



Dimensions – 114th Edition

Judgment under GST era

Abdul Mannan Khan v. The Goods & Services Tax Council and Others¹

Issue for Consideration

Whether rectification of statement of outward supply (GSTR 1) can be done beyond the period prescribed under section 37 of West Bengal Goods and Services Tax Act, 2017 (i.e. earlier of: the return under section 39 for the month of September following the end of the financial year to which such details pertain, or the furnishing of the relevant annual return)?

Discussion

- The Petitioner, while reporting in its GSTR 1, inadvertently reported a particular sale made to a customer as an unregistered sale even though the said customer was a GST registered company.
- After one and half years in September 2019, the customer informed the Petitioner that they were not receiving input tax credit due to the inadvertent mistake of the Petitioner.

- The Petitioner made an application seeking rectification of GSTR-1 for the period of January 2018 to March 2018. This application was rejected on the grounds that:
 - The period for making such an application expired at the end of September 2018 as per section 37² of the West Bengal Goods and Services Tax Act, 2017.
 - The Act does not provide any provision for appeal.
 - There is no provision for the condoning of such a delay.

Judgment

The Hon'ble High Court dismissed the Writ Petition with the following directions:

- There is no reason to interfere as the statute has provided a period of limitation for seeking rectification.
- The writ court cannot, by itself, condone such a limitation period. Condoning such delay would

¹ 2021-VIL-386-CAL

² Section 37(3) : Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period: PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.



render the provision otiose and would open the floodgates for similar cases.

Dhruva Comments:

It needs to be debated as to whether the input tax credit could be questioned when all conditions of section 16 (Eligibility and conditions for taking input tax credit) stands satisfied. Can recipient be held accountable and disentitled from availing credit for the inadvertent error committed at the end of the supplier?

It is to be noted that section 16(2)(aa) inserted vide Finance Act 2021 has not yet been made effective - *“the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37”*.

Judgment under Pre-GST Era

Cochin International Airport Limited v. Commissioner of Central Tax & Central Excise, Cochin³

Issue for Consideration

Whether the refund of an amount paid in advance is barred by the limitation of one year as stipulated under Section 11B of Central Excise Act, 1944?

Discussion

- The Appellant is engaged in providing taxable service under the category of “Airport Services” and other taxable services holding Service Tax registration.
- A refund claim was filed on January 10, 2018 for an amount that was lying in balance in their credit as at June 2017, which was paid by the Appellant as advance payment under rule 6(1A) of the Service Tax Rules, 1994.

- The refund was denied on the following grounds:
 - The refund was time barred as per section 11B(1)⁴ since it was not filed within one year.
 - Section 142(5) of the CGST Act, 2017 provides for a cash refund in situations specified in Section 11B(2) of the Central Excise Act, 1944 but by an express *non-obstante* clause, it is provided that none of the other provisions of the existing law will be applicable, other than section 11B(2) of the Central Excise Act, 1944.
 - The Appellant has not given an intimation of advance deposit as required under Rule 6(1A) of Service Tax Rules, 1994.
- The Appellant submitted as follows:
 - The time-bar under section 11B(1) of the Central Excise Act, 1944 is not applicable to advance / deposits, wrong remittance of tax not payable, or other payments that are not in the nature of taxes or duties since the section speaks of refund of ‘duty of excise and interest’. An advance/deposit is not tax unless it is utilised for liability.
 - Intimation under rule 6(1A) of Service Tax Rules, 1994 is only a procedural formality and inclusion of advance deposits in ST-3 Returns is sufficient compliance. Mere non-observance of the procedure laid down in rule 6(1A) *ibid* cannot be made ground for denial of adjustment. The disallowance amounts to unjustly enriching the Government with excess amount, which is not the intention of the law and is also contrary to the provisions of Article 265 of the Constitution of India.
 - Reliance was placed upon the judgments of *Fluid Controls Pvt. Ltd. v. CCE & ST, Pune*⁵ and *R.S. Chemicals v. CCE, Noida*⁶.

³ TS-197-CESTAT-2021-ST

⁴ Section 11B(1): Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed.....

⁵ 2018 (364) ELT 1041 (Tri. - Mumbai)

⁶ 2017 (353) ELT 247 (Tri. - All.)



Judgment

The Hon'ble CESTAT allowed the appeal and held as under:

- The time-bar under Section 11B(1) of the Central Excise Act, 1944 is not applicable to advances / deposits, wrong remittance of tax not payable, other payments.
- Intimation under rule 6(1A) is a procedural formality and merely non-observance of the procedure laid down in the said rule cannot be a ground for denial of substantive benefit.
- Section 142(1) of the CGST Act, 2017 provides for cash refunds in situations specified in section 11B(2) of the Central Excise Act, 1944 and the Appellant's case is squarely covered by clause (b) of proviso to section 11B(2), which provides for cash refund of the balance in account current.

Dhruva Comments:

Section 54 of the CGST Act, 2017 deals with refund of tax, interest and any other amount paid. Applying the rationale of the instant judgment, can it be debated that the time limit of two years stipulated under section 54 would not apply to advances / deposits made in electronic cash ledger that are not appropriated for tax?

***Qualcomm India Private Limited v. Union of India and Others*⁷**

Issue for Consideration

Whether the Petitioner is entitled to receive interest for a delay in processing of refund application beyond three months from the date of filing the refund application?

Discussion

- The Petitioner is engaged in the business of providing support services primarily to its foreign affiliates. The said services qualify as export of service under the erstwhile Export of Service Rules, 2005 as well as under rule 6A of the Service Tax

Rules, 1994 read with rule 3 of the Place of Provision of Services Rules, 2012.

- The Petitioner received various input services which were used in the course of providing output services which were exported. Since, the services provided were exported without payment of service tax, there was accumulation of CENVAT credit of service tax paid on various input services.
- The Petitioner filed 19 refund applications for the period June 2008 to December 2014 under rule 5 of CENVAT Credit Rules, 2004 ("CCR, 2004") for unutilised CENVAT credit on account of export of services.
- The adjudicating authority issued various show cause notices ("SCN") in relation to refund claims filed by the Petitioner.
- After the scrutiny of the documents and refund application, the adjudicating authority partially sanctioned the refund claims filed by the Petitioner and rejected the balance refund amount. The Petitioner filed appeals before the appellate authority against the orders issued by the adjudicating authority.
- The appellate authority allowed the refund claim filed by the Petitioner. Based on the said orders, order in original was passed by the refund sanctioning authority.
- The Petitioner received the sanctioned refund amounts. However, the refund claims were sanctioned beyond the period of three months from the date of filing the refund application. Therefore, the Petitioner filed various letters with the tax authorities for claiming interest on the delay in payment of the refund under section 11BB of the Central Excise Act, 1944 ("CEA, 1944"). However, no communication received from the tax authorities.
- Aggrieved, the Petitioner has filed writ petition before the Hon'ble High Court.
- The Respondent in the present case has contended that with the implementation of GST from July 1,

⁷ 2021 (5) TMI 222.



2017, the departmental set-up was required to be re-organized. The exercise of re-organization caused certain delay in the processing of appeals and in issuing further orders for sanction of refund as per the order in appeals. However, there was no intentional delay by the refund sanctioning authority.

- In this regard, the Petitioner stated that they are entitled for refund in accordance with section 11BB of the CEA, 1944. There is no question whether the delay caused in refund is intentional or unintentional. In relation to the same, the Petitioner relied on the circular issued by Central Board of Excise and Customs (“CBEC”) dated October 1, 2002 and also relied on number of judicial precedents.
- The Hon’ble High Court, after taking into account the facts of the case, observed as follows:
 - Section 11BB of the CEA, 1944 provides that if any duty has to be refunded and if the same is not refunded within a period of three months from the date of receipt of an application, then, interest has to be paid to the applicant. The interest should be calculated for the period commencing from the date immediately after expiry of three months from the date of receipt of such application until the date of refund.
 - CBEC circular⁸ dated October 1, 2002 provided that provisions of section 11BB of the CEA, 1944 are attracted automatically for any refund sanctioned beyond the period of three months.
 - Reliance was also placed on the decision of Hon’ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India*⁹ wherein it was held that interest under section 11BB becomes payable on the expiry of three months from the date of receipt of application. It is a well settled proposition of law that a fiscal legislation has to be construed strictly. One has to look merely at what is said in the relevant provision, there is nothing to be read in or nothing to be

implied and there is no room for any intendment.

- In the present case, it is not in dispute that there was a delay in granting a refund and the orders were passed beyond period of three months from the date of receipt of the application. The only ground to be considered is that the delay was unintentional.
- Section 11BB does not speak about or exempts any delay which is unintentional. The section does not distinguish delay which is intentional and delay which is unintentional. Once there is a delay in granting a refund beyond three months, the payment of interest becomes obligatory as a matter of law being a mandate of the statute.

Judgment

The Petitioner should be entitled to receive interest under Section 11BB of the CEA, 1944 for the delay in receiving refund beyond the period of three months from the date of filing refund application.

Dhruva Comments:

Generally, a certain amount of time is taken by the tax authorities to process refund applications filed by assessee. In the present case, the High Court has clarified that irrespective of the nature of delay i.e. intentional or unintentional, the assessee is entitled to receive a refund for the period beyond three months from the date of receipt of refund application. This is a welcome judgment, and it would certainly provide relief in similar matters for receiving interest on delayed refunds.

Notification under GST

Amendments in CGST Rules, 2017

The Government has issued notification no. 15/2021-Central Tax dated May 18, 2021 whereby certain

⁸ Circular No.670/61/2002-CX, dated October 1, 2002

⁹ (2011) 10 SCC 292



amendments have been made in the CGST Rules, 2017. The keys amendments are summarised below:

- **Rule 23 (Revocation of cancellation of registration)**
 - The Additional Commissioner / the Joint Commissioner / the Commissioner can extend the time period for submission of the application for revocation of cancellation of registration beyond thirty days from the service of order of cancellation of registration [*earlier the application was to be filed within thirty days*].
- **Rule 90 (Acknowledgment for refund filed)**
 - The time period from the filing of the refund claim and the date of communication of the deficiencies by the proper officer shall be excluded in calculating the period of two years as specified under section 54(1) of the CGST Act, 2017, in respect of any fresh application filed after rectification of the deficiencies.
 - The assessee has now been granted the facility of withdrawal of the refund application in Form RFD-01W. Once such application is filed, any amount which is debited from the electronic cash / credit ledger shall be credited back to the respective ledger.

Dhruva Comments:

The amendment in rule 90 is a welcome one as the department had been adopting a view that the application filed after rectification of deficiencies would be considered as a fresh application and accordingly, were rejecting the refund applications as being time barred. Although, it is still open to debate, whether fulfilling the deficiencies would tantamount to filing a fresh application which will attract the time bar of two year period.

Instruction under Customs

Special refund and drawback drive

- In order to provide immediate relief to the business entities, especially MSMEs in the present difficult time of pandemic, the CBIC has issued instructions¹⁰ for conducting a “Special Refund and Drawback Disposal Drive” with the objective of priority processing and disposal of all pending refund and drawback claims.
- This special drive shall be in place from May 15, 2021 to May 31, 2021. The following points need to be taken into account:
 - Though the purpose is to provide immediate relief to the taxpayers, due diligence must be done before granting the refund / drawback. All the relevant legal provisions, notifications, circulars and instructions must be followed while processing the claims.
 - All communication should be done over email, wherever email id of the applicant is available.
 - All deficiency memos may be reviewed, and refund / drawback may be considered on merit.

¹⁰ Instruction no. 10/2021-Customs dated May 13, 2021





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