

# INTEREST ON DELAYED GST REFUNDS: A SAGA OF TUSSLED INTERPRETATIONS

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## Introduction

It has been a trite law that interest on delayed refund is assessee's right, so much so that the CESTAT in the case of BSL Ltd. v. CCE [2019-TIOL-3407-CESTAT-DEL] has even gone ahead to grant interest over delayed payment of interest although there is no provision for payment of interest over interest, observing that it is allowable because there is no prohibition in law. However, the date from which the interest shall be computed has always been an area of dreary litigation.

## Position in erstwhile laws

It has been a settled position in law that interest is a matter of compensation to the assessee when the monies of the assessee are withheld by the department to extent of delay in discharging the refund within the specified time. However, there have been a variety of interpretations and arguments about the date of computation of interest. In customs law, in terms of section 27A of the Customs Act, 1962, if the duty, which is ordered to be refunded, is not refunded within a period of 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 elucidates that where an order of refund is made by the Commissioner (Appeals) etc. against an order of the Assistant / Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals) etc. will be deemed to be an order passed by the Assistant / Deputy Commissioner of Customs in this regard. This is suggestive of the fact that 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.

In the case of [\*Global United Shipping India Pvt. Ltd. Vs. Assistant Commissioner of Customs \(Refund\) \[W.P. No. 17506 of 2019\]\*](#), the Hon'ble High Court of Madras had held that liability to pay interest would commence from the date of expiry of three months from the date of application for refund and not on the expiry of the said period from the date on which the order of refund was made. In the case of [\*Andhra Organics Ltd. vs. Commissioner of Central Tax \[2018 \(362\) E.L.T. 275 \(Tri. - Hyd.\)\]\*](#), the 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. The hon'ble CESTAT therein observed that this is clearly contrary to the provisions relating to interest on delayed refunds which have only one date for calculation of interest, i.e. from the date of expiry of three months of receipt of refund application.

Even in the Central Excise and Service Tax laws, provision pertaining interest on delayed refund was in place under section 11BB of the Central Excise Act. The provision is lucid with respect to the date of computation of interest, i.e. 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 plethora of cases explaining the stance of this provision. The hon'ble Supreme Court, in the landmark case of [\*Ranbaxy Laboratories Ltd. Vs. UOI \[2011 \(273\) E.L.T. 3 \(S.C.\)\*](#), while discussing the law on the subject, observed that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiring 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. It was further detailed that the explanation to proviso to Section 11BB introduces a deeming fiction that where order for refund is not made by Asstt. Commissioner/Dy. Commissioner, but by Appellate Authority, such appellate order shall be deemed to be an order made by Asstt. Commissioner/Dy. Commissioner. This explanation does not postpone the date from which interest becomes payable to under Section 11BB, as is manifest from the provision of Section 11B of Central Excise Act, 1944.

The position was reiterated recently in the case of [\*Scribotech India Healthcare Pvt. Ltd. Vs Commissioner of Central Tax \[Service Tax Appeal No. 20193 of 2020\]\*](#), wherein the Hon'ble Tribunal, following the ratio of the *Ranbaxy Laboratories Ltd.* case, 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**

A similar provision is incorporated in the GST law as well. Section 56 of the [\*CGST Act, 2017\*](#) 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, it is lucid that the liability of the Revenue to pay interest under the provisions of this section originates 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 refund order is made.

In GST law, specified timelines are prescribed for issuing a deficiency memo and releasing the refund. There is a possibility that the assessee, in order to earn an undue benefit in the form of interest, may take a course wherein a deficient refund application is filed, in view of the assumption that by the time deficiency memo will be issued and refund sanctioned, the time limit of sixty days will have already been lapsed, and accordingly interest will be payable. However, it is important to take note that the date of filing correct and complete refund application is taken into account for computation of interest.

In the case of [\*Jian International Vs Commissioner of Delhi Goods and Services Tax \[W.P. \(C\) 4205/2020\]\*](#), 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.

Therefore, the provisions relating to the grant of interest on delayed refunds are to be interpreted so that they neither exploit the position of the applicant nor do they grant any undue advantage to the applicant. The intention of the provision is eloquent to construe that the computation of interest shall be from the date of filing a "proper" refund application, i.e. the subsequent filing of fresh application in case the deficiencies / discrepancies are noticed and communicated to the applicant. The language of the Section is precise, clear and unambiguous. No other interpretation can be assigned than that discussed herein above. In other words, the interest will accrue

from the date of expiry of sixty days of filing a proper refund application.

### **Conclusion**

Even though there have been multiple views on the construction and interpretation of the provisions concerning interest on delayed refunds, the stand of the courts has always been clear with respect to the date of computation of interest. The incorporation of a similar provision in GST law is to ensure timely and speedy disposal of the refund claims, which would ultimately aid the applicants in keeping up with the working capital requirements.

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