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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 13.03.2023

+ **W.P.(C) 13881/2018, CM Nos.54179/2018 & 30210/2019**

AC IMPEX

..... Petitioner

Through: Mr Puneet Agarwal, Mr Yuvraj Singh, Ms Tanuja Rawat and Mr Chetan Kumar Shukla, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Kunjala Bhardwaj, Adv. for Mr Kirtiman Singh, CGSC for R-1. Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur, Adv. for R-3 & 4. Mr Satyakam and Mr Shadan Farasat, ASC for R-2, 5, 6 & 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. Notice in this writ petition was issued on 21.12.2018. At the point in time when the writ petitioner had approached this court, several reliefs were sought, which, during the pendency of the writ action, was pared down to a singular issue.
2. Thus, at the present juncture, we are required to rule on one issue, i.e., the date from which statutory interest under Section 56 of the Central Goods and Services Tax Act, 2017 [in short, "CGST Act"] would get triggered.

The petitioner claims that interest should be triggered from the date when the initial application for refund was filed. On the other hand, the respondent/revenue asserts that in terms of the proviso appended to Section 56 of the CGST Act, interest will get triggered 60 days after the date when this court passed an order directing consideration of the application.

3. Therefore, for determination of the aforesaid central and, as noted above, the only issue, the following broad facts are required to be considered.

3.1 The petitioner is in the business of exporting jewellery. The petitioner had, concededly, purchased jewellery, which was exported thereafter.

3.2 The petitioner had claimed, for the period in issue, Input Tax Credit [ITC]. The period involved, i.e., the period for which ITC was claimed, was August 2017 and September 2017.

3.3 The facts and figure concerning the period, the quantity in terms of weight of the jewellery domestically purchased, the ITC availed and the jewellery exported, once again in terms of weight, and the consequent total weight are set forth in the table below:

Period	Purchase in Grams	ITC Availed (Rs.)	Export in Grams
August 2017	99,934.51	84.80 lakhs	32,587.34
September 2017	15,83,744.599	13.69 crores	15,06,621.2016
October 2017	0.00	-	1,44,470.523
Total (Rounded off)	16,83,679.06	14.54 crores	16,83,679.06

3.4 Concededly, the petitioner had filed refund applications in view of the fact that these were zero rated supplies against the export made on

06.01.2017.

4. The respondents/revenue had raised a deficiency memo on 13.02.2018, which was cured on 16.02.2018. Admittedly, on 07.05.2018, a notice was issued calling upon the petitioner to show cause as to why refund amounting to Rs.59,67,280/- lakhs ought not to be disallowed, *qua* the exports made in August 2017. The ostensible ground given, was that the exports made were less than the corresponding purchases made in the said month.

4.1 A notice of even date, i.e., 07.05.2018, on almost identical lines, which set forth the amount of disallowance *qua* refund *vis-a-vis* the exports made in September 2017, was issued as well. The proposed amount of refund which was disallowed for the month of September 2017 was Rs.1,70,20,253/-.

4.2 The petitioner filed two separate response of even date, i.e., 10.05.2018, to the said show cause notices. *Inter alia*, the petitioner asserted that it had exported the entire quantity of goods, i.e., jewellery, which had been domestically purchased.

4.3 The explanation given by the petitioner did not find favour with the respondents/revenue and accordingly, *via* two orders dated 11.05.2018, it disallowed refund for the months of August 2017 and September 2017, as indicated in the show cause notices dated 07.05.2018.

4.4 We may only note that since ITC amounting to Rs.36,950/- [on account services] was claimed by way of refund on 13.05.2018, which we are told by the counsel for the parties was paid, the same is therefore not the subject matter of our present discussion.

5. Significantly, there are two circulars which have been issued by the

Central Board of Excise and Customs [CBEC]. The first circular dated 21.12.2017, *inter alia*, indicated by way of clarification that the refund claim concerning zero rated supply shall be filed manually for the relevant tax period, in the prescribed form, albeit on monthly basis.

5.1 As alluded to above, although no purchases were made by the petitioner in October 2017, it exported jewellery weighing 1,44,470.523 grams in the said month.

5.2. That such a claim was viable is evident upon a perusal of the second circular, i.e., Circular no.37/11/2018 dated 15.03.2018. Para 11 of the said circular, being relevant, is extracted hereafter:

“11. Filing frequency of Refunds:

Various representations have been made to the Board regarding the period for which refund applications can be filed. Section 2(107) of the CGST Act defines the term "tax period" as the period for which the return is required to be furnished. The terms 'Net ITC' and 'turnover of zero rated supply of goods/services' are used in the context of the relevant period in rule 89(4) of CGST Rules.

The phrase 'relevant period' has been defined in the said sub-rule as 'the period for which the claim has been filed'.

11.1 In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

11.2. In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years...”

[Emphasis is ours]

6. As indicated right in the beginning, it is in this backdrop, that the petitioner had approached this Court by way of a writ action. Notice, as

observed at the outset, was issued on 21.12.2018. On the returnable date i.e., 11.01.2019, a coordinate Bench of this court gave liberty to the petitioner to file its application for refund manually, having regard to the fact that the period for moving application for refund i.e., two years, had not expired.

6.1 The court, specifically, directed the respondents/revenue, i.e., the concerned authority, to examine the application, which as indicated above, had to be filed manually, in accordance with the law.

7. It is not in dispute that the respondents/revenue, in a sense, side-stepped the specific directions issued by the court on 11.01.2019 giving the petitioner liberty to file the application manually and thus, went on to reject the applications, which were filed manually on 28.01.2019. The respondents/revenue's order to this effect was passed on 22.03.2019, which impelled the petitioner to approach this court, once again, during the pendency of the writ action.

8. The record shows that on 28.03.2019, the court set aside the order dated 22.03.2019 and directed the respondents/revenue, i.e., the concerned authority, to once again examine the petitioner's application for refund, which had been filed manually.

9. It is not in dispute that thereafter, the respondents/revenue passed an order dated 24.05.2019 and granted refund in full, after having rejected the same by separate orders of even date, i.e., 11.05.2018. Thus, the total amount which was refunded to the petitioner was Rs.29,90,532/-. This was the sum total of the amount which was the subject matter of the aforementioned two orders of even date, i.e., 11.05.2018.

10. It is also not in dispute that on 08.07.2019, the respondents/revenue

passed an order sanctioning interest amounting to Rs.70,861/-.

11. Thus, the position which emerges from the facts as set forth hereinabove is that in the initial round, the petitioner was granted cumulative refund for August and September, 2017 amounting to Rs.12.24 crores and the cumulative amount which was denied for the very same months was Rs.2.30 crores (approximately). This amount was, however, sanctioned ultimately on 24.05.2019, with interest amounting to Rs. 70,861 being sanctioned on 08.07.2019.

12. Mr Puneet Agrawal, who appears on behalf of the petitioner, says that the calculation of interest is not in accordance with the provisions of Section 56 of the CGST Act.

12.1 According to Mr Agrawal, the interest at the notified rate, which is presently 6%, should run from 60 days after the date when the deficiency application, *qua* initial application of refund filed on 16.12.2017, was cured.

12.2 As per this contention advanced by Mr Agrawal, the interest should run from 18.04.2018 and would end on the date when the amount was remitted for the respective months, both against the CGST and DGST.

13. The record shows that in case of CGST, the refund for the months of August and September 2017 was concededly remitted on 02.07.2019 whereas *qua* DGST, the amount was remitted to the petitioner for the months of August and September 2017 on 28.05.2019.

14. Mr Satyakam and Mr Shadan Farasat, learned additional standing counsel, who appear on behalf of the respondents/revenue, contest the position taken by Mr Agrawal.

14.1 It is their contention that the proviso appended to Section 56 of the CGST Act deals with both substantial and procedural orders. In other

words, according to Messrs Satyakam and Farasat, although the order granting refund, i.e., order dated 24.05.2019, was procedural in nature, the proviso will get attracted.

14.2 Secondly, it is submitted by Messrs Satyakam and Farasat that in a taxing statute, the court would have to go by textual interpretation and therefore, no leeway should be given for shifting the date from which interest would get triggered. In this particular case, according to them, interest was triggered post the order passed by this court in the writ action on 28.03.2019.

14.3 Thirdly, the proviso is 'agnostic' to the reason based on which interest is triggered. This submission is tied in with the second submission made by Messrs Satyakam and Farasat.

14.4 Lastly, it is submitted that it is because of this reason that a higher rate of interest is granted when the interest is triggered due to orders issued by the statutory authorities, which includes the court.

14.5 In this context, our attention is drawn to the fact that in the main part of Section 56 of the CGST Act, the interest which can be notified by the Government on the recommendation of the council, can go up to 6%, whereas under the proviso, this range can extend up to 9%.

15. As noticed above, insofar as the main part of Section 56 is concerned, the interest has been notified at 6%.

15.1 We are also informed that under the proviso, the interest has been notified at 9%.

16. We have heard learned counsel for the parties at some length.

17. In our view, one cannot quibble with the fact that when one is dealing with a taxing statute, equity does not come into play. It is also well-

established that the plain language of the text has to be given its full play while dealing with statutes concerning revenue or tax. That said, such meaning has to be given to a proviso, which does not destroy or disrupt what is stated in the main part of the provision. The proviso carves out an exception to the main provision.

17.1 With this prelude, for the sake of convenience, Section 56 of the CGST Act is set forth hereafter:

“Section 56 – Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued 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 under the said sub-section till the date of refund of such tax:

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).”

17.2 A careful perusal of the main part of Section 56 would show that if any tax is ordered to be refunded under Section 54(5) of the CGST Act *vis-a-vis* an applicant, and if the same is not refunded within sixty days from the date of receipt of an application under Section 54(1), interest at such rate not exceeding 6%, as has been specified in the notification issued by the

Government on the recommendation of the Council, is payable immediately after the expiry of sixty (60) days from the date of the receipt of the said application, which runs, as per the said provision, till the date of refund of such tax.

18. Section 54 generally deals with refund on tax. Sub-section (1) of Section 54 clarifies that any person claiming refund of any tax and interest, if any, paid, on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

19. Sub-section (5) of Section 54, which is relevant for our purposes, reads as follows:

“(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.”

20. In this particular case, more than the order rejecting a part of the refund, the show-cause notices dated 07.05.2018 gives the clue as to why the refund was declined. The reasons given in the notices are identical, although two separate orders were passed for the months of August and September 2017.

<i>Sr.No.</i>	<i>Description (Select the reasons of inadmissibility of refund from the drop down)</i>	<i>Amount inadmissible</i>
<i>1.</i>	<i>You are being given refunds only on supplies of zero rated goods & services Rs. 83773761/- whereas you have requested for refund on the purchases to the tune of Rs. 290984657/- in the month of August 2017.</i>	<i>5967280/-</i>

<i>Sr.No.</i>	<i>Description (Select the reasons of</i>	<i>Amount</i>
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	<i>inadmissibility of refund from the drop down)</i>	<i>inadmissible</i>
1.	<i>You are being given refunds only on supplies of zero rated goods & services Rs. 3998497570/- whereas you have requested for refund on the purchases to the tune of Rs.4695614991/- in the month of September 2017.</i>	<i>17020253/-</i>

21. As would be evident, the reasons based on which a part of the refund was sought to be denied, was that the value of exports for the given month was less than the purchases made in that month. Accordingly, for the month of August 2017, as noted above, the inadmissible amount was pegged at Rs.59,67,280/-; likewise for the month of September 2017, the inadmissible amount was quantified at Rs. 1,70,20,253/-.

22. The petitioner gave its explanation, as noted hereinabove while narrating the facts, *via* two separate responses of even date, i.e., 10.05.2018.

22.1 For the sake of convenience, the stand taken in the said response(s) to the extent relevant are extracted hereafter:

“The Company purchased goods amounting for Rs 282468390/- in the month of Aug 2017, which were exported during the month of Aug and Sept. 2017. Due to GSTN server problem, entire refund has been claimed during the month of Aug. 2017 in spite of part of the export had been made in Sept. 2017. On the date of filing of refund claim, entire stock had been exported.

Since the GSTN Server did not allow to claim refund either in the month of Sept. 2017 or in the respective months, the Company had no option but to claim the entire refund in the month of Aug. 2017; in spite of the fact that the Company is aware that refund should be claimed in the respective months. It is reiterated that on the date of filing of refund claim, entire stock had been exported

If the Hon'ble Authority is of the view that under the present circumstances, in spite of Govt. Server Problem, the Company is not eligible to claim entire refund in the month of Aug, 2017 and refund should be claimed only in the respective months, and hence refund amount to be rejected proportionately;

the Company prayed that it may be permitted to file the refund application for the proportionate amount in the month of Sept. 2017 manually.”

[Reply concerning August 2017]

“The Company purchased goods amounting for Rs 4557296529/- in the month of Sept. 2017, which were exported during the month of Sept and Oct. 2017. Due to GSTN server problem, entire refund has been claimed during the month of Sept. 2017 in spite of part of the export had been made in Oct. 2017. On the date of filing of refund claim, entire stock had been exported.

Since the GSTN Server did not allow to claim refund either in the month of Oct. 2017 or in the respective months, the Company had no option but to claim the entire refund in the month of Sept. 2017; in spite of the fact that the Company is aware that refund should be claimed in the respective months. It is reiterated that on the date of filing of refund claim, entire stock had been exported.

If the Hon'ble Authority is of the view that under the present circumstances, inspite of Govt. Server Problem, the Company is no eligible to claim entire refund in the month of Sept. 2017 and refund should be claimed only in the respective months, and hence refund amount to be rejected proportionately; the Company prayed that it may be permitted to file the refund application for the proportionate amount in the month of Oct. 2017 manually.”

[Reply concerning September 2017]

22.2 The sum and substance of the aforementioned responses is that the petitioner had exported the entire quantity of jewellery, which was domestically purchased, in August and September, 2017. A part of the quantity which was exported spilled over to October 2017, and accordingly, an application for refund was made on 16.12.2017.

23. It is important to note, a fact that we have adverted to above, that this explanation was finally accepted by the respondents/revenue on 24.05.2019. As observed hereinabove, the entire amount of refund, which was withheld via two separate orders dated 11.05.2018, was sanctioned in favour of the petitioner.

24. The argument of the respondent/revenue, that the refund order dated

24.05.2019 came to be passed on account of the order issued by the Coordinate Bench of this Court on 28.03.2019, and therefore, the trigger point for commencement of the period of refund as stipulated in the proviso appended to Section 56 of the CGST Act will apply, does not find favour with us. The reason for this is that the proviso, as indicated above, is an exception to the main part of the Section 56 of the CGST Act. The proviso is triggered only when the facts of a case do not fall in the main part.

24.1 Ordinarily, the proviso thus carves out an exception to the main provision, to which it is appended, even while it embraces the field that is covered by the main provision [See *Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore and Anr. v. The Indo Mercantile Bank Ltd and Anr.*, 1959 Supp (2) SCR 256, paragraphs 10 and 11].

24.2 In other words, the proviso can neither be dismembered from the main provision, nor can it be used to nullify or set at naught the real object of the main enactment. [See *S. Sundaram Pillai and Ors. v. V.R. Pattabiraman and Ors.*, AIR 1985 SCC 582, paragraph 27].

24.3 The proviso envisages a situation where, while processing an application for refund, the respondents/revenue are required to deal with a lis and the refund is a consequence of that lis. Where there is no lis with regard to either the quantum or the value, then in our view, the proviso will have no application. The wordings of the proviso in that context are revealing. The proviso begins with the following sentence “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...”

25. In this case, the 28.03.2019 order was passed by the Court in the background of the order dated 11.01.2019, whereby, the Court had permitted the petitioner to file an application manually to seek refund. Because the concerned authority had rejected the petitioner's application for seeking refund manually *via* order dated 22.03.2019, the petitioner was impelled to approach the Court, which resulted in the order dated 28.03.2019 being passed.

25.1 To our minds, these were orders of the Court which only pushed the respondents/revenue in the right direction, in consonance with the main provision of Section 56 of the CGST Act. Based on what had been put before the Court, it is quite apparent that there was no element of *lis* obtaining between the parties which required adjudication.

25.2 The order dated 24.05.2019 exemplifies the reasoning which we have adopted, for analysing as to whether or not the proviso will get attracted in the given situation.

26. We are therefore of the opinion that the petitioner is right in its contention that interest should trigger in accordance with the main part of Section 56 of the CGST Act, i.e., from 18.04.2018, and that interest should run, both on CGST and DGST, up until the date when the amount was remitted to the petitioner. The dates when the remittance was made have been captured in the narrative set forth hereinabove.

27. It is ordered accordingly.

28. The respondents/revenue will remit the interest to the petitioner in accordance with what is stated hereinabove, within two weeks from receipt of a copy of the judgment.

29. The writ petition is disposed of in the aforesaid terms.

30. The pending applications shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 13, 2023

pmc/ha

[Click here to check corrigendum, if any](#)

