

Repugnant Refund

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By Vijay Kumar

A taxpayer filed a refund claim with the GST authorities and as usual found no positive response from the Department. Frustrated, he approached the High Court.

The high Court observed - [2020-TIOL-1235-HC-DEL-GST](#)

Rules 90 and 91 of CGST/DGST Rules provide a complete code with regard to acknowledgement, scrutiny and grant of refund. The said Rules also provide a strict time line for carrying out the aforesaid activities. For instance, Rules 90(2) and (3) of the DGST Rules states that within fifteen days from the date of filing of the refund application, the respondent has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02. In the event deficiencies are noted and communicated to the applicant, then the applicant would have to file a fresh refund application after rectifying the deficiencies.

In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST/DGST Act.

Admittedly, till date the petitioner's refund application dated 4th November, 2019 has not been processed. As neither any acknowledgment in FORM GST RFD-02 has been issued nor any deficiency memo has been issued in RFD-03 within time line of fifteen days, the refund application would be presumed to be complete in all respects in accordance with sub-rule (2), (3) and (4) of Rule 89 of CGST/DGST Rules.

To allow the respondent to issue a deficiency memo today would amount to enabling the Respondent to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules, referred above. This could then also be construed as rejection of the petitioner's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. This would not only delay the petitioner's right to seek refund, but also impair petitioner's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules.

Consequently, this Court is of the view that the respondent has lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage.

Accordingly, this Court directs the respondent to pay to the petitioner the refund along with interest in accordance with law within two weeks.

The taxpayer had to file writ petitions for identical refunds pertaining to different periods.

Why this resistance to refunds? Is the officer losing something by granting legitimate refunds? By driving hapless assesseees to the High Court for simple matters like this, these officers are not only clogging the courts, but also destroying the very edifice of taxation and making the government pay interest. These officers who think they are more loyal than the king are actually more dangerous to the government than tax evaders. These are issues which could and should be solved by a phone call - for which the valuable time and material of High Courts are being unpardonably wasted.

When will we learn?

Five years ago, I wrote in my column, DDT

[Refund is Repugnant to Revenue](#)

Sometime back I asked a senior Customs/Central Excise Officer, why the Revenue officers are allergic to granting refunds. He said **"at the end of the day, we are revenue officers; our job is to collect tax, not to refund it."**

When I asked him as to why Income Tax Department is more liberal in granting refunds than the CBEC officers, he said, **"perhaps their refund orders are not reviewed by senior officers."**

It is easier for a camel to go through the eye of a needle than for an assessee to get a refund from the Customs, Excise and Service Tax Department. Somehow the officers here use all their intelligence to find some reason to deny refunds. They forget that their job is to collect the correct revenue - not a rupee less; not a rupee more. If they have collected a rupee more, they should be as eager to return/refund it as they were at the time of collecting it. The ingenuity of the departmental officers knows no bounds when it comes to rejecting refunds.

It is not as if these rejecters of refunds are champions of revenue or they are serving the cause of revenue. These officers are ultimately responsible for the government ending up with payment of interest for a long period, because some Assistant Commissioner wanted to show that he was more loyal than the king and the refund is granted only after the assessee successfully completes a tortuous voyage through the treacherous and uncertain waters of taxation and sometimes the process has to be repeated.

ICAI and GST

Hon'ble Prime Minister of India, Shri Narendra Modi acknowledged ICAI's GST endeavours when he said in his CA Day message "A year ago, when the nation had just begun heading towards the One-Nation-One-Tax goal, I had the opportunity to address your (CA) fraternity. Today, we have all ushered in a new era in history of Indian economy making the goods and services tax come out with flying colours! Such a feat could not have been achieved without your (CAs') vital contribution in not only helping businesses adapt to the new tax regime but also in coming up with innovative ways to simplify the system!" -

(From the 70th Annual Report of the Institute of Chartered Accountants of India (ICAI) for the year ended 31st March 2019, published in the Gazette of India.)

The same institute got into the wrong side of the tax administration. The above annual report also contains certain vital information on the Institute's tryst with GST.

The Institute has received two show cause notices of 'Rs. 15,797 lakhs from the Additional Director General, Goods and Service Tax Intelligence for payment of service tax on annual fee, certificate of practice fee, entrance fee, Seminar Fees and Coaching Class Fees etc.

The Institute is of the opinion that it is not liable to service tax as mentioned in show cause notice (SCN). A writ petition was filed with Hon'ble Delhi High Court in this regard, on 08.04.2019 inter alia seeking stay of the proceedings pursuant to the SCN dated 09.08.2018 and 03.10.2018 issued by department. The writ petition was filed on 16.04.2019 and Hon'ble High Court of Delhi has allowed the writ petition and advised the Institute to reply to the aforesaid SCNs and further ordered that no final order shall be passed by the department till the decision of the writ petition.

Is the matter pending in the High Court or has the High Court allowed the writ petition as claimed by the Institute in its sanctified annual report? If the writ petition is allowed, why should they wait for the decision in the writ? Is there a contradiction in the Annual Report?

The Annual report also states:

The reconciliation of GST paid, payable and GST input is in progress. An amount of Rs. 1,213 Lakhs (2,059 Lakhs) including ineligible input tax credit and input credit attributable to exempted supplies, has been charged off to the Income and Expenditure Account as 'GST Expenses'. GST payable at the end of the year of Rs. 784 Lakhs (1389 Lakhs) has been included under other liabilities (Note No. 8) and amount of Rs. 1,230 Lakhs (966 Lakhs) as GST input credit recoverable has been shown under 'Loans and Advances (Note No.14)'. The management is of the opinion that no material adjustments are likely to arise when the reconciliation is completed.

The GST is after all not that simple and good tax as it is made out to be, that even the Institute of Chartered Accountants of India had doubts on taxability and quantification. It is reported that the ICAI has paid Rs. 2.35 crore as interest on late deposit of Goods and Services Tax (GST) and Rs. 7.58 lakhs as late fee on late filing of GST Returns.

If the ICAI had to pay heavy interest and late fee, who are we ordinary mortals to avoid them?

Fourteen years ago, there was a doubt whether FAPCCI was liable to pay service tax. FAPCCI - Federation of Andhra Pradesh Chambers of Commerce and Industry was the apex body for traders and industries in Andhra Pradesh. FAPCCI, vide letter dated 18.10.2005 claimed that their association does not fall under the category of clubs and association as they are rendering service of a nature of charity and are not formed with a profit motive. They enclosed opinions obtained from certain experts. The Chief Commissioner did not agree.

I spoke to a former President of FAPCCI (who is himself a leading tax analyst) and he was of the firm opinion that FAPCCI was not liable to pay Service Tax but they were paying it because, being a reputed public organisation, they did not want to be charged with evading taxes and attracting penal consequences. He said a holistic approach has to be taken and the tax was meant to be on commercial clubs and not public bodies like FAPCCI.

ICAI stands on a higher footing, being the result of a Parliamentary Act.

The IRS Mission

The mission of the US IRS is to

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

This mission statement describes our role and the public's expectation about how we should perform that role.

- In the United States, the Congress passes tax laws and requires taxpayers to comply.
- The taxpayer's role is to understand and meet his or her tax obligations.
- The IRS role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share.

The CBIC Mission also states:

Mission

A robust indirect tax and border control administration, with a view towards delivery of services, which is -

- Simple and predictable
- Fair and just
- Transparent
- Technology-driven

and which

- Encourages trust - based voluntary compliance
- Protects honest taxpayers' rights
- Facilitates trade with risk-based enforcement
- Enables legitimate movement of people, goods and services.
- Supplement the efforts to ensure national security, and;
- Continually invests in capacity building to achieve professional and ethical excellence.

Mission Statements are not mute words on the websites of the taxation Department; they are meant to be read, understood and religiously followed.

Until next week