

Legal Communique

Information about important decisions



Department of Goods and Services Tax Government of Maharashtra

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Legal Communique Case No. 1

Altisource Business Solutions India Pvt Ltd v/s Union of India & Others

BOMBAY HIGH COURT WP No. 5312 & 37613 OF 2024, 1807 OF 2025

(Interest at rate 6% per annum to be granted from the expiry of 60 days
of the original refund application)

The petitioner is engaged in the business of providing software development services and IT enabled back office services to the foreign clients.

Facts of the case :

For the period of April 2018 to January 2019 petitioner had filed different refund applications under the head "export of services without payment of tax". After issuing SCN, proper officer had rejected the refund claims for the reason that the supply of services to its parent company is not export of service / zero rated supply under Section 16 of the IGST Act and it is a providing intermediary services in terms of Section 13(8)(b) of the IGST Act. Petitioner had filed appeal against the refund rejection orders. Appellate authority had allowed all refund claims and set aside the refund rejection orders. Subsequent to the Orders-In-Appeal, petitioner had filed refund applications for claiming the refunds as sanctioned by appellate authority. These refunds were sanctioned by the concerned officer within the period of 60 days from filing of the refund application as per appellate authority order.

The petitioner had made original refund applications earlier which were rejected by the proper officer & after the order of appellate authority, he once again made refund applications for the refund claim and subsequently refund was credited to him. However, actual refund due date was 60 days from the filing of original refund applications. Therefore, there was a delay between the date of filing the original refund applications and the date when refunds were actually granted to the petitioner. Petitioner had made another refund applications and claimed the refund of interest on delayed refund. However, Deputy Commissioner of State Tax passed the impugned orders rejecting the interest on delayed refund.

In the grounds of petition, petitioner mentioned that, refund of interest claimed by the petitioner was under Section 56 of GST Act which says that, if the amount claimed as a refund is not refunded within 60 days from the date of receipt of the application, then the person would be entitled for the interest.

Arguments by the petitioner :

The reasoning in the impugned orders (which rejected the refund of interest) is entirely contrary to the law laid down by the Hon'ble Supreme Court and High Courts in the following decisions:-

- i) **Ranbaxy Laboratories vs. Union of India & Others** [(2011) 273 E.L.T. (S. C.)]
- ii) **Lupin Limited vs. Union of India and Others** [BHC, Goa Bench order dated 5 August 2025, W.P. No. 610 of 2024]

- iii) **Bansal International vs. Commissioner of DGST** [Delhi HC, (2023) 13 Centax 2010 Del.]
- iv) **SBI Cards and Payments Services Ltd vs. Union of India** [(2023) 72 G.S.T.L. 174 (Punjab & Haryana)]
- v) **Qualcom India Pvt Ltd vs. Deputy Commissioner (ST) (FAC)** [(2024) 86 G.S.T.L. 300 (Telangana)]

Counsel for petitioner has laid emphasis on the decision of Hon'ble BHC, Goa Bench in *Lupin Limited* (supra), where, in almost identical circumstances, the contention on behalf of the revenue was rejected, and interest was directed to be paid from the date of the expiry of 60 days from the original refund application.

Arguments by the Department :

Petitioner's initial application for a refund was rejected. Accordingly, there was no obligation to grant a refund, and consequently, no liability for payment of the interest on the refund. Refund was allowed only by the order of the appellate authority. Based on this order, the petitioner re-applied for a refund. This refund was made within 60 days from the date of the petitioner's refund application and therefore, under the scheme of Sections 54 and 56 of the CGST/MGST Act, there was no obligation for payment of any interest.

Discussion by the Court :

In almost similar facts and situations, the coordinate Bench of this Court in case of *Lupin Limited* (supra) paragraphs 12 and 13 of the said order observed and held as follows: -

- "12. A conjoint and meaningful reading of Section 54 along with Section 56, as we have stated, forms a Scheme for refund of tax along with the interest and make it evidently clear, that the interest is levied, on delay of the refund, with an object to compensate the person who has claimed a refund, as if refund is allowed, the same shall be immediately refunded, upon an order being passed by a proper officer within a period of 60 days. However, this period of 60 days is to be computed from the date of receipt of the application referred under subsection (1) of Section 54, and not as what has been argued before us by the Counsel for the Revenue, that it will be payable from the date of approval of refund. Similarly, when an Appellate Authority passes an order, either the Assessee or the Revenue going to the appellate forum, then a fresh application is to be filed for the purposes of convenience and bringing the refund order into the system, and the proviso clearly contemplates that within a period of 60 days from passing of the order by the Appellate Authority, the amount of refund shall be disbursed, if not, it shall carry an interest of 9%.
- 13. It is sought to be urged before us by Revenue, that a proviso operates only when an order is passed by an Appellate Tribunal or Appellate Authority and the interest shall run only from the date when an application is preferred for seeking refund and therefore according to Ms Desai after the appellate order was passed in favour of the petitioner, fresh application for refund was filed on 11.05.2023 and the interest would be payable from that date.

We must reject the said argument as this is not the scheme of the statute and it is trite position in law that when a statute specifies or regulates the payment of interest, it must necessarily abide by all the stipulations there in and here when Section 56 contemplates two different contingencies; the first being the amount not being

refunded in 60 days of filing of an application, undersub-section (1) of Section 54, and the second contingency being that the amount not being refunded within 60 days from the date of the application filed consequent to an order passed by the adjudicating Authority or the Appellate Authority or the Appellate Tribunal or Court and it having attained finality.

However, the legislature was conscious of the two different situations, as it granted 9% interest in the proviso, when consequent to an order being passed by an Appellate Authority, a fresh application for refund has been made and the amount is not paid within 60 days.

In any case, a conjoint reading of Section 56, the first part along with the proviso and specifically read with the explanation, make it evidently clear that the legislature intended to give the status of an order in original as passed under Sub-section (5) by the proper officer, to the order passed by the Appellate Forum and therefore, the interest which is liable to be paid shall be governed by clause (1) as well as by the proviso and if from the date of the original order, if amount was not refunded within 60 days from the date of the first application, it shall carry an interest of 6% and also if upon the order being passed by the Appellate forum if the refund is not disbursed within a period of 60 days, it shall carry an interest at the rate of 9%."

Hon. Delhi High Court and Hon. Telangana High Court have similarly interpreted the provisions and scheme of Sections 54 and 56 of the CGST Act. Basis for such interpretation is to be found in *Ranbaxy Laboratories Ltd* (supra), where the Hon'ble Supreme Court considered the provisions of Section 11(BB) of the erstwhile Central Excise Act, 1944, which are in pari materia to Sections 54 and 56 of the CGST Act.

Observations of the Bombay High Court :

Section 56 of the CGST/MGST Act reads as :

"56. ***Interest on delayed refunds- If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund 198 [for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed] :***

Provided that where any claim of refund arises from an ***order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order,*** interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.--For the purposes of this section, ***where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order***

passed by the Appellate Authority, Appellate Tribunal or the court shall be deemed to be an order passed under the said sub-section (5)."

- When refund application is made under section 54(1) and refund sanction order is passed under section 54(5), taxpayer is entitled to interest at 6% rate for the delay beyond 60 days from the receipt of refund application to the actual refund date.
- When refund arises from an order passed by an appellate authority, and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, taxpayer is entitled to interest at 9% rate.
- When any order of refund made by an appellate authority against an order of proper officer under section 54(5), that order shall be deemed to be an order passed under the section 54(5).
- In this case an appellate authority had passed the orders sanctioning the refund against orders passed by proper officer. Hence these orders shall be treated as they are passed under section 54(5).
- Hon. BHC allowed the interest to the petitioner at 6% rate and not at 9% rate.
- Similar issue under Central Excise Act, 1944 was challenged before Hon. Supreme Court in case of ***Ranbaxy Laboratories vs. Union of India & Others*** (supra) in which Hon. Supreme Court held that, ***"the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."***

Decision of the Court :

Hon. Bombay High Court set aside the impugned orders rejecting the interest on delayed refund and directed the respondents to pay the petitioner's interest at a rate of 6% per annum, calculated from the expiry of 60 days from the original refund application.

Way forward :

This judgement is accepted by the department. Hence when an appellate authority passes the orders sanctioning the refund against orders passed by proper officer, these orders shall be treated as they are passed under section 54(5), then taxpayer is entitled to interest at 6% rate for the delay beyond 60 days from the receipt of refund application to the actual refund date.

Legal Communique Case No. 2



Sriba Nirman Company
V/s.
The Commissioner (Appeals), Guntur,
Central Tax & Customs, Sub- office,
Visakhapatnam, The Joint Commissioner of Central Tax,
Visakhapatnam Central GST Commissionerate,
GST Bhavan, Port Area, Visakhapatnam,
The Joint Director, Directorate General of GST Intelligence,
Visakhapatnam Zonal Unit, Visakhapatnam,
The Assistant Commissioner (ST), Aryapuram Circle,
Rajahmahendravaram.

ANDHRA PRADESH HIGH COURT WP No.25826/2023



(SUPREME COURT)
SLP (C) No. 14270/2025



(Supreme Court)
RP (C) Diary No. 38833/2025

(Failure to file monthly returns and remit tax constitutes suppression of facts, notwithstanding availability of extended timelines for annual returns.)

Facts of the Case:

- The petitioner, M/s Sriba Nirman Company, a partnership firm registered under the GST regime and engaged in works contracts, executed Engineering Procurement Construction (EPC) sub-contracts for M/s Vijay Nirman Company Ltd. during the period July 2017 to March 2018. In March 2018, the petitioner raised nine invoices aggregating ₹20,92,02,422, inclusive of GST amounting to ₹3,19,12,234.
- The petitioner did not file the periodical GSTR-3B returns, nor did it discharge the corresponding tax liability, citing insufficiency of payments received from the main contractor. On 31.07.2018, officers of the Directorate General of GST Intelligence (DGGI) conducted an inspection and seized documents. Subsequent thereto, between 31.07.2018 to 29.09.2018, the petitioner remitted tax dues aggregating ₹3,36,51,468 and filed all pending returns for FY 2017-18.
- Despite such compliance, the department issued show cause notices dated 21.08.2020 and 03.09.2020, proposing demand of tax (already paid), interest, and imposition of penalty under Section 74, in addition to penalties under Section 122, Section 125, and late fees under Section 47. Upon adjudication, the demand was confirmed by order dated 24.12.2021, and the appellate authority dismissed the petitioner's appeal on 26.07.2022. A recovery notice under Section 79 was thereafter issued on 19.08.2023, prompting the present writ petition.
- The writ petition was dismissed by the Andhra Pradesh High Court by judgment dated

29.01.2025. Aggrieved thereby, the petitioner approached the Supreme Court of India by filing Special Leave Petition (Civil) No. 14270 of 2025. The Supreme Court, by order dated 16.05.2025, dismissed the Special Leave Petition, finding no reason to interfere with the judgment of the High Court. Thereafter, the petitioner filed a Review Petition (Civil) (Diary No. 38833 of 2025), which was also dismissed by the Supreme Court by order dated 18.11.2025, thereby attaining finality to the dispute.

Submissions of the Petitioner:

The petitioner assailed the appellate order on the following principal grounds:

1. Improper invocation of Section 74:

It was submitted that mere non-payment of tax or delayed filing of returns does not amount to fraud, wilful misstatement, or suppression of facts, which are sine qua non for invoking Section 74 of the CGST Act. The petitioner's conduct did not possess the requisite mens rea to evade tax.

2. Tax paid before issuance of SCN:

Since the entire tax liability stood discharged by September 2018, nearly two years prior to issuance of the SCN, the jurisdictional foundation to invoke Section 74 was absent.

3. Annual return deadline:

The petitioner argued that in view of extensions granted under Section 44, the last date for filing the annual return for the relevant period extended until 07.02.2020, and therefore, non-filing of monthly returns could not constitute suppression during the extended period.

Respondent's Submission:

The respondents opposed the writ petition contending:

1. That Sections 37-39 mandate monthly returns and corresponding payment of tax; failure thereof constitutes statutory contravention.
2. That non-filing of GSTR-3B returns amounts to suppression of facts within the meaning of Explanation 2 to Section 74.
3. That records showed the petitioner had received payments from the main contractor sufficient to discharge the GST liability in part, yet the petitioner deliberately withheld filing and payment.

Court Observation:

1. Mens rea and scope of Section 74:

The Court held that Section 74 is attracted only when non-payment arises from fraud, wilful misstatement, or suppression of facts to evade tax. Suppression, as defined in Explanation 2, includes non-declaration of information required to be furnished, but must nevertheless be wilful and intended to evade tax.

2. Non-filing of monthly returns constitutes suppression:

The Court held that the statutory requirement to file monthly returns under Sections 37-

39 and Rule 61 is independent of the annual return under Section 44. Non-filing of GSTR-3B returns therefore constitutes suppression of facts that the taxable person is obligated to disclose.

3. Tax payment prior to SCN insufficient to avoid Section 74:

The Court noted that immunity under Section 74(5) is available only when the taxable person pays:

- the tax,
- interest under Section 50, and
- 15% penalty,
- before the issuance of SCN.

In the present case, although the tax was paid, the interest was paid only after issuance of SCN and the 15% penalty was never paid. Hence, issuance of SCN under Section 74 was valid.

4. Rejection of petitioner's plea on annual return timelines:

The Court held that the obligation to file monthly returns cannot be deferred by relying on the extended deadline for annual returns under Section 44. The petitioner's failure to file monthly returns for nearly a year constituted deliberate non-compliance.

5. Existence of wilful suppression:

The appellate authority had recorded that the petitioner had indeed received payments from its main contractor but still failed to file returns or discharge tax liability. The Court accepted this finding and concluded that the suppression was wilful, thereby justifying invocation of Section 74.

Court's Decision:

1. The High Court dismissed the writ petition, holding:

- That invocation of Section 74(1) was justified;
- That penalties imposed under Section 74 and other provisions were valid;
- That recovery proceedings initiated under Section 79 suffered from no infirmity;
- That no case for interference under Article 226 was made out.

No order as to costs was passed.

2. The Supreme Court dismissed the Special Leave Petition on 16.05.2025 and the Review Petition on 18.11.2025, thereby affirming the orders of the High Court and the tax authorities.

Relevant Statutory Provisions:

- Sections 37-39, CGST Act - Monthly filing of returns and payment of tax
- Section 44 - Annual return

- Section 50 - Interest on delayed payment
- Section 73 - Demand without fraud/suppression (10% penalty)
- Section 74 - Demand with fraud/suppression (100% penalty)
- Section 122 & 125 - General and specific offences
- Section 47 - Late fee
- Section 79 - Recovery proceedings
- Explanation 2 to Section 74 - Definition of "suppression"

Way Forward:

1. Failure to file monthly returns and remit tax constitutes suppression of facts, notwithstanding availability of extended timelines for annual returns.
2. Suppression under Section 74 requires wilfulness; deliberate non-filing despite receiving payments satisfies this requirement.
3. Payment of tax alone does not preclude issuance of SCN under Section 74; interest and 15% penalty must also be paid before SCN.
4. Financial incapacity is not a legally recognized defense for non-payment of GST.
5. This judgment reinforces a strict approach to GST compliance, particularly concerning monthly filing obligations.



Legal Communique Case No. 3

Shivamma (Dead) through LRs Vs Karnataka Housing Board & Ors.,

SUPREME COURT OF INDIA (Civil Appeal No. 11794 of 2025)

((Condonation of Delay under Section 5 of the Limitation Act, 1963))

Background:

The Hon'ble Supreme Court examined the scope and interpretation of Section 5 of the Limitation Act, 1963 while considering whether the High Court was justified in condoning an inordinate delay of 3966 days in filing a second appeal. The principal issue before the Court was the true meaning of the expression "**within such period**" occurring in Section 5 and the extent of explanation required for seeking condonation of delay.

Issue Considered:

Whether "sufficient cause" under Section 5 of the Limitation Act must be explained **only for the period after expiry of limitation or for the entire period from commencement of limitation till actual filing** of the appeal/application.

Findings of the Supreme Court:

The Hon'ble Supreme Court held that the expression "**within such period**" cannot be narrowly construed to mean only the delay beyond the prescribed limitation period. The Court clarified that:

The explanation for delay must cover **the entire continuum of time**, beginning from the date when the limitation period started running and extending up to the actual date of filing of the appeal or application.

The phrase "within such period" includes **both** the original statutory period of limitation and the period beyond limitation. Explanation confined only to the post-limitation delay is legally insufficient.

The Court reconsidered and clarified earlier views expressed in *Ramlal v. Rewa Coalfields Ltd.* and aligned the interpretation with the text, context, and object of Section 5 of the Limitation Act.

Observations on Government Delay:

The Hon. Supreme Court reiterated that **State authorities are not entitled to any special or automatic indulgence** in matters of condonation of delay. Administrative inefficiencies, internal file movement, or institutional lethargy do not constitute "sufficient cause".

Condonation of delay is discretionary and must be exercised judicially, based on bona fide conduct, absence of negligence, and a convincing explanation covering the entire period of delay.

Legal Position Emanating:

Condonation of delay is an **exception**, not a matter of right.

Explanation must begin from **Day-1 of limitation**, not merely from the date of expiry.

Mechanical or routine condonation orders are liable to be set aside.

Government departments must maintain strict monitoring of limitation periods in litigation matters.

Way Forward:

The judgment conclusively settles that: For condonation under Section 5, delay must be explained from Day-1 of limitation till the date of filing. Partial explanations are legally insufficient.

Referred judgements can be accessed through the QR Code Provided on the note

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