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Interest Entitlement is ab initio

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Introduction

THE nature of interest has always been compensatory in character. This position has been substantiated by various courts time and again. The levy of interest is geared to the amount withheld and the extent of delay in discharging the refunds by the department within the time specified. Interest is payable for the period during which the assessee is deprived of his monies. There have been multiple interpretations and views on the date of computation of interest and this has resulted in litigation, whereby courts have maintained a persistent observation with respect to the same.

Position in Erstwhile Laws

In accordance with the provisions pertaining interest on delayed refunds in the customs law, i.e. section 27A of the Customs Act, 1962, if the duty, ordered to be refunded, is not refunded within three months from the date of receipt of application, the applicant is entitled to an interest at the applicable rate from the date immediately after the expiry of three months from the date of receipt of the application till the date of refund of the duty. The explanation to this section goes on to elucidate that where an order of refund is made by the Commissioner (Appeals), Appellate Tribunal, etc. against an order of the Assistant / Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, etc. will be deemed to be an order passed by the Assistant / Deputy Commissioner of Customs.

In other words, pursuant to the order of refund made by the Commissioner (Appeals) against the order of the Assistant / Deputy Commissioner, the refund has become due and the interest will be computed from the date of expiry of three months of receipt of original refund claim.

The CESTAT, in case of *Andhra Organics Ltd. vs. Commissioner of Central Tax* - [2020-TIOL-1645-CESTAT-HYD](#), wherein Ld. Commissioner (Appeals) had taken the date of receipt of final order of Tribunal as the relevant date for calculation of interest to be paid on the refund amount, observed that this is clearly contrary to the provisions of section 27A which has only one date for calculation of interest, which is from the date of expiry of three months of receipt of refund application.

A similar provision is contained in the service tax as well as excise law in section 11BB of the Central Excise Act, 1944. Though the language of the provisions is lucid with respect to the date of computation of interest, there has always been a room for litigation. It is a trite law that the relevant date for computation of interest is the date after three months of receipt of refund application, and the date of passing Commissioner (Appeals) order allowing refund is not relevant. There had been a catena of cases in support of this argument. In the case of *Jindal Steel & Power Ltd. vs. Commissioner of Central Excise, Raipur* - [2017-TIOL-777-CESTAT-DEL](#), the Hon'ble Tribunal observed, "...the refund claim has not arisen consequential to any appellate order. The appellate order only decides the correctness of the claim already filed and rejected by the Original Authority. This cannot be considered as a refund consequent on an appellate order. Further, the refund amount paid is with reference to the original application for refund filed by the appellant."

In a recent case of *Scribotech India Healthcare Pvt. Ltd. Vs Commissioner of Central Tax* - [2020-TIOL-1550-CESTAT-BANG](#), the Hon'ble Tribunal, following the ratio of the landmark case of *Ranbaxy Laboratories Ltd. Vs. UOI* - [2011-TIOL-105-SC-CX](#), held that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiry of period of three months from the date of receipt of application and not from the date of order of refund or Appellate Order allowing such refund.

Provision under GST Law

The provision concerning interest on delayed refunds is incorporated under section 56 of the CGST [Act, 2017](#). The text of the section lays down that if any tax, ordered to be refunded is not refunded within sixty days from the date of receipt of application, the applicant becomes entitled to interest at an applicable rate from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund of the tax. The explanation to this section further lays down that where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer, the said order will be deemed to be an order passed by the proper officer in this regard.

Thus, the interest becomes payable if, on an expiry of a period of sixty days from the date of receipt of the refund application, the amount claimed is still not refunded. This provision relates back the interest clause to the original refund filing by stating that the order of the Appellate authority shall be deemed to be the order passed by the proper officer under Section 54(5). In view of the same, the liability of the Revenue to pay interest under the provisions of this section commences from the date of expiry of sixty days from the date of receipt of application for refund and not on the expiry of the said period from the date on which order of refund is made.

Interest to accrue from the correct and complete refund application filed

In the case of *Jian International Vs Commissioner of Delhi Goods and Services Tax* [W.P. (C) 4205/2020] - [2020-TIOL-1235-HC-DEL-GST](#), the applicant's concern was that the Department had neither pointed out any deficiency / discrepancy nor it had issued any acknowledgement of the refund application. The Hon'ble Delhi High Court observed that the rules provide for a strict timeline for carrying out the aforesaid activities, and so, in case the deficiencies are pointed out and communicated to the applicant, the applicant is required to file a fresh application for refund after rectifying the deficiencies. Eventually, the Hon'ble High Court directed the Department to grant refund along with applicable interest.

It is important to note that the provisions relating to the grant of interest on delayed refunds are to be construed in a manner so as to neither exploit the position of the applicant nor to give any undue advantage to the applicant. It is the clear intent of the provision that the computation of interest shall be from the date of filing a "proper" refund application with all the requisite documents, without any deficiencies, i.e. the subsequent filing of fresh application in case the deficiencies / discrepancies are noticed and communicated to the applicant. There is no other interpretation of the intent of the provision.

However, in a case, *Commissioner of Customs vs. Gimpex Ltd.* - [2020-TIOL-1001-HC-KAR-CUS](#), the Karnataka High Court has gone to the extent of holding that even in case of deficiencies, the interest would be admissible ab-initio. The High Court has held that *"if at all the application is defective, it would only be an irregularity and not illegality. However, if the department or revenue chooses for returning the application for compliance of deficiencies and on compliance of deficiencies pointed, such application if adjudicated by the authorities, they cannot be heard to contend that application which was defective would not enable the applicant to claim interest from the date of application."*

The incorporation of a similar provision relating to interest on delayed refunds in GST law ensures timely and speedy disposal of the refund claims. This, in turn, helps the applicants keep with the working capital requirements.

Therefore, it is unambiguously clear that the interest is not applicable only after the favourable order has been granted by the appellate authorities but right after the filing of the refund claim from the very beginning.

[The views expressed are strictly personal.]

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