

CWP-1851-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1851-2022

DATE OF DECISION: JANUARY 6, 2023

SBI CARDS & PAYMENT SERVICES LIMITED ...PETITIONER

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE DEEPAK MANCHANDA.**

**PRESENT: MR.TUSHAR JARWAL, ADVOCATE
AND MR. AMITJIT SINGH NARANG, ADVOCATE
FOR THE PETITIONER.**

**MR. SHARAN SETHI, SR.STANDING COUNSEL
FOR THE RESPONDENTS.**

DEEPAK MANCHANDA, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of the impugned order dated 22.12.2021 (Annexure P-1) passed by respondent No.2 vide which the claim of interest of Rs.15,68,26,554/- till 31.10.2021 has been rejected. Also, a writ of mandamus has been sought for issuance of directions to the respondents to sanction the claim of interest of Rs.16,91,23,181/- (as per Annexure P-3) on Rs.108.41 crores calculated as per the applicable rates notified by Section 56 of the Central Goods and Service Tax Act, 2017 (for short 'the Act').

2. The brief matrix of the present case is that the petitioner filed CWP No.8108 of 2021 challenging the order dated 19.2.2021, issued by the Additional Commissioner(Appeals), GST, praying for a refund of Central

Goods and Services Tax (for short 'CGST') and State Goods and Services Tax (for short 'SGST') amounting to Rs.108.41 crores approximately wrongly paid on 5.4.2019 (for the disputed period, i.e. April 2018 to December 2018) more than the tax due under Section 77 of the Act. At that time, the GST regime had kicked in and the petitioner had one Registration Number for Service Tax which continued for the initial period under the new GST regime and thereafter, the petitioner obtained separate Registration Numbers in all 28 States. However, during the initial stage, the complete break-up of all notified transactions was not available to the petitioner and in the absence thereof for the period from April 2018 to December 2018, the petitioner paid CGST and SGST of Rs.108 Crores approximately treating the transactions to be intra-State sales. The supply was reported under GSTR1 and 3-B as a Business to Customer (B2C) supply as the GST registration of the acquiring banks was not known.

3. Later on it transpired that those transactions (for which an amount of Rs.108 crores approximately had been paid based on intra-State sales) were inter-State transactions. Accordingly, the petitioner on this plea applied for a refund which was rejected by the concerned Authorities vide order dated 19.2.2021. Accordingly, CWP No.8108 of 2021 was filed and was allowed vide order dated 8.10.2021, vide which the respondents were directed to refund the amount of Rs.108 crores approximately which was deposited by the petitioner towards CGST and SGST along with applicable interest within a period of one month. Thereafter, vide order dated 22.12.2021, passed by respondent No.2 (Annexure P-1), the claim of interest amount of Rs.15,68,26,554/- on Rs.108.41 crores (as of 31.10.2021)

was rejected vide Annexure P-1 and aggrieved against the said order dated 22.12.2021, the present writ petition has been filed by the petitioner.

4. Learned counsel for the petitioner has argued that vide judgment dated 8.10.2021, the Court allowed a refund of Rs.108.41 crores paid by the petitioner to the GST Department along with applicable interest, however, the respondent-Department in the colorable exercise of power disallowed the interest by employing ex-facie arbitrary interpretation of Section 56 of the Central Goods and Services Tax Act, 2017 which was untenable in law. Learned counsel further submits that the petitioner paid Rs.108.41 crores on the dictates of the GST Department and the said amount was kept lying for 2½ years thereafter, vide Court order the same had been refunded and despite the same, the respondent rejected the legitimate claim of interest without any plausible explanation. Learned counsel submits that as per Section 56 of the Act, an assessee is entitled to receive interest after the expiry of 60 days from the date of the filing of the application till the refund amount is credited to its account and has referred to the total calculation annexed with this petition as Annexure P-3 and further refers to Section 54 of the Act which provides that a person can claim any refund or tax or interest paid by him if the conditions specified under Section 54 of the Act are satisfied.

5. Learned counsel for the petitioner has further argued that the respondent Department in the impugned order has held that the period of 60 days prescribed for calculating the interest liability shall be reckoned from 28.10.2021, the date on which the petitioner filed an online refund application for seeking a refund of the interest of Rs.15,68,26,554/- along

with the principal amount of Rs.108.41 crores under the judgment dated 8.10.2021 of this Court. Learned counsel for the petitioner further argued that the interest shall be reckoned after the expiry of 60 days from the date of filing of the original application, i.e. 5.4.2019, as per the rates notified under Section 56 of the Act and an explanation of Section 56 of Act provides that the once the order passed by proper Officer rejecting the refund claim has been set aside by any Court, then it will be deemed that the said order is passed by a proper officer and the interest liability shall be calculated from the date of the original calculation and the petitioner had to file a fresh application as the Online GST portal does not allow refund of the principal amount along with interest unless a fresh application is filed. Learned counsel, in support of his contentions, relies upon the judgment passed by the Hon'ble Apex Court in **Ranbaxy Laboratories Ltd. Vs. Union of India and others, (2011) 273 E.L.T. (S.C.)**, and the decision adopted by this Court in **M/s Dee Kay Exports Vs. Union of India and others**, in CWP No.26707 of 2018, decided on 24.10.2019, where this Court allowed the writ petition challenging the rejection of interest by placing reliance on the Hon'ble Apex Court judgment in **Ranbaxy's case** (supra), and holding that the respondents are liable to pay interest w.e.f. the expiry of three months from the date of the initial application.

6. On the other hand, learned counsel for the respondents has filed a reply dated 8.4.2022 and contends that Section 56 of the Act is crystal clear that where any claim of refund arises from an order passed by the adjudicating Authority or appellate Authority or appellate Tribunal or the Court, which has attained finality and the same is not refunded within 60

days from the date of receipt of an application filed to such order, the interest at the said rate not exceeding 9% as recommended by the Council shall be payable from the date immediately after the expiry of 60 days from the date of receipt of the application till the date of refund. Learned counsel for the respondents further submits that when a claim of refund arises from an order passed by the Court, the applicant has to file a refund claim after the said order and if the said refund claim is not decided within a period of 60 days, the interest shall be payable to the said applicant after the expiry of 60 days and has further objected to the contention of the petitioner that a conjoint reading of Section 56, Explanation to Section 56 and Section 54(5) of the Act means that the order passed by the Court shall be deemed to be an order under Section 54(5) of the Act.

7. Learned counsel for the respondents further submits that the interest is payable to a party where the refund arises within 60 days of the filing of the application as a consequence of the Court order, therefore, no interest is liable to be paid to the petitioner.

We have heard learned counsels for the parties.

8. A perusal of the pleadings emanates that this Court had ordered a refund of Rs.108.41 crores along with applicable interest vide judgement dated 8.10.2021 and in compliance of the same, though the claim of the petitioner about the refund amount had been accepted, but the claim of interest had been rejected vide impugned order dated 22.12.2021 (Annexure P-1). A perusal of the judgement dated 8.10.2021 passed in CWP No.8108 of 2021 filed by the petitioner shows that the same was allowed and the respondents were directed for a refund of Rs.108.41 crores along with

applicable interest within a period of 1 month. The Court had observed that additional amount of tax which was paid by the petitioner was the additional amount of Rs.108.41 crores approximately and the same was paid on the requirement of the respondents only. This Court specifically observed that the said money had been lying with the respondents for 2½ years and consequently, a direction was issued to the respondents for a refund of Rs.108 crores approximately along with applicable interest which had been rejected by the respondents vide impugned order dated 22.12.2021.

For the proper adjudication of the matter and to resolve the issue about payment of interest, Section 54 and Section 56 of the CGST Act are reproduced hereinbelow:-

“Section 54.:Refund of Tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

***Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [such form and] manner as may be prescribed.*

(2) A specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to refund of tax paid by it on inward supplies of goods or services or both, may make an application

for such refund, in such form and manner as may be prescribed, before the expiry of [2 years] from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim a refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero-rated supplies made without payment of tax;*
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempted supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and*
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and*

interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided *that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.*

(5) *If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.*

(6) *Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*

(7) *The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.*

(8) *Notwithstanding anything contained in sub-section (5),*

the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on (export) zero-rated supplies of goods or services or both or on inputs or input services used in making (exports);*
- (b) refund of unutilised input tax credit under sub-section (3);*
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;*
- (d) refund of tax in pursuance of section 77;*
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or*
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.*

[(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest*

or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.— *For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.*

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.— For the purposes of this section,—

(1) “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) “relevant date” means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such services, the due date for furnishing of return under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services

themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange (or in Indian Rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

[(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

“Section 56 Interest on delayed refunds

56. *If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within*

sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of an application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.— *For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)."*

9. It is further mentioned in the pleadings that on 28.10.2021, the petitioner applied to the GST portal as same does not allow for a refund unless another application for a refund is filed. Though there was no requirement to file any fresh application for seeking interest and the same

was filed as a procedure of the technicalities required to do so. The said application is annexed as Annexure P-10 and instead of sanctioning the claim for refund and interest to the petitioner, respondent No.2 issued a show cause notice proposing to reject the claim of interest on the ground that the interest is not applicable as the refund application was processed within the stipulated period of 60 days from the date of filing of refund application, i.e. 28.10.2021. It is also mentioned that respondent No.3 had preferred an application before the Court for an extension of time for compliance with the judgment dated 8.10.2021 which is annexed as Annexure P-14. It is also an admitted position that this Court had allowed the writ petition and directed the respondents to refund the amount along with interest and the said order has also attained finality in the absence of any challenge to the same, as nothing has been brought to the notice of this Court, neither by the petitioner nor by the respondents.

10. Now the actual question remains whether, in compliance with the judgement dated 8.10.2021, the order passed by respondent No.2 vide Annexure P-1 dated 22.12.2021, is contrary to and violative of directions issued by this Court about payment of interest.

Given the judgement passed by this Court on 8.10.2021, the respondents' reliance upon explanation is not well founded and the said explanation does not deal with the period for which the interest is to be paid. The arguments raised by the petitioner are supported by the judgment of the Hon'ble Supreme Court in Ranbaxy's case (supra). In that case, Section 11B and 11BB of the Central Excise Act, 1944 fell for consideration. Section 11B and Section 11BB insofar as they are relevant

read as under:

“Section 11B. Claim for refund of [duty and interest, if any, paid on such duty]. -

(1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] to the Assistant [Principal Commissioner of Central Excise or Commissioner of Central Excise] [or Deputy [Principal Commissioner of Central Excise or Commissioner of Central Excise]] before the expiry of [two years] [from the relevant date] [in such form [and manner]] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12-A) as the applicant may furnish to establish that the amount of (duty of excise and interest, if any, paid on such duty) in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person:

Provided *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:]*

Provided [further] *that the limitation of [two years] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.*

(2) If, on receipt of any such application, the Assistant [Principal Commissioner of Central Excise or

Commissioner of Central Excise] [or Deputy [Principal Commissioner of Central Excise or Commissioner of Central Excise]] is satisfied that the whole or any part of the [duty of excise and interest, if any paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the Assistant [Principal Commissioner of Central Excise or Commissioner of Central Excise] [or Deputy [Principal Commissioner of Central Excise or Commissioner of Central Excise]] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Principal Commissioner of Central Excise or Commissioner of Central Excise];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the [duty of excise or interest, if any paid on such duty] borne by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any,

paid on such duty] to any other person;

(e) the [duty of excise and interest, if any paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(f) the [duty of excise and interest, if any paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary in any judgement, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the

notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[Explanation.- For the purposes of this Section,-

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) *in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;*

(c) *in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;*

(d) *in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;*

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

[(ea) in the case of goods which are exempt from payment of duty by a special order issued under subsection (2) of section 5A, the date of issue of such order;]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;]

[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of

appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty.]

Section 11BB. Interest on delayed refunds. -

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below [five] per cent and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette,] on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided *that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.”*

Explanation. - *Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, [National Tax Tribunal] or any court against an order of the Assistant [Principal Commissioner of Central Excise or Commissioner] [or Deputy Commissioner of Central Excise]], under sub-section (2) of section 11B, the order*

passed by the Commissioner (Appeals), Appellate Tribunal, [National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]

11. The judgment relied upon by the petitioner supports the petitioner's case. In that event, the petitioner's submissions are upheld given what has been stated earlier. Section 54 and 56 of the Act mandates the payment of interest from the date of application whereas the plea of the respondents about the period in which the application for payment of interest was made and the same has been processed within 60 days, hence the petitioner is not liable for the interest is not tenable as the respondents in any case, does not suffer any loss as money lain with the respondents for the continuous period of two and a half years, in fact even before the date of filing of the application for a refund under Section 56 of the Act and the time taken for a refund of the money in terms of the judgment dated 8/10/2021 is unreasonable. The petitioner was entitled to a refund as well as interest amount vide judgment dated 8.10.2021, wherein a specific direction was issued for a refund of Rs.108 crores approximately which was deposited by the petitioner towards CGST+SGST along with applicable interest within one month. Unfortunately, this has not been done and the respondents have no justification for withholding the interest amount, which is a negligent act on the part of the respondents. The Government cannot deprive the petitioner from entitlement of the interest. Therefore, this inaction is wholly unjustified and has deprived the petitioner where the petitioner could have earned interest during this period but because of the withholding, this could not be done.

12. The Chart (Annexure P-3) indicating the delay in days is as follows:-

S.No.	Particulars	Amount in Rs.
1	Date of filing of refund application via Form GST RFD-01A(ARN No.AA0604190075211)	5-Apr-19
2	Amount of refund claimed	1,084,122,958
3	Interest rate u/S 54 proviso & Notification No.13/2017 – Central Tax dated 28 June 2017	6%
4	60 days from filing of refund application	4-June-19
5	Date of filing of refund application via Form GST RFD-01A (ARN No.AA0610210489594) against High Court Order	28-Oct-21
6	60 days from filing of refund application against high court Order	27-Dec-21
7	Actual Date of Refund	4-Jan-22
8	Period of Interest upto 27 Dec 21	937
9	Interest amount up to 60 days of refund application against high court order	166,984,638
10	Interest rate u/S 56 proviso	9%
11	Additional Interest amount after 60 days of refund application against high court order	2,138,544
Total Interest		169,123,181

CGST	84,561,591
SGST	84,561,591

13. The position of law is well settled and the provisions relating to interest on delayed payment of refund have been consistently held as

beneficial and non-discriminatory. It is true that in the taxing statute, the principles of equity may have little role to play, but at the same time, any statute in taxation matters should also meet the test of the constitutionality and the respondents were not able to explain in any manner the issue of delay in their reply as raised by the petitioner and the chart indicating the delay referred to above speaks for itself.

14. Accordingly, the present petition is, allowed, the Impugned order dated 22.12.2021 (Annexure P-1) is hereby partially quashed qua interest part vide which the claim of interest has been rejected and respondents are liable to pay applicable interest in terms of Annexure P-3 annexed with writ petition, from the date of filing of the original application, i.e. 5.4.2019. The respondents are further directed to calculate the requisite amount towards the interest and the same shall be paid to the petitioner within a period of two months from the date of receipt of the certified copy of the order.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

January 6, 2023
Gulati

Whether Reportable: Yes
Whether Speaking/Reasoned: Yes