

Before the Hon'ble High Court of Delhi at Delhi

(Civil Extra Ordinary Writ Jurisdiction)

W.P (C) NO 10284 OF 2018

IN THE MATTER OF

Sales Tax Bar Association (Regd.) and Anr.

...PETITIONERS

#VERSUS#

Union of India &Ors

...RESPONDENTS

<u>S.No.</u>	<u>Issues</u>	<u>Details</u>
1.	Rule 89(4) of the CGST Rules provides the mechanism which is completely in violation of the Parent Act. .i.e. Section 16(3) of the IGST Act and Section 54 of the CGST Act.	<ul style="list-style-type: none"> • Section 16(3) of the IGST Act provides that the person making 'zero rated supplies' shall be eligible to claim refund of the "<u>unutilized input tax credit</u>". • Section 54 of the CGST Act also provides that the "refund of unutilized input tax credit" can be claimed at the end of any tax period. • However, Rule 89(4) of the CGST provides formula of refund of Input Tax Credit which restricts the refund of only that input tax credit which is availed during the period for which it is filed. • Section 16 of the IGST Act allows the refund of unutilized ITC irrespective of whether it was availed during the period when refund claimed or otherwise.
2.	Circular No.24/24/2017 Dated 21.12.2017 provides a mechanism for making refund application which is beyond the scope of the Section 54 of the CGST	<ul style="list-style-type: none"> • Section 54 of the CGST Act provides right of refund of tax and interest, if any paid on such tax or any other amount paid by him by making an application before expiry of two years from the relevant date. • Section 54 only provides the limitation

	Act.	<p>period for filing the refund application and no other limitation w.r.t to the refund claim.</p> <ul style="list-style-type: none">• Further Rule 89 provides for filing of all the refund application except application in case of refund of Integrated Tax paid on goods or services exported outside India, electronically in FORM GST RFD-01 through common portal.• Para 2.4 of the circular no. 17/17/2017-GST provides that refund of unutilized input tax credit on input goods and input services used in making such zero-rated supplies shall be filed in GST RFD-01A.• Para 2.0 of the Circular No. 24/24/2017 provides a mechanism that refund claims in respect of zero rated supplies and on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger, shall be filed for a tax period on monthly basis in FORM GST RFD-01A.• Therefore, Circular No. 24/24/2017-GST provides a mechanism (i.e. application to be filed on monthly basis) beyond the scope of Section 54 of CGST Act as also Rule 89 of the CGST Rules for the relevant period because the substantive provisions do not provide any such restriction/limitation for filing the refund claim.• Further the combined effect of Rule 89 and Circular No. 24/24/2017 is that the Assessee is compelled to file a refund claim for each month separately during the relevant period, and is allowed to avail refund of only that ITC which is availed during that month.
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		<ul style="list-style-type: none"> • This severely and factually takes away the vested right granted by S.16(3) and the right granted to assessee within two years by Section 54.
3.	Acknowledgement which is mandatory to be issued within 15 days of the date of filing the refund application under Rule 91, is not being issued in a very large number of cases.	<ul style="list-style-type: none"> • Rule 91 of the CGST Rules provides for the issuance of acknowledgement in GST RFD-02 within 15 days from the date of filing of the refund application. • However, in the data provided as per the Counter Affidavit dated 30.05.2019 filed by the Respondents No. 3, 5 and 7, it is evident that in large number of cases mandatory acknowledgement in GST RFD-02 has not been issued to the tax payers.
4.	Provisional Refund is not being issued within the time limit as provided under Rule 91 of the CGST Rule. Further	<ul style="list-style-type: none"> • As per Section 54(6) of the CGST Act, registered person claiming refund on account of zero rated supply of goods or service or both is eligible for provisional refund of ninety percent of total amount so claimed. • Further Rule 91 provides that on prima facie satisfaction, authority shall sanction the provisional refund within 7 days from the date of acknowledgement. • However, Authorities are not issuing the provisional refund within the time limit as prescribed under law. • In the data provided in the Counter Affidavit filed by the Respondent No 3, 5 and 7, for the amount of Rs. 238.72 Crores in which acknowledgement has been issued, only Rs. 195.74 Crore of refund has been released and that too beyond the time frame of 7 days as provided under Rule 91. • A total of Rs.43 Crores are pending with the Authorities over a long period of

		<p>time despite the case that acknowledgment has been issued in such cases.</p> <ul style="list-style-type: none"> • A maximum 10%, i.e. 4 Crores could have been pending. • Therefore, it is evident that the provisional refund is not being issued at all.
5.	<p>Authorities are not adhering to the mandatory time limit for issuance of Refund as contemplated in Section 54(7) of CGST Act.</p>	<ul style="list-style-type: none"> • Section 54 of the CGST act provides the mandatory time limit for the releasing of refund of the tax payers. However in large number of cases, authorities are not adhering to the mandatory time limit for issuance of Refund. • In large number of cases, the taxpayers have to approach the Hon'ble High Court for Hon'ble High Court's intervention in getting the refund sanctioned. • In large number of cases, the Authorities are arbitrarily either reject the refund application without mentioning any reason or retain the refund amount for a long period of time within giving any reason. • In the Counter Affidavit filed by the Respondent No. 3, 5 and 7, it has been provided that a total Refund of Rs. 284 Crores has been applied out of which only Rs. 195 Crores of refund has been sanctioned, resulting in 31% of the refund which is either pending/stuck as on 21.09.2018. • The above mentioned data is apart from the cases where numerous persons have not been able to file the refunds.
6.	<p>No facility to amend any mistake leading to</p>	<ul style="list-style-type: none"> • The mechanism of operation of the common portal is causing great

	the denial of Refund.	<p>hardship to the tax payers to claim refund. For e.g. in many cases, the drawback rate (both higher and lower) is the same. While one rate is given in Column A and one rate is given in Column B. If exporter has wrongly mentioned A i.e. Higher Drawback rate column though the tax payer has not claimed higher drawback, still his refund is denied.</p> <ul style="list-style-type: none"> • There is no facility of correcting the mistake if made in FORM GSTR 3B. As an illustration, an exporter exported goods on payment of IGST, however rather than showing as export, mentioned the same in column 3.1(a)-“outward taxable supply (other than zero rate, nil rated and exempted” instead of Column 3.1 (b)-“(outward taxable supplies zero rated)”. Once such mistake happens, there is no way of correcting the same and hence the substantive right for claiming the refund itself gets frustrated. • Likewise, if any mistake is done by the shipping Companies in filing the EGM then there is inordinate delay in issuing refund. • Further any mistake in filing of data in GSTR 3B it would mismatch with the customs EDI data and resulting in refund stuck.
7.	Even though the Tax Payer is within the two years window, the system does not allow the tax payer (Exporter) to file a Refund Application	<ul style="list-style-type: none"> • Though government has now made amendments in the online portal where refund application for multiple months can be made at the same time. However, this amendment has only prospective application and does not provide any remedy to the tax payers

	again.	<p>who have submitted the refund application for previous months and the application were rejected because of the technical problems like the month of ITC and exports are different, etc.</p> <ul style="list-style-type: none">• The amendment does not solve the problem when the ITC is availed in one financial year and the export is made in other financial year.
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