

BEFORE THE PROPER OFFICER, DGST DEPARTMENT, NEW DELHI

IN THE MATTER OF

REQUEST FOR GRANT OF INTEREST UNDER SECTION
56 OF THE DGST ACT ON THE DELAYED REFUND
ISSUED AS PER ORDER ANNEXED WITH THIS
APPLICATION.,

**REFUND FOR THE PERIOD ..
RUPEES.....**

**DATE OF APPLICATION-
DATE OF REFUND:
DATE OF REFUND CREDIT IN THE BANK**

Sir,

This application is being under section 56 of the DGST Act to make a prayer for the interest on delayed refund without any reasons attributable to the tax payer.

2. Taxpayer filed refund application for unutilized ITC under Section 54 of the DGST Act as per details given above. While refund has been allowed, interest has not been given even though in the reply filed by the tax payer interest prayer was specifically made quoting Delhi HC and SC Judgments. A copy of the reply filed is also annexed with this application for your ready perusal.

3. Sec 56 of the CGST Act provides for the period for which the interest is to be granted, and the said period starts from the date of receipt of period for grant of interest would begin on expiry of 60 days from the date of the application i.e. 4.1.2025 and would continue till the date of refund of such tax. There is no contingency involved in this case as the refund or RFD 08 were not processed within the statutory period of 60 days as mandated under

Section 54(7) of the DGST Act – against the judgments of jurisdictional Delhi High Court and of the Supreme Court of India under the GST Law itself.

4. All the procedural formalities including issuance of RFD 02 was to be issued within maximum 15 days or deficiency memo, if it was required, was to be issued within this period and during rest of 45 days statutory period the refund application was to be processed leading to rejection or acceptance under Section 54(7) of the DGST Act. The Department did noting albeit issued RFD 08 after a period much after the mandatory period of section 54(7) and the taxpayer replied the same in good faith even though all the papers were uploaded and physically filed at the time of making application. Hence the provisions of Rule 90(3) too were not complied with.

5. We are quoting below the relevant Rules for your kind information :

Rule 90 (2) of CGST Rules, 2017:-

"The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer, who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be incomplete in terms of sub-rule (2) (3) and (4) of Rule 89, an acknowledgment in Form GST RFD-02 shall made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

Rule 90 (3) of CGST Rules, 2017:-

Where any deficiencies are noticed, proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file fresh refund application after rectification of such deficiencies"

6. The proper officer is under a statutory mandate that he shall, within period of fifteen days of filing of the said application, scrutinize the application for its completeness and in case the application is found to be complete, an

acknowledgment shall be made available to the applicant through the common portal or in case, the Officer is in want of any particular documents, as per Rule 90(3) of CGST Rules, the Officer is mandated to issue a deficiency memo calling for the applicant (petitioner) to comply with the deficiencies pointed out in the memo and file a fresh application.

7. The CGST Policy Wing, vide its Circular No.131/1/2020 dated 23 January 2020, has stated that the verification shall be completed by jurisdictional CGST office within 14 working days of furnishing of information in proforma by the exporter and if the verification is not completed within 14 days, same shall be brought to the notice of the jurisdictional Chief Commissioner and exporter may also bring the same to the notice of the jurisdictional Principal Chief Commissioner. After that, the jurisdictional Chief Commissioner / Chief Commissioner of Central Tax should take appropriate action to complete the verification within seven working days. If the exporter does not get the refund within one month, then the exporter may register his grievance on the 'Respondents' portal, giving all the details.

8. Supreme Court and High Courts after considering the submissions from the both sides took note of law stated in Section 16 & 20 of IGST Act, Section 54 & 56 of the CGST Act, and observed that in terms of *Section 16 of the IGST Act to claim refund of either unutilized input tax credit of export of goods under bond or letter of undertaking or refund of integrated tax paid on export of goods and in terms of Section 20 any claim for refund is to be governed by the provisions of the CGST Act which would apply mutatis mutandis as if they were enacted in the IGST Act*. Thus, the application of refund is required to be made in accordance with Section 54 of the CGST Act.

9. That in terms of Section 56 *if the refund is not granted to the applicant within 60 days from the date of receipt of application, interest would be payable at the rate of 6% from the receipt of application till the remittance of refund. However as per the proviso to the section if any refund arises out of any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and the refund is not granted within 60 days from the receipt of application, the interest would be payable at the rate of 9%, and the refunds in the instant case are not covered by the proviso.*

A few copy of the judgments of Delhi High Court and of Supreme Court are annexed with this petition for your perusal.

10. Hence, it is prayed that the interest for delay period beyond 61st date from the date of filing application onat the rate of 6 Percent may be granted till when the refund for the above was credited in the bank account of the taxpayer. We shall be grateful for the same.

For ABC LIMITED

AUTH SIGNATORY

NEW DELHI
DATED:

Thus, a reading of the [Section 54 \(1\)](#) of CGST Act would make it clear that the assessee can make the application within two years. The terms used in said Section "may make application before two years from the relevant date in such form and manner as may be prescribed", which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time limit fixed under Section 54 (1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of <https://www.mhc.tn.gov.in/judis>

In the present case, the application was filed within two years and therefore, the question of making claim after two years does not arise even assuming AO made endorsement after two years, the same would in no way debar the claim as barred by limitation. Further, even Rule 90 (3) of [CGST Act](#) permits to make fresh application, which means that in appropriate cases, the Officer concerned can permit the refund application even beyond the period of limitation.

Hence, this Court holds that when the petitioner has filed application, which is within a period of limitation, viz. 2 years as stipulated under [Section 54\(1\)](#) of the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time limit to pass an order under [Section 54 \(7\)](#) of the CGST Act

W.P.Nos.23604, 23605 and 23607 of 2022 two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

W.P.Nos.23604, 23605 and 23607 of 2022 acknowledgment, and therefore, it is not open to the respondent to contend that the supporting documents were filed with a delay.

M/S. Lenovo (India) Pvt. Ltd vs The Joint Commissioner Of Gst ... on 6 November, 2023

Author: [Krishnan Ramasamy](#)

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Interest @ 6% is payable for the period commencing from the 61st day of first application till the date of payment or the expiry of sixty days from the date of filing second application (i.e., the application filed pursuant to the orders of the appellate fora), whichever is earlier.