

2025 (8) TMI 703 - BOMBAY HIGH COURT

Other Citation: 2025:BHC - GOA:1458 - DB

Lupin Limited Versus Union of India, Through Revenue Secretary, Department of Revenue, Ministry of Finance, New Delhi, Additional Commissioner (Appeals), Panaji, Goa, Assistant Commissioner, CGST, Div-IV, Margao.

No.- Writ Petition No. 610 of 2024

Dated:- August 5, 2025

Interest on delayed refund - relevant date for calculation of interest - to be calculated from the date when the fresh application was preferred by the petitioner or not - HELD THAT:- A conjoint and meaningful reading of Section 54 along with Section 56 forms a Scheme for refund of tax along with the interest and make it evidently clear, that the interest is levied, on delay of the refund, with an object to compensate the person who has claimed a refund, as if refund is allowed, the same shall be immediately refunded, upon an order being passed by a proper officer within a period of 60 days. However, this period of 60 days is to be computed from the date of receipt of the application referred under sub-section (1) of Section 54, and not as what has been argued by the Counsel for the Revenue, that it will be payable from the date of approval of refund. Similarly, when an Appellate Authority passes an order, either the Assessee or the Revenue going to the appellate forum, then a fresh application is to be filed for the purposes of convenience and bringing the refund order into the system, and the proviso clearly contemplates that within a period of 60 days from passing of the order by the Appellate Authority, the amount of refund shall be disbursed, if not, it shall carry an interest of 9%.

A conjoint reading of Section 56, the first part along with the proviso and specifically read with the explanation, make it evidently clear that the legislature intended to give the status of an order in original as passed under Sub-section (5) by the proper officer, to the order passed by the Appellate Forum and therefore, the interest which is liable to be paid shall be governed by clause (1) as well as by the proviso and if from the date of the original order, if amount was not refunded within 60 days from the date of the first application, it shall carry an interest of 6% and also if upon the order being passed by the Appellate forum if the refund is not disbursed within a period of 60 days, it shall carry an interest at the rate of 9%.

The interest shall be payable on the amount as contemplated under first part, i.e. when the amount is not refunded within 60 days from the date of the order passed by the First Authority, the proper officer and the interest at the rate of 9% from the date when the fresh application was made after the Appellate Authority allowed the appeals filed by the petitioner and revised the order in original, thereby allowing the entire claim of refund.

Writ Petition is made absolute by quashing and setting aside the impugned order-in-appeal and by directing the respondents to pay to the petitioner the applicable interest amount of Rs. 2,18,44,148/- from 14.06.2022 on the refund claimed for February 2022 and Rs. 4,10,94,646/- from 12.10.2022 on refund claimed from May 2022, respectively.

Petition disposed off.

Judgment / Order

BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.**For the Petitioner: Mr Jatin Arora with Mr H.D. Naik and Ms Preeta Gaykar, Advocate.****For the Respondent Nos. 2 and 3: Mr Pravin Faldessai, Deputy Solicitor General of India for Respondent No. 1. Ms Asha Desai, Central Government Standing Counsel.****ORAL JUDGMENT:**

(PER BHARATI DANGRE, J.)

1. The petitioner, a company having its registered office in Verna, IDC, Salcete, South Goa, is aggrieved by the impugned order in appeal dated 07.03.2024 passed by the respondent no.2, thereby rejecting the appeal and upholding the orders in original dated 10.07.2023 and 11.07.2023.

We have heard learned counsel Mr Jatin Arora for the petitioner and learned counsel Ms Asha Desai for the Revenue.

By consent of parties, we issue 'Rule' by making it returnable forthwith as the pleadings in the petition are complete upon the reply being filed by the respondents.

2. The brief facts highlighted in the petition would disclose that the petitioner is a pharmaceutical company registered under the Central Goods and Services Tax Act, 2017 and in relation to its exports undertaking for the month of February 2022 and May 2022, the petitioner filed two distinct refund applications; on 14.04.2022 and 12.08.2022, respectively, in respect of the two exports under Section 54(1) of the CGST Act. The applications claimed refund of ITC on export of goods and services without payment of tax and claimed two distinct amounts as set out therein.

The two orders in original dated 30.06.2022 and 10.10.2022, granted part refund claimed under the provisions of Section 54 of the CGST Act 2017, read with Rule 89 of the Rules of 2017.

As far as the first order dated 30.06.2022 is concerned, an amount of Rs. 4,32,80,504/- was held to be admissible for refund, whereas an amount of Rs. 33,38,87,556/- was held inadmissible. However, in the second order dated 10.10.2022, passed in respect of the refund application pertaining to the export of May 2022, a refund of Rs. 12,21,93,41/- was held to be admissible and the rest of the claim was rejected by stating that it was an inadmissible claim.

3. This resulted in two distinct appeals being filed before the Appellate Authority, i.e. the Commissioner (Appeals), CGST and Customs Goa, as the Assistant Commissioner had allowed the refund claim only in part. The Appellate Authority, by two distinct orders, modified the impugned order and sanctioned the eligible amount of refund by re-determining it as per the claim of the petitioner. There are two separate orders passed by the Appellate Authority, i.e. the order dated 21.04.2023 and the order dated 24.04.2023.

4. Upon the aforesaid orders being passed by the Appellate Authority, the petitioner preferred an application to the Assistant Commissioner, CGST Division IV, Margao Goa, seeking refund of ITC on the export of goods and services without payment of tax for the period February 2022 and May 2022 with reference to the original applications for refund dated 14.04.2022 and 12.08.2022.

The details of the refund claimed in the separate applications are crystallized in the petition, in paragraph No. 1 2, which reads thus:

"12. The computation of interest, as per the date of application and date of payment of the refund is as mentioned below:

Sr. No.	Particulars	Date	Refund Amount sanctioned	Interest Amount (In)
1.	<i>Application filed to claim IGST refund for Feb 22</i>	<i>14-04-22</i>	<i>33,38,82,494</i>	
	<i>61st day from date of application</i>	<i>14-06-22</i>		
	<i>Refund payment date</i>	<i>17-07-23</i>		
	<i>Delay in number of days from 61st day</i>	<i>398</i>		
	Interest @ 6%			<i>2,18,44,148</i>

2.	Application filed to claim refund for May 22	12-08-22	89,60,30,215	
	61st day from date of application	12-10-22		
	Refund payment date	18-07-23		
	Delay in number of days from 61st day	279		
	Interest @ 6%			4,10,94,646
		TOTAL	12,299,12,709	6,29,38,794

(Total Interest: Rupees Six Crores Twenty-Nine Lakhs Thirty-Eight Thousand Seven Hundred Ninety Four only)

The learned counsel for the petitioner concedes to the fact that the interest that is claimed in the petition is computed at the rate of 6% from the date of the refund application and he has not computed it by considering the proviso to Section 156, which has permitted 9% interest.

5. The learned counsel would rely upon the decision of the Delhi High Court in case of **Bansal International V/s. Commissioner of DGST 2024 (83) G.S.T.L. 190 (Del.)** as well as the decision of the Telangana High Court in the case of **Qualcom India Pvt. Ltd. V/s. Deputy Commissioner (ST)(FAC), Hyderabad 2024 (86) G.S.T.L. 300 (Telangana) decided on 20.03.2024.**

By inviting our attention to the Scheme contained in Chapter XI of the CGST Act, 2017, comprising of Section 52 and in specific Section 56, it is the submission of Mr Arora that the petitioner is entitled for interest from the date of the application, which is made under sub-section (1) of Section 54 and this is what is precisely construed by the Delhi High Court to be followed by the Telangana High Court, which has construed Section 54 as well as Section 56 along with the explanation appended therein.

6. The learned Counsel Ms Asha Desai for the Revenue, by relying upon an affidavit, at the outset, would raise a preliminary objection that a remedy of appeal under Section 110 of CGST Act is available to the petitioner. She would state that in the wake of the Notification published in the Official Gazette of India on 31.07.2024, the appellate Tribunal has already been set up but she concede to the fact that the Bench has not yet become functional and as of today the members are not appointed so that the Tribunal is made functional though the process for the same is ongoing.

7. Apart from this, on merits, it is her submission that the interest to be paid under Section 56, is liable to be paid from the date when the fresh application was preferred by the petitioner on 12.05.2023 consequent to the appellate orders being passed, granting the claim of refund of the amount by the Appellate Authority on two distinct counts. She would place reliance upon the circular issued under Section 54 of the CGST Act 2017, read with Rule 93 of the Rules of 2017, in order to streamline the procedure to claim refund, subsequent to a favourable order being passed in an appeal or any other forum. It is her specific contention that in fact there is no delay in refund of the amount, if it is to be construed from the date of the fresh application that is preferred on 12.05.2023, as the actual refund was sanctioned on 10.07.2023, and is actually disbursed on 17.07.2023 and 18.07.2023, respectively, for the claim of refund for February 2022 and May 2022.

8. In the wake of the counter arguments advanced before us, we have referred to the factual statements contained in the Writ Petition and we have perused the Scheme contained in Chapter XI of the CGST Act 2017, pertaining to the refund of tax and the interest on delayed refunds, which form an entirety Scheme by itself.

As per Section 54, sub-section (1), for any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, it is imperative for him to make an application in the form and manner prescribed before expiry of two years from the relevant date.

As per sub-section (4), an application shall be accompanied by such documentary evidence that would be necessary to establish the claim for refund and such other documents, 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 the interest had not been passed on to any other person.

The application so preferred shall be scrutinized by the proper officer, who on being satisfied that the whole or part of the amount claimed as refund is refundable, make an order under sub-section (5) of Section 54, and the amount so determined shall be credited to the fund referred to in Section 57.

As per sub-section (7), the proper officer shall issue the order under sub-section (5) within a period of 60 days from the date of receipt of the application.

9. For proper implementation and effective understanding of the terminology used in Section 54, an explanation appended thereto has defined the term “refund” and “relevant date”.

The term “relevant date” under clause (2) appended to the explanation set out as to what would amount as relevant date as indicated in sub-clause (1) of Section 54 and Ms Desai would rely upon clause (d) of the said definition as it contemplates that in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, the date of communication of such judgment, decree, order or direction is the relevant date.

According to us, the definition of the term “relevant date”, is relatable to sub-section (1) of Section 54 in determining the period of limitation as sub-section (1) contemplate that an application shall be made before expiry of 2 years from the “relevant date” and, therefore, according to us, sub-clause (d) of clause (2) of explanation is not relevant for determining as to from what date the interest is liable to be paid and we ignore this submission.

10. The crucial section for our consideration is Section 56, which is accompanied by one proviso and the explanation to be followed by the proviso. For our understanding, we deem it appropriate to reproduce Section 56, which reads thus:

“56. Interest on delayed refunds - 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 sub-section (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 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).”

11. The interest on delayed refunds is thus governed by Section 56 and the first part of Section 56, direct the interest to be paid, if any tax ordered to be refunded under sub-section (5) of Section 54 by the proper officer is not refunded within 60 days from the date of receipt of the application under sub-section (1) of Section 54 and it shall carry an interest not exceeding 6%.

The proviso appended to Section 56 provide for a contingency where any claim for refund arises from an order passed by an adjudicating Authority or Appellate Authority like in the present case before us, when the order in original refused or only granted a part refund but declined the interest on the part and the Appellate Authority permitted even this refund, and, as per the proviso, if the order has attained finality and the refund is not remitted within a period of 60 days from the receipt of application, consequent to such an order being passed, then it shall carry an interest not exceeding 9%.

What is most relevant is the explanation to this section, which makes it evidently clear that wherever any order has been passed by the Appellate Authority/Appellate Tribunal or Court, against an order passed by the proper officer under sub-section (5) of Section 54, then the order so passed shall be deemed to be an order passed under sub-section (5), that is an order passed by the proper officer, determining the amount of refund, which shall be credited to the fund.

12. A conjoint and meaningful reading of Section 54 along with Section 56, as we have stated, forms a Scheme for refund of tax along with the interest and make it evidently clear, that the interest is levied, on delay of the refund, with an object to compensate the person who has claimed a refund, as if refund is allowed, the same shall be immediately refunded, upon an order being passed by a proper officer within a period of 60 days. However, this period of 60 days is to be computed from the date of receipt of the application referred under sub-section (1) of Section 54, and not as what has been argued before us by the Counsel for the Revenue, that it will be payable from the date of approval of refund. Similarly, when an Appellate Authority passes an order, either the Assessee or the Revenue going to the appellate forum, then a fresh application is to be filed for the purposes of convenience and bringing the refund order into the system, and the proviso clearly contemplates that within a period of 60 days from passing of the order by the Appellate Authority, the amount of refund shall be disbursed, if not, it shall carry an interest of 9%.

13. It is sought to be urged before us by Revenue, that a proviso operates only when an order is passed by an Appellate Tribunal or Appellate Authority and the interest shall run only from the date when an application is preferred for seeking refund and therefore according to Ms Desai after the appellate order was passed in favour of the petitioner, fresh application for refund was filed on 11.05.2023 and the interest would be payable from that date.

We must reject the said argument as this is not the scheme of the statute and it is trite position in law that when a statute specify or regulate the payment of interest, it must necessarily abide by all the stipulations therein and here when Section 56 contemplate two different contingencies; the first being the amount not being refunded in 60 days of filing of an application, under sub-section (1) of Section 54, and the second contingency being that the amount not being refunded within 60 days from the date of the application filed consequent to an order passed by the adjudicating Authority or the Appellate Authority or the Appellate Tribunal or Court and it having attained finality.

However, the legislature was conscious of the two different situations, as it granted 9% interest in the proviso, when consequent to an order being passed by an Appellate Authority, a fresh application for refund has been made and the amount is not paid within 60 days.

In any case, a conjoint reading of Section 56, the first part along with the proviso and specifically read with the explanation, make it evidently clear that the legislature intended to give the status of an order in original as passed under Sub-section (5) by the proper officer, to the order passed by the Appellate Forum and therefore, the interest which is liable to be paid shall be governed by clause (1) as well as by the proviso and if from the date of the original order, if amount was not refunded within 60 days from the date of the first application, it shall carry an interest of 6% and also if upon the order being passed by the Appellate forum if the refund is not disbursed within a period of 60 days, it shall carry an interest at the rate of 9%.

14. This is how the Delhi High Court has also interpreted the aforesaid provision, when the question arose before it in respect of the interpretation and the applicability of Section 56 of the CGST Act and in no uncertain words, on the plain reading of Section 54 along with Section 56, somehow similar arguments advanced, came to be rejected.

The relevant observation of the Division Bench of the Delhi High Court, interpreting the effect of the proviso to the said section, is to be found recorded in the following paragraphs.

"30. Thus, the proviso to Section 56 of the CGST Act must not be read as replacing the main clause or diluting its import; it merely addresses a situation which is covered by the main clause.

31. It is important to note that the rate of interest as specified in the main provision of Section 56 of the CGST Act and the proviso to Section 56 of the CGST Act is materially different. Whereas, the main provision of Section 56 of the CGST Act provides for an interest at the rate not exceeding 6% per annum, the proviso to Section 56 of the CGST Act stipulates interest at the rate not exceeding 9% per annum.

32. The learned counsel also informed this Court that 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 sixty 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 sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating 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 sixty 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 sixty days of the filing of such an application - that is, the application filed pursuant to the orders of the appellate fora and not the first application.

33. *It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, 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."*

A similar view is also expressed by the Telangana High Court relying upon the decision of the Delhi High Court in case of **Bansal International (supra)**.

15. Since the two decisions above, of Delhi High Court and Telangana High Court fortify our view, and contain the reasoning, which we concur as even according to us reading of Section 56 together with the explanation, with reference to the application preferred under sub-section (1) of Section 54, clearly lead us to a conclusion that the interest shall be payable on the amount as contemplated under first part, i.e. when the amount is not refunded within 60 days from the date of the order passed by the First Authority, the proper officer and the interest at the rate of 9% from the date when the fresh application was made after the Appellate Authority allowed the appeals filed by the petitioner and revised the order in original, thereby allowing the entire claim of refund.

16. In the wake of the aforesaid, Writ Petition is made absolute by quashing and setting aside the impugned order-in-appeal dated 07.03.2024 passed by Additional Commissioner (Appeals) bearing reference number GOA-CGST-000-APP-ADC-087-088-2023-24 and by directing the respondents to pay to the petitioner the applicable interest amount of Rs. 2,18,44,148/- from 14.06.2022 on the refund claimed for February 2022 and Rs. 4,10,94,646/- from 12.10.2022 on refund claimed from May 2022, respectively.

Citations:

1. **2024 (4) TMI 365 - TELANGANA HIGH COURT**
Qualcom India Private Limited Versus Deputy Commissioner (ST) (FAC) and Ors. And Microsoft Global Services Center (India) Pvt Ltd. Versus State of Telangana and Ors.
2. **2023 (11) TMI 958 - DELHI HIGH COURT**
Bansal International Versus Commissioner of DGST And Anr.