

Adjustment of interest against GST refund claim permissible – Delhi HC

08 December 2023



Summary

The Delhi High Court (HC) permitted the adjustment of interest payable by the petitioner on account of the delay in payment of tax liability against its refund claim. The HC observed that the petitioner amended the tax invoices to export under the category 'with payment of Integrated Goods and Services Tax (IGST)', which was initially disclosed as 'supplies under Letter of Undertaking (LUT)'. Additionally, in order to avoid blockage of working capital, the petitioner had also delayed the payment of IGST on the import of services. Owing to the above, the petitioner was liable for dual interest liability. Upholding the order of the adjudicating authority, the HC relied on the principle that 'equity is out of place in tax law' and held that Goods and Services Tax (GST) and interest are statutory levies and cannot be avoided merely because the assessee was entitled to a refund of accumulated input tax credit (ITC) resulting in tax neutrality of import and export of services.

Facts of the case

- Grapes Digital Private Limited (the petitioner) is engaged in the business of providing services of digital media management, online advertisement, management of advertisement projects, sale and procurement of space and slots for advertisement campaigns and other business support services, and provides such services to clients located in India as well as abroad.
- The petitioner imported such services from overseas entities, triggering liability to pay IGST under the reverse charge mechanism (RCM).
- The petitioner had opted to export the services without payment of IGST under LUT. Accordingly, the petitioner would be entitled to avail a refund of the accumulated ITC on account of such exports.
- On account of the immense ambiguity of the refund mechanism and to avoid working capital blockage, the petitioner did not pay the IGST on imports.
- Subsequently, the petitioner amended the export invoices and opted to pay IGST on the above exports. They also paid the impending IGST on imports.

Accordingly, the accumulated ITC on account of payment RCM liability on imports was utilised for the payment of IGST on exports.

- The petitioner filed a refund application to obtain a refund of the IGST paid on exports, which was accepted by the adjudicating authority (AA). However, the AA adjusted the interest due on the delayed payment of IGST on imports and exports against the refund claim.

Proceedings in appeal and remand

- The petitioner challenged the adjustment of interest before the appellate authority on the grounds that such an adjustment of interest cannot be made without issuing a Show Cause Notice (SCN).
- The petitioner had contended that the IGST payable on imports would be available as a refund of accumulated ITC on account of exports, making the entire transaction tax-neutral. Since the interest is compensatory in nature, interest liability should not arise.
- The appellate authority rejected the petitioner's contentions, stating that the provisions prescribe the payment of IGST and interest on its own without any

requirement of a SCN. It was stated that withholding payment of IGST on imports was in violation of the provisions of GST.

- However, the appellate authority pointed out that the AA had referred to the incorrect provisions for adjustment of interest. Owing to the said error, the appellate authority remanded the matter back to the AA for reconsideration to afford the petitioner the opportunity to resist the adjustment of interest.
- The AA again confirmed the adjustment of interest under the relevant provisions, which was appealed by the petitioner reiterating the above contentions.
- On the other hand, the department, on account of the review order, challenged the refund order on the grounds that a refund of IGST cannot be permitted as the petitioner had initially opted to export under LUT without payment of IGST, and the subsequent amendment to export invoices to change the category of option cannot be permitted.
- The appellate authority, vide a common order, accepted the department's appeal.
- The petitioner has assailed the impugned order of the appellate authority vide the present petition.

Delhi HC observations and judgement [W.P.(C) No. 2918/2021; Order dated 05 December 2023]

- **Appeal filed against refund order is barred by limitation:** The HC observed that the appeal against the AA's order granting a refund was filed subsequent to the review order, which was passed after one year from the date of AA's order. The HC evaluated the appeal provisions and stated that the time period for filing an appeal starts from the date when the original order is communicated and cannot be regarded from the date of

communication of the review order. Accordingly, the HC stated that the appeal filed by the department subsequent to receiving the review order was barred by limitation and should have been rejected by the AA.

- **Refund permitted by appellate authority cannot be questioned and reconsidered in remand proceedings:** The HC observed that the appellate authority had categorically affirmed the refund entitlement of the petitioner while also upholding the adjustment of interest. The matter was remanded to AA for the limited purpose of error on account of provisions referred for adjustment of interest. Accordingly, the original order stood merged with the appellate order, and the refund entitlement could not be questioned in remand proceedings.
- **Adjustment of interest against admissible refund claim does not warrant issuance of a demand notice:** The HC observed that the interest provisions pertinently prescribe an automatic accrual of interest against any tax which is not paid before the due date. Accordingly, such unpaid interest shall be recoverable as per the recovery provisions. The HC further noted that although the recovery of interest shall be pursuant to a notice, no specific demand notice is required to be issued. The petitioner was given due opportunity to contest the adjustment of interest on the delayed payment; accordingly, there was no requirement for any further notice. In view of the above, the HC upheld the adjustment of interest against the refund.
- **Interest payment cannot be avoided merely on account of tax neutrality:** The HC asserted that GST and interest are 'statutory exactions' and cannot be averted merely because the

simultaneous transactions of import and export are tax neutral. Invoking the principle that 'equity is out of place in tax law,' the HC categorically affirmed that payment of GST cannot be avoided

merely because the same would be available as a consequent refund.

Our comments

Pertinently, the refund provisions categorically permit the deduction of any tax, interest, penalty, fee or any other amount, in the absence of any stay, from the refund due to the assessee.

The HC stated that the assessee who is liable to pay interest should be given an opportunity to contest such levy in consonance with the principles of natural justice. However, it was explicitly clarified that no specific demand notice is required for recovery of such interest, which is an 'automatic accrual' as a consequence of delayed payment.

It is a trite position that when there is a dispute on the quantum of tax or due date of payment of tax which directly affects the interest quantum, the same would be done by issuing proper notice in terms of Section 73 or 74 as the case may be. In other cases, when the amount is not disputed, the department is entitled to deduct or adjust the amount due from the amount payable to the taxpayer without issuing a notice.

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