

## Gargantuan Consequences for the Tax Department for Withholding Refunds Granted

### *M/s Century Copper Rod Pvt Ltd v. the Assistant Commissioner of Central Excise and Service Tax, Division – II, Surat<sup>1</sup>*

The Hon'ble Gujarat High Court considered a writ petition to examine whether it was reasonable for the tax department to withhold a refund ordered by the Ahmedabad Bench of the Central Excise, Service Tax Appellate Tribunal ('Tribunal') to the petitioner.

The Tribunal had granted a refund to the petitioner in an order dated 9 May 2019. The Assistant Commissioner passed an order on 20 August 2019 holding that the petitioner was entitled to their refund claim but directed the amount to be credited to the Consumer Welfare Fund instead of crediting it into the account of the petitioner.

It was the respondent's contention that the refund was being withheld in the Consumer Welfare Fund as the tax department would prefer an Appeal against the order issued by the Tribunal.

The Hon'ble High Court rejected the department's justification to withhold the refund, on the grounds that an order cannot be passed based on an assumption of an action that may take place in future, depriving the petitioner of their funds. It was also noted that the

department's appeal was filed belatedly along with the condonation of delay application. This convinced the Hon'ble High Court that the refund was being withheld for extra-legal reasons.

Consequently, the Hon'ble High Court has directed for the refund to be granted within 24 hours, granted cost, interest at 6% for the period up to the date on which the refund amount was credited to the Consumer Welfare Fund and after that date until the date the refund is granted at 18% (excess interest of 12% recoverable from the officer responsible for the delay).

The matter was posted for another hearing and the tax department was asked to come prepared to pay additional costs and interest.

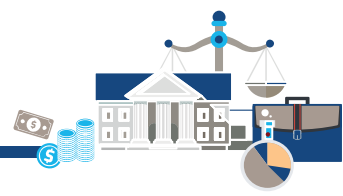
#### **Dhruva Comments:**

This judgement is unique as ordinarily cost is not granted in cases of delay of refunds. However, the petitioner has been compensated adequately for the deprivation of the refund amount for over a year. The judgement is also a good deterrent for the tax department to understand that withholding refunds unnecessarily will have consequences.

<sup>1</sup> 2020-VIL- 339-GUJ-CE



Under the GST regime, it will be interesting to see how such an order for payment of interest at 18% is viewed by higher courts in terms of section 56 of the Central Goods and Service Tax Act, 2017, which states that interest should be payable at such rate not exceeding 6%, in the event that the refund is not disbursed within 60 days from the date of receipt of the application.





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