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Two-Year Limitation for filing refund application in GST is Mandatory; Delay Condonable Only via Article 226 Subject to Statutory Safeguards

The Hon'ble Karnataka High Court in the case of ***Assistant Commissioner of Central Taxes & Ors. v. Merck Life Science Pvt. Ltd. [Writ Appeal No. 110 OF 2026 and Ors, order dated March 17, 2026]*** held that the two-year limitation period under Section 54 of the CGST Act for filing refund claims is mandatory; however, in deserving cases, delay may be condoned only through exercise of writ jurisdiction under Article 226, subject to conditions ensuring parity with statutory timelines.

Facts:

The Assistant Commissioner of Central Taxes & Ors. ("**the Appellant**"), being the Revenue authorities, preferred appeals challenging the order of the learned Single Judge in W.P. No.27259/2024 (T-RES) and four other petitions dated March 7, 2025.

M/s. Merck Life Science Private Limited ("**the Respondent/Assessee**"), engaged in providing intermediary services to foreign entities.

The Respondent–Assessee is a company engaged in the business of healthcare, life sciences, and electronics, providing intermediary services to foreign entities and earning commission income therefrom. The Assessee filed its return in Form GSTR-3B for the tax period October 2017 and paid Integrated Goods and Services Tax (IGST), treating the services as “export of services”. Subsequently, the Assessee filed another return in Form GSTR-3B in March 2018 and paid Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST), treating the transaction as intra-State supply. It is stated that the erroneous payment of IGST was not refunded. Notification No. 35/2021–Central Tax dated September 24, 2021 inserted Rule 89(1A) of the CGST Rules, 2017 prescribing the procedure and timelines for claiming refund.

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The application filed by the Assessee under Section 54 of the CGST Act came to be rejected on the ground that it was filed beyond the prescribed period. The refund application filed by the Assessee is dated March 30, 2024, and was rejected by order dated May 27, 2024 as time-barred.

Aggrieved by the rejection of refund, the Assessee preferred a writ petition. The learned Single Judge, by order dated November 07, 2025, allowed the writ petition, held that Section 54 and Rule 89(1A) are directory in nature, and directed the authorities to process the refund. Aggrieved thereby, the Appellant–Revenue has preferred the present appeals.

Issue:

Whether the two-year limitation prescribed under Section 54 of the CGST Act for filing refund claims is mandatory, and if so, whether delay can be condoned and by what mechanism?

Held:

The Hon'ble Karnataka High Court in **Writ Appeal No. 110 OF 2026** held as under:

- Observed that, the GST framework is a strict, time-bound statutory scheme and timelines form the backbone of the Act.
- Noted that, Section 54 prescribes a period of two years, and there is no enabling provision under the Act to condone delay.
- Observed that, the expression “may” in Section 54 cannot be construed as directory and its nature depends on context and purpose.
- Held that, the two-year limitation under Section 54 is mandatory and binding on the proper officer.

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- Noted that, relaxing limitation under Section 54 without corresponding extension under Sections 73 and 74 would render the statutory scheme meaningless.
- Observed that, no mechanism exists under the CGST Act to condone delay, resulting in potential hardship.
- Held that, in absence of statutory remedy, writ jurisdiction under Article 226 remains available to seek condonation of delay. such condonation must be case-specific and balanced with extension of time to Revenue to invoke Sections 73/74.
- Further held that, upon condonation, the refund claim shall be treated as filed within limitation, enabling both taxpayer benefits and Revenue powers.
- Applied that, since double taxation was undisputed and delay was only six months, the delay was condoned and authorities were directed to process the refund within 60 days.

Our Comments:

In the case of ***Dhulabhai v. State of Madhya Pradesh [MANU/SC/0157/1968]*** to hold that writ jurisdiction can be invoked where statutory remedies are inadequate, particularly for refund claims. The judgment clarifies that writ courts can grant complete relief, including refund, when statutory mechanisms are deficient.

Further in the case of ***Salonah Tea Co. Ltd. v. Superintendent of Taxes [(1988) 1 SCC 401]***, where it was held that taxes collected without authority of law must ordinarily be refunded, subject to limitations like delay or laches.

It is also to be noted that, the Hon'ble Andhra Pradesh High Court in ***Nspira Management Services Private Limited v. Assistant Deputy Commissioner of Central Tax [W.P. Nos. 18287 & 14905 of 2024, order dated September 26, 2025]*** held that the two-year limitation prescribed under Section 54 of the CGST Act would not apply to refund claims arising from tax paid under

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mistake on exempt services. The Court reasoned that such payment is not “tax due” but a deposit made without authority of law, in view of Article 265 of the Constitution.

Further the Hon’ble Gujarat High Court decisions in ***Comsol Energy Private Limited v. State of Gujarat [R/SCA No. 11905 of 2020, order dated December 21, 2020]*** and ***Binani Cement Ltd. v. Union of India [(2013) 288 ELT 193 (Guj)]***, it was held that limitation provisions governing refund of lawful tax do not apply to recovery of amounts paid under mistake. These judgments emphasize that procedural timelines cannot override the constitutional mandate that no tax shall be retained without authority of law.

Relevant Provisions:

Section 54 of the CGST Act, 2017:

“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 such form and manner as may be prescribed.”

Rule 92(3) of the CGST Rules, 2017

“Rule 92. Order sanctioning refund.-

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after

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considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.”

Rule 89 (1A) of the CGST Rules, 2017

“89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”

Article 265 of Constitution of India

“265. Taxes not to be imposed save by authority of law

No tax shall be levied or collected except by authority of law.”

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