

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. Ltd*⁴ and Andhra Pradesh HC in case of *Nspira Management Services Pvt. Ltd*⁵ 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, inadvertence, 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.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon Temple
Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

8th Floor, Building No. 14A
Block 14, Zone 1
Brigade International Financial Centre
GIFT City SEZ
Gandhinagar - 382355, Gujarat
Tel +91 79 6608 3800

Bengaluru

12th & 13th Floor
"UB City", Canberra Block
No.24 Vittal Mallia Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground & 1st Floor
11, 'A' wing
Divyasree Chambers
Langford Town
Bengaluru - 560 025
Tel: + 91 80 6727 5000

3rd & 4th Floor
MARKSQUARE
#61, St. Mark's Road
Shantala Nagar
Bengaluru - 560 001
Tel: + 91 80 6727 5000

1st & 8th Floor, Tower A
Prestige Shantiniketan
Mahadevapura Post
Whitefield,
Bengaluru - 560 048
Tel: + 91 80 6727 5000

Bhubaneswar

8th Floor, O-Hub, Tower A
Chandaka SEZ, Bhubaneswar
Odisha - 751024
Tel: + 91 674 274 4490

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

6th & 7th Floor, A Block,
Tidel Park, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Aikyam
Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jaipur

9th floor, Jewel of India
Horizon Tower, JLN Marg
Opp Jaipur Stock Exchange
Jaipur, Rajasthan - 302018

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

3rd Floor, Unit No 301
Building No. 1
MindSpace Airoli West (Gigaplex)
Located at Plot No. IT-5
MIDC Knowledge Corridor
Airoli (West)
Navi Mumbai - 400708
Tel: + 91 22 6192 0003

Altimus, 18th Floor
Pandurang Budhkar Marg
Worli, Mumbai - 400 018
Tel: +91 22 6192 0503

Pune

C-401, 4th Floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

10th Floor, Smartworks
M-Agile, Pan Card Club Road
Baner, Taluka Haveli
Pune - 411 045
Tel: + 91 20 4912 6800

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