under the Rules.

18. Likewise, again the Delhi High Court dealing with Section 56 in the case of **Bansal International vs. Commissioner of DGST and Anr.**⁸ in paragraph Nos.15, 25, 26, 27, 33 and 34 has held as under:

“15. The petitioner’s entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in the appellate proceedings.

25. The object of providing payment of interest after the expiry of sixty days from the date of the refund application is to ensure that a taxpayer is adequately compensated for denial of the funds that were legitimately due to it after accounting for a reasonable period of sixty days for processing its claim. The right of a taxpayer to receive such compensation would be severally diluted if the reference to the date of receipt of application under Section 54(1) of the CGST Act, in Section 56 of the CGST Act is construed to mean the date of an application for refund filed subsequently - that is, after the first application for refund is rejected in whole or in part - pursuant to the orders passed by the appellate fora.

26. We are of the view that on a plain reading of the main provisions of Section 56 of the CGST Act, a taxpayer would be entitled to interest from the date immediately after the expiry of sixty days from the receipt of the first application under Section 54(1) of the CGST Act, which is accompanied by the documents as specified under Section 54(4) of the CGST Act read with Rule 89 of the Rules.

27. We are also unable to accept that the proviso to Section 56 of the CGST Act in any manner dilutes the

⁸ 2023 (11) TMI 958 – DELHI HIGH COURT

right of a taxpayer to receive interest under the main provisions of Section 56 of the CGST Act. It is well settled that a proviso to a clause must be read in the context of the main clause and not as a separate or an independent clause. The main clause and the proviso must be read as a whole.

33. It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days from the date of his application filed pursuant to its entitlement to refund claim attaining finality.

34. The applications for refund filed pursuant to orders passed by the Appellate Authority, do not invite any fresh adjudication. The said applications are merely to

implement the orders already passed. *Sensu stricto*, such application is only for the purposes of convenience and to retrigger the processing of the refund claimed. It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursement of the refund claim and for the proper officer to determine and disburse the interest as payable.”

19. The said judgment of the Delhi High Court also deals with the objections of the State Counsel referring to the explanation to Section 56 so far as the interest being calculated from the decision in the appeal proceedings even otherwise. The said contention of the State Counsel would not be sustainable for the reason that what is intended by the explanation is that the moment the Appellate Authority or the Tribunal or the Court as the case may be decides the issue of refund, the order so passed shall be deemed to have been passed as under sub-section (5) of Section 54. Which in other words means the said order by the Appellate Authority, Tribunal or the Court of law as the case may be for the purpose of its enforceability has be treated as if it is an order under sub-section (5) of Section 54 and as such interest would be calculated

immediately after sixty (60) days within which the payment of refund has to be made starts.

20. For all the aforesaid reasons, we are of the considered opinion that both these writ petitions therefore deserve to be allowed and are accordingly allowed. The respondents are directed to forthwith take steps for payment of interest on the delayed refund of ITC released to the petitioners in terms of sub-section (1) of Section 56 and the proviso thereto.

21. No order as to costs.

22. Consequently, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 20.03.2024

Note: LR Copy to be marked: Yes
B/O. GSD