

Interest entitlement cannot be diluted merely on account of the pendency of appellate proceedings – Delhi HC

28 November 2023



Summary

The Delhi High Court (HC), while extensively deliberating on interest entitlement to taxpayers, highlighted that Good and Services Tax (GST) envisages the culmination of refund proceedings within 60 days, pursuant to which interest at the rate of 6% becomes payable for the subsequent period of delay. In a scenario where a refund application is rejected but subsequently allowed by a higher forum, interest accrues from the date of the original application. The HC held that a refund arising on account of an order of the appellate authority, appellate tribunal or the court, which is not paid within 60 days of the refund application filed consequent to such order, is liable to enhanced interest at the rate of 9%. Pertinently, the subsequent application filed consequent to the appellate order would not be tantamount to a fresh refund application and accordingly, interest entitlement will not lapse.

Facts of the case

- Bansal International (the petitioner) is engaged in the business of export of goods. Pursuant to such exports, the petitioner filed an application for claiming a refund of accumulated input tax credit (ITC), which was rejected by the adjudicating authority (AA) for being wrongful.
- In appeal, the appellate authority decided the matter in favour of the petitioner and set aside the refund rejection order of the adjudicating authority.
- Thereafter, the petitioner filed the application to claim a refund of the accumulated ITC along with interest for the delayed payment. The AA allowed a refund, but the interest claim was denied.
- Petitioner's subsequent refund application for claiming enhanced interest at the rate of 9% p.a. was also outrightly rejected.
- In the writ proceedings before the HC, the petitioner had assailed the above orders of the AA, not allowing and outrightly rejecting the enhanced interest, and sought clarification on interest on delayed refund.

Delhi HC observations and judgement [W.P.(C) No. 11629/2023; Order dated 21 November 2023]

- **Interest at the rate of 6% arises from the date of expiry of 60 days from filing the refund application:** After a detailed evaluation of the refund provisions, the HC highlighted that under GST, it is envisaged that refund proceedings shall be completed within 60 days from filing the application. Accordingly, in case the refund proceedings are not completed within the defined period, the applicant is entitled to interest at the rate of 6% p.a. from the date of expiry of 60 days from filing such refund application.
- **Interest entitlement does not lapse merely on account of an incorrect order of AA:** The HC invoked and affirmed the principle that appellate proceedings are in continuation of the original proceedings, and an order by the appellate authority subsumes the order passed by the AA. On the basis of this assertion, the HC stated that the interest entitlement arises once the refund claim is ordered, irrespective of whether it is ordered subsequently by the appellate authority, appellate tribunal or the court.

It was further clarified that a subsequent refund application filed pursuant to the order passed by the appellate authority, appellate tribunal or the court would not be equivalent to a fresh refund application. Accordingly, interest entitlement does not lapse merely on account of pendency in the appellate forum, as interest is a measure to compensate a person for the denial of legitimately due funds.

- **Enhanced interest of 9% becomes payable from the date of expiry of 60 days from the subsequent application:** The HC stated that the applicant would be entitled to receive 'enhanced interest' when the department fails to complete the refund proceedings within 60 days from the subsequent refund application

filed pursuant to favourable order of the appellate authority. The HC explained that the subsequent refund application does not require any fresh adjudication and is merely a 'nudge' to disburse the refund claim as approved by the appellate authority. Accordingly, interest at a higher rate of 9% p.a. shall be applicable from the date immediately after the expiry of 60 days from filing of such subsequent application. The HC summarised that the interest at the rate of 6% p.a. should be payable from the date immediately after the expiry of 60 days from the first refund application, and such interest would get enhanced to 9% p.a. which shall be applicable from the date immediately after the expiry of 60 days from the subsequent application.

Our comments

This issue was prominently deliberated before the Supreme Court (SC) in the case of Willowood Chemicals Private Limited and Saraf Natural Stone, wherein, by a common order, the SC had explicitly clarified that interest at the rate of 6% would be payable after the expiry of 60 days from receipt of application for refund, while enhanced interest of 9% would be applicable if the refund claim arises pursuant to the order of the appellate authority, appellate tribunal or court, and if it is not refunded within 60 days from date of refund application filed consequent to such order.

The Punjab and Haryana HC, in the case of SBI Cards and Payments Services Limited, had also decided on the issue in a similar manner.

The taxpayers whose refund applications were initially rejected may take advantage of said ruling for interest entitlement in the event of a subsequent favourable order.

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