IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgement delivered on: 21.11.2023

\+ **W.P.(C) 11629/2023**

BANSAL INTERNATIONAL ..... Petitioner

versus

COMMISSIONER OF DGST AND ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Jain, Mr Virag Tiwari, Mr K.J. Bhat & Mr Ramashish, Advocates.

For the Respondents : Mr Rajeev Aggarwal and Mr Aadish Jain, Advocates for R-1.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 11.07.2023 (hereafter '**the impugned order**') passed by the Additional Commissioner, Department of Trade and Taxes (hereafter '**the Adjudicating Authority'**), whereby the petitioner's claim for interest of ₹13,12,761/- calculated at the rate of 9% per annum, on the refund of GST already granted, was rejected. The Adjudicating Authority referred to Section 56 of the Delhi Goods and

Services Tax Act, 2017 (hereafter '**DGST Act'**) and had held that in terms of the proviso to Section 56 of the DGST Act, interest was payable only if the refund was not made within sixty 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 sixty days from the date of such application, no interest was payable under Section 56 of the DGST Act.

2. According to the petitioner, the Adjudicating Authority has misinterpreted the provisions of Section 56 of the DGST Act. The petitioner claims that he is entitled to interest for the period immediately after the expiry of sixty days from the date of the first application for a refund and not after sixty days from the application filed after succeeding in his claim for refund before the Appellate Authority.

3. In view of the above, the principal controversy to be addressed is whether the period for which the interest is payable under Section 56 of the DGST Act – which is similarly worded as Section 56 of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') – commences from the date immediately after expiry of sixty days from the receipt of an application for refund or from a later date, in case the refund is initially denied but subsequently allowed by the Appellate Authority, Appellate Tribunal, or a court.

4. Briefly stated, the context in which the aforesaid controversy arises is as under:

4.1. The petitioner (Arun Bansal) carries on business of export of goods in the name of its proprietorship concern, Bansal International. On 06.02.2020, the petitioner filed an application claiming a refund of Input Tax Credit (hereafter '**ITC**') of ₹53,92,516/- (₹8,62,883/- Central GST, ₹8,62,883/- Delhi GST and ₹36,66,750/- Cess) in respect of goods exported without payment of tax in the month of November, 2019.

4.2. The petitioner's application for the refund was acknowledged on 30.07.2020 and on the same date, the concerned officer issued a Show Cause Notice (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.

4.3. The Adjudicating Authority found that there was no inward supply to M/s Suvidha Enterprises, which was the supplier from whom the petitioner claims to have received the supplies. This was 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. The petitioner also contended that its claim could not be denied on account of any doubt as to the supplies received by M/s Suvidha Enterprises. The petitioner contended that since 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.

4.4. 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.

4.5. The Appellate Authority found the appeal in favour of the petitioner. The petitioner's claim that one M/s U.K. Traders of Calcutta had supplied goods to M/s Suvidha Enterprises, Delhi through the Railways, was verified and confirmed by the Railways pursuant to a letter dated 09.09.2022, issued to the Chief Parcel Officer Northern Railways. The Appellate Authority also accepted the petitioner's contention that it was open for a taxpayer to discharge its tax obligations either in cash or through utilisation of ITC admissible in respect of such supplies. Accordingly, the Appellate Authority 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 and the Adjudicating Authority was directed to process the petitioner's application in accordance with the timeline as prescribed in the CGST/DGST Act and the Central Goods & Services Tax Rules, 2017 (hereafter '**the Rules'**). The petitioner's claim for interest was denied.

4.6. 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.

4.7. 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 at the rate of 9% per annum on refund already granted (Central GST = ₹2,09,120/, Delhi GST = ₹2,09,120/- and Cess = ₹8,94,521/-). The said application was rejected by the impugned order.

5. The petitioner has filed the present petition, *inter alia*, assailing the impugned order dated 11.07.2023 as well as the order dated 28.12.2022. The petitioner also impugns orders allocating the jurisdiction to the Additional/Special Commissioner to act as an Appellate Authority. However, the petitioner had confined the present petition to the denial of its claim of interest on the refund pertaining to the tax period, November, 2019.

6. At the outset, it would be relevant to refer to Section 56 of the CGST Act (which is identically worded as Section 56 of the DGST Act). The said Section reads as under:

> "**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).”

7. In terms of Section 54(1) of the CGST Act, any person claiming refund of tax and any interest paid on such tax or any other amount paid by him can make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If his refund as ordered, is not paid within a period of sixty days from the date of the application, the applicant is required to be paid interest not exceeding 6% per annum from the date immediately after the expiry of sixty days from the date of receipt of the said application.

8. Sub-section (4) of Section 54 of the CGST Act requires the said application for refund to be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant and such documentary or other evidence to establish that the incidence of tax and interest claimed has not been passed on to any other person. Sub-section (1) and Sub-section (4) of Section 54 of the CGST Act are relevant and are set out below:

> "**54. Refund of tax.–**
>
> (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:
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> Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed."
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> ** ** ** ** **
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> (4) The application shall be accompanied by-
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> (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
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> (b) such documentary or other evidence (including the documents referred to in section 33) 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 interest had not been passed on to any other person:
>
> Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person."

9. Chapter X of the Rules contains provisions regarding refund. Rule 89 of the Rules stipulates that an application for refund would be made electronically in form GST RFD-01 through common portal either directly or through a facilitation centre notified by the Commissioner.

10. Sub-rule (2) of Rule 89 of the Rules prescribes the documents required to be filed to establish that a refund is due to the applicant. Sub-rule (2) of Rule 89 of the Rules is set out below:

> "**Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-**
>
> (1) xxx xxx xxx
>
> (2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **FORM GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-
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> (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;
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> (b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, other than electricity;
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> (ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for

exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation. - For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer."

11. Sub-rule (3) of Rule 89 of the Rules provides that before making an application relating to refund of ITC, the applicant would debit the electronic credit ledger by an amount equal to the refund claimed. Sub-rule (4) of Rule 89 of the Rules relates to computation of the refund payable in case of zero-rated supplies, without payment of tax.

12. Rule 90 of the Rules stipulates that an acknowledgement of an application for refund would be issued in Form GST RFD-02 and the period of sixty days within which a proper officer is required to make an order in respect of the application, as prescribed under Section 54(7) of the CGST Act, would be reckoned from the date of issuance of the acknowledgment. Sub-rules (1), (2) and (3) of Rule 90 of the Rules are set out below:

"**Rule 90. Acknowledgement. -**

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

13. It is apparent from the scheme of the CGST Act that an order in respect of an application for refund is required to be made within a period of sixty days from the date of receipt of an application, complete in all respects.

14. 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 sixty days from the date when an application (complete in all respects) has been received and acknowledged by the proper officer.

15. The petitioner's entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in the appellate proceedings.

16. In terms of Section 107 of the CGST Act, any person aggrieved by any decision or an order passed by an Adjudicating Authority under the CGST Act, the SGST Act or the UT CGST Act may appeal to the Appellate Authority within a period of three months from the date of communication of the said order. It is well settled that the appellate proceedings are in continuation of the original proceedings. In terms of Sub-section (11) of Section 107 of the CGST Act, the Appellate Authority is required to pass such orders as it thinks fit and proper confirming, modifying, annulling the decision or the order appealed against. It is also specifically provided that the Appellate Authority shall not refer the case back to the Adjudicating Authority that has passed the decision or the order. Similarly, Section 112 of the CGST Act entitles any person aggrieved by an order passed under Sections 107 or 108 of the CGST Act (by the Appellate Authority or the revisional authority) to appeal to the Appellate Tribunal. Section 117 of the CGST Act provides an appeal to a High Court against any order passed by the Appellate Tribunal if the case involves a substantial question of law.

17. It is relevant to note that the appellate proceedings are in continuation of the original proceedings[1] and an order passed by the Adjudicating Authority would stand merged with the order passed by the Appellate Authority or the Appellate Tribunal/High Court. Once a person has triggered the proceedings for claiming refund by filing an application under Section 54(1) of the CGST Act along with all relevant documents as specified under Section 54(4) of the CGST Act read with Rule 89(2) of the Rules, which are acknowledged in terms of Rule 90 of the Rules, and his claim is ordered but not paid within a period of sixty days, his entitlement to interest is crystalised. In case where the claim initially is denied by the Adjudicating Authority but subsequently ordered by the Appellate Authority, Appellate Tribunal or the court, the said orders are deemed to be the orders passed under Section 54(5) of the CGST Act. This is expressly stipulated in the Explanation to Section 56 of the CGST Act. It is obvious that the right to receive interest would arise only if the refund is ordered under Section 54 of the CGST Act. The period for which the interest is to be calculated would commence from the date immediately after the expiry of sixty days from the date of the refund application.

18. Mr Rajeev Aggarwal, learned counsel appearing for the Revenue had contended that the grant of interest was not a matter of equity and therefore, is required to be granted strictly in accordance with the statute. He submitted that Rule 89(2) of the Rules, *inter* alia, provides

[1] ***State of Kerela v. K.M Charia Abdullah & Co:*** AIR 1965 SC 1585; ***Gojer Bros Pvt Ltd v Ratan Lal Singh:*** (1974) 2 SCC 453.

that the person seeking refund must file an application accompanied by an order passed by the proper officer, or the Appellate Authority or the Appellate Tribunal or the court resulting in such refund. He submitted that Clause (a) of Sub-rule (2) of Rule 89 of the Rules 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. He submitted that 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 sixty days from the date of an application filed pursuant to the order passed by the Appellate Authority, Appellate Tribunal or the court.

19. We are unable to accept the said contention. There is no cavil that the taxpayer's right to interest is circumscribed by the text of the statutory provisions. It is also not the petitioner's case that he is entitled to interest in equity and in disregard of the provisions of Section 56 of the CGST Act.

20. As stated at the outset, 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 sixty days from the date of receipt of application under Sub-section (1) of Section 54 of the CGST Act. Thus, on a plain reading of Section 56 of the CGST Act, the petitioner's entitlement to interest was required to be reckoned from the date of receipt of the application under

Section 54 of the CGST Act. This, obviously, refers to the first application for refund, which is required to be made within a period of two years from the 'relevant date' as defined under Explanation (2) of Section 54 of the CGST Act.

21. 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 a period of two years from the relevant date. The logical sequitur of the Revenue's contention is that the period spent by the taxpayer in pursuing its appellate remedies would also be disregarded for the purposes of calculating the period of two years within which an application is required to be made under Section 54(1) of the CGST Act. Resultantly, the taxpayer would be denied its claim for refund altogether in cases where the first application for refund was made within the stipulated period of two years from the relevant date (as defined under explanation to Section 54 of the CGST Act) but the proceedings before the appellate forum had carried on beyond the said period. This is, plainly, unacceptable, and therefore, the assumption that the application filed after the appellate orders is required to be treated as a fresh application is clearly flawed.

22. 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 fora.

23. It is also well settled that an interest is a measure to compensate a person for denial of funds. In ***Union of India Through Director of Income Tax v. M/s Tata Chemicals Ltd.***[2], the Supreme Court had observed as under:

> "38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course."

[2] (2014) 6 SCC 335

24. It is also well settled that where a statute specifies or regulates the payment of interest, it would be payable in terms of the statute. But where the statute is silent and the payment of interest is not proscribed, the court would award reasonable interest on equitable grounds[3].

25. The object of providing payment of interest after the expiry of sixty days from the date of the refund application is to ensure that a taxpayer is adequately compensated for denial of the funds that were legitimately due to it after accounting for a reasonable period of sixty days for processing its claim. The right of a taxpayer to receive such compensation would be severally diluted if the reference to the date of receipt of application under Section 54(1) of the CGST Act, in Section 56 of the CGST Act is construed to mean the date of an application for refund filed subsequently – that is, after the first application for refund is rejected in whole or in part – pursuant to the orders passed by the appellate fora.

26. We are of the view that on a plain reading of the main provisions of Section 56 of the CGST Act, a taxpayer would be entitled to interest from the date immediately after the expiry of sixty days from the receipt of the first application under Section 54(1) of the CGST Act, which is accompanied by the documents as specified under Section 54(4) of the CGST Act read with Rule 89 of the Rules.

[3] ***Modi Industries Ltd., Modi Nagar & Ors. v. Commissioner of Income Tax, Delhi & Anr***: (1995) 6 SCC 396; ***Godavari sugar Mills Ltd. v. State of Maharashtra & Ors.***:(2011) 2 SCC 439; ***Union of India & Ors. v. Willowood Chemicals Pvt Ltd. & Anr.*** (2022) 9 SCC 341

27. We are also unable to accept that the proviso to Section 56 of the CGST Act in any manner dilutes the right of a taxpayer to receive interest under the main provisions of Section 56 of the CGST Act. It is well settled that a provsio to a clause must be read in the context of the main clause and not as a separate or an independent clause. The main clause and the proviso must be read as a whole.

28. In ***Dwarka Prasad v. Dwarka Das Saraf***[4], V. R. Krishna Iyer, J. observed that:-

> "18. ….The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (Thompson v. Dibdin, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.
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> "The proper course is to apply the broad general Rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

[4] *(1976) 1 SCC 128*

> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)"

29. In ***Union of India & Ors. v. VKC Footsteps (India) (P) Ltd.***[5], the Supreme Court had observed as under:-

> "91. Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation [Justice G.P. Singh, Principles of Statutory Interpretation, (14th Edn., Lexis Nexis, 2016) pp. 215-234.] formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:
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> "The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by Lush, J. [Mullins v. Treasurer of the County of Surrey, (1880) LR 5 QBD 170] : (QBD p. 173) '… When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso.' In the words of Lord Macmillan [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7]: (SCC OnLine PC) '… The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' The proviso may, as Lord Macnaghten [Local Govt. Board v. South Stoneham Union, 1909 AC 57 (HL)] laid down, be 'a qualification of the preceding enactment

[5] (2022) 2 SCC 603

which is expressed in terms too general to be quite accurate' (AC p. 62). The general rule has been stated by Hidayatullah, J. [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] , in the following words : (AIR p. 1600, para 9) '9. … As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.' And in the words of Kapur, J. [CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713] : (AIR p. 717, para 9) '9. … The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment.…'"

92.2. A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:

"The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. 'It is a cardinal rule of interpretation', observed Bhagwati, J. [Ram Narain Sons Ltd. v. CST, AIR 1955 SC 765, p. 769, para 10] , 'that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'" [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 221.]

92.4. An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and

> to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution." [Id, p. 226.]

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.

34. 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. *Sensu stricto*, 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 disbursal of the refund claim and for the proper officer to determine and disburse the interest as payable.

35. In ***SBI Cards & Payment Services Ltd. v. Union of India***[6], the Division Bench of Punjab and Haryana High Court had interpreted Section 56 of the CGST Act in a similar manner as is evident from the chart setting out the computation of interest, which was accepted by the Court. Paragraph 12 of the said decision, which sets out the computation of the interest payable to the petitioner in that case is set out below:

> "12. The Chart (Annexure P-3) indicating the delay in days is as follows:-
>
> | Sl. No. | Particulars | Amount in Rs. |
> |---|---|---|
> | 1 | Date of filing of refund application via Form GST RFD-01A (ARN No. AA060419007521l) | 5-Apr-19 |
> | 2 | Amount of refund claimed | 1,084,122,958 |
> | 3 | Interest rate u/S 54 proviso & Notification No. 13/2017 - Central Tax dated 28 June 2017 | 6% |
> | 4 | 60 days from filing of refund application | 4-June-19 |
> | 5 | Date of filing of refund application via Form GST RFD -01A (ARN No.AA0610210489594) against High Court Order | 28-Oct-21 |
> | 6 | 60 days from filing of refund application against high court Order | 27-Dec-21 |
> | 7 | Actual Date of Refund | 4-Jan-22 |
> | 8 | Period of Interest upto 27 Dec 21 | 937 |
> | 9 | Interest amount up to 60 days of refund application against high court order | 166,984,638 |

[6] CWP-1851/2022 decided on 06.01.2023

10	Interest rate u/S 56 proviso		9%
11	Additional Interest amount after 60 days of refund application against high court order		2,138,544
	Total Interest		1,69,123,181
	CGST	84,561,591	
	SGST	84,561,591”	

36. The petition is, accordingly, allowed. The impugned order is set aside. The Adjudicating Authority is directed to process the petitioner’s application for refund filed on 16.05.2023, in accordance with this decision.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 21, 2023
RK