



\$~71

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

Date of decision: 20th May, 2025

+ **W.P.(C) 5088/2024 & CM APPL. 30873/2025**

**MATRIX CELLULAR (INTERNATIONAL)
SERVICES PVT LTD.**

.....Petitioner

Through: Mr Anurag Soan, Mr Akshay Saxena,
Mr Rituraj, Advs. (M:7709512446)

versus

**THE PRINCIPAL COMMISSIONER STATE
TAX DELHI & ANR.**

.....Respondents

Through: Mr. K.G. Gopalakrishnan, Ms. Nisha
Mohandas and Mr. Kunwar Raj
Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India seeks directions against the Respondents for grant of refund of Rs. 3,39,79,974/- along with applicable interest in relation to the refund application dated 12th April, 2018 bearing ARN:770704180207738
3. The brief background of the case is that the Petitioner obtained the GST registration as Input Service Distributor (hereinafter 'ISD') on 10th July, 2017. According to the Petitioner, it had inadvertently deposited a sum of Rs.3,39,79,974/- in its Electronic Cash Ledger (hereinafter 'ECL') between August, 2017 to January, 2018. The Petitioner was under the mistaken impression that only Input Tax Credit (hereinafter 'ITC') could be distributed through the ISD account and the cash deposit was not permissible for distribution. In view thereof, owing to the inadvertent deposit, the Petitioner



filed a refund application on 12th April, 2018 seeking refund of the said amount. The Respondent - Delhi GST Department (hereinafter '*the Department*') debited the amount from ECL and the same was to be credited into the Petitioner's bank account. However, unfortunately the anticipated credit did not take place.

4. A deficiency memo was issued to the Petitioner on 3rd March, 2020. In order to rectify the deficiency, and upon the Department clarifying the Petitioner's earlier misunderstanding, the Petitioner submitted a withdrawal application seeking to withdraw the original refund application, under the *bona fide* belief that the refund amount would thereafter be credited. However, as the amount continued to remain uncredited, the Petitioner addressed repeated representations to the Authorities, but to no avail. Despite repeated follow ups, the amount was not credited, hence this writ petition. The prayer in this writ petition is as under:

“(i) issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India to direct the Respondents to grant refund of Rs.3,39,79,974/- as filed under Refund Application dated 12.04.2018 bearing ARN AA0704180207738 to the Petitioner;

(ii) issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India to direct the Respondents to grant interest on Rs.3,39,79,974/-, as filed under Refund Application dated 12.04.2018 bearing ARN AA0704180207738, from 11.06.2018 till the date of actual refund to the Petitioner;”

5. Notice was issued in this writ petition on 8th April, 2024. A counter affidavit was directed to be filed. and the same was filed by the Department



in July, 2024. The stand in the counter affidavit is that in terms of **Circular No.17/17/2017** dated 15th November, 2017, the refund application along with all the requisite documents ought to be submitted physically to the jurisdictional authority. The sanction order for refund is to be issued only after receipt of the refund application, which is complete in all respects.

6. It is, in fact, not disputed that when a deficiency memo RFD-03 is issued, the refund is to be processed within 60 days from the receipt of reply to the deficiency memo. However, it is the Department's position that since the refund application was not submitted in a physical manner, the same could not be processed within the stipulated time. In this case the deficiency memo was issued on 19th February, 2020 and the Petitioner was advised to file a fresh refund application. However, the Petitioner withdrew the refund application on 16th March, 2020 and thereafter surprisingly, only followed up after 3 years *i.e.*, on 29th August, 2023. The stand of the Department finally is that since the deficiencies were not cleared in terms of the said Circular, the refund could not be processed. After raising the above submissions, the Department's stand in paragraphs 6 to 10 of the Counter affidavit is relevant and is set out below:

"6. The Respondents are ready to consider the Refund request of the Petitioner even though when the Respondents had asked the Petitioner to file fresh application through Deficiency Memo dated 03.03.2020 but instead of filing the same, the Petitioner withdrew the application. The Petitioner has also failed to file the application physically before the jurisdictional authority as per the Act, 2017.

7. The Respondents have not withheld the tax amount of the Petitioner, but it is the Petitioner itself who chose to



withdraw their Refund application and did not clear the deficiencies in the application as stated by the authorities in their Deficiency Memo.

8. The Respondents hereby state that they are ready and willing to consider as far as re-crediting of debited amount from the ECL is concerned, and the amount will be re-credited using PMT-03 in the ECL of the applicant.

9. Therefore, the Respondents hereby reiterate that the amount of Rs.3,39,79,974/- (Rupees Three Crores Thirty-Nine Lakhs Seventy Thousand Nine Hundred and Seventy-Four Only) which includes (IGST- Rs 2,40,48,974, CGST-Rs 3000, SGST- Rs 3000 and CESS- Rs 99,25,000) that were debited for the purpose of refund claim by the taxpayer shall be re-credited to the ECL of the Petitioner by the Respondents even though the Petitioner has not followed the procedural requirements under the Act, 2017.”

7. Thus, the stand of the Department ultimately is that it is willing to consider re-crediting the amount to the ECL. However, on interest, the stand of the Department appears to be that no interest would be liable to be paid as the proper application in terms of the said Circular has not been made till date.

8. On the last date of hearing, i.e., 1st May, 2025, after hearing the parties, the Court directed the Petitioner to appear before the Department on 13th May, 2025, to facilitate the submission of any requisite documents in physical form. The Department was further directed to compute the principal amount along with the consequential interest and place a computation report on record before the Court.

9. Today, Mr. Anurag, Id. Counsel appearing for the Petitioner submits that the Petitioner had appeared on 13th May, 2025 before the concerned



officer. The bank statements etc. were submitted, as were requested. However, a letter was issued on 16th May, 2025 stating that a fresh refund application ought to be filed. In response thereto, the Petitioner took a position that the amount ought to have been re-credited in the ECL, even that has not been done. In view thereof, no fresh application for refund requires to be filed.

10. Heard the parties. The short question is -

- (i) whether the Petitioner is entitled to refund and if so, to what amount and
- (ii) whether any interest is payable if so to what extent.

A refund application is to be filed under Rule 89 of the Central Goods and Services Tax Rules, 2017(hereinafter '*CGST Rules*'). As per Rule 90 of the CGST Rules, the proper officer shall within 15 days of the application, scrutinize the application and if found to be proper, issue an acknowledgement in **FORM GST RFD-02**. However, if any deficiency is found, the deficiency memo ought to be issued under **FORM GST RFD-03**. If the deficiency memo is issued, the deficiencies would have to be cured by the party concerned and in such a case, Rule 93 could be invoked by the Department.

11. In the present case, it is seen that the Petitioner inadvertently deposited the money between August, 2017 to January, 2018 and the refund application was filed on 12th April, 2018. The deficiency memo under **FORM RFD-03** was issued for the first time on 3rd March 2020, seeking the following documents:

S. No.	Description
1.	<i>Copy of up to date returns.</i>
2.	<i>Copy of Electronic cash ledger showing debit of refund amount.</i>
3.	<i>Copy of Cancelled cheque.</i>



4.	<i>Declaration regarding not having been prosecuted for any offences when the amount of tax evaded exceeds to hundred and fifty lakh rupees.</i>
----	--

12. From a perusal of the records, it is clear that from the date of filing of refund application, the mandate for scrutinizing and issuance of deficiency memos within 15 days has not been adhered to by the Department. However, after issuance of the deficiency memo on 3rd March 2020, the Petitioner withdrew the application for refund on 17th March 2020. Thereafter the case of the Petitioner is that it regularly followed up with the department but there is no written communication. The first written communication is of 29th August 2023, when the Petitioner stated that it could not file a reply to the Deficiency Memo due to the Covid-19 pandemic. Vide this letter, the refund was once again sought by the Petitioner.

13. The entire scheme for grant of refunds has been considered by this Court in ***Bansal International v. Commissioner of DGST (W.P.(C) 11629/2023, decided on 21st November, 2023)*** wherein the Court has clearly held that a party would be entitled to interest on the amount of refund commencing from the date immediately after the expiry of 60 days from the date when an application has been received. The relevant portion of the judgement is extracted below:

“31. It is important to note that the rate of interest as specified in the main provision of Section 56 of the CGST Act and the proviso to Section 56 of the CGST Act is materially different. Whereas, the main provision of Section 56 of the CGST Act provides for an interest at the rate not exceeding 6% per annum, the proviso to Section 56 of the CGST Act stipulates interest at the rate not exceeding 9% per annum.



32. The learned counsel also informed this Court that the interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of sixty days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of sixty days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of sixty days of the filing of such an application – that is, the application filed pursuant to the orders of the appellate fora and not the first application.

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."

14. The efficacy of the said scheme is contingent upon the Department adhering to the specific timelines prescribed under the Act and the Rules, which, in the present case, have evidently not been complied with. For whatever reason, the refund or acknowledgment has not taken place till date and the Department has continued to retain the amount.

15. However, even as per the counter affidavit, it is clear that the amount can no longer be retained by the Department. Therefore, in the opinion of this Court, the amount would be liable to be refunded and cannot be enjoyed by the Department in this manner.



16. Thus, the Petitioner is entitled to the refund. The only remaining question would be of interest. Even if a 60 days period is counted from the date of refund application, the Petitioner would be entitled to interest for a substantial period of time. The refund application being dated 12th April, 2018, 60 days from there would take the Petitioner to 11th June, 2018.

17. Accordingly, it is directed that the Department shall immediately by 30th May, 2025 credit the Petitioner's bank account with the sum of Rs.3,39,79,974/- along with interest @ 6% for the following periods:

- a. 11th June, 2018 till 2nd March 2020;
- b. 29th August 2023 till today i.e., 20th May, 2025.

For the intervening period from issuance of deficiency memo till the first letter post the pandemic i.e., 3rd March 2020 to 28th August 2023, no interest would be payable, especially because of the filing of the withdrawal of the refund application by the Petitioner.

18. However it is made clear that if the Department does not credit with the said amount to the bank account of the Petitioner, interest would be liable to be paid @ 18% per annum from 1st June 2025.

19. The petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 20, 2025/dk/Ar.