

Gujarat High Court (HC) erred in awarding interest at the rate exceeding 6% on reasonable delay in grant of refund by proper officer – Supreme Court (SC)

2 May 2022



Summary

The SC has held that the Gujarat HC had erred in awarding interest at the rate exceeding 6% on delay in granting refund under the Goods and Services Tax (GST) law. The SC stated that wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. In the present case, the delay was in the region of 94 to 290 days and not so inordinate, therefore, the matter must be seen purely in the light of the concerned statutory provisions. Hence, the interest would be awarded at the rate of 6% in terms of the principal part of Section 56 of the Central Goods and Services Tax Act, 2017. Interest at the rate of 9% would be attracted only if the matter was covered by the proviso to the said section.

Facts of the case

- The petitioners¹ had filed writ before the Gujarat HC praying to grant interest on delay in grant of refund on account of export of goods².
- The petitioners contended that inordinate delay in granting refund without any explanation is arbitrary and illegal. Thus, seek compensation along with interest for the delay in sanctioning refund.

Gujarat HC observations and ruling³:

- **Interest on delayed refund is well settled in law:** The provisions relating to interest of delayed payment of

refund, are consistently held as beneficial and non-discriminatory. The Calcutta HC in a similar case⁴ had directed the respondents to pay interest on delayed payment. The delay in refund for petitioners is quite evident and hence eligible for interest.

- **Simple interest on delayed payment of refund:** The respondents have not provided an explanation for delay in payment of refund. Thus, they are liable to pay simple interest at the rate of 9% p.a. on delayed payment. The interest shall be calculated on the aggregate amount of refund.

¹ Saraf Natural Stone (Partnership firm) and its Partner; Willowood Chemicals Pvt. Ltd.

² Section 54 of CGST Act, 2017

³ R/Special Civil Application No. 15925 Of 2018; Misc. Civil Application (For Review) No. 1 Of 2019 In R/Special Civil Application No.18591 Of 2018

⁴ Shiv Kumar Jain Vs. Union of India reported in 2004 (168) E.L.T. 158 (Cal.)

SC observations and ruling⁵:

- **Writ petition only for enforcing monetary claim cannot be entertained:** The Apex Court in various similar cases⁶ has held that a writ petition⁷ in the HC only for the purpose of seeking order of refund or interest cannot be entertained. However, the HC has power to grant relief by ordering payment of money or interest as a consequential relief with the main relief. Thus, writ petition filed by the applicant before the HC seeking direction to grant interest in the delayed refund was not maintainable.
- **Interest can be granted on equitable grounds only where the statute is silent:** If the statute provides for provision relating to payment of interest, then the interest shall be paid in accordance with that statute. Where the statute is silent and there is no express bar on payment of interest, interest is required to be awarded at a reasonable rate on equitable ground⁸.
- **Refund did not arise from any order passed by adjudicating authority:** The GST law⁹ specifically provides that where any claim of refund arises

from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and if the same is not refunded within 60 days from the date of receipt of an application filed consequent to such an order, the rate of interest payable would be 9%. The present case was strictly within the scope of the principal provision and not under the aforementioned proviso, hence, the interest would be awarded at the rate of 6%.

- **Error on the part of HC:** The SC stated that in present case the delay was in the region of 94 to 290 days and not so inordinate. Therefore, the rate of interest shall be determined considering the statutory provisions and petitioners are entitled for interest of delay in payment of refund at the rate of 6% p.a. on the amount to be refunded. Hence, the HC erred in awarding interest at the rate exceeding 6%.

⁵ R/Special Civil Application No. 13513 Of 2020 order dated 16-03-2022

⁶ Sughanmal [AIR 1965 SC 1740 : 56 ITR 84 : 16 STC 398], U.P. Pollution Control Board v. Kanoria Industrial Ltd. [(2001) 2 SCC 549], ABL International

Ltd. v. Export Credit Guarantee Corp. of India Ltd. [(2004) 3 SCC 553]

⁷ Article 226 of the constitution

⁸ Modi Industries Ltd.⁹ and Godavari Sugar Mills Ltd.⁷

⁹ Section 56 of CGST.

Our comments

Earlier, in the case of Modi Industries Limited, the Apex Court had held that there is no right to get interest on refund, except as provided by the statute. Further, interest at reasonable rate on equitable grounds can be awarded only if the law is silent about interest, and payment of interest is expressly barred.

Thus, this is a significant ruling wherein the SC has held that the provisions relating to grant of interest in case of delay in sanctioning refund under the GST law are very clear. Unless the order of refund has arisen from any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court, interest at the rate exceeding 6% cannot be awarded.

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