



# Lawgics

By Nidhi, Advocate



**Judgment No.: 045**  
**Dt.: 07-01-2024**



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## Judgment Deals With

<b>Section/Rule</b>	Section 50
<b>Authority</b>	Allahabad High Court
<b>Case Name</b>	Savista Global Solutions Private Limited VS Union Of India
<b>Dated</b>	06 <sup>th</sup> October, 2021

### Brief Facts:

The petitioner filed an application seeking refund, on 27.09.2019 manually before the officer. Under Rule 97A of the CGST Rules, 2017, it was permissible to file that application, manually. In any case, the said application has admittedly been processed. Though, under Rule 54(7) of the Rules, the said application should have been processed and necessary order passed within 60 days, however, the order of refund was passed beyond 60 days, on 06.01.2020.

Therefore, by virtue of Section 56 of the CGST Act, 2017, interest @ 6% from the date of expiry of 60 days contemplated under Section 54(7) of that Act, till the date of actual payment of refund, also became due. The refund to the petitioner of Rs.1,28,50,535/- that became due under the order dated 06.01.2020 alongwith interest has to be paid to the petitioner.

### Contention of the Department:

The refund was approved on 06.01.2020 itself and the file was forwarded for actual payment on 15.01.2020. The refund application and the forwarding letter by Department were moved through physical mode and therefore the same could not have been processed.

Upon activation of the GST portal on 26.09.2019, the application made by the petitioner and the further process made by Department should have been through online mode only. There was deficiency in procedure. No interest is due to the petitioner and the refund may be paid only after due compliance is made by the petitioner by logging in the particulars of the refund and the refund order on the GST portal, through online mode, only.

### **Findings & Decision of the Court:**

Admittedly, neither the amount of refund awarded under the order dated 06.01.2020 nor any interest has been paid to the petitioner, till date.

There is no dispute that the application for refund was filed by the petitioner manually, on 27.09.2019 yet the same was not processed and the refund was not directed to be paid within 60 days. Therefore, by way of a legal consequence arising from the plain language of the statute, the Department has exposed themselves to interest liability @ 6% from the date 27.11.2019 onwards on the amount of admitted refund Rs.1,28,50,535/-.

There cannot be any disentitlement of the petitioner either towards the refund of Rs.1,28,50,535/- or the interest payable thereon. The insistence on part of Department to have the details of the refund claimed and the refund order passed, uploaded on the GST portal is an eye wash. Though, the law did contemplate such applications to be made and orders to be passed and also refund to be made through online mode, at the same time, on account of the problems that arose upon the introduction of GST regime, Rule 97A of the CGST Rules, 2017 was introduced.

The subsequent Circular No.125/44/2019-GST came to be issued on 18.11.2019 prescribing the online mode for such refund applications w.e.f. 26.09.2019. It is of no benefit to the Department, as the said Circular did not and it could not override or negate the effect of law arising from Rule 97A of the Rules.

It is a settled principle in law that the delegated legislation would stand on a higher pedestal over a pure administrative instruction.

So long as Rule 97A remains on the Rule book, the Circular cannot take away the plain effect of the said Rule 97A. Therefore, the Circular could only provide a directory or an optional mode, to process a refund claim.

Second, in any case, since the Circular itself was issued on 18.11.2019 i.e. well after the application dated 27.09.2019 had been filed by the petitioner, the same could not be pressed into service by the Department.

Third, and more crucially, the Department has processed the application filed by the petitioner and passed the order dated 06.10.2020 directing for refund. Once the application had been processed and or order passed, which has attained finality, the Department cannot escape the plain effect of the same. Department also cannot escape the liability of interest that arises on non-compliance of the same.

Though the Department only acted in the best interest of revenue and with the sole object to comply the law in letter and spirit at the same time, it gives no relief to the misery caused to the petitioner who has been made to wait for refund for a very long period of almost 2 years, after complying with the law.

Thus, Department shall refund the entire amount of Rs.1,28,50,535/- together with interest from the date against 27.11.2019 till the date of issuance of the demand draft @ 6%.