



2025:DHC:4344-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 20th May, 2025*+ **W.P.(C) 7485/2024 & CM APPL. 31186/2024****M S G S INDUSTRIES**

.....Petitioner

Through: Mr. Siddharth Malhotra, Adv.

versus

COMMISSIONER OF CENTRAL TAX AND GST DELHI WEST

.....Respondent

Through: Mr Aakarsh Srivastava, Senior
Standing Counsel with Mr. Anand
Pandey & Mr. Anugya Gupta, Advs.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

CM APPL. 31186/2024 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 7485/20243. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India challenging the impugned Order-in-Appeal dated 12th February, 2024 by which part interest on the refund claim of the Petitioner was rejected.

4. The brief background is that the Petitioner had filed two refund



applications on 4th July, 2019 and 9th July, 2019 and had claimed a refund of a sum of Rs.23,10,333/- and Rs.14,46,417/- respectively. The deficiency memos were issued to the Petitioner in **FORM GST RFD-03** on 29th November, 2019 to which the Petitioner filed a reply on 27th January, 2020. Acknowledgements under **FORM GST RFD-02** were generated on 11th February, 2020. However, despite the said acknowledgements, the refund was not granted with interest within 60 days in terms of Section 54(7) of the Central Goods and Service Tax Act, 2017 (hereinafter 'CGST Act). After repeated follow-ups, since there was no response, a writ petition being **W.P.(C) 9321/2020** titled **G.S. Industries v. Principal Commissioner of Central Goods & Services Tax & Ors** was filed by the Petitioner. The Court, on 24th November, 2020, upon hearing the parties, passed the following order:

“W.P. (C) 9321/2020

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present writ petition has been filed for issuance of a direction to the Respondents to release the GST refund due to the Petitioner amounting to Rs.37,56,750/- for the period of September, 2017 to March, 2018 and April, 2018 to March, 2019 with interest thereon in terms of 54(3)(ii) of the Central Goods and Service Tax Act 2017.

Issue notice.

Mr. Harpreet Singh, learned counsel accepts notice on behalf of the respondents. He states that the petitioner's claim shall be processed and decision shall be taken within three weeks.

The statement made by Mr. Harpreet Singh is accepted by this Court and the respondents are held bound by the same.



In view thereof, the present writ petition stands disposed of.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.”

5. Pursuant to the above order, the refund applications were to be processed within three weeks. The refund application was, however, rejected on 14th December, 2020. The matter was then carried in appeal by the Petitioner to the Appellate Authority and the Commissioner (Appeals) upon considering the submissions, on 3rd January, 2022 passed the following order:

*“In view of above discussions, analysis and statutory provisions cited above, the two appeals filed by the appellant hold merit and deserve to be allowed. **No order as to interest.** The two impugned orders are set aside and both the appeals are allowed and disposed off in terms of Section 107(12) of CGST Act, 2017.”*

6. As can be seen from the above order, the refund was allowed. However, interest was not awarded. Pursuant to the above order, the Petitioner had filed a second set of refund applications under **FORM GST RFD-01** on 4th February, 2022. Since the said order dated 3rd January, 2022 was also not implemented by the Department, the Petitioner filed a second writ petition being **W.P.(C) 14719/2022** titled **G.S. Industries v. Commissioner Central Goods and Services Tax Delhi West & Anr. & Ors.** in which, the Court, vide order dated 28th March, 2023, directed that the Petitioner’s claim for refund, including interest, would be processed forthwith. The relevant portion of the said order reads as under:



“14. In view of the above, the present petition is allowed. **The respondents are directed to forthwith process the petitioner’s claim for refund including interest.**

15. It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents prevail in their challenge to order-in-appeal dated 03.01.2022, the respondents would also be entitled to take consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law.”

7. Finally, on 9th June, 2023, the refund was sanctioned by the Deputy Commissioner, CGST Delhi West, but without granting complete interest.

The operative portion of the said order reads as under:

“1. I hereby sanction an amount of INR Rs. 37,54,306/- (Rupees Thirty Seven Lakhs Fifty four thousand three hundred and six only) (Rs.1004479/- as CGST+ Rs.2749827/- as SGST+0/- as IGST)/ - to M/s G.S. Industries having GSTIN:- 07AMOPS2765G IZK under Rule 92 of CGST Rules, 2017 read with section 54 of the CGST Act,2017 for the refund period September, 2017 to March, 2019 filed by the party vide ARN No. AA0702220109810 dated 04-02-2022

2. I hereby sanction an amount of Rs. 45,669/- | Rupees Forty Five Thousand six hundred and sixty nine only) (Rs. 12,219/- as CGST + 33,450/-as SGST) to M/s G.S. Industries having GSTIN: - 07AMOPS2765G1ZK as Interest in compliance of Hon'ble High Court's order dated 28.03.2023”

8. As can be seen from the above order, only an amount of Rs.45,669/- has been awarded as interest. The basis of the calculation of interest was the order dated 9th June, 2023. In effect, therefore, interest for a period of 74 days



was granted from 28th March, 2023 till 9th June, 2023. The calculation in order dated 9th June, 2023 is set out below:

Interest period	No. of days	Amount of Refund	Interest @6%
28.03.2023 (Date of the Hon'ble High court's order) to 09.06.2023	74	1004479 (CGST)	12219/-
28.03.2023 (Date of the Hon'ble High court's order) to 09.06.2023	74	2749827 (SGST)	33450/-

9. The Petitioner is aggrieved by the non-grant of full interest in its favour and has hence filed the present writ petition.

10. The Court has considered the matter. The provisions that are relevant in determining the interest on delayed refunds are covered by Section 54 and 56 of the Central Goods and Services Tax Act, 2017 (hereinafter 'CGST Act').

For ease of reference, the same is extracted below:

Section 54 of the CGST Act

“54. Refund of tax.— (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.



(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.”

Section 56 of the CGST Act

“56. Interest on delayed refunds.— If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation. —For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).”

11. The entire scheme for grant of refunds under CGST Act has been considered by this Court in ***Bansal International v. Commissioner of DGST***



(W.P.(C) 11629/2023, decided on 21st November, 2023) and the relevant portion of the judgement is extracted below: *6% p.a.*

9% p.a. “31. It is important to note that the ~~rate~~ of interest as specified in the main provision of Section 56 of the CGST Act and the proviso to Section 56 of the CGST Act is materially different. Whereas, the main provision of Section 56 of the CGST Act provides for an interest at the rate not exceeding 6% per annum, the proviso to Section 56 of the CGST Act stipulates interest at the rate not exceeding 9% per annum.

32. The learned counsel also informed this Court that the interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of sixty days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of sixty days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of sixty days of the filing of such an application – that is, the application filed pursuant to the orders of the appellate fora and not the first application.

33. It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the



CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days from the date of his application filed pursuant to its entitlement to refund claim attaining finality.”

12. The stand of Id. Counsel for the Petitioner is that the deficiency memo was not issued within 15 days in terms of Rule 90 of Central Goods Services Tax Rules (hereinafter ‘CGST Rules’). Hence, the interest is liable to be



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granted for the entire period.

13. The stand of the Department is that the deficiencies were genuine and they were cleared only after two months *i.e.*, when the documents were submitted and the same was duly acknowledged on 11th February, 2020.

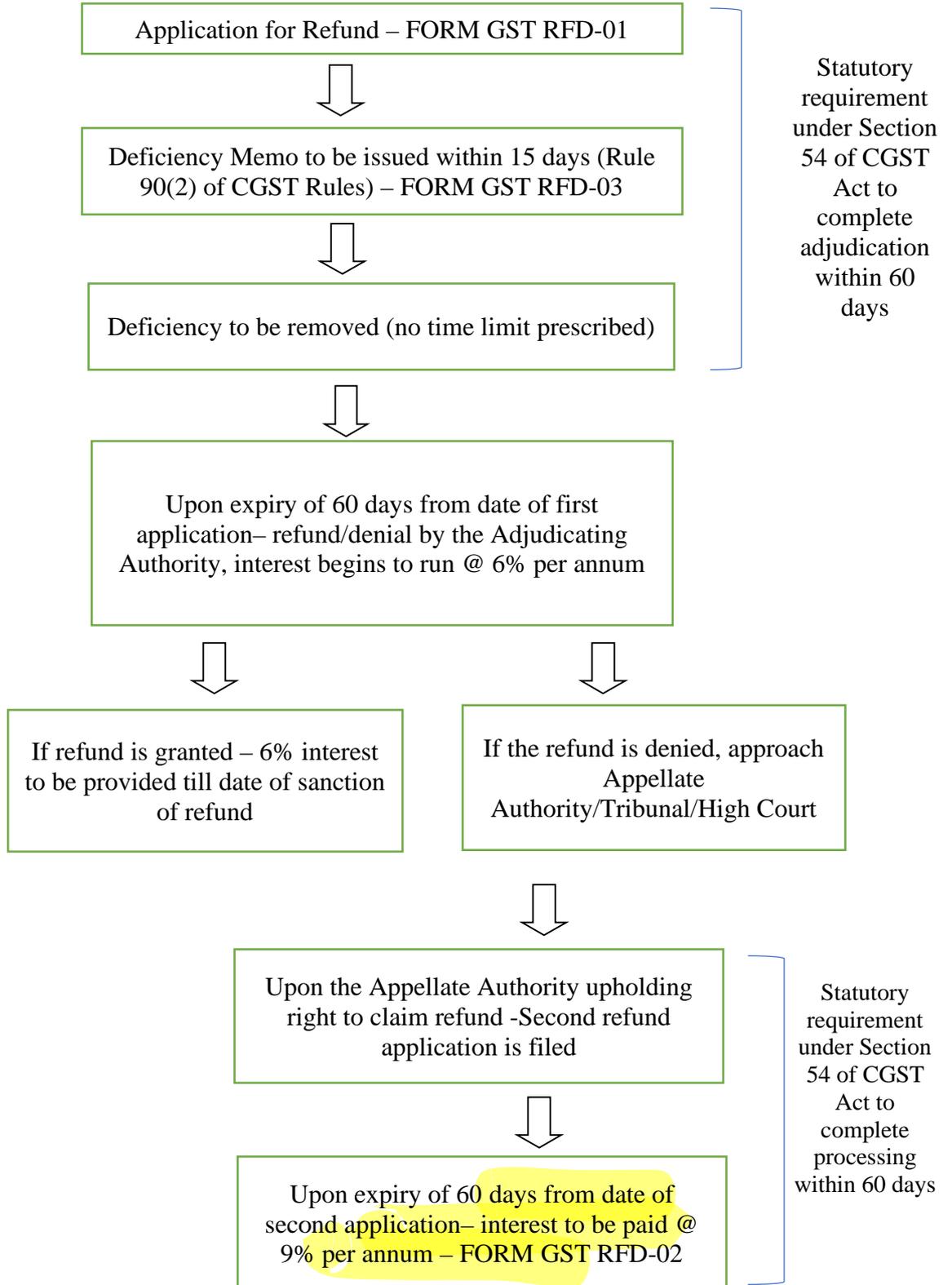
14. The scheme of payment of interest on delayed refunds can be illustrated in the following flow chart.

Note -1: For the period from FORM GST RFD-01 till the second refund application, 6% interest would be liable to be paid.

Note-2: If the second refund application is filed, then upon expiry of 60 days, interest would be liable to be paid @ 9% per annum.



Payment of Interest in an Application for Refund under Section 56 of CGST Act read with Rule 90 of CGST Rules

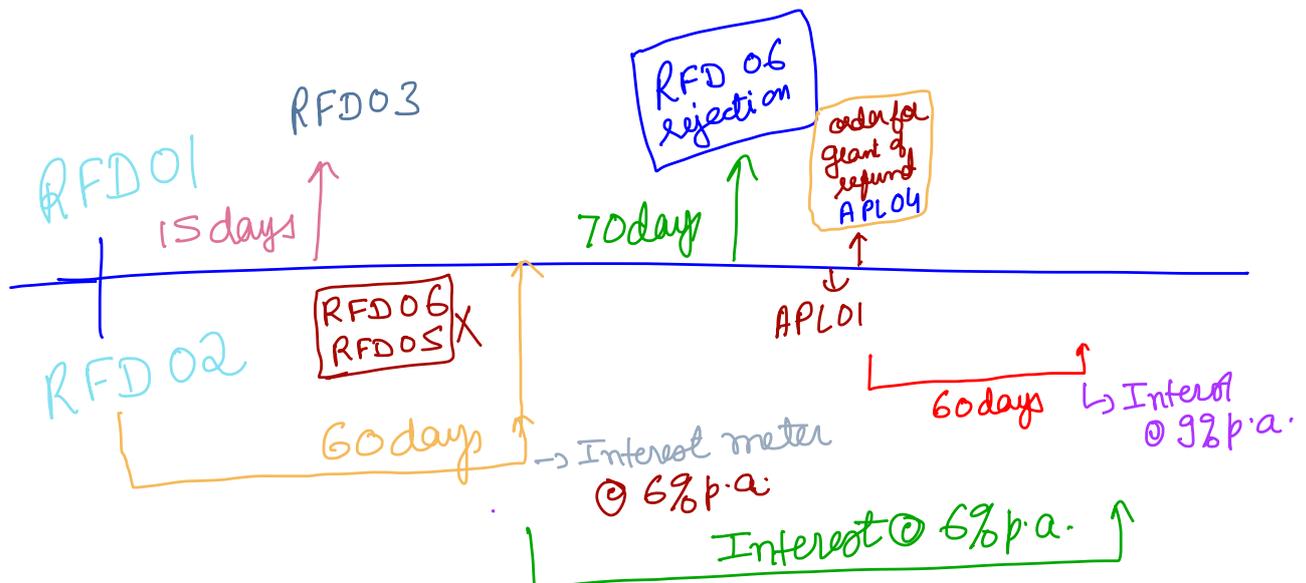




15. Considering the overall circumstances, this Court is of the view that the Petitioner cannot be denied the benefit of interest for delay caused due to the deficiency memo not having been issued within the stipulated period, i.e., between 4th/9th July, 2019 and 29th November, 2019. At the same time, the Petitioner also took about 74 days to respond to the deficiency memo i.e., between 29th November, 2019 and 11th February, 2020.

16. In view thereof, the interest would be liable to be paid for a period from 7th September, 2019 and 9th September, 2019 (i.e., 60 days from the date of refund applications) till 9th June, 2023 (i.e., date of sanction of refund). However, from this entire period, the number of days between 29th November, 2019 and 11th February, 2020 (i.e., 74 days), which was the period taken for responding to the deficiency memo by the Petitioner, shall be deducted.

17. For ease of reference the relevant dates along with the allowed interest are captured in the table below:





Dates	Events	Interest Rates Applicable
4 th July, 2019 and 9 th July, 2019	First set of refund applications filed. RFD 01 Acknowledgement APPLICATION RFD 02	No Interest as the same accrues only beyond 60 days under Section 54 of CGST Act
19 th July, 2019 and 24 th July, 2019	The deadline for issuance of deficiency memos in terms of Rule 90 of CGST Rules. RFD 03 15 days	
7 th September, 2019 and 9 th September, 2019	60 days from the date of refund applications i.e., the date from which the interest on refunds starts to accrue in terms of Rule 90 of CGST Rules	<u>6% interest from 7th & 9th September, 2019 to 28th November, 2019</u>
29 th November, 2019	The date of issuance of deficiency memos to the Petitioner on FORM GST RFD-03	No Interest is to be granted between 29 th November, 2019 and 11 th February, 2020 (74 days) on the grounds of equity
11 th February, 2020	The date on which deficiencies were cleared and refund applications were duly received and acknowledged	
3 rd January, 2022	Commissioner (Appeals) upon considering the submissions, grants refund in favour of the Petitioner, however, without interest.	
4 th February, 2022	The date of second set refund applications RFD 01	6% Interest from 12 th February, 2020 till 4 th April, 2022
5 th April, 2022	60 days from the date of filing of second set of refund applications	
28 th March, 2023	High Court <i>vide</i> judgment in W.P(C) 14719/2022 directed Respondent GST Department to process the refund along with interest.	
9 th June, 2023	The date of sanction of refund without complete interest. RFD 06	<u>9% Interest from 5th April, 2022 to 9th June 2023</u>

18. Accordingly, the interest that shall be liable to be paid at the rate of 6% in the initial period between 7th September, 2019, to 4th April, 2022 (i.e., 60



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days from the date of second refund application dated 4th February, 2022). However it is again made clear that the interest for the period of 74 days shall be deducted from this period. The interest for the subsequent period between 5th April, 2022 to 9th June, 2023 shall be 9% per annum.

19. The interest already paid shall be deducted from the total amount.

20. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 20, 2025

Rahul/Ar.