

Department's interest meter on refunds keeps ticking after 60 days of application... if taxpayer wins in appellate proceedings

By: Team Tax Connect

A very important judgement as held in the case of BANSAL INTERNATIONAL Vs COMMISSIONER OF DGST [2023-VIL-809-DEL], on Interest available to taxpayers on GST refunds needs thorough discussion. Let's understand with an example and thereafter the jurisprudence established –

Sl. No.	Particulars	Amount in Rs.
1	Date of filing of refund application via Form GST RFD-01A (ARN No. AA0604190075211)	05-Apr-19
2	Amount of refund claimed	1,08,41,22,958
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	04-Jun-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	04-Jan-22
8	Period of Interest (5th June 2019 to 27 Dec 21)	937 days
9	Interest amounts up to 60 days of refund application against high court order	16,69,84,638
10	Interest rate u/S 56 proviso	9%

11	Additional Interest amount after 60 days of refund application against high court order		21,38,544
	Total Interest		16,91,23,181
	CGST	8,45,61,591	
	SGST	84,561,591"	

To explain in detail - In case where the claim for refund u/s 54 of CGST Act is initially 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.

Hence, 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. Section 56 of the CGST Act 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)."

The provisions of Section 56 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 60 days from the date when an application (complete in all respects) has been received and acknowledged by the proper officer. 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.

Now, there are two interest rates u/s 56 - 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.

Hence, 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.

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