



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1474 OF 2023

Ms. Anita Agarwal
(Sole Proprietor of M/s. Shanker
International), having its place of
business at 214, Near C Block Market,
Kailash Hills, South Delhi – 110 065

...Petitioner

Versus

1. Union of India
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, Rashtrapati Bhavan
Defence Quarters,
New Delhi – 110 001
2. Central Board of Indirect Tax and
Custom, Ministry of Finance,
Department of Revenue,
Represented by its Chairman,
having its office at North Block,
Rashtrapati Bhavan
Defence Quarters,
New Delhi – 110 001
3. **Deleted** – As per order dated
14 March 2023
4. **Deleted** – As per order dated
14 March 2023
5. The Additional Commissioner
(Nhava Sheva – II)
having his office at Jawaharlal
Nehru Customs House, Nhava
Sheva, Tal: Uran, District: Raigad
Maharashtra – 400 707

...Respondents

Mr. Sriram Sridharan (through VC) for Petitioner.

Mr. Jitendra B. Mishra a/w Mr. Satyaprakash Sharma, Mr. Ashutosh Mishra and Mr. Rupesh Dubey for Respondent Nos.1, 2 and 5.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 11 November 2024

PRONOUNCED ON : 14 November 2024

JUDGMENT (Per Jitendra Jain J):-

1. Rule. The rule is made returnable immediately at the request and consent of the learned counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks interest on delayed payment of refund of tax as per Section 56 of the Central Goods and Services Tax Act, 2017 (“CGST Act”).

Brief facts :-

3. The Petitioner is an exporter and supplier of Ethyl Alcohol Liquid Packaging Film, Iodized salt, etc. On export of the goods, the Petitioner makes payment of Integrated Goods and Services Tax (“IGST”) and claims the refund of same based on shipping bills as per the provisions of Section 16(3) of IGST Act read with Section 54 of CGST Act and Rule 96 of CGST Rules.

4. During the period August 2018 to July 2019, the Petitioner filed various shipping bills, which are considered as refund applications and claimed a refund of IGST of Rs.3.21 crore. However, the refund was

granted only in August 2020 after constant follow-up with Respondents. The Petitioner contends that the delay in the grant of refund is not attributable to her. On enquiry with the Respondents, the Petitioner was informed that the Petitioner's name was flagged on the "risky exporters list" and, therefore, there was a delay on the part of the Respondents in granting the refund. The said red flag was removed on receipt of NOC from the Risk Management Centre for Customs on 3 August 2020, and thereafter, the refund was granted.

5. It is the case of the Petitioner that they were never informed about her name being red-flagged on the portal of Respondents, and it is only through enquiry from Respondents that she was informed about the same. In any case, the Petitioner submits that as per Circular No.16 of 2019, dated 17 June 2019, the investigation in cases of names appearing "names red flagged" is to be completed within 30 days and, therefore, at the most, the interest for 30 days during which the investigation ought to have been completed can be excluded for computing interest. Therefore, the Petitioner prayed that the Respondents be directed to grant interest for the delay following Section 56 of the CGST Act.

6. Per contra, Mr. Mishra, learned counsel for the Respondents, submits that as soon as the NOC was received in August 2020 from the Risk Management Centre for Customs, the red flag tag was removed,

and the refund was granted. Therefore, there was no delay in the grant of the refund. Mr. Mishra strongly objected to the Petitioner's claim for a grant of interest. The Respondents made no other submissions.

7. We have heard learned counsel for the Petitioner and Respondents.

8. The short point that arises for our consideration is whether the Petitioner is entitled to interest under Section 56 of the CGST Act for the period starting from the expiry of 60 days from the date of filing the shipping bill up to the date of grant of refund, although during the interregnum, the Petitioner's name was red flagged on the respondents' portal.

9. Section 56 of the CGST Act provides for the grant of interest on delayed refunds, and the same reads as under:-

***“Section 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.”

10. In the instant case on 25 June 2019, an alert was inserted in the system of Respondents to keep the refund of IGST of the Petitioner in abeyance. As per the Circular dated 17 June 2019 issued by the Respondents, the Chief Commissioner of Central Tax shall get the verification of IGST refund claims and other related aspects in accordance with the standard operating procedure to be issued by the CGST policy wing. A report shall be furnished within 30 days specifying clearly whether the amount of IGST paid and claimed as a refund is in accordance with the law or not, and after that, the Chief Commissioner shall comply and forward the report within five working days after that to the concerned Customs Port of Export.

11. The CGST Policy Wing, vide its Circular No.131/1/2020 dated 23 January 2020, has stated that the verification shall be completed by jurisdictional CGST office within 14 working days of furnishing of information in proforma by the exporter and if the verification is not completed within 14 days, same shall be brought to the notice of the jurisdictional Chief Commissioner and exporter may also bring the same to the notice of the jurisdictional Principal Chief Commissioner. After that, the jurisdictional Chief Commissioner / Chief Commissioner of Central Tax should take appropriate action to complete the verification

within seven working days. If the exporter does not get the refund within one month, then the exporter may register his grievance on the Respondents' portal, giving all the details.

12. In our view, the objective of Circular No.16 of 2019 and Circular No.131/1/2020 is to ensure that the investigation in case of a suspicious refund claim is completed within the time frame provided therein so that the exporters can get the refund within the time specified. It is also important to note that the refund plays a very important role in the working capital of an exporter, and therefore, any delay in the grant of the refund would affect the day-to-day running of the business. The objective of these Circulars is to make Indian businesses internationally competitive; therefore, working capital management is very important. It is keeping in mind this aspect and for ease of doing business that the above-referred Circulars have been issued to complete the investigation within the time frame specified therein.

13. Section 54 of the CGST Act also states that the refund application must be processed within 60 days. In the instant case, there is no adverse comment against the Petitioner insofar as non-compliance of any information sought by the Respondent is concerned or deficiency in any documents to be produced for the grant of refund. The delay is squarely attributable to the inaction of the Respondents in not

completing the investigation within the time frame specified in the Circular, nor is any explanation given as to why the time limit specified in the Circular could not be complied with or same attributable to the Petitioner. In our view, the Petitioner cannot be made to suffer because of inaction or delay in the Respondent's action in completing the investigation after the Petitioner has been red flagged. Therefore, there is no reason why the Petitioner should be denied the interest under Section 56 of the CGST Act for the period of delay attributable to the Respondents.

14. Section 56 of the CGST Act providing for interest on delayed refunds does not provide for excluding the period during which the Respondents are investigating the grant of refund. In any case, Respondents have not complied with the time frame specified in the Circulars referred to hereinabove. Therefore, even on this count, we do not find any justification for the Respondents to deny the interest on the delayed refund. Admittedly, the Petitioner has paid the amount of IGST, which the Respondents have utilised up to the date of grant of refund. Having used the money of the Petitioner, we do not see any justification for denying interest more so when the delay as observed by us above is not attributable to the Petitioner, but the same is attributable to the Respondents, which too is not explained by the Respondents.

15. Section 56 of the CGST Act provides for the period for which the interest is to be granted, and the said period starts from the date of receipt of an application for refund till the date of refund of such tax. In the instant case, the shipping bill is considered as an application for refund and, therefore, the period for grant of interest would begin on expiry of 60 days from the date of the shipping bill and would continue till the date of refund of such tax. In the absence of any provision in Section 56 to exclude the contingency with which we are faced, the denial of interest by the Respondents cannot be justified. If we accept the submissions of the Respondents, then the same would amount to re-writing the provisions of Section 56 of the CGST Act by this Court, which certainly is not permissible.

16. In view of the above, we declare and pass the following order:-

ORDER

- (i) The Petitioner is entitled to interest under Section 56 of the CGST Act for the period beginning with the expiry of 60 days from the date of the shipping bill up to the date of grant of refund
- (ii) In calculating the above period, the 30-day period provided in Circular No.16 of 2019 will be excluded as a

reasonable period provided in the Circular for completing the investigation.

(iii) Interest must be calculated after reducing 30 days from the period mentioned in (i) above.

(iv) Respondents are directed to grant interest for the above period within eight weeks from the date of uploading the present order.

17. The Rule is made absolute in the above terms with no cost order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)