

Tax alert: Gujarat High Court directs payment of interest on delay in granting refund of IGST

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Summary

The Gujarat High Court (HC), in a recent case¹, has held that interest is payable on delay in granting refund of Integrated Tax (IGST) paid on export of goods. Further, the HC observed that the Tax Department has not explained the reason of delay and accordingly directed the Tax Department to pay simple interest at 9% per annum from the date of filing of the GSTR-03 on the aggregate amount of refund within two months of the order.

Facts of the case

- The Petitioner filed a writ petition for directing the Tax Department to pay interest on delay in granting refund of IGST paid on export of goods².

Petitioner's contentions

- **Mandatory to suo motu pay interest on delayed refund:** The Petitioner submitted that the proper officer is mandated to order sanctioning of interest on delayed refunds suo motu, where any interest is due and payable to the applicant³, without any application to be made by the registered person for any delay in the refund⁴.
- **No process to claim compensation on common portal:** The Petitioner further stated that there is also no option available on the common portal to enable the registered person to make application for claiming compensation/interest on delayed refund. Further, the Petitioner submitted that the jurisdictional GST authorities expressed their inability to help the Petitioner stating that all

refund-related processing is only being done through the GST portal.

- **Substantial delay in granting refund:** Further, the Petitioner contended that while the refund was received after a substantial period of delay, it did not receive any notice about any deficiencies in the refund application. The Petitioner further submitted that the inaction leading to delay is arbitrary and violative of Articles of Constitution of India⁵. Thus, it was argued that it severely impacted the working capital, thereby substantially diminishing its ability to continue its business.

Gujarat HC's observations and ruling

- **Grant of interest on delay is beneficial and non-discriminatory:** The HC observed that the provisions relating to interest of delayed payment of refund have been consistently held as beneficial and non-discriminatory. Accordingly, the HC rejected the Revenue's argument that in the absence of a specific provision providing for the entitlement of

¹ M/s Saraf Natural Stone vs Union of India [R/Special Civil Application No. 15925 of 2018]

² U/s 16 of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017

³ U/s 56 of the CGST Act, 2017

⁴ Rule 94 of the CGST Rules, 2017

⁵ Article 14 and 19 of Constitution of India

interest on refund, no interest would be available.

- **Interest is payable on delayed refund:** The HC observed that Revenue has not explained the reason for the delay. Accordingly, the HC held that the Tax Department is liable to pay simple interest on the delayed payment of IGST refund at 9% per annum.
- **Interest to be paid within two months:** The HC further held that interest is payable on the aggregate amount of refund from the date of filing of the GSTR-03. Thus, the HC directed that the Tax Department shall undertake this exercise at the earliest and calculate the requisite amount towards the interest and make payment of the same within a period of two months from the date of receipt of the order.

Our comments

Delay in grant of refund by the authorities has been a common phenomenon and a mundane matter even under the erstwhile indirect tax regime. Despite several efforts by the government in streamlining and automating the entire refund process in the GST regime, the issue of delay in granting refund does not appear to be sufficiently resolved. This is a welcome judgement and should provide relief to the exporters as enormous working capital gets blocked due to unjustified delays in granting refunds by the authorities.

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