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W.A.Nos.2242 and 2243 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.Nos.2242 and 2243 of 2024
and
C.M.P.Nos.15771 and 15772 of 2024**

The Commercial Tax Officer-GD-III,
Office of the Commercial Tax Officer-GD-III,
Commercial Taxes Department,
100 Feet Road, Ellaipillaichavady,
Puducherry - 605 005.

... Appellant
in both W.As

-Vs-

1. M/s.Suzlon Energy Limited,
R.S.No.59, Thiruvandarkoil,
Mannadipet Commune,
Puducherry.

2. The Assistant Commissioner (Appeal),
Commercial Taxes Complex,
100 Feet Road, Ellaipillaichavady,
Puducherry - 605 005.

Respondents

...

in both W.As

COMMON PRAYER : Appeals filed under Clause 15 of Letters Patent, to set aside the common impugned order dated 16.11.2023 in W.P.No.10852 and 10855 of 2023.



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For Appellant : Mr.J.Kumaran
in both W.As Additional Government Pleader (Pondy)

For Respondents : Mr.Raghavan Ramabadran
in both W.As Assisted by M.s.Krithika Jaganathan
for M/s.Lakshmi Kumaran
and Sridharan Attorneys for R1

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

These intra-Court appeals have been directed against the common order passed by the writ Court, dated 16.11.2023 made in W.P.Nos.10852 and 10855 of 2023.

2. That the question that was posted before the writ Court was whether the dealer namely, M/s.Suzlon Energy Limited, who was the first respondent herein, is entitled to get the refund or not.

3. The necessary facts relating to the filing of the said writ petitions were that, the first respondent had procured the materials from the supplier, where the supplier paid IGST at the rate of 18% and made the supply. However, insofar as the final product is concerned, the first respondent was liable to pay



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IGST only at the rate of 5%. Even though the supplier was supposed to pay 5%

IGST for the input service, he had paid 18% and therefore, insofar as the excess payment is concerned, since it is higher IGST pay, which was fixed at only 5%, he had made a claim to get the refund of the excess amount paid by way of IGST under Section 54 of the Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST Act'). That claim was rejected by an order of the Original Authority dated 06.01.2020, as against which, appeal was filed by the first respondent / dealer which was allowed by the Appellate Authority on 22.07.2022 as well as on 28.07.2022. These orders were under challenge in the respective writ petitions.

4. In fact the first respondent / dealer after getting orders from the Appellate Authority in his favour, in order to execute the order seeking a writ of mandamus filed two writ petitions in W.P.Nos.293 and 294 of 2023, which was also ordered by another learned Single Judge, by order dated 06.01.2023.

5. When that was the position since these two writ petitions had been filed by the Revenue challenging the orders passed by the Appellate Authority on the refund claim made by the dealer, that was dealt with by the writ Court in the present impugned order.



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6. The writ Court having taken into account Section 54 of the GST Act, especially Section 54(3)(ii) and also Section 54(5)(6)&(7) has come to the conclusion that, the dealer since has paid higher input tax of course through the supplier which is higher than the output tax, is entitled to get the refund under the said provisions of the Act and therefore, confirmed the order passed by the Appellate Authority dated 22.07.2022 and 28.07.2022 respectively.

7. That apart, the writ Court also by taking into account of Section 56 of the GST Act has allowed 9% interest per annum for refund, for which, the first respondent was entitled to.

8. Questioning these orders only, the present appeals have been directed at the instance of the Revenue.

9. Heard Mr.J.Kumaran, learned Additional Government Pleader (Pondy) appearing for the appellant and Mr.Raghavan Ramabadran, learned counsel appearing for the first respondent.

10. It was argued by the learned Additional Government Pleader



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appearing for the appellant that, the 18% input tax paid by the supplier to the dealer itself is an excess payment wrongly made, this was accepted by them.

When that being so, that cannot be taken advantage by the dealer to seek for the refund as a matter of right. Even according to the provisions of the Act, if the output tax is higher than the input tax, such a situation since is absent in this case, the dealer is not entitled to get the refund.

11. The second argument is that, the 9% interest allowed by the writ Court is also not in consonance with the provisions of the Act, especially, in the context of Section 56, where the maximum interest can be fixed only at the rate of 6% as per the Notification No.01 of 2017, Central Tax dated 28.06.2017. He has also made a submission stating that, under proviso to Section 56 of the GST Act, such an interest cannot be claimed as a matter of right, if it is paid within sixty days. Here in the case in hand, according to the learned Additional Government Pleader appearing for the appellant, since the issue has attained finality only by the orders passed by the Appellate Commissioner as well as Court of Law, thereafter only the limitation would start, therefore, within sixty days, if it is paid, the interest component could not be added, therefore, that was also the point canvassed by the learned Additional Government Pleader appearing for the appellant.



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12. We have also heard the learned counsel appearing for the first respondent, who, fairly submitted that, as per the notification dated 28.06.2017 which is in consonance with Section 56 of the GST Act, the maximum rate of interest can be fixed only at 6%, therefore, to that extent, the fixation at 9% interest by the writ Court through the order impugned may require some modification at the hands of the Division Bench.

13. We have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

14. As has been rightly held by the writ Court, the provisions under Section 54 is made clear that, when the input tax paid is higher than what has been paid by way of tax for the output, then the dealer is entitled to seek for refund of the excess amount by way of ITC. This has been made clear under the Section, i.e., Section 54 of the GST Act.

15. Even though it was argued on behalf of the Revenue that, ITC itself was only 5%, however voluntarily an excess payment has been made which has



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been admitted by the seller of the dealer concerned, that cannot *ipso facto* being an advantage to the dealer to claim refund by invoking the provisions of Section 54 r/w. Section 56 of the GST Act, we are not impressed with the said argument for the reason being that, the very intention of the legislature is to provide the refund only, when there has been an excess amount of tax being collected by way of ITC, that has to be set right by way of refund, if the output tax is lesser than the ITC. If this principle is applied, certainly in the present case, the dealer is entitled to get the refund as admittedly the output tax was only 5%, whereas ITC was 18%.

16. Therefore, to that extent, the reason given by the writ Court in rejecting the claim made by the Revenue before the writ Court was to be justified.

17. Coming to the rate of interest, as has been fairly admitted by the learned counsel appearing for the first respondent and submitted by the learned Additional Government Pleader appearing for the appellant that, under Section 56 of the GST Act, the maximum rate of interest which has been fixed is 6% as specified in the notification issued by the Government on the recommendation of the council.



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19. Insofar as the submission that has been made with regard to the sixty days period which starts only from the finality that has been reached in the Court of Law by citing the proviso to Section 56 is concerned, insofar as the said proviso to Section 56 since has been clarified in the explanation itself, where it makes very clear that, for the purpose of the Section where any order of refund is made by the Appellate Authority or Tribunal or Court of Law against the order of the proper officer under Sub-section 5 of Section 54, the order passed by the Tribunal or the Court of Law shall be deemed to be an order passed under Sub-section 5.

20. If sub-section 5 of Section 54 deals with to make such an order by the



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Original Authority, such an order shall be taken into effect from the date of the order of the Original Authority and the maximum period is sixty days as per Sub-section 7 of Section 54. When that being so, even though the finality has now been reached in this case by passing orders either by the Appellate Authority or the Tribunal or the Court of Law, it takes back to the Original Authority's order under Sub-section 5 of Section 54. When that being the position, the limitation would start from the date of the Original Authority's order and from that date, if sixty days period is over, after expiry of the sixty days, the dealer is entitled to get the interest at the maximum rate of 6% as we have discussed herein above.

21. In that view of the matter and based on the reason that we have discussed herein above, we are not impressed with the submissions made by the learned Additional Government Pleader appearing for the appellant, therefore, the order passed by the writ Court does not call for any interference except with the rate of interest which was allowed by the learned Judge in paragraph No.17 of the order. Therefore, we are inclined to dispose of the writ appeals with the following modified order:

(i) The order impugned is sustained,
therefore, to that extent, these Writ Appeals filed



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by the Revenue are liable to be dismissed, hence, are dismissed. However, the rate of interest of 9% allowed by the writ Court through the impugned order is modified into 6% which shall be paid by the Revenue from the date of expiry of sixty days from the date of order passed by the Original Authority. However, there shall be no order as to costs.

(ii) Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (C.S.N.,
J.)
14.08.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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