Refund cannot be withheld under Section 54(11) of the CGST Act merely because the Revenue contemplates filing an appeal

The Hon'ble Orissa High Court in ***M/s. Rashmi Agency v. Deputy Commissioner CT & GST & Ors. [W.P.(C) No. 17470 of 2026 dated June 25, 2026]*** set aside the order refusing to consider the refund application filed under Section 54 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) and held that the refund flowing from an appellate order cannot be withheld by invoking Section 54(11) of the CGST Act read with Rule 92(2) of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**) merely because the Revenue contemplates filing an appeal before the GST Appellate Tribunal under Section 112 of the CGST Act, when, on the date of passing of the order, neither any appeal nor any other proceeding was pending. Accordingly, the matter was remanded for fresh consideration within a period of two weeks.

Facts:

M/s. Rashmi Agency (**"the Petitioner"**) is a registered taxpayer in the State of Odisha. During a search operation conducted by the Directorate General of Goods and Services Tax Intelligence (**"DGGI"**) under Section 67 of the CGST Act in respect of Hotel Rashmi Plaza, a sum of Rs. 33,00,000/- was recovered from the Petitioner on August 10, 2023, by issuance of Show Cause Notice in Form GST DRC-03, which amount was paid under protest. Due to inadvertence, the said amount was deposited under the GSTIN of the Petitioner instead of the GSTIN of Hotel Rashmi Plaza, which was the entity actually under investigation.

The refund claimed by the Petitioner was initially rejected vide Order dated October 19, 2023 issued in Form GST RFD-06. However, the appeal filed by the Petitioner under Section 107 of the CGST Act was allowed in full by the Additional Commissioner of State Tax (Appeal) vide Order dated February 27, 2026 (**"the Appellate Order"**), holding that the collection was made during the course of inspection in contravention of CBIC Instruction No. 01/2022-23 dated May

25, 2022 and the judicial principles laid down by the Courts, and directing that the excess payment be refunded to the Petitioner as per the provisions of law.

Pursuant thereto, the Petitioner filed a refund application in Form GST RFD-01 on March 05, 2026 claiming refund of Rs. 33,00,000/-. The Deputy Commissioner CT & GST, Cuttack-I Circle (**“the Respondent”**) issued a Show Cause Notice dated April 24, 2026, to which the Petitioner filed a reply on April 29, 2026. Thereafter, the Respondent vide Order dated May 02, 2026 issued in Form GST RFD-06 (**“the Impugned Order”**) refused to consider the refund application on the ground that the State may file an appeal before the Appellate Tribunal under Section 112(3) of the CGST Act within six months, i.e., up to August 26, 2026, and hence, the Appellate Order had not attained finality and grant of refund at that stage would be premature and may adversely affect the interest of the revenue.

Aggrieved by the Impugned Order, the Petitioner filed a writ petition on May 30, 2026 before the Hon’ble Orissa High Court. Notably, the State filed its appeal before the GST Appellate Tribunal only on June 24, 2026, i.e., after receipt of the copy of the writ petition.

Issue:

Whether the refund arising out of an appellate order can be withheld by invoking Section 54(11) of the CGST Act read with Rule 92(2) of the CGST Rules merely because the Revenue contemplates filing an appeal before the Appellate Tribunal under Section 112 of the CGST Act, when no appeal or any other proceeding is actually pending on the date of passing of the order?

Held:

The Hon’ble Orissa High Court in ***W.P.(C) No. 17470 of 2026*** held as under:

- Observed that, the power to withhold refund under Section 54(11) of the CGST Act is strictly circumscribed and can be exercised only when: (i) the order giving rise to the refund is the subject matter of an appeal or further proceedings, or any other proceeding under the CGST Act is pending; and (ii) the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed. Further, recording of reasons for withholding the refund by passing an order in Part A of Form GST RFD-07, as mandated by Rule 92(2) of the CGST Rules, is a statutory requirement which cannot be exercised in vacuum and must reflect conscious application of mind.

- Noted that, as on May 02, 2026, when the Impugned Order was passed, it is demonstrably manifest that there was neither any appeal pending before the GST Appellate Tribunal nor any other proceeding, as the State filed its appeal only on June 24, 2026, after receipt of the copy of the writ petition. Hence, the necessary jurisdictional facts for exercise of power under sub-section (10) read with sub-section (11) of Section 54 of the CGST Act were not satisfied on the date when the Respondent refused to entertain the refund application.

- Noted that, mere quoting of the provision of Section 54(11) of the CGST Act in the order would not empower the authority to exercise the power to withhold the refund flowing from the appellate order, since existence of power is one thing and its exercise is another, and mere existence least justifies the exercise. Reliance was placed, *inter alia*, on the pre-GST precedent in ***Unit Construction Company P. Ltd. v. CCT [2014 SCC OnLine Ori 361]*** rendered in the context of Section 60 of the Odisha Value Added Tax Act, 2004, wherein it was held that the discretion to withhold refund must be exercised judicially, on relevant grounds and for germane reasons, as Article 265 of the Constitution enjoins that no tax shall be levied or collected except by authority of law.

- Held that, merely because there was scope for the Department to file an appeal before the GST Appellate Tribunal, the Respondent could not have sat over the appellate order wherefrom the refund had arisen. An action may be contemplated, but till such appeal is filed or the proceeding is shown to have been pending, it cannot be said that the authority concerned has the power to invoke sub-section (11) of Section 54 of the CGST Act read with Rule 92(2) of the CGST Rules. Thus, the refusal to consider the refund application prior to filing of the appeal before the Appellate Tribunal, or on the ground of mere contemplation of filing an appeal under Section 112 of the CGST Act, is not tenable in the eye of law and the withholding of refund in the present fact-situation is untenable, unwarranted and uncalled for.

- Directed that, the Impugned Order is set aside and the matter is remitted to the Respondent for fresh consideration of the refund application within a period of two weeks from the date of production of the copy of the order, after affording a reasonable opportunity of hearing to the Petitioner, taking into consideration the reply dated April 29, 2026 filed in connection with the Show Cause Notice dated April 24, 2026, and keeping in view the tenor and texture of CBIC Instruction No. 01/2022-23 dated May 25, 2022. Liberty was also reserved for the Petitioner to raise all contentions including the jurisdiction of the Respondent to invoke Section 54(11) of the CGST Act for withholding refund.

Our Comments:

Section 54(11) of the CGST Act provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings, or where any other proceedings under the CGST Act is pending, and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

Correspondingly, Rule 92(2) of the CGST Rules mandates that where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under Section 54(10) or Section 54(11) of the CGST Act, he shall pass an order in Part A of Form GST RFD-07 informing the taxpayer the reasons for withholding of such refund. As rightly emphasised by the Hon'ble High Court, Form GST RFD-07 is not merely a form for communicating the decision; rather, it is a form in which an order is to be passed, containing a dedicated column for recording reasons which must be in consonance with Section 54(11) of the CGST Act read with Rule 92(2) of the CGST Rules. A cumulative reading of these provisions makes it clear that pendency of an appeal or proceeding is a jurisdictional pre-condition, and a recorded, reasoned opinion of the Commissioner is a mandatory safeguard — the mere possibility of a future appeal satisfies neither.

The present ruling is in line with the settled position adopted by the Hon'ble Delhi High Court in a catena of judgments. In ***Truth Fashion v. Commissioner of DGST Delhi [W.P.(C) No. 486 of 2025 dated February 10, 2025],*** it was held that the plain language of Section 54(11) refers to a contingency where an order giving rise to a refund "is the subject matter of an appeal", and the mere decision to prefer or institute an appeal would not qualify under Section 54(11), since a decision taken by the Commissioner to assail an order cannot ipso facto place the principal order in abeyance. Similarly, in ***Shalender Kumar v. Commissioner Delhi West CGST Commissionerate [W.P.(C) No. 3824 of 2025 dated April 03, 2025],*** it was held that the Department's opinion under Section 54(11) cannot be relied upon on a standalone basis, and in the absence of any appeal or other proceeding pending against the order of the Appellate Authority, such opinion cannot result in holding back the refund.

Earlier, in ***G S Industries v. Commissioner of Central Goods and Services Tax [W.P.(C) No. 14719 of 2022 dated March 20, 2023]*** **and** ***Alex Tour & Travel (P) Ltd. v. Commissioner (CGST) [W.P.(C) No. 5722 of 2023 dated May 08, 2023],*** the Hon'ble Delhi High Court categorically held that the Revenue cannot ignore or refuse to comply with an order passed by the Appellate Authority merely on the ground that it proposes to appeal against the said order, particularly when no stay has been granted by any competent Court or Tribunal. It was further observed that since refund amounts carry statutory interest for the period of delay, it would in fact be contrary to the interest of the Department itself to hold back the refund, inasmuch as if the appeal is eventually allowed, the Revenue would be entitled to take consequential action for recovery of the amount disbursed in accordance with law.

Another significant facet of this ruling is the underlying principle of judicial discipline. The Hon'ble Supreme Court in ***Union of India v. Kamlakshi Finance Corporation Ltd. [AIR 1992 SC 711]*** has authoritatively held that the orders of the higher appellate authorities are binding on the subordinate authorities and must be followed unreservedly unless the operation thereof is suspended by a competent Court. A Deputy Commissioner cannot, therefore, sit in judgment over the order of the Additional Commissioner (Appeal) or effectively nullify it under the garb of "premature" consideration of refund.

Further, the direction of the Hon'ble High Court to keep in view CBIC Instruction No. 01/2022-23 [GST-Investigation] dated May 25, 2022 is noteworthy. The said Instruction unequivocally clarifies that there is no provision under the CGST Act which mandates recovery of tax dues during the course of search, inspection or investigation, and any payment made through Form GST DRC-03 during such proceedings must be strictly voluntary. Recoveries effected under coercion or pressure during search operations have consistently been deprecated by the Courts, and amounts so collected are refundable to the taxpayer.

In our considered view, this judgment reinforces a vital safeguard for taxpayers: a refund crystallised by an appellate order is a legitimate entitlement and cannot be defeated on the basis of a future contingency. Field formations must appreciate that if the Revenue apprehends prejudice, the remedy lies in actually filing the appeal and thereafter invoking Section 54(11) of the CGST Act in the manner prescribed — by recording a reasoned opinion in Part A of Form GST RFD-07 after affording an opportunity of hearing — and not in mechanically refusing to consider the refund application itself.

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(Author can be reached at info@a2ztaxcorp.com)

A2Z Taxcorp LLP

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091
Email: info@a2ztaxcorp.com; Web: www.a2ztaxcorp.net; Tel: +91 11 4242 7056