

Neutral Citation Number : 2023:DHC:3416-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 15th May, 2023***

+ **W.P.(C) 5590/2023 & CM APPL. 21905/2023**

SESAME WORKSHOP INITIATIVES (INDIA)

PRIVATE LIMITED

..... Petitioner

Through: Mr. Sandeep Chilana,
Mr. Snehil Sharma, Mr.
Prem Kandpal & Ms.
Anjali Jain, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Neeraj, Senior Panel
Counsel with Mr. Rudra
Paliwal, GP with Mr.
Vedansh Anand, Adv. for
R1
Mr. R. Ramachandran, Sr.
SC for R1, 3 & 4
Mr. Rajeev Aggarwal,
ASC with Ms. Shilpa
Singh, Advs. for R2, 5 & 6

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition, *inter alia*, claiming interest on the amount of ₹68,37,488/-.
2. By an order dated 04.10.2021, a refund of ₹1,12,98,201/- was sanctioned. This comprised of ₹44,60,713/- on account of State Goods and Services Tax (SGST); ₹44,60,713/- on account of Central Goods and Services Tax (CGST), and ₹23,76,775/- on account of Integrated Goods and Services Tax (IGST).
3. The refund of SGST for the amount of ₹44,60,713/- was processed and disbursed on 09.03.2022. However, the refund of

CGST and IGST was not processed despite the refund order dated 04.10.2021, sanctioning the same. This led the petitioner to file the present petition, *inter alia*, claiming a refund of ₹68,37,488/- (₹44,60,713/- being CGST and ₹23,76,775/- being IGST). The advance copy of the present writ petition was served on the concerned authorities on 21.04.2023. Apparently, this galvanized the concerned authorities to take steps and disburse the amount of refund that was sanctioned on 04.10.2021. A letter informing the petitioner of disbursal of the said amount was issued on 23.04.2023 and the said amount was credited into the petitioner's bank account on 27.04.2023.

4. The issue involved in the present case is now confined to the interest payable on the said amount. Although the petitioner had also challenged the notification bearing no. 13/2017-Central Tax dated 28.06.2017, whereby the interest rate on delayed refund was fixed at 6% per annum, the said relief is not pressed as noted in the order dated 01.05.2023.

5. Learned counsel for the petitioner also submits that there are two components of its claim for interest: one for the interest prior to 04.10.2021 and, second, for delayed payment on the sum of ₹68,37,488/- after the said refund sanction order was passed.

6. In so far as the first component is concerned, learned counsel for the petitioner states that the petitioner has already filed an appeal before the concerned authority and the same is pending. He fairly states that since the petitioner has availed of an alternate remedy in this regard, he would not press for interest for the period prior to 04.10.2021 in this petition, while reserving the petitioner's right to do so in the pending appeal.

7. He, however, requests that directions be issued for an

expeditious disposal of the petitioner's appeal.

8. In so far as the interest for the period commencing from 04.10.2021 is concerned, this Court had expressed its *prima facie* view in the order dated 01.05.2023, that the same would be payable as there has been an inordinate delay in disbursing the refund.

9. Mr. R. Ramachandran, learned counsel for the respondents submits that the concerned department is unable to process the refund as there is no statutory provision for grant of this refund.

10. Interest is essentially a compensation to a person who has been deprived of use of the amounts due to him. It is relevant to refer to the following observations made by the Supreme Court in ***Union of India v. Tata Chemicals Ltd.: (2014) 6 SCC 335:***

“38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.”

11. Undisputedly, if a person is denied of the payment due to him, he is required to be compensated. In ***Sandvik Asia Limited v. Commissioner of Income tax I, Pune: (2006) 2 SCC 508*** the Supreme Court has endorsed the principle that interest would be

payable even in cases where there was no statutory provision for payment of interest.

12. We are, therefore, of the view that the petitioner is entitled to interest on the sum of ₹68,37,488/- from 01.11.2021 (considering an allowance of twenty-six days for the respondents to comply with the refund sanction order dated 04.10.2021) till the date of payment, that is, 27.04.2023.

13. In so far as the rate of interest is concerned, the same is required to be compensatory and not necessarily pegged at 6% per annum as contended by Mr Ramachandran. However, since the learned counsel for the petitioner states that the rate of 6% per annum, and the same is also stipulated rate of interest in the statute; we find no reason to undertake further examination as to the apposite compensatory rate of interest.

14. In view of the above, the present petition is disposed of by directing the respondents to pay the interest on the amount of ₹68,37,488/- from 01.11.2021 till 27.04.2023 at the rate of 6% per annum as expeditiously as possible and, in any event, before 31.05.2023.

15. We also direct the concerned authority [Commissioner (Appeals)] to adjudicate the petitioner's appeal in respect of the order dated 04.10.2021 for grant of further interest for the period prior to 04.10.2021 as expeditiously as possible.

16. The present petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 15, 2023/“SS”