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Circular Cannot Bar Refund of Interest Paid Under Rule 96A, Once the Tax on Delayed Export Realisation Is Refunded

The Hon'ble Punjab and Haryana High Court in ***Ernst and Young LLP v. Union of India and Others [CWP-19850-2024 dated September 30, 2026]*** quashed paragraph 4.6 of Circular No. 197/09/2023-GST dated July 17, 2023 to the extent it bars refund of interest paid under Rule 96A(1) of the CGST Rules, 2017, and held that where the tax paid on account of delayed realisation of export proceeds has been refunded, the Revenue cannot retain the interest paid on that tax merely on the strength of a circular, as such retention must have an independent basis in the Act or the Rules.

Facts:

- Ernst and Young LLP (the **"Petitioner"**) exports professional services to clients located outside India without payment of IGST, having furnished a Letter of Undertaking (**"LUT"**) under Rule 96A of the CGST Rules, 2017.

- Rule 96A(1)(b), as applicable to the Petitioner, required the export consideration to be realised in convertible foreign exchange within one year from the date of invoice, failing which the tax along with interest under Section 50 of the CGST Act, 2017 was payable.

- The Petitioner could not realise the consideration within one year and therefore deposited the tax along with interest. The consideration was, however, subsequently realised, though after the prescribed period.

- The Petitioner claimed refund of both the tax and the interest. The tax was refunded vide orders dated April 12, 2022 and April 13, 2022, but the refund of interest was rejected.

- The Additional Commissioner (Appeals), CGST, Gurugram upheld the rejection vide order dated February 28, 2023 by relying on paragraph 4.6 of Circular No. 197/09/2023-GST,

which provides that no refund of the interest paid in compliance with Rule 96A(1) shall be admissible.

- Aggrieved, the Petitioner filed a writ petition seeking to quash the appellate order to that extent and a declaration that paragraph 4.6 of the Circular is ultra vires the CGST Act.

Contentions of the Petitioner:

- The Act does not prescribe any time limit for receipt of payment in convertible foreign exchange under Section 2(6)(iv) of the IGST Act, 2017; the one-year period is found only in Rule 96A, and a condition in the Rules cannot curtail what the Act itself recognises as an export of services (relying on *Zenith Spinners*).

- Interest under Section 50 is compensatory and depends on the principal tax. Once the supply is accepted as zero-rated and the tax is refunded, the interest cannot survive independently (relying on *Pratibha Processors*, *Jayathi Krishna* and *Bill Forge*).

- A circular cannot create a restriction not contemplated by the statute or the Rules (relying on *Ratan Melting & Wire Industries*).

- In the alternative, the amount is refundable under Section 54(1) of the CGST Act read with Rule 89(2)(k), as the provision covers tax, interest paid thereon and "any other amount paid".

Contentions of the Respondents:

- Rule 96A(1)(b) is a machinery provision giving effect to Section 2(6)(iv) of the IGST Act. The liability to interest arose on default and subsequent realisation of proceeds does not wipe it out.

- Interest under Section 50 is compensatory for the period the Revenue remained deprived of the tax (relying on *Associated Cement Co. Ltd.*), and *Pratibha Processors* is distinguishable.

- Rule 96B, which deals with export of goods, provides for refund of tax but not of interest, which is consistent with paragraph 4.6 of the Circular.

- Section 54 does not create an independent right to refund of interest which is otherwise non-refundable (relying on *Mafatlal Industries* and *Dilip Kumar & Co.*), and an exporter who realises proceeds in time cannot be equated with one who does not, so there is no violation of Article 14.

Issues:

- Whether, once the tax deposited under Rule 96A of the CGST Rules, 2017 has been refunded upon subsequent realisation of the export proceeds, the Revenue can still retain the interest paid on such tax solely on the strength of paragraph 4.6 of Circular No. 197/09/2023-GST dated July 17, 2023?

- Whether a circular can impose a restriction on refund of interest when Section 54(1) of the CGST Act expressly contemplates refund of tax and interest paid thereon, and neither the Act nor Rule 96A provides for such retention?

- Whether the silence of Rule 96B on refund of interest can be imported into Rule 96A to sustain the denial of refund?

Held:

The Hon'ble Punjab and Haryana High Court in ***CWP-19850-2024*** held as under:

- Observed that Rule 96A(1)(b) requires payment of tax with interest under Section 50 on failure to realise the export proceeds in time, but it does not provide for the consequence

where the proceeds are subsequently realised and the tax is refunded, nor does it provide that the interest shall nevertheless be retained. The bar on refund of interest is found only in paragraph 4.6 of the Circular.

- Noted that Section 54(1) of the CGST Act expressly contemplates a claim for refund of tax and interest, if any, paid on such tax, besides any other amount paid, and is wide enough to cover a claim for refund of interest paid along with the tax.

- Observed that the refund of tax is significant. Having accepted the subsequent realisation and refunded the tax, the Revenue cannot justify retention of the interest merely by relying on paragraph 4.6, and the retention must be tested on the provisions of the Act and the Rules.

- Held that a circular may clarify how a statutory provision is to be administered but cannot override or alter the statute, as reiterated by the Constitution Bench in *Ratan Melting & Wire Industries*. Paragraph 4.6, to the extent it prohibits refund of interest, travels beyond the Act and the Rules and must yield to them.

- Rejected the Revenue's submission that the liability to interest had crystallised and could not be undone, holding that once the tax is refunded, retention of the interest must have an independent statutory basis, and none was pointed out except paragraph 4.6.

- Held that *Associated Cement*, *Mafatlal Industries* and *Dilip Kumar & Co.* do not answer the narrow question, and that the Revenue's attempt to distinguish *Pratibha Processors* and *Jayathi Krishna* was not persuasive, as interest is compensatory and ordinarily follows the principal amount.

- Held that reliance on Rule 96B is misplaced, as it operates in a different field (recovery and restoration of refund on export of goods), and its silence on refund of interest cannot

be imported into Rule 96A or used to restrict Section 54(1). The Article 14 argument was held not to require adjudication.

- Directed that paragraph 4.6 of Circular No. 197/09/2023-GST is bad in law and quashed to the extent it provides that no refund of interest paid under Rule 96A(1) is admissible where the tax paid along with such interest has been refunded upon realisation of the export proceeds.

- Directed that the appellate order dated February 28, 2023 be set aside to the extent it rejects the refund of interest and that the Respondents refund the interest, corresponding to the tax already refunded, within eight weeks from receipt of the certified copy of the order, failing which interest under Section 56 of the CGST Act shall be payable from the date of expiry of that period until actual payment.

- Hence, the writ petition was allowed without any order as to costs.

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Our Comments:

Provisions invoked. The dispute sits at the intersection of the zero-rating provisions and the refund machinery. Section 2(6) of the IGST Act, 2017 defines "export of services" and clause (iv) requires the payment to be received in convertible foreign exchange, but does not prescribe any time limit. Section 16 of the IGST Act zero-rates exports and allows export under bond or LUT without payment of tax. Rule 96A(1)(b) of the CGST Rules, 2017 is the source of the one-year period, and on default it requires payment of the tax with interest under Section 50 of the CGST Act. Section 54(1) of the CGST Act covers refund of "any tax and interest, if any, paid on such tax or any other amount paid", and Section 56 provides interest on delayed refunds.

The Circular position. Circular No. 125/44/2019-GST dated November 18, 2019 clarified the manner of compliance with Rule 96A(1). Thereafter, Circular No. 197/09/2023-GST dated July 17, 2023 clarified that on subsequent realisation of the export proceeds, the exporter can claim

refund of the tax paid earlier, but no refund of interest would be admissible. This is the line the High Court has now struck down. The practical effect is that the Circular, as interpreted by the departmental authorities, had converted an interest cost into a permanent levy even on a transaction the Department itself accepted as a genuine export.

Pari materia and supporting judgments. The ruling is in line with the settled principle that a circular cannot travel beyond the statute. The Constitution Bench of the Supreme Court in *Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries* [2008 (231) E.L.T. 22 (S.C.)] held that circulars contrary to the statutory provisions have no existence in law. On the nature of interest, *Pratibha Processors v. Union of India* [(1996) 11 SCC 101] and *Commissioner of Customs v. Jayathi Krishna & Co.* [2000 (119) E.L.T. 4 (S.C.)] support the view that interest is compensatory and follows the principal duty, so that it cannot survive where the principal is not payable. *Commissioner of Central Excise and Service Tax, LTU, Bangalore v. Bill Forge Pvt. Ltd.* [2012 (279) E.L.T. 209 (Kar.)] also recognises the compensatory character of interest. Further, in *Union of India v. Zenith Spinners* [2015 (326) E.L.T. 23 (S.C.)], affirming [2015 (326) E.L.T. 97 (Guj.)], the power to prescribe conditions and safeguards for a facility was held not to extend to curtailing the substantive benefit conferred by the statute, which is the same logic applied to Rule 96A and the Circular.

Contrary view. The Revenue relied on *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [(1981) 4 SCC 578] for the proposition that interest is compensatory for the period of default and survives later events, on *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536] for the rule that refund is governed strictly by the statutory scheme, and on *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co.* [(2018) 9 SCC 1] for strict construction. The Court held that none of these answers the narrow question of whether interest on a refunded tax can be retained without statutory authority. It is also noteworthy that the Court accepted the Revenue's argument only partly: it did not hold that interest was never payable for the period of default, but that the retention after refund of the tax needs an independent legal basis.

Key takeaways for exporters.

- Exporters of services who paid tax and interest under Rule 96A(1)(b) on delayed realisation, and whose interest refund was rejected or not claimed, should examine a refund claim under Section 54(1) read with Rule 89(2)(k), keeping the two-year limitation in Section 54(1) in view.

- Pending appeals and refund applications before the Appellate Authorities should now be supplemented with this judgment, specifically on the ground that paragraph 4.6 has been held to be bad in law.

- The judgment is of the Punjab and Haryana High Court and is binding within its territorial jurisdiction while being of strong persuasive value elsewhere. Until the Board withdraws or amends the Circular, or the matter is carried further by the Revenue, exporters outside the jurisdiction may need to pursue writ remedies to obtain relief.

- Where refund is not made within eight weeks of receipt of the certified copy of the order, the amount carries interest under Section 56 of the CGST Act.

We recommend that exporters maintain complete records of FIRC or bank realisation certificates and the dates of payment of tax and interest under Rule 96A, as these will be the primary documents in any claim for refund of interest.

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