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

% *Date of Decision: 21.07.2022*

\+ **W.P.(C) 12233/2021 & CM APPL.4315/2022**

M/S ANKUSH AUTO DEALS .....Petitioner

Through: Mr Vasdev Lalwani with Mr Rohit Gautam, Advs.

versus

COMMISSIONER OF DGST & ANR. .....Respondents

Through: Mr Rishikesh Kumar with Ms Seema Priya and Muhammad Zaid, Advs. for R-1.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. On the previous date i.e., 12.05.2022, we had recorded as follows:

> *"1. The counsel for the petitioner informs us that the grievance of the petitioner has been partially addressed, as the principal amount towards refund has already been remitted.*
>
> *1.1. Therefore, according to learned counsel for the petitioner, what remains is the payment of statutory interest.*
>
> *1.2. This position is affirmed by the counsel for the respondents.*
>
> *2. As a matter of fact, a copy of the order dated 22.03.2022, passed by the Goods and Service Tax Officer (GSTO), Ward-72, Department of Trade & Taxes has*

been placed before us.

2.1. The calculation, as reflected in the said order, insofar as the petitioner is concerned reads as follows :
"(1) Refund claimed by the taxpayer: Rs.25,29,944/-
(2) Refund already granted Rs.14,22,482/-
(3) Refund to be further allowed Rs.11,07,462/-""

3. Clearly, the concerned officer has not addressed the petitioner's grievance with regard to the payment of statutory interest.

3.1. Prima facie, we are of the opinion that statutory interest would have to be paid to the petitioner.

3.2. Mr Rishikesh Kumar, who appears on behalf of the respondents, seeks a short accommodation to address the court on this aspect.

4. At the request of Mr Kumar, list the matter on 21.07.2022.

5. For the purposes of good order and record, the Registry will scan and upload the payment order as well as the order dated 22.03.2022, so that the same stands embedded in the case file."

2. Mr Rishikesh Kumar, who appears on behalf of the respondents/revenue, says that counter-affidavit has been filed.

3. We are told that the counter-affidavit was filed on 20.07.2022.

3.1. Consequently, the counter-affidavit is not on record. However, a hardcopy of the same has been furnished to us.

4. A perusal of the same would show that the only reason the respondents/revenue have denied grant of statutory interest to the petitioner, is because Covid-19 was raging and there was delay in processing the petitioner's refund.

4.1. As noted on 12.05.2022, the principal amount has already been refunded to the petitioner.

5. In support of the aforesaid plea, the respondents/revenue have relied upon various orders passed by the Supreme Court in *Suo Motu* W.P (C.) 3/2020 and have also referred to the judgment of the Madras High Court dated 28.09.2022, passed in W.P (C) 18165/2021, titled ***M/s GNC Infra LLP v. Assistant Commissioner (circle)***, in support of his submission that the period for processing refund claims stood extended.

6. On the other hand, Mr Vasdev Lalwani, who appears on behalf of the petitioner, says that the principles enunciated in the orders/ judgement referred to above will not be applicable in the present case.

6.1. It is Mr Lalwani's submission that the refund application was filed by the petitioner on 20.07.2021 and thereafter, *albeit* in tranches, the refund was remitted to the petitioner.

6.2. According to Mr Lalwani, the first tranche amounting to Rs.14,22,482/-, was remitted to the petitioner on 04.01.2022, while the second tranche amounting to Rs.11,07,462/-, was remitted to the petitioner on 22.03.2022

6.3. Therefore, the argument of Mr Lalwani is that the respondents/revenue were processing the petitioner's application for refund, *albeit*, in stages.

6.4. It is thus contended, that when the respondents/revenue were doing so, they should have also granted statutory interest in accordance with provisions of Section 56 of the Central Goods and Services Tax Act, 2017 [hereafter referred to as the "Act".]

7. Mr Kumar, in rebuttal, pegs his defense on the averments made in the counter-affidavit placed before us.

8. Having heard the learned counsel for the parties, we are unable to agree with the contentions advanced on behalf of the respondents/revenue.

9. What has emerged from the record, and something which is not disputed, is that the petitioner did file an application for refund on 20.07.2021, and as noted hereinabove, the principal amount towards refund was released in two tranches; first one amounting to Rs.14,22,482/- was released in and about 04.01.2022, and the second tranche amounting Rs.11,07,462/- was released in and about 22.03.2022.

9.1. Mr Lalwani is correct in his submission that the respondents/revenue ought to have released the amount along with statutory rate of interest, as provided under Section 56 of the Act.

9.2. The statutory rate of interest is pegged at 6%. The said interest gets triggered after the expiry of 60 days from the date of receipt of application for refund.

10. Therefore, in our view, interest is payable to the petitioner. The respondents/revenue are directed to pay to the petitioner at the statutory rate as prescribed in Section 56 of the Act.

11. The submission that limitation was extended by virtue of orders passed by the Supreme Court in *Suo Motu* W.P.(C) 3/2020 is, according to us, completely misconceived.

11.1. It is relevant to note that neither the orders passed by the Supreme Court in *Suo Motu* W.P.(C) 3/2020 and the judgement of the Madras High Court in ***M/s GNC Infra LLP v. Assistant Commissioner (circle)*** (referred to above) concern the point in issue i.e., grant of interest on refund withheld

beyond the period prescribed under the Act.

12. The statutory rate of interest provided under Section 56 of the Act is a compensation for use of money.

12.1. Clearly, respondents/revenue could not have retained the money beyond the period stipulated under Section 56 of the Act.

13. Therefore, as indicated above, interest is payable to the petitioner.

13.1. Respondents will take steps in that behalf.

14. The writ petition is disposed of in the aforementioned terms.

15. Consequently, the pending application shall also stand closed.

16. List the matter for compliance on 04.08.2022.

17. For the purposes of good order and record, the Registry will scan and upload the counter-affidavit filed by the respondents/revenue, so that the same stands embedded in the case file.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 21, 2022/pmc

Click here to check corrigendum, if any