

EY Tax Alert

HC interprets relevant date and applicable rate for interest computation on delayed refund under GST

Executive summary

This Tax Alert summarizes a recent judgement of the Delhi High Court (HC)¹ interpreting relevant date and applicable rate for interest computation on delayed refund under Section 56 of the Central Goods and Services Tax Act, 2017 (CGST Act).

Assessee filed a refund application for unutilized input tax credit (ITC) under Section 54 of the CGST Act. Against the partial rejection order of adjudicating authority, Appellate authority allowed assessee's appeal by sanctioning the refund. Assessee filed second application for claiming the said refund along with interest. While refund was allowed, interest claim was denied by the adjudicating authority. Aggrieved, assessee filed writ petition before the HC.

Section 56 provides for interest @ 6% for the period of delayed refund beyond sixty days from the date of receipt of application till the date of payment. Further, as per the proviso, interest shall be payable @ 9% where refund claim arises pursuant to the orders of the appellate fora.

HC observed that the object of providing interest is to ensure that a taxpayer is adequately compensated for denial of its legitimate dues.

Interest @ 6% is payable for the period commencing from the 61st day of first application till the date of payment or the expiry of sixty days from the date of filing second application (i.e., the application filed pursuant to the orders of the appellate fora), whichever is earlier.

Interest @ 9% would run from the date immediately after the expiry of sixty days of the filing of second application till the date of payment.

Thus, HC held that the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days of the second application filed pursuant to its entitlement to refund claim attaining finality.

¹ 2023-VIL-809-DEL

Background

- ▶ Section 54 of the CGST Act requires a person to make an application for claiming refund of tax and interest.
- ▶ Section 56 of the CGST Act provides for interest for delayed refund @ 6% for the period of delay beyond sixty days from the date of receipt of application till the date of refund of such tax.

As per the proviso, where claim arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality, interest would be at the rate of 9%.

Further, as per the Explanation to section 56, the said orders are deemed to be the orders passed under Section 54(5) of the CGST Act.

- ▶ Assessee, an exporter, filed an application under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act) for refund of unutilized input tax credit (ITC) on account of export of goods made without payment of tax.
- ▶ The refund was partially rejected by the adjudicating authority. Aggrieved, assessee filed appeal before Appellate Authority where the same was allowed.
- ▶ Assessee then filed a second application for the balance refund amount along with interest. While refund was granted, the interest claim was denied.
- ▶ Aggrieved, assessee filed writ petition before Delhi High Court (HC).

Assessee's contentions

- ▶ Basis the proviso to section 56, where refund application is filed consequent to order passed by Appellate Authority, interest is payable @ 9%.

Revenue's contentions

- ▶ As per section 56, the interest would run from the date immediately after expiry of sixty days from the date of an application filed pursuant to the order passed by the Appellate Authority.
- ▶ Since the refund was processed within the period of sixty days from the date of application filed post Appellate Authority's order, no interest is payable under Section 56.

HC Ruling

- ▶ The subject matter is whether the period for which the interest is payable under Section 56 commences from the date immediately after expiry of sixty days from the receipt of first application for refund or from a later date in case the refund is initially denied

but subsequently allowed by the Appellate Authority, Appellate Tribunal, or a court.

- ▶ The assessee's entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in the appellate proceedings.
- ▶ The appellate proceedings are in continuation of the original proceedings.²
- ▶ The assumption that application for the refund filed pursuant to any orders passed by the Appellate Authority, Appellate Tribunal or the court is required to be considered as a fresh application under Section 54(1) is clearly unmerited.
- ▶ The assessee cannot be denied interest on account of the time involved in appellate fora.
- ▶ The object of providing interest payment after the expiry of sixty days from the date of the refund application is to ensure that a taxpayer is adequately compensated for denial of the funds that were legitimately due³.
- ▶ The right of a taxpayer to receive such compensation would be severally diluted if the reference to the date of receipt of application in Section 56 is construed to mean the date of refund application filed subsequently.
- ▶ Taxpayer would be entitled to interest from the date immediately after the expiry of sixty days from the receipt of the first application under Section 54(1).
- ▶ There are two separate rates of interest specified under Section 56, i.e., 6% under the main provision and 9% under the proviso.
- ▶ It is well settled that a proviso to a clause must be read in the context of the main clause and not as separate or an independent clause⁴.
- ▶ The interest @ 6% is payable for the period commencing from the date immediately after expiry of sixty days from the date of first application under Section 54(1) till the date of payment or the expiry of sixty days from the date of filing second application (i.e., the application filed pursuant to the orders of the appellate fora), whichever is earlier.
- ▶ The interest @ 9% would run from the date immediately after the expiry of sixty days of the filing of second refund application.
- ▶ Reference was made to P&H HC decision in case of SBI Cards & Payment Services⁵ where the Division Bench had interpreted Section 56 in a similar manner.
- ▶ Therefore, HC held 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.

² AIR 1965 SC 1585, (1974) 2 SCC 453
³ (2014) 6 SCC 335

⁴ (1976) 1 SCC 128
⁵ 2023-VIL-808-P&H

Comments

- a. The decision provides much needed clarity on the relevant date and applicable rate of interest in case of delayed refunds. There were divergent views prevailing in the industry on this matter.
- b. This judgement is likely to benefit the taxpayers having similar pending litigations before lower authorities wherein either the interest was rejected or granted at lower rate instead of enhanced rate.

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