

EY Tax Alert

HC holds two-year period of limitation for claiming refund of wrongly paid tax is not mandatory

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Executive summary

This Tax Alert summarizes a recent ruling¹ of the Karnataka High Court (HC) on whether the two-year time limit prescribed under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act) is mandatory or directory.

The assessee provided intermediary services to foreign entities and paid integrated tax (IGST) on the same during the period July to November 2017, considering it as export. Later, it realized the services were intra-state supplies and paid appropriate tax in March 2018. It then filed a refund application on 30 March 2024 for refund of IGST paid earlier, which was rejected on the grounds that it was time-barred under Section 54 of the CGST Act r/w Rule 89(1A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules).

The key observations of the HC are:

- ▶ Section 19(1) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) provides that if IGST paid on a supply considered by a taxpayer to be an inter-state supply is subsequently held to be an intra-state supply, such taxpayer shall be granted refund of the amount of IGST paid.
- ▶ Madras HC in case of Lenovo India Pvt. Ltd.² and Andhra Pradesh HC in case of Nspira Management Services Pvt. Ltd.³ have held that the time limit prescribed under section 54 and Rule 89(1A) are directory and not mandatory.
- ▶ Under Article 265 of the Constitution, the Central GST authorities were not entitled to collect IGST from the petitioner, who was not liable to pay it. Once the petitioner paid the correct tax to the State authorities, the Centre could not retain the wrongly paid IGST and, applying the principles of restitution and unjust enrichment, was required to refund it.

Accordingly, HC held that the refund claim is within time limit and is not barred by limitation. Consequently, it remitted the matter back to the department to pass appropriate order on merits.

¹ TS-939-HC(KAR)-2025-GST

² (2023) 12 Centax 230 (Mad)

³ WRIT PETITION Nos.18287 & 14905 of 2024



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Background

- ▶ Assessee operating across multiple sectors, provided intermediary services to foreign entities and, under the bona-fide belief that these qualified as exports, paid IGST during the period July 2017 to November 2017.

Subsequently, assessee realized that the services rendered by them did not qualify as export of services and that the same was not inter-State supply but was in fact intra-State supply. Accordingly, it discharged Central and State GST (C+S) liability in the month of March 2018.

Refund application under Section 19 of the IGST Act r/w Section 77 of the CGST Act was filed before Revenue on 30 March 2024, which was rejected on the ground that the same was barred by limitation as per Section 54 of the CGST Act.

- ▶ Aggrieved, assessee filed writ petition before the Karnataka High Court.
- ▶ Section 54(1) of the Central Goods and Services Tax Act, 2017 (CGST Act) provides that any person claiming refund of any tax may make an application before expiry of two years from the relevant date.
- ▶ As per Section 19(1) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), any registered person who has paid integrated tax on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall be refunded the amount of tax so paid in such manner and subject to such conditions as may be prescribed.
- ▶ Rule 89(1A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) stipulates that refund claim under Section 77 of the CGST Act or Section 19 of the IGST Act should be made within a period of two years from the date of payment of correct tax.

Assessee Contentions

- ▶ The source of power to grant refund in the present case emanates from Section 19 of the IGST Act and Section 77 of the CGST Act and not from Section 54 of the CGST Act.
- ▶ Madras HC in case of Lenovo India Pvt. Ltd⁴ and Andhra Pradesh HC in case of Nspira Management Services Pvt. Ltd⁵ held that time-limit fixed under Section 54 of the CGST Act is directory and not mandatory in nature.
- ▶ Madras HC (*supra*) observed that the term used in section 54(1) "may make application before two years from the relevant date" means that it is not mandatory that the application has to be made within two years.

In appropriate cases, the refund application can be made beyond two years and the time limit prescribed under section 54(1) is directory and not mandatory in nature.

- ▶ Further, Andhra Pradesh HC (*supra*) held that collection of taxes should be in accordance with Article 265 of the Constitution which postulates that no tax can be collected without authority of law.

Revenue Contentions

- ▶ The provisions contained in Section 54 of the CGST Act and Rule 89(1A) are mandatory in nature and not directory. Any refund application filed beyond the period of two years from when it becomes due is not maintainable.

HC ruling

- ▶ A plain reading of Section 77(1) of the CGST Act clearly indicates that the taxpayer who pays tax to the Central Authority by oversight, inadherence, or erroneously, would be entitled to refund of the amount of tax so paid.

Similarly, Section 19(1) of the IGST Act provides that if IGST paid on a supply considered by a taxpayer to be an inter-state supply is subsequently held to be an intra-state supply, such taxpayer shall be granted refund of the amount of IGST paid.

- ▶ Madras HC (*supra*) and Andhra Pradesh HC (*supra*) have already held that the time limit prescribed under Section 54 r/w Rule 89(1A) are directory and not mandatory.
- ▶ It is also important to note that, under Article 265 of the Constitution, the Central GST authorities are not entitled to collect IGST from the taxpayer, who was not liable to pay it.

Once the assessee has subsequently paid the correct tax to the State GST authorities, the Centre could not retain the wrongly paid IGST and consequently by applying the principles of restitution and unjust enrichment, the Centre was required to refund the amount to the assessee.

- ▶ Accordingly, HC held that the refund claim is within time and is not barred by limitation and remitted the matter back to the department to consider the refund claims on merits.

⁴ (2023) 12 Centax 230 (Mad.)

⁵ WRIT PETITION Nos.18287 & 14905 of 2024

Comments

- a. The ruling is likely to help taxpayers seeking refund beyond the period of two years in cases involving wrong payment of tax.
- b. Businesses may have to evaluate whether the observation of the HC that time limit prescribed under Section 54 is not mandatory can apply to refund in other cases as well.
- c. It remains to be seen whether Revenue files an appeal against this ruling before the Supreme Court.
- d. AP HC in case of Nspira Management Services had earlier dealt with delayed refund application filed by taxpayer for tax wrongly paid on supply which was exempt.

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