

GST Update - High Court Directs GST Department to pay 9% Interest for Delay in Granting Refund to the Exporters

Since the launch of GST, the problem of delay in refund of IGST to the exporters has been very common. This has adversely effected working capital requirement of exporter and consequently adversely affecting their businesses. Earlier the delay was due to problem of portal as well as lack of knowledge of system to exporters, CHA, consultants and department. Later on, the awareness has increased and refund of payment of IGST is coming automatically. But the refund of unutilised credit is still granted after lapse of considerable time. This is due to the fact that system for granting refund is so cumbersome that it takes time. The problem of checking it with GSTR-2A, filing copies of purchase and sale invoices, Xerox copies of invoices not reflected in GSTR-2A, system of granting of refund of CGST and IGST by CGST department and refund of SGST by SGST department are still grey areas which lead to delay in refund payment. The Government has tried to resolve these issues but still the problems persists like the Government has amended the law to allow refund of CGST, SGST and IGST by single jurisdictional authority but the portal is not prepared for the same. Hence, it is causing delay in refund proceedings.

We are discussing the landmark judgement decided by Gujarat High Court.

Narration:- The Gujarat High Court directed the GST Department, to pay interest to the petitioner at the rate of 9% p.a for delay in granting refund under the IGST Act from the actual date of filing of GSTR-3B return to the date of receipt of refund.

Case Reference:- M/s Saraf Natural Stone

Facts of the Case:- The petitioner, M/S Saraf Natural Stone, had approached the High Court seeking compensation and interest for the substantial delay in making payment of the refund of IGST paid on the export of goods.

As per **Sec. 16** of the IGST Act, 2017, a registered person making exports of goods outside India shall be eligible to claim refund of either unutilized ITC on export of goods under bond or letter of undertaking, or refund of IGST paid on export of goods which should be claimed as per Section 54 of the CGST Act and its Rules.

Sec. 54 read with Rule 91 states that such a refund should be made in a time-bound manner i.e. the provisional refund is to be granted within 7 days from the date of acknowledgment of the refund claim.

Rule 96 was also stated by the petitioner that the Shipping Bill filled shall be deemed to be the Application of Refund of IGST paid on the goods exported outside India.

Sec. 56 of the CGST Act provides that if any tax ordered to be refunded under Section 54 is not refunded within 60 days from the date of receipt of application, interest at a rate not exceeding 9%.

Since there is no option available on the GST portal to enable claims of compensation/interest on delayed refund. The exporter company received the refund of IGST after a substantial period of delay, which has severe impact on its working capital and its ability to continue its business. Therefore, it sought compensation and interest in terms of Section 16 of the IGST Act.

Contention of Respondents:- They argued that unless there is a specific provision for entitlement of interest or refund, the same would not be available since equity has no role to play in tax matters.

The Bench, however, disagreed with this submission. Its verdict reads as follows:-

"It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision."

The Bench noted that the respondent authorities did not explain the delay in granting the refund, the Court directed them to pay simple interest on delayed payment at the rate of 9% per annum.

Our Comments:- *This order has been welcomed by the exporters as mostly the refunds have been delayed. It will help exporters by easing cash flow problem. But our suggestion is that the interest amount should be enabled in system itself and the exporter should get the refund along with interest as it is being done in case of Income tax refunds. Otherwise every exporter will not go to High Court to get the interest amount.*

If the same is being done then every exporter will get the interest automatically and authorities will be compelled to allow the refund claim in time to avoid the interest amount.

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