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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 486/2025**

**TRUTH FASHION THROUGH PROPRIETORSHIP MS
SADIA**

.....Petitioner

Through: Ms. Tabbasum Firdause & Mr.
Ahmad Ansari, Advs.

versus

COMMISSIONER OF DGST DELHI & ORS.Respondents

Through: Ms. Vaishali Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

10.02.2025

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1. The instant writ petition has been preferred seeking the following reliefs: -

“(i) Directing to the respondent to comply in respect of order dated 10.05.2024 (ANNEXURE-P-1) of the appellate authority for release of refund of Rs 18,33,000/- in spite of the direction of the Hon'ble High court of Delhi vide order dated 18.11.2024 (ANNEXURE P-6) to release the refund of the petitioner expeditiously within three weeks from the date of the order.

(ii) Directing to the respondent to grant interest in terms of Section 56 under DGST/CGST/IGST Act 2017;”

2. We note that in an earlier round of litigation, the writ petitioner had approached this Court by way of W.P.(C) 15886/2024 and which came to be disposed of on 18 November 2024 in the following terms:-

“2. Mr. Aggarwal, learned counsel who appears on behalf of the respondent, states that subject to due verification of all facts and contentions on merits being kept open, the respondent shall ensure that the claim for refund is disposed of with expedition and preferably within a period of three weeks



from today. The statement so made is recorded and accepted.

3. The aforesaid direction shall be subject to any orders that may be obtained by the respondents on any statutory appeal that they may choose to prefer and orders that may be passed thereon.

4. The petition shall stand disposed of on the aforesaid terms.”

3. Despite the aforesaid directions, the respondents have failed to take appropriate steps and release the refund as claimed. It is this which has constrained the writ petitioner to approach the Court yet again.

4. The claim for refund itself emanates from an order dated 10 May 2024 in terms of which the **Objection Hearing Authority**¹ had allowed the objections as were preferred by the writ petitioner and set aside the order which had rejected the claim for refund.

5. When the matter was taken up for consideration today, learned counsel appearing for the respondents had drawn our attention to the provisions contained in Section 54(11) of the **Central Goods and Services Tax Act, 2017**² to submit that since the Commissioner has taken a decision to prefer an appeal against the order dated 10 May 2024, the respondents are justified in not effecting the refund as claimed. Section 54(11) of the CGST Act reads as follows: -

“Section 54 – Refund of Tax

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(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this 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.”

¹ OHA

² CGST Act



6. We find ourselves unable to countenance that submission bearing in mind the plain language in which Section 54(11) stands couched and which refers to a contingency where an order giving rise to a refund “is the subject matter of an appeal”. In our considered opinion, the mere decision to prefer or institute an appeal would not qualify Section 54(11).

7. This we hold since a decision taken by the Commissioner to assail an order cannot ipso facto or automatically result in the principal order being placed in abeyance. We, in this regard, also bear in mind the following pertinent observations which had been rendered by the Division Bench of the Court in **Alex Tour & Travel (P) Ltd. vs. Commr. (CGST)**³:-

“17. Undisputedly, the Revenue is entitled to file an appeal under section 112 of the Central Goods and Services tax Act, 2017, within a period of three months from the date of the order. We are informed that the said period has been extended as the Appellate Tribunal has not been constituted as yet. However, the respondent cannot refuse to comply with the appellate orders on this ground.

18. We are unable to accept that the Revenue can ignore an order passed by the appellate authority on the ground that it proposes to appeal the said order.

19. Suffice it to note that there is no order passed by any competent court, staying the implementation of the orders-in-appeal passed by the appellate authority. The Revenue has also taken no steps for securing orders to that effect.

20. We are also unable to appreciate the insistence on the part of the Revenue for the appellant to file fresh applications for the refund.

21. Mr. Singla fairly states that fresh applications for refund or response to show-cause notices are not necessary, considering that the proceedings emanated from the petitioner filing applications for refund, which culminated in orders-in-appeals passed by the

³ 2023 SCC OnLine Del 2709



appellate authority.

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25. The present petition is allowed. The respondent is directed to forthwith disburse the petitioner's claim for refund along with interest as payable in accordance with law.

26. It is, however, clarified that this order would not preclude the respondent from availing statutory remedy against the orders-in-appeal in accordance with law.”

8. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and hereby command the respondents to affect the refund to the writ petitioner forthwith together with statutory interest, as payable.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 10, 2025/v