In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And The Hon'ble Mr. Justice Uday Kumar

M.A.T. No.104 of 2024
+
IA No: CAN 1 of 2024
Arising out of
W.P.A. No. 1905 of 2023

Suraj Mangar
Vs.
The Assistant Commissioner of
West Bengal State Tax and Others

For the appellant	:	Mr. Ankit Kanodia (through VC), Ms. Megha Agarwal, Mr. Abhilash Mittal
For the State	:	Mr. Subir Kumar Saha, Ld. AGP, Ms. Rima Sarkar, Mr. Hirak Barman
Heard on	:	22.07.2025 and 25.07.2025
Reserved on	:	25.07.2025
Judgment on	:	30.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of an order dated January 9, 2023, whereby a writ petition filed by the present appellant/applicant

challenging an order passed by the Appellate Authority, confirming an order passed under Section 54 of the West Bengal Goods and Services

Tax Act, 2017 (hereinafter referred to as ―the Act‖), whereby the application filed by the appellant for refund of tax was rejected.

2. The timelines in the case are as follows:

Dates	**Events**
December 24, 2021	Application for refund filed.
January 10, 2022	Acknowledgment issued under Rule 90(2) of the West Bengal Goods and Services Tax Rules, 2017 (for short, ―the Rules‖).
February 8, 2022	Show Cause Notice issued under Rule 92(3).
February 23, 2023	Date of reply fixed as per Show Cause Notice dated February 8, 2022.

3. Learned counsel appearing for the appellant submits that the respondent-Authorities failed to adhere to the timelines stipulated under the Act and the Rules. Whereas Section 54(7) of the Act provides that the Proper Officer (PO) shall issue the order under sub-section (5) of Section 54 within 60 days from the date of receipt of the application, complete in all respect, in the present case, the notice itself, issued under Rule 92(3) of the Rules, stipulated the date of reply on February 23, 2022, that is, beyond the period of 60 days. Also, the acknowledgment under Rule 92(3) was issued on January 10, 2022, beyond the period of 15 days from the date of the application, as specified under the Rules. It is argued that the timelines provided

under the Act and the Rules being mandatory, contravention of the same vitiates the entire order.

4. Learned counsel relies on the judgment passed by a Division Bench of the Delhi High Court in the matter of *Smartadmedia v. Commissioner of Delhi Goods and Service Tax*, reported at *(2024) 19 Centax 106 (Del.)*, where the Division Bench had relied on Circular No. 125/44/2019-GST issued by the Central Board of Indirect Taxes and Customs, in Clause 34 of which it was specified that all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days from the date of generation of ARN (Application Reference Number), so that the disbursement is completed within 60 days.

5. Learned counsel also relies on another Division Bench judgment of the Delhi High Court in the matter of *M.D. Securities Pvt. Ltd. v. Sales Tax*

Officer Avato, reported at *(2025) 31 Centax 138 (Del.)*, where the Division Bench relied on a previous judgment of the Delhi High Court in *Jian International v. Commissioner of Delhi goods and Services Tax*, reported at *2020 (39) G.S.T.L. 385 (Del.)* where, in view of the nonadherence to the timelines stipulated in Rule 90 of the Central Rules (similar to the West Bengal Rules), it was held that the respondentAuthority had lost the right to point out any deficiency in the petitioner's refund application.

6. Learned counsel for the appellant next cites *Vidarbha Industries Power Limited v. Axis Bank Limited*, reported at *(2022) 8 SCC 352* where the Supreme Court, although in connection with the Insolvency and Bankruptcy Code, 2016, observed that the use of the word ―shall‖ in a statute raises a presumption that a provision is imperative, although such presumption may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the

construction.

7. Learned counsel contends that in view of the delay of two days in issuing the acknowledgement under FORM GST RFD-02 by the respondents, the date of filing reply itself exceeded the outer limit of 60 days from the date of fling of the refund application. Thus, the statutory provisions of Section 54(7), read with Rule 92, were transgressed, as was Circular No. 125/44/2019-GST dated November 18, 2019.

8. The respondent no. 1, in rejecting the refund, observed that the business premises of the petitioner were found to be small, from where it was hardly possible to conduct business, and that the E-way Bill for inward supplies were not generated, which are based absolutely on surmise and beyond the Show Cause Notice issued by the respondents. The appellant has been conducting its business

activities and exporting goods from the self-same premises all along after being granted GST registration by the Department.

9. By relying on *G.S. Industries v. Commissioner of Central Goods and Services Tax, Delhi*, reported at *(2023) 7 Centax 87 (Del.)*, it is argued that the Delhi High Court observed that there could not be a rejection of an application for refund without corroborative evidence.

10. Learned counsel for the appellant next argues that the alleged absence of E-way Bill was *de hors* the law since Rule 138(14)(b) of the Rules provides that where the goods are being transported by a nonmotorised conveyance, no E-way Bills are required to be produced, as in the present case.

11. Learned counsel next contends that the reliance placed by the respondent-Authorities on alleged information received from the Customs Department of the Kingdom of Bhutan was vague, since the goods of the appellant were already cleared by the Indian Custom Frontier Authorities. Since the appellant furnished shipping bills and Export General Manifest (EGM) details, as reflected in the ICEGATE Portal of the Central Board of Indirect Taxes and Customs, the genuineness of the entitlement of the appellant could not disbelieved.

By relying on the judgment of the High Court at Telengana in *ACC Ltd. v. Assistant Commissioner CT LTU (W.P. No. 943 of 2014)*, it is argued that the respondent-Authorities cannot withhold refund beyond the prescribed time-limit for want of cross-verification details.

12. Learned counsel relies on another Division Bench judgment of the Delhi High Court in *Balaji Exim v. Commissioner of CGST*, reported at *(2023) 5 Centax 41 (Del.)* for the proposition that refund applications cannot be rejected merely because of suspicion of any cogent material where the invoices in respect of exports were raised by a registered dealer and there is no allegation that the exporter has not paid the invoices, which include taxes.

13. Learned counsel further cites *M/s. Duakem Pharma Private Limited and another v. The Deputy Commissioner of Revenue and others (WPA 18295 of 2024)*, a judgment rendered by a learned Single Judge of this Court, as well as *Ramlala v. State of U.P. and others (Writ C No. 31059 of 2023)*,

a Division Bench judgment of the Allahabad High Court, for the proposition that the stand taken in the reply to a show-cause cannot be turned down on grounds extraneous to the Show Cause Notice.

14. Learned counsel appearing for the respondent-Authorities, on the other hand, submits that Section 54(7) of the Act is not mandatory but directory, which is evident from Section 56 of the Act, which provides for interest in case of delayed refund beyond the period of 60 days. It is argued that since interest has been imposed as the sanction for such delay, in the absence of any such provision in the Act, the entire process of adjudication cannot be vitiated merely because the timelines stipulated in the Act and the Rules are exceeded.

15. Learned counsel submits that the appellant itself sought for further time on the returnable date, which is not permissible under the law.

16. That apart, it is contended that the timelines of the statute were adhered to since clear 15 days' time was given to the appellant for filing its reply, from after the Show Cause Notice.

17. Learned counsel for the appellant, in reply, reiterates his submissions and insinuates that in the event the date of reply itself is fixed after the 60 days' mandatory outer limit, there would be no occasion for any further extension, as permitted under the proviso to Section 75(5) of the Act.

18. On the basis of the arguments of parties, the following issues fall for consideration in the present case:

i. Whether the period of 60 days under Section 54(7) of the Act is mandatory;

ii. Whether the orders of rejection of the appellant's claim of refund by the Assistant Commissioner and the Appellate Authority are otherwise bad in law; iii. The scope of interference in the present intra-court appeal.

19. The court comes to the following conclusions on the above issues:

i. ***Whether the period of 60 days under Section 54(7) of the Act is mandatory;***

20. The relevant provisions of the Act and the Rules are required to be considered to ascertain the present issue. At the outset, the argument of the appellant based on Section 75(5) of the Act has to be turned down, since Section 75 is an umbrella provision covering Section 73 and Section 74, which pertain to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised, either on the ground of fraud, wilful misstatement or suppression of facts, or otherwise. Thus, Section 75, which comes under Chapter XV of the Act, pertaining to demand and recovery, has no manner of application to refund of tax under Section 54, which is under Chapter-XI of the Act, pertaining to refund.

21. The governing provision in the present case is Section 54 of the Act. Sub-section (1) of the same contemplates an application by any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him before the expiry of two years before the relevant date, in such form and manner as may be prescribed. There is

no dispute that the appellant has duly filed such application in the instant case.

22. Sub-section (5) of Section 54 provides that 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.

23. Sub-section (7) of Section 54 of the Act stipulates that the Proper Officer shall issue the order under sub-section (5) within 60 days from the date of receipt of the application, complete in all respects. It is such outer limit of 60 days which is under consideration here.

24. Since Section 54 refers to the application being required to be in such form and manner as may be prescribed, and Section 2(87) of the Act provides that ―prescribed‖ means prescribed by Rules made under the Act on the recommendation of the Council, it is the Rules framed under the Act which acquire relevance.

25. Rule 90(2) of the Rules provides that the application shall be forwarded to the PO who shall *within a period of 15 days from filing the said application* scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rules (2), (3) and (4) of Rule 89, make available an acknowledgement in FORM GST RFD02 to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund, and the time period specified in sub-section (7) of Section 54 shall be counted from the date

of filing.

26. On the other hand, Rule 92(3) provides that where the PO is satisfied that either whole or part of the refund is not payable, he/she will issue a notice in FORM GST RFD-08 requiring the applicant to furnish a reply in FORM GST RFD-09 *within 15 days or receipt of notice*. After considering such reply, the PO is to make an order in

FORM GST RFD06 sanctioning a refund in whole/part or rejecting the claim of refund.

27. The proviso to Rule 92(3) stipulates that there shall not be any rejection of application without giving the applicant an opportunity of being heard.

28. While considering the issue at hand, thus, the above timelines are required to be looked into. The overarching outer limit of passing an order under Section 54(5) is 60 days from the date of the application filed under Section 54(1), in terms of Section 54(7) of the Act. It is to be noted that the expression ―shall‖ has been used in Section 54(7), as opposed to ―may‖. As held by the Supreme Court in *Vidarbha Industries Power Limited (supra)*[1], the expression ―shall‖ postulates a mandatory requirement and raises a presumption that the concerned provision is imperative, unless such presumption is rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.

29. Regarding the scope of the enactment in the instant case, there is no manner of doubt that since the Act is a taxing statute, the governing rule of interpretation is the Strict Rule.

30. As to the consequences flowing from the construction, it has been repeatedly held by different High Courts, in particular, the Delhi High Court, that if the timelines provided in the Act and the Rules are

[1] . ***Vidarbha Industries Power Limited v. Axis Bank Limited, reported at (2022) 8 SCC 352***

jumped, the right to claim that there is any deficiency in the application is lost by the respondent-Authority and the refund is to be given to the applicant.

31. Although the 15-day timeline in Rule 90(2) pertains to the scrutiny of the application for its completeness, as per the clear language of the said sub-Rule, once an application is scrutinised and found to be complete, an acknowledgment has to be issued simultaneously in FORM GST RFD-02. Since the scrutiny itself is for the purpose of ascertaining completeness, there cannot be any reason, once the scrutiny is completed and the application is found to be complete, for wasting further time in issuing acknowledgment. Hence, the timeline of 15 days stipulated in Rule 90(2) governs the completion of the scrutiny regarding completeness as well as issuance of acknowledgment of itself. **32.** Taking the provision to its limit, if an acknowledgment is issued on the 15th day from the application, 45 more days are left to reach the 60-day outer limit. The language of Rule 92(3) is such that once the PO is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible and not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring the latter to furnish a reply in FORM GST RFD-09 within a period of 15 days of the receipt of notice. After considering such reply, an order in FORM GST RFD-06 sanctioning the amount of refund in whole or

in part, or rejecting the refund claim, shall be made available to the applicant electronically.

33. Thus, there are three stages involved – first, a scrutiny as to completeness of the application is to be done by the PO and an acknowledgment issued, if satisfied, which entire process is to be completed within 15 days of the application. Secondly, the PO, if for recorded reasons, is satisfied that the claim of refund is not admissible, wholly or in part, a show cause notice is required to be issued calling for a reply. 15 days' time has to be given for the applicant to file such reply. Thus, in total, the time taken in scrutiny as to completeness and acknowledgment (15 days) and the time between the Show Cause Notice and the date of reply (15 days) comes to 30 days and leaves 30 more days for the order under Section 54(5), as per stipulation of Section 54(7), to be passed, keeping in view the outer limit of 60 days.

34. The proviso to Rule 92(3) introduces a further stage into the process by stipulating that no application for refund shall be rejected without giving the applicant an opportunity of being heard. The negative language, in which the proviso is couched, manifestly makes its stipulation mandatory.

35. Thus, the PO, before passing the order within 60 days, does not only have to ―consider the reply‖, as mandated by Rule 92(3), but also to give the applicant an opportunity of hearing under the proviso to the said sub-rule. The dual requirement of consideration of reply and

opportunity of hearing makes it quite obvious that the date of reply has to precede the date of hearing, since otherwise, the hearing being granted to the applicant would be an empty formality, without the pleading of the applicant in the form of his reply being on record.

36. Thus, the balance number of days left for completion of the 60-day outer limit, after deducting the 15 days taken for scrutiny and acknowledgment (at the beginning of the spectrum) and the 15 days between the Show Cause Notice and the reply (at the end of the spectrum), is 30 days. In order to enable a consideration of the reply and an opportunity of hearing to be given on the reply upon notice to the applicant, the said 30 days has to be utilised by the PO.

37. Proceeding from such premise, although Rule 92(3) is unclear as to what time may be taken by the PO between the issuance of acknowledgment and recording a satisfaction to the effect that the entire or partial claim is not payable, it is clear that such *prima facie* opinion has to be formed by the PO simultaneously with the scrutiny of the application on completeness, contemporaneously with the issuance of acknowledgment.

38. In *Smartadmedia (supra)*[2], the Delhi High Court quoted Circular No. 125/44/2019-GST issued by the Central Board of Indirect Taxes and Customs, Clause 34 of which is very vital. In Clause 34, taking into account the fact that interest has to be paid in terms of Section 56 of

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[2] . ***Smartadmedia v. Commissioner of Delhi Goods and Service Tax, reported at (2024) 19 Centax 106 (Del.)***

the Central GST Act (which is almost exactly *pare material* with the West Bengal Act) after the expiry of 60 days, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of the ARN (Application Reference Number) so that the disbursement is completed within 60 days. In order to do so, a reasonable time has to be left after the first two stages are crossed, that is, the PO scrutinizes the application for completeness and issues acknowledgment within 15 days, forms a *prima facie* opinion as to the claim of refund, and issues a show cause notice seeking a reply, for giving an opportunity of hearing to the applicant on its representation, upon considering which the PO finally passes the order.

39. To adhere to the above timelines, as interpreted by the aforementioned Circular, the *prima facie* opinion required to issue a Show Cause Notice under Rule 92(3) has to be formed immediately after the issuance of an acknowledgement in terms of Rule 90(2) by the 15th day from the date of filing of the application and a show notice is to be issued almost immediately after the issuance of the acknowledgment, in order to leave sufficient time of further 15 days for the reply to be given, thereafter opportunity of hearing to be given by a notice to the applicant and upon such hearing, a consideration to be given to the reply and to pass the final order, all within 60 days from the application.

40. The respondents have argued in the present case that Section 56 of the Act provides for interest as a sanction to the non-adherence to the 60 days' stipulation, which dilutes the mandatory nature of the time-limit under Section 54(7).

41. However, there are several fallacies to such argument.

42. First, the Circular issued by the Board in this regard, as referred to above, itself indicates that the entire process has to be completed within 45 days in order for disbursal to be made within the mandatory timeline of 60 days.

43. The mode of disbursal as contemplated in the Act and the Rules implies that the same has to be simultaneous with the order.

44. Section 56, instead of mitigating the mandatory nature of Section 54(7,) highlights the same. It is to be kept in mind that the issue pertains to the depletion of the Public Exchequer in the event interest has to be paid to an individual applicant because of the negligence in adhering to the timelines on the part of the PO.

45. It has been consistently held by the Division Benches of the Delhi High Court in *Smartadmedia (supra)*[3], *M.D. Securities (supra)*[4] and *Jian International (supra)*[5] that the non-adherence to the timelines

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[3] ***. Smartadmedia v. Commissioner of Delhi Goods and Service Tax, reported at (2024) 19 Centax 106 (Del.)***

[4] ***. M.D. Securities Pvt. Ltd. v. Sales Tax Officer Avato, reported at (2025) 31 Centax 138 (Del.)***

[5] ***. Jian International v. Commissioner of Delhi goods and Services Tax, reported at 2020 (39) G.S.T.L. 385 (Del.)***

stipulated in the Act and the Rules vitiates the entire process and disentitles the PO from claiming any deficiency in the application.

46. Furthermore, it is well-settled that taxing and penal statutes are to by interpreted by applying the Strict Rule of interpretation of statutes. Since the GST Act is a taxing statute, the above rule applies and the timelines are to be deemed mandatory.

47. Moreover, the expression ―shall‖ has been used to predicate the timelines in Section 54 (7) of the Act as well as the relevant Rules.

48. In view of the above, we are of the opinion that the statutory time limit of 60 days as stipulated in Section 54(7) of the Act is mandatory and non-compliance of the same vitiates any order passed in violation thereof under Section 54(5) of the Act.

ii) Whether the orders of rejection of the appellant's claim of refund by the Assistant Commissioner and the Appellate Authority are otherwise bad in law

49. In the present case, interestingly, the PO himself, in the impugned order dated February 24, 2022, treated the timeline as stipulated in Section 54(7) to be mandatory and on such ground alone, refused to extend the time for filing reply beyond the maximum period of 60 days, by holding that there is no provision in the Act to extend the date of reply. By the same logic, the PO failed to adhere to the 15-day outer time limit in issuing the acknowledgment post-scrutiny in terms of Rule 90(2). Whereas the 15th day expired on January 8, 2022 from

the date of the application for refund (December 24, 2021), the acknowledgment was issued two days thereafter on January 10, 2022. In the absence of any provision to extend such timeline, coupled with the fact that the expression ―shall‖ has been issued both in Section 54(7) and in Rule 90(2), and also keeping in view that the statute being interpreted is a taxing statute and the Strict Rule of interpretation applies, by occasioning such delay, the PO lost his right to point out any deficiency

in the refund claim, going by the ratio of *Jian International (supra)*[6] and *M.D. Securities (supra)*[7].

50. Not stopping there, the Show Cause Notice was issued under Rule 92(3) only on February 8, 2022, an inordinately long 29 days after the issuance of the acknowledgement, which is clearly contrary to the intention of the statute and the Rules framed thereunder.

51. The date of reply fixed was on February 23, 2022, which was itself beyond the 60 days' outer limit for passing the order, which period expired on or about February 22, 2022.

52. As per Rule 92(3) and the proviso thereto, even if the reply was filed on the appointed day, an opportunity of hearing on the same was to be given to the applicant and only thereafter, on a consideration of the reply in the light of such hearing, an order had to be made by the

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[6] ***. Jian International v. Commissioner of Delhi goods and Services Tax, reported at 2020 (39) G.S.T.L. 385 (Del.)***

[7] ***. M.D. Securities Pvt. Ltd. v. Sales Tax Officer Avato, reported at (2025) 31 Centax 138 (Del.)***

PO under Section 54(5), which entire process would then extend much beyond the outer limit of 60 days.

53. As such, the non-adherence to the timelines of Section 54(7), read with Rule 90(2) and Rule 92(3) and its proviso, vitiated the impugned order dated February 24, 2022 which was passed after the expiry of the statutory outer limit of 60 days from the application.

54. Conspicuously, the PO exceeded the statutory timelines on several counts. First, the acknowledgement under Rule 90(2) was issued two days beyond the period of 15 days. The very issuance of the acknowledgment clearly shows that there could not be any allegation of the application being incomplete in any respect. Thus, the grounds assigned in the impugned order of the P.O. (as affirmed by the Appellate Authority), regarding E-way Bills and the office space of the appellant being small, were extraneous as those fell beyond the scope of consideration of the PO. Moreover, the PO was precluded from taking such points after having issued the acknowledgement, thereby admitting that the application was complete.

55. Apart from the first such delay of two days in issuing the acknowledgment, the 15 days' reply period was given by a Show Cause Notice dated February 8, 2022, taking the date of reply beyond the 60day period. The order itself was passed even one day thereafter. Hence, even if a reply was filed on the scheduled date, it would be one day after the 60-day period and there would be absolutely no time left for the further mandatory statutory procedure of fixing a date of

hearing, giving a hearing to the applicant on the reply, and consideration of the reply in the light of such hearing, only after which an order could be passed by the PO under Section 54 (5) of the Act.

56. Thus, the respondent-Authorities sought to take advantage on their own wrong in exceeding the timeline by a mile and yet refusing to consider the request of the appellant for extension of date of reply on the ground that there was no provision in the sratute to extend the timelines.

57. Another aspect of the matter has to be noted. The PO relied on documents allegedly furnished by the Customs Authorities of the Kingdom of Bhutan, which could not have been a valid basis in any event.

58. Rule 90(2) provides that the scope of scrutiny of the application for refund shall be on the anvil of sub-Rules (2), (3) and (4) of Rule 89. Rule 89(2)(b), relating to export of goods, provides that a statement containing the number and date of shipping bills or the bills of export and the number and the date of the export invoices are to accompany an application, to establish that an refund is due to the applicant – nothing more, nothing less. In the present case, the appellant provided not only the shipping bill details along with Export General Manifest details as reflected in the concerned portal, but also the

Orders (LEO)‖ in respect of the goods, issued by the Indian Customs Authorities.

59. Section 16 of the Customs Act, 1962 provides that the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force—

(a) in the case of goods entered for export under Section 50 thereof, on the date on which the Proper Officer makes an order permitting clearance and loading of the goods for exportation under Section 51.

(b) in the case any other goods, on the date of payment of duty.

60. Thus, the relevant date, on which the duty, along with other charges, were to be deemed to have been paid applicant/appellant, is the date on which the Indian Customs Authorities issued clearance.

61. The limited charter of the GST Authorities is merely to ascertain whether such duties and charges have been duly payable, which is amply proved in the instant case by the Customs documents issued by the Indian Customs Authorities to the appellant at the time when the appellant's exported goods crossed the Indian border.

62. However, the PO went way beyond his jurisdiction in seeking to ascertain whether the goods were actually received by the importer, which is a completely extraneous consideration in the present context. The scope of ascertainment of the GST Authorities is whether the applicant has paid all duties and taxes for export, of which the

conclusive proof are the relevant documents issued by the Customs Authorities of India, which were furnished by the applicant duly.

63. It is entirely beyond the look-out of the respondent-Authorities as to what happened to such goods after they cross the border of India or whether the importer takes the goods at all, since the amount of refund under the Act is to be calculated not on the fate of the exported goods but on the payment of duties and charges having actually been made by the applicant. In the present case, since such issue was clearly clinched by the appellant by producing necessary documents as contemplated in Rule 89(2)(b) of the Rules, read with the relevant provisions of the Customs Act, there was no scope at all for the respondent-Authorities to refuse the refund in the first place. Thus, the impugned orders of the PO rejecting the claim and the Appellate Authority affirming the same, being *de hors* the law, are palpably vitiated by contravention of law.

iii) <u>The scope of interference in the present intra-court appeal.</u>

64. In the present case, the learned Single Judge proceeded to interpret Section 54(7), read with Section 56 of the Act, on the premise that they were to apply only when the PO is satisfied that the applicant has fulfilled all prescribed conditions.

65. However, in the process, with utmost respect, the learned Single Judge smudged the two different stages contemplated under Rule 90(2), where the scrutiny is confined to the completeness of the

application (which was vindicated by issuance of acknowledgment by the PO in the present case) and the second stage under Section 92(3), where, upon a Show Cause Notice being issued and an opportunity of hearing being given, the reply of the applicant is to be considered by the PO and an order is required to be passed under Section 54 (5) of the Act.

66. That apart, double standards were applied in the impugned judgment, by holding on the one hand that the Authority could not have extended the time for filing reply, since Rule 92 was mandatory, while failing to observe on the other hand that the overarching time-limit of 60 days stipulated in Section 54(7) of the Act itself was also mandatory by the same logic. If Rule 92 and Rule 90 are mandatory, it is the PO himself who violated the same by issuing the acknowledgment late and fixing even the date of filing reply one day after the expiry of 60 days from the application, leaving no time whatsoever for a further opportunity of hearing and a consideration of the reply in terms of Rule 92(3) of the

Rules.

67. It was held by the learned Single Judge that the procedure as laid down in the Act and the Rules were complied with by the respondentAuthorities, which is evidently erroneous on the face of it, in terms of the discussions above.

68. The contradiction in the observations of the learned Single Judge is that if the timelines were mandatory for the applicant, by the same logic, they were mandatory for the respondent-Authorities as well.

69. Thus, on a careful assessment of the impugned order, we arrive at the conclusion that despite the constraints of interference in an intra-court appeal, in the present case, there was a violation of law *ex facie* evident from the impugned judgment and, as such, we have no other option but to set aside the same.

70. Accordingly, M.A.T. No. 104 of 2024 is allowed on contest, thereby setting aside the judgment dated August 2, 2024 passed in W.P.A. No. 1905 of 2023 as well as the order dated July 5, 2023 passed by the Appellate Authority and the order of rejection of the Proper Officer (respondent no.1), dated February 24, 2022.

71. Hence, the entire procedure adopted by the respondents in respect of the appellant's application for refund, being vitiated in law, is hereby set aside.

72. The respondents are, accordingly, directed to refund the entire amount claimed by the appellant at the earliest, positively within 30 days from date, along with interest as contemplated in Section 56 of the West

Bengal Goods and Services Tax Act, 2017.

73. Consequentially, IA No: CAN 1 of 2025 is disposed of as well.

74. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)