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By Nidhi, Advocate



Judgment No.: 020
Dt.: 27-11-2023



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Judgment Deals With

Section/Rule	Section 56
Authority	Delhi High Court
Case Name	Bansal International VS Commissioner Of DGST & Anr.
Dated	21 st November, 2023

Brief Facts:

The petitioner carries on business of export of goods. On 06.02.2020, the petitioner filed an application claiming a refund of ITC of ₹53,92,516 in respect of goods exported without payment of tax in November, 2019. The petitioner's application for the refund was acknowledged on 30.07.2020 and on the same date, the concerned officer issued a SCN in form RFD-08 proposing to reject the petitioner's application for a refund on the ground that his claim was wrongful. Thereafter, the concerned officer passed an order dated 10.11.2020 sanctioning a refund of ₹1,08,293/- but rejecting the remaining refund claim of ₹52,84,223/- as not tenable under Section 62(2)(c) of the DGST Act. The Adjudicating Authority found that there was no inward supply from M/s Suvidha Enterprises on account of the non-generation of E-way Bills. According to the petitioner, the finding that no supplies had been received by M/s Suvidha Enterprises was incorrect as one M/s U.K. Traders of West Bengal had supplied goods to M/s Suvidha Enterprises through Railways. There was no dispute that it had paid taxes on input supplies received from its supplier (M/s Suvidha Enterprises), it was entitled for a refund of the same. The petitioner filed an appeal before the Appellate Authority assailing the order dated 10.11.2020 to the extent that the petitioner's claim for refund was rejected. The Appellate Authority found the appeal in favour of the petitioner & set aside the order dated 10.11.2020 passed by the Adjudicating Authority to the extent that it rejected the petitioner's claim for refund. The petitioner was directed to file an application for fresh refund. On 23.11.2022, the petitioner once again filed an application (in RFD-01) for the refund of ₹52,84,223/- as well as the interest. Pursuant to the said application, the Adjudicating Authority passed an order dated 28.12.2022 sanctioning a refund of balance amount of ₹52,84,223/-. However, the Adjudicating Authority did not sanction any amount on account of interest on the said amount. Thus, the petitioner's claim for refund was allowed in entirety but interest on the said amount was denied. The amount of ₹52,84,223/- was credited into the petitioner's account on 03.01.2023. The petitioner once again filed an application on 16.05.2023 claiming an interest of ₹13,12,761/- computed @ 9% per annum on refund already granted. The said application was rejected by impugned order passed by Adjudicating Authority.

Contention of Petitioner:

The provisions of Section 56 of the CGST Act read with the provisions of Sections 54(7) and 54(8) of the CGST Act makes it amply clear that an applicant would be entitled to interest on the amount of refund due for the period commencing from the date immediately after the expiry of 60 days from the date when an application (complete in all respects) has been received and acknowledged by the proper officer. The petitioner's entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in appellate proceedings. The Adjudicating Authority has misinterpreted the provisions of Section 56 of the DGST Act. The petitioner is entitled to interest for the period immediately **after the expiry of 60 days from the date of the first application for a refund and not after 60 days from the application filed after succeeding in his claim for refund before the Appellate Authority.**

Contention of Department:

Rule 89(2)(a) made it clear that a separate application was required to be filed in case the claim of refund was allowed by the Appellate Authority, Appellate Tribunal or the court as the case may be. Proviso to Section 56 of the CGST Act read with Rule 89(2)(a) of the Rules makes it clear that the interest would run from the date immediately after expiry of 60 days from the date of an application filed pursuant to the order passed by the Appellate Authority, Appellate Tribunal or the court. In terms of the proviso to Section 56 of the DGST Act, interest was payable only if the refund was not made within 60 days from the receipt of the application filed pursuant to the order passed by the Appellate Authority. Since in the present case, the refund was processed within the period of 60 days from the date of such application, no interest was payable under Section 56 of the DGST Act.

Findings & Order:

The controversy essentially relates to the interpretation of Section 56 of the CGST Act. A plain reading of the main provision of Section 56 of the CGST Act clearly indicates that an applicant would be entitled to interest from the date immediately after expiry of 60 days from the date of receipt of application under Section 54(1) of the CGST Act. This, obviously, refers to the first application for refund, which is required to be made within 2 years from the 'relevant date' as defined under Explanation (2) of Section 54 of the CGST Act.

The assumption that any 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) of the CGST Act, is clearly unmerited. This is apparent when one considers that an application under Section 54(1) of the CGST Act is required to be made within 2 years from the relevant date. The assumption that the application filed after appellate orders is required to be treated as fresh application is clearly flawed.

It is well settled that an interpretation of a statute that leads to an absurd result must be eschewed. A statute must be interpreted to further its object. The object of providing a period of limitation is clearly to deny the remedies to a person who has not availed the same within the period as stipulated. The rationale is that matters must rest finally within a defined period of time. Thus, the applicant cannot be denied interest on account of the time involved in appellate forum. It is also well settled that an interest is a measure to compensate a person for denial of funds.

The interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of 60 days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of 60 days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of 60 days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of 60 days of the filing of such an application – that is, the application filed pursuant to the orders of the appellate forum and not the first application.

The applications for refund filed pursuant to orders passed by the Appellate Authority; do not invite any fresh adjudication. The said applications are merely to implement the orders already passed. Such application is only for the purposes of convenience and to retrigger the processing of the refund claimed.

It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursement of the refund claim and for the proper officer to determine and disburse the interest as payable. Thus, The impugned order was set aside and the Adjudicating Authority was directed to process the petitioner's application for refund filed on 16.05.2023.