

A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 419 of 2022

Petitioner :- M/S Alok Traders

Respondent :- Commissioner Commercial Taxes And 2 Others

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 424 of 2022

Petitioner :- M/S Alok Traders

Respondent :- Commissioner Commercial Taxes And 2 Others

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.
2. Personal affidavit of respondent no.1 dated 25.04.2022 has been filed today, which is taken on record.
3. The aforesaid two writ petitions have been filed praying for the following reliefs:-

Reliefs as prayed in Writ-Tax No.419 of 2022	Reliefs as prayed in Writ-Tax No.424 of 2022
(a) Issue a writ, order or direction in the nature of MANDAMUS directing the respondent no.3 and respondent no.2 to refund the amount of security of Rs.4,70,400/- deposited in the form of Draft under Section 129 (1) of the U.P. Goods and Service Tax Act, 2017 due to the petitioner along with interest under section 56 in compliance of the appellate order dated 30.06.2018 passed in Appeal No. 10 for the assessment Year 2017-18;	(a) Issue a writ, order or direction in the nature of MANDAMUS directing the respondent no.3 and respondent no.2 to refund the amount of security of Rs.5,60,000/- deposited in the form of Draft under Section 129 (1) of the U.P. Goods and Service Tax Act, 2017 due to the petitioner along with interest under section 56 in compliance of the appellate order dated 29.06.2018 passed in Appeal No. 14 for the assessment Year 2017-18;

(b) Issue a writ, order or direction in the nature of MANDAMUS directing the respondent No. 3 to provide the temporary ID and password on the official website so as to enable the petitioner to file the ONLINE application required under Rule 89 of the U.P. Goods and Service Tax Rules, 2017; (c) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the facts and circumstances of the case; (d) Award the costs of the petition to the petitioner.	(b) Issue a writ, order or direction in the nature of MANDAMUS directing the respondent No. 3 to provide the temporary ID and password on the official website so as to enable the petitioner to file the ONLINE application required under Rule 89 of the U.P. Goods and Service Tax Rules, 2017; (c) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the facts and circumstances of the case; (d) Award the costs of the petition to the petitioner.
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4. Since facts and issues involved in both the writ petitions are similar and inter-parties, therefore, with the consent of learned counsels for the parties, both the writ petitions are being heard together and facts of Writ-Tax No.419 of 2022 are being noted.

Writ-Tax No.419 of 2022

5. The petitioner is a registered dealer dealing in tobacco. His place of business is at Vileshwar Road, Near Talab, Post-Kunjrao, District-Anand (Gujarat). While certain goods sold by him were being transported through vehicle bearing registration No.GJ06/AX/7576, it was intercepted by the Assistant Commissioner, Mobile Squad Unit-5, State Tax, Jhansi and an order dated 30.12.2017 under Section 129(3) of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as the 'Act, 2017) was passed demanding tax of Rs.2,35,200/- and penalty of equal amount, total Rs.4,70,400/-, for release of goods. Although the petitioner is a registered dealer and all particulars relating to him were well mentioned in the accompanying invoice and other documents, yet the aforesaid Assistant Commissioner, Mobile Squad Unit created at its own a temporary ID and released the goods on deposit of the aforesaid demanded amount by the petitioner by an account payee bank draft.

6. Against the aforesaid order dated 30.12.2017 under Section 129(3) of the Act, 2017, the petitioner filed an appeal under Section 107 of the Act, 2017 before the appellate authority, which was allowed by order dated 30.06.2018. Thereafter, the petitioner moved a refund application dated 09.07.2018 alongwith a copy of the appellate order (received by the respondent no.3 on 11.07.2018) incorporating therein the operative portion of the appellate order, which is reproduced below:-

"सेवा में

श्रीमान असिए कमि० वाणिज्य कर/राज्य कर / सचल दल/ पंचम इकाई, झाँसी

विषय: रिफंड हेतु प्रार्थनापत्र

वर्ष: 2017.18, उ०प्र० माल एवं सेवाकर अधिनियम 2017 के अन्तर्गत

आदरणीय महोदय.

निवेदन है कि वाहन संख्या : जी जे 06 ए एक्स / 7576 के द्वारा परिवहन किये जा रहे माल को श्रीमान जी के द्वारा रोका, एवं प्रार्थी से कर एवं अर्थदण्ड के रूप में रु० : 4700000 जमा कराये।

प्रार्थी के द्वारा उक्त आदेश के विरुद्ध माननीय एडीशनल कमिश्नर / ग्रेड 2/ अपील / द्वितीय वाणिज्य कर / राज्य कर झाँसी के न्यायालय में अपील दाखिल की जो अपील संख्या : 10/ 2018 वर्ष 2017.18 उ०प्र० माल एवं सेवाकर अधिनियम 2017 की धारा 129/3/ के अन्तर्गत पंजीकृत हुयी। माननीय न्यायालय के द्वारा आदेश संख्या 17 दि० 30.6.2018 के द्वारा निम्न आदेश पारित किये -

" अपील संख्या: 17/18 स्वीकार की जाती है, तथा सचल दल अधिकारी के द्वारा उ०प्र० माल एवं सेवाकर अधिनियम 2017 की धारा 129/3/ के अन्तर्गत पारित आदेश संख्या : 236 दि० : 30.12.2017 समाप्त किया जाता है, माल को बिना जमानत अवमुक्त किये जाने के आदेश दिये जाते हैं। यदि अपीलकर्ता के द्वारा उक्त मद में कोई धनराशि/ बैंक गारंटी जमा की गयी हो तो वह अपीलकर्ता को नियमानुसार वापिसी योग्य है।"

प्रार्थना

अतः प्रार्थी का विनम्र निवेदन है कि संगत वर्ष में अधिक जमा धनराशि वापिस करने की कृपा करे।

भवदीय

दिनांक : 9-7-2018

सर्वश्री आलोक ट्रेडर्स,
विलेश्वर रोड नियर तालाब,
पोस्ट- कंजर, आनन्द 388335 गुजरात
जी एस टी नं. 24PVVPM 3807-1ZW

संलग्न:

माननीय एडीशनल कमिश्नर / ग्रेड 2 / अपील / वाणिज्य कर झाँसी के द्वारा पारित आदेश की कॉपी"

7. Since the respondents have neither refunded the amount nor made any communication, therefore, the petitioner moved applications/reminders dated 08.12.2020, 18.01.2021 and 25.01.2021. Thereafter, the respondents sent letter no.92, dated 27.01.2021 and letter no.102, dated 12.02.2021 to the petitioner informing as under :-

"पत्र संख्या - 92 दिनांक 27-01-2021

"मूल पत्रावली की जाँच पर यह प्रकाश में आया कि रु470400 को मार्च 2018 को आलोक धनीधर मिश्रा के नाम पर दिये गये TMP - ID पर जमा करा

दिया गया है। जिसकी एक प्रति आपको सूचनार्थ उपलब्ध कराई जा रही है। उक्त दाखिल प्रार्थना पत्र के क्रम में जाँच पर विभागीय सर्वर पर सम्बंधित लम्बित आर एफ डी - 01 का ए आर एन नहीं पाया गया है। जिसकी अनुपस्थिति में उक्त जमा धनराशि वापिस नहीं ली जा सकती है।"

पत्र संख्या- 102 दिनांक 12-02-2021

"आपको निर्देशित किया जाता है कि केन्द्रीय/राज्यकर अधिनियम-2017 के अर्न्तगत फार्म जी एस टी - आर एफ डी 01 इलैक्ट्रॉनिकी विभागीय पोर्टल पर दाखिल करते हुये उक्त का ए आर एन नम्बर उपलब्ध कराये।"

8. The petitioner again submitted an application dated 01.06.2021 before the respondent no.3. In paragraphs 4, 5 and 6 of the application dated 01.06.2021, the petitioner has stated as under :-

"4/ यह कि उक्त सम्यव्यवहार उत्तर प्रदेश प्रान्त के बाहर से उत्तर प्रदेश प्रान्त के भीतर से सम्बंधित है । जिस पर आई जी एस टी के प्रावधान लागू होते हैं। जबकि श्रीमान जी के द्वारा समस्त धनराशि सी जी एस टी एवं एस जी एस टी के मद में जमा की है ।

5/ यह कि श्रीमान जी के द्वारा दिनांक **12-02-2020** के पूर्व प्रार्थी को कोई टैम्परेरी आईडी से उक्त धनराशि जमा होने की जानकारी नहीं दी है और न ही कोई पासवर्ड / मोबाईल नम्बर उपलब्ध कराया है। जिसमें कि रिफण्ड के प्रार्थना पत्र का ए आर एन नम्बर आ सके ।

6/ यह कि प्रार्थी जी एस टी अधिनियम के अर्न्तगत पंजीकृत होने के बाद भी उक्त धनराशि टैम्परेरी आई डी में क्यों जमा की गयी आज तक स्पष्ट नहीं किया गया है ।

7/ यह कि प्रार्थी को उक्त समस्त धनराशि मय व्याज के वापिस करने की कृपा करे। तथा प्रार्थी को यह मार्गदर्शन देने की कृपा करे कि श्रीमान जी के द्वारा जो टैम्परेरी आई डी बनाकर प्रार्थी के द्वारा दिये गये ड्राफ्ट को जमा किया है उसका रिफण्ड किस प्रकार से होगा ।"

9. Thereafter, the respondent no.3 sent a letter no.58, dated 16.07.2021 to the petitioner stating as under :-

"पत्रांक- 58 / 21-22 / असिंकमिंस 0 द 0 पं0 ई० अम्बावाय, झाँसी।

कार्यालय - असिस्टेंट कमिश्नर (प्रभारी) स 0 द 0 पंचम इकाई, अम्बावाय, झाँसी।

दिनांक 16 जुलाई 2021

सर्वश्री आलोक ट्रेडर्स,

विलेश्वर रोड नियर तालाब,

पोस्ट- कंजर, आनन्द गुजरात 388335

आप द्वारा दिनांक 08.07.2021 को प्राप्त कराये गये "रिफण्ड हेतु प्रार्थना पत्र" का अवलोकन किया गया। आपको पूर्व में भी सूचित किया गया था वाहन संख्या (GJ06AX7576 एवं वाहन संख्या GJ23Y6273 से सम्बन्धित अर्थदंड के जमा की कार्यवाही उस समय प्रभावी पत्र सं० सं० द० नकद धनराशि जमा 2017-18 / 1718046 / वाणिज्य कर, कार्यालय कमिश्नर, वाणिज्य कर प्रदेश (सचल दल अनुभाग), लखनऊ दिनांक नवंबर 7, 2017 तथा पत्र सं० सं० द० नकद धनराशि जमा 2017-18 / 1405 / 1718031 / वाणिज्य कर, कार्यालय कमिश्नर, वाणिज्य कर प्रदेश (सचल दल अनुभाग), लखनऊ दिनांक अगस्त 7, 2017 के क्रम में की गयी थी। आप द्वारा दिए गए प्रार्थना पत्र में पासवर्ड की मांग की जा रही है जो कि एक तकनीकी समस्या है, जिसके लिए ज्वाइन्ट कमिश्नर (आई०टी०अनुभाग) मुख्यालय से सम्पर्क करते हुए मार्गदर्शन मांगा गया है। साथ ही आपको पुनः अवगत कराया जाता है कि फोन नम्बर एवं रिफण्ड फाईल करने सम्बन्धी अन्य किसी तकनीकी समस्या के लिए आप स्वयं भी <https://selfservice.gstsystem.in/> पर सम्पर्क करते तकनीकी समस्या के लिए टोकन जेनरेट करते हुए प्रयास करें एवं इस कार्यालय को भी उक्त प्रयासों से अवगत कराये।

(शरद प्रताप सिंह)

असिस्टेंट कमिश्नर (प्रभारी) वाणिज्य कर,
सचलदल मंचम इकाई, झाँसी।"

10. The petitioner again submitted an applications dated 27.07.2021 and 14.02.2022 before the respondent no.3 and the Joint Commissioner IT Division, Commercial Tax/State Tax, Gomti Nagar, Lucknow as **eighth reminder** in which the petitioner again mentioned that the respondent no.3 has deposited the draft submitted by him by making at his own a temporary ID and, therefore, it may be guided as to how the amount would be refunded to the petitioner pursuant to the appellate order. Since nothing was done by the respondents, therefore, the petitioner has filed the present writ petitions.

11. On 28.03.2022, this Court passed the following order:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

A sum of Rs. 04,70,400/- deposited by the petitioner through bank draft pursuant to the order of the respondent no.2 under Section 179 (1) of the CGST/UPGST Act, 2017 is not being refunded, despite the order has been set aside by the appellate authority vide order dated 30.06.2018. The petitioner moved physical application before the respondent no.3 requesting to provide the Treasury Challan through which bank draft was deposited. It is only thereafter, the respondent no.3 has intimated to the petitioner that by letter dated 27.01.2021 the aforesaid bank draft was deposited in the name of Alok Dharnidhar Mishra on Temporary-ID. Again petitioner wrote several letters to the respondents to provide password so that the petitioner may generate A.R.N. for R.F.D.-01. In response to it, the respondent no.3 sent a letter to the petitioner dated 16.07.2021 in which he mentioned, as under:-

आप द्वारा दिए गए प्रार्थना पत्र में पासवर्ड की माँग की जा रही है जो कि एक तकनीकी समस्या है, जिसके लिए ज्वाइन्ट कमिश्नर (आई०टी०अनुभाग) मुख्यालय से सम्पर्क करते हुए मार्गदर्शन मांगा गया है।

Again the petitioner has moved several applications before the respondent no.3 including the applications dated 27.07.2021 and 14.02.2022 requesting for password and also to guide how his amount shall be refunded. However, nothing has been done by the respondents so far, as evident from the instructions dated 07.03.2022 produced today by the learned Standing Counsel which further shows that the respondents have attempted to mislead the Court and very conveniently suppressed the facts aforementioned.

Under the circumstances, we direct the respondent no.1 to file counter affidavit by means of his personal affidavit and show cause that why exemplary cost be not imposed.

Put up as a fresh case before the appropriate bench on 04.04.2022."

12. It is only after this Court passed the order, the refund was sanctioned to the petitioner on 31.03.2022 and it was paid on 04.04.2022.

13. On 04.04.2022, the following order was passed by this Court:-

“1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. On 28.03.2022, this Court passed the following order:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

A sum of Rs. 04,70,400/- deposited by the petitioner through bank draft pursuant to the order of the respondent no.2 under Section 179 (1) of the CGST/UPGST Act, 2017 is not being refunded, despite the order has been set aside by the appellate authority vide order dated 30.06.2018. The petitioner moved physical application before the respondent no.3 requesting to provide the Treasury Challan through which bank draft was deposited. It is only thereafter, the respondent no.3 has intimated to the petitioner that by letter dated 27.01.2021 the aforesaid bank draft was deposited in the name of Alok Dharnidhar Mishra on Temporary-ID. Again petitioner wrote several letters to the respondents to provide password so that the petitioner may generate A.R.N. for R.F.D.-01. In response to it, the respondent no.3 sent a letter to the petitioner dated 16.07.2021 in which he mentioned, as under:-

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Again the petitioner has moved several applications before the respondent no.3 including the applications dated 27.07.2021 and 14.02.2022 requesting for password and also to guide how his amount shall be refunded. However, nothing has been done by the respondents so far, as evident from the instructions dated 07.03.2022 produced today by the learned Standing Counsel which further shows that the respondents have attempted to mislead the Court and very conveniently suppressed the facts aforementioned.

Under the circumstances, we direct the respondent no.1 to file counter affidavit by means of his personal affidavit and show cause that why exemplary cost be not imposed.

Put up as a fresh case before the appropriate bench on 04.04.2022."

3. Today, a counter affidavit by means of personal affidavit of the respondent no.1 has been filed by the learned Standing Counsel, which is taken on record.

4. Learned counsel for the petitioner has also produced before the Court a letter dated 31.03.2022 said to have been written by the petitioner to the Additional Commissioner, Grade-1, Commercial Tax, Jhansi in the matter of present writ petition which is also kept on record. The aforesaid letter is reproduced below:-

"सेवा में,

श्रीमान एडी० कमि० ब्रेड-1 वाणिज्यकर झाँसी।

विषय -रि संख्या-419/2020 रिफण्ड प्रार्थना पत्र वर्ष 2017-18

आदरणीय महोदय,

निवेदन है कि वाहन संख्या: जी जे 06 ए एक्स / 7576 के द्वारा परिवहन किये जा रहे माल को श्रीमान असि० कमि०/ सचल दल / पंचम इकाई झाँसी के द्वारा रोका, एवं प्रार्थी से कर एवं अर्थदण्ड के रूप में रु० : 470400 जमा कराये। जिसके सम्बंध में प्रार्थी ने माननीय उच्च न्यायालय इलाहाबाद के समक्ष उक्त रिट याचिका दाखिल की है कि प्रार्थी को रिफण्ड शीघ्र से शीघ्र दिलाया जाये । इस सम्बंध में माननीय उच्च न्यायालय इलाहाबाद के द्वारा निर्णय दिनांक 28-03-2022 के द्वारा कमि० वाणिज्यकर उत्तर प्रदेश को रिफण्ड के सम्बंध में निर्देश दिये है। मेरी समस्या की जानकारी जब श्रीमान कमि० वाणिज्यकर उत्तर प्रदेश को हुई तब उनके द्वारा अपने अथक प्रयास से जी एस टी एन उच्चाधिकारी से सम्पर्क किया गया तब उन्हें यह जानकारी हुई कि टैम्परेरी आई डी में जमा धनराशि के रिफण्ड के सम्बंध में एक विषम तकनीकी समस्या है। लेकिन कमि० वाणिज्यकर उत्तर प्रदेश द्वारा इस सम्बंध में जी एस टी एन के उच्चाधिकारियों से व्यक्तिगत रुचि लेते हुये वार्ता की गयी और वार्ता करने पर मेरी 3 साल पुरानी तकनीकी समस्या का समाधान तलाशा गया। जिसके कारण ई मेल आई डी एवं पासवर्ड सेट करने की समस्या का समाधान हुआ । मैं अनुग्रहीत हूँ कि माननीय कमि० महोदय के संज्ञान में मेरा प्रकरण आने पर मेरी समस्या का तीव्र गति से समाधान कराया। अब मुझे उक्त रिफण्ड के सम्बंध में वाणिज्यकर/ राज्यकर विभाग से कोई भी शिकायत नहीं है। इस सम्बंध में माननीय कमि० वाणिज्यकर उत्तर प्रदेश के द्वारा अपने अथक प्रयास से प्रार्थी को आई डी पासवर्ड उक्त रिफण्ड दिलाये जाने सम्बंधित समस्त कार्यवाही पूर्ण कर ली है। जिसके कारण अब प्रार्थी को उक्त रिफण्ड के सम्बंध में अब कोई परेशानी नहीं है। प्रार्थी ने माननीय उच्च न्यायालय इलाहाबाद के समक्ष जो रिट याचिका दाखिल की है जिसमें सुनवाई की तिथि 04-04-2022 नियत है उसे प्रार्थी अब वापिस ले रहा है। इस सम्बंध में प्रार्थी में अपने अधिवक्ता को भी सूचित कर दिया है।

दिनांक - 31-03-2022

भवदीय

सर्वश्री आलोक ट्रैडर्स,

विलेश्वर रोड नियर तालाब,

पोस्ट- कंजर आनन्द 388335

गुजरात

जी एस टी नं. 24 BPV/PM

3807-1ZW

प्रतिलिपि - माननीय कमि० वाणिज्यकर / राज्यकर उत्तर प्रदेश को इस धन्यवाद के साथ कि उनके संज्ञान में मेरा तथ्य आते ही उन्होंने मेरी समस्या का तीव्र गति से समाधान कराया । इसके लिये मैं उनका सदैव अभारी रहूँगा।"

सर्वश्री आलोक ट्रैडर्स"

5. **Perusal of the aforequoted letter dated 31.03.2022** said to have been written by the petitioner to the Additional Commissioner, Grade-1, Commercial Tax, Jhansi, who is not even the respondent in the present petition, **prima facie, shows that the said letter appears to have been procured to get the writ petition dismissed as withdrawn so that adjudication on merits may not take place and the question as posed**

by the Court in its order dated 28.03.2022 with regard to the imposition of exemplary cost may not be adjudicated.

6. Considering the facts and circumstances of the case, we direct the respondent no.1 to file his personal affidavit explaining the circumstances and the procurement of the aforequoted letter, within three days from today.

7. Put up as a fresh case before the appropriate Bench on **07.04.2022 alongwith the records of Writ-Tax No.424 of 2022.”**

(emphasis supplied)

14. Since in the aforequoted order dated 04.04.2022, this Court noticed that certain letters have been procured by the respondent so as to avoid to comply with the direction given in paragraph 5 of the order of this Court dated 04.04.2022, the respondent no.1 filed her personal affidavit dated 06.04.2022 stating in paragraph 5, as under :-

“5. That in reply to the same, the Additional Commissioner Grade-1, Commercial Tax, Jhansi has informed that **the said letter has been given by the petitioner's counsel Sri Naresh Kumar Gupta, Advocate Jhansi** out of his own willingness and there was no pressure on him to do so. A true copy of letter dated 06.4.2022 written by Additional commissioner Grade-1 jhansi and letter dated 31.3.2022 given by advocate Shri Naresh Kumar Gupta are being appended herewith and marked as Annexure-1 to this affidavit.”

15. Perusal of Annexure-1 to the aforesaid personal affidavit dated 06.04.2022 shows that at page 7 is the letter of the Additional Commissioner dated 06.04.202 and at pages 8 and 9 are two letters, both dated 31.03.2022 (one relating to Writ-Tax No.419 of 2022 and the other relating to Writ-Tax No.424 of 2022), which is said to have been signed by the counsel at Jhansi.

16. As per **reliefs sought** in the writ petitions, the petitioner has prayed for **refund of the amount and grant of interest**. Under the circumstances, **learned counsel for the petitioner has now pressed for the relief for grant of interest** and, therefore, this Court heard learned counsels for the parties and passed the **order dated 21.04.2022, as under :-**

“1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. High handedness, abuse of power and harassment of dealers by the respondents are evident on record and also reflected from the orders passed by this Court in the leading petition, being Writ-Tax No.424 of 2022 as well as the orders dated 28.03.2022 and 04.04.2022 passed in the connected Writ-Tax No.419 of 2022.

3. From the orders dated 28.03.2022, it is evident that despite the petitioner succeeded in appeal, the respondents, on one pretext or the other, and also on account of dereliction in their duty, have not given effect to the appellate order to grant refund to the petitioner of the amount deposited by him. Despite our order dated 18.04.2022, in the two personal affidavits filed today, there is not even a whisper about payment of interest on illegally withheld amount deposited by the petitioner.

4. Learned Standing Counsel submits that since GST is a new regime, therefore, some direction by the Court for grant of interest under the facts and circumstances of the case, is needed.

5. Oral request made by the respondents through the learned Standing Counsel, as recorded above, be brought on record by means of personal affidavit of the respondent no.1 for consideration by this Court. The personal affidavit may be filed on or before the next date fixed.

6. Put up as a fresh case for further hearing on 27.04.2022 at 10:00 a.m. alongwith connected writ petition.”

(emphasis supplied)

17. Today, a personal affidavit of the respondent no.1 dated 25.04.2022 has been filed in which the respondent no.1 has stated in paragraphs 12 to 21 as under :-

“12. That on 09.07.2018 the petitioner gave his letter for refund due to appellate order but file RFD-01A on common portal nor did he informed the proper officer that there was any technical issue for filing of RFD-01A which is a mandatory requirement as per Rule 89(1) and 97A of CGST/UPGST Rules, 2017. For kind perusal of this Hon'ble Court true copy of Form RFD-01A is being appended herewith and marked as Annexure-8 to this affidavit.

13. That again on 09-12-2020 and on 21-01-2021 reminder letter was given by the petitioner before the proper officer and in turn proper officer duly communicated to the petitioner that he should file online application in format (RFD-01) on the common portal but it was not complied with.

14. That on request of the petitioner to provide password, the proper officer suggested him to generate a token for technical glitches on the common portal at [https:// selfservice.gstsystem.in/](https://selfservice.gstsystem.in/), even after this communication no compliance was made by petitioner.

15. That the petitioner could have approached on self help portal which had started functioning since 22.1.2018 and also there was a help desk established in GSTN but there was no averment in the writ petition that

the petitioner ever approached GST self-help portal for the technical difficulties faced by him.

16. That due to technical glitches, the temporary I.D. of the petitioner was not available at the end of proper officer's login as it was at development stage of GST Portal and hence it was not possible to provide the password to the petitioner from the proper officer's end.

17. That when the entire problem came into knowledge of the deponent, she took it up on top priority with GSTN and after continuous efforts with CEO of GSTN, it was possible to activate the temporary I.D. at the login of the proper officer to provide password

18. That after receiving the password, the online refund application in form RFD-01 was filed by the petitioner on 31.03.2022. A true copy of RFD-01 filed by the petitioner is being appended herewith and marked as Annexure-9 to this affidavit.

19. That the abovementioned application RFD-01 was disposed and refund was sanctioned in Form RFD-06 within the time period specified under Section 56 of the CGST/UPGST Act, 2017 hence liability to pay interest does not arise. True copy of the Refund Sanction Order ic. RFD-06 is being appended herewith and marked as Annexure-10 to this affidavit.

20. That as per Section 54 of CGST/UPGST Act and rules 89 of CGST/UPGST Rules and circulars issued by the department, refund can only be made after the taxpayer file refund application in form RFD-01/RFD-01A as the case may be and there was no system of giving suo moto refund at the officer level under the GST system.

21. That in view of the aforesaid facts and circumstances mentioned above, this Hon'ble Court may be pleased to pass appropriate orders/direction in the interest of justice.”

(emphasis supplied)

18. That facts of the case as discussed above leaves no manner of doubt that the respondent No.3 mischievously created temporary I.D. for depositing of the sum of Rs.4,70,400/- made by the petitioner pursuant to the order dated 30.12.2017 passed by the respondent No.3 under Section 129 of the U.P. GST Act, 2017, even though he was well aware of the fact that the petitioner is a registered dealer of Gujrat State and the provisions of IGST Act are applicable and all details relating to petitioner were available with him and there was no need to create a temporary I.D.. The password of the temporary I.D. created by the respondent No.3 was never communicated to the petitioner despite repeated demands made by him which fact is further evident from own letters of the respondents quoted in paragraphs 7 and 9 of

this judgment and paragraph-16 of the personal affidavit of the respondent No.1 dated 25.04.2022 quoted in paragraph 17 of this judgment. The appellate authority, by order dated 30.06.2018, not only allowed the appeal of the petitioner and set aside the order dated 30.12.2017 passed by the respondent No.3, but also directed for refund of the amount/ bank guarantee deposited by the petitioner. The petitioner moved the application dated 09.07.2018 for refund before the respondent No.3 along with a copy of the order of the appellate authority. Subsequently, it was followed by several applications written by him to various authorities/ respondents. Thus, it was wholly impossible for the petitioner to submit online Form RFD-01A for refund inasmuch as the petitioner was not having the password of the temporary I.D. mischievously created by the respondent No.3 at its own. The respondent No.1 herself has stated in paragraph-16 of her personal affidavit dated 25.04.2022 that due to technical glitches, the temporary I.D. of the petitioner was not available at the end of proper officer's login as it was at development stage of GST Portal and hence it was not possible to provide the password to the petitioner from the proper officer's end. Thus, facts sufficiently establish that the petitioner was entitled for refund in terms of the order for refund passed by the First Appellate Authority dated 30.06.2018 and he applied for refund on 09.07.2018 but the respondents deliberately did not refund the amount on one pretext or the other. There was no fault on the part of the petitioner asking the respondents to refund the deposited amount in terms of the order of the First Appellate Authority dated 30.06.2018. It is only when this court passed the order dated 28.03.2022, the respondents awoke and allowed the petitioner also to submit Form RFD-01A. Thus, online RFD-01A filed by the petitioner as required by the respondents, relate back to his refund application dated 09.07.2018 whereas the refund has been sanctioned by the respondents to the petitioner on 31.03.2022 and it was paid on 04.04.2022 but without interest. The letter dated 31.03.2022 was procured by the respondents from the local counsel of the petitioner at the time of sanctioning of the refund i.e. on 31.03.2022 which prima facie amounts to interference in court proceedings by the respondents and constituting criminal contempt. However, learned standing

counsel much persuaded us not to refer the matter for criminal contempt particularly in view of the unconditional apology tendered by the respondent No.1.

19. Now the question that remains for consideration is as to whether under the facts and circumstances, the petitioner is entitled for interest on the amount of Rs.4,70,400/-, was liable to be refunded in terms of the order of the First Appellate Authority dated 30.06.2018 but it was refunded on 04.04.2022.

20. Sections 54 and 56 of the C.G.S.T. Act and Rule 89 of the C.G.S.T. Rules provides for refund, which are reproduced below:

“Section 54. Refund of tax

*(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, **may make an application** before the expiry of two years from the relevant date **in such form and manner as may be prescribed**:*

PROVIDED that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

PROVIDED that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

PROVIDED FURTHER that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

PROVIDED ALSO that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

PROVIDED that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export exports of goods or services or both or on inputs or input services used in making such zero-rated supplies 1“export” and “exports”;

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(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.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) “relevant date” means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange ³ “or in Indian rupees wherever permitted by the Reserve Bank of India”, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

Section 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 from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

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 by the court shall be deemed to be an order passed under the said sub-section (5).

Rule 89 of the C.G.S.T. Rules:-

Rule 89 – Application for refund of tax, interest, penalty, fees or any other amount

(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

*PROVIDED that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in **FORM GSTR-3** or **FORM GSTR-4** or **FORM GSTR-7**, as the case may be:*

PROVIDED FURTHER that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

PROVIDED ALSO that in respect of supplies regarded as deemed exports, the application may be filed by, –

- (a) the recipient of deemed export supplies; or*
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund:*

PROVIDED ALSO that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

*(2) **The application under sub-rule (1) shall be accompanied** by any of the following documentary evidences in Annexure 1 in **Form GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-*

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub- section (6) of section 107 and sub-section (8) of section 112 claimed as refund;*
- (b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;*
- (c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;*
- (d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;*
- (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;*
- (f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;*
- (g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;*
- (h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains*

to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

PROVIDED that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

PROVIDED that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

Explanation.— For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression “invoice” means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Where, –

(A) “Refund amount” means the maximum refund that is admissible;

(B) “Net ITC” means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

(D) “Turnover of zero-rated supply of services” means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) “Adjusted Total Turnover” means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.’

(F) “Relevant period” means the period for which the claim has been filed.

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, Notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in

the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of Notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or Notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) “Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).”

21. As per provisions of Section 54(1) of the CGST Act, 2017, the petitioner could claim refund by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. The relevant date for the purposes of the present case is referable to Explanation 2(d) appended to Section 54 which provides that in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the **Appellate Authority**, Appellate Tribunal or any court, **the date of communication of such judgment, decree, order or direction.**

22. It is undisputed that the proper office while accepting the deposit of tax and penalty by bank-draft from the petitioner for Rs.4,70,400/- for release of goods pursuant to the order dated 30.12.2017 under Section 129 (3) of the U.P. Goods and Service Tax Act, 2017, mistakenly shown the

deposit under the aforesaid Act instead of IGST Act and further committed a manifest error whether deliberately or otherwise, to deposit the aforesaid amount by creating a temporary ID at its own, without informing any relevant fact or password etc. to the petitioner. Therefore, it was wholly impossible for the petitioner to apply online for refund under Section 54(1) of the Act read with Rule 89 of the Rules. It is well settled that law does not compel a man to do what he cannot possibly perform. Under the circumstances, the petitioner admittedly moved a refund application dated 09.07.2018 in physical form for refund of the aforesaid amount pursuant to appellate order dated 30.06.2018 and also enclosed a copy of the appellate order along with the refund application. Since then, the petitioner who is based in the State of Gujrat has been running from pillar to post to get the refund as is evident from the facts briefly noted in paragraph-6 to 10 of this judgment. The respondents themselves have forgotten the password of the temporary ID and, therefore, could not provide it to the petitioner as is evident from their own letter dated 16.07.2021 referred in the order dated 28.03.2022 passed by this court (quoted in paragraph-11 above). The fact that the petitioner was compelled to apply for refund physically vide application dated 09.07.2018, also stands admitted by the respondent No.1 in paragraph-16 of her personal affidavit dated 25.04.2022 quoted in paragraph 17 above, that due to technical glitches, the temporary I.D. of the petitioner was not available at the end of proper officer's login as it was at development stage of GST Portal and hence it was not possible to provide the password to the petitioner from the proper officer's end.

23. Thus, as per own admitted case of the respondents, they themselves firstly proceeded arbitrarily and deposited the amount received from the petitioner, by creating a temporary ID and did not give access to the petitioner to the said ID and even the said temporary ID was not available at the end of the proper officer's login and its password was not provided to the petitioner as per own stand taken by the respondents in the afore-quoted paragraph-16 of the personal affidavit dated 25.04.2022. Under the circumstances, when the appellate authority vide order dated 30.06.2018

directed for refund and the order was communicated to the respondents by the petitioner vide letter dated 09.07.2018, then, the respondents were bound to refund the amount along with interest under Section 56 of the CGST/ U.P. GST Act, 2017 but on one hand, they arbitrarily withheld the refund of the petitioner for more than 33 months and on the other hand, they again arbitrarily acted and have not granted interest to the petitioner on the delayed refund of the amount in question. The principal amount deposited was refunded by the respondents to the petitioner only on 04.04.2022. Thus, the petitioner is entitled for interest under Section 56 of the Act, 2017.

24. There is another aspect of the matter, so far as the payment of interest by the respondents to the petitioner is concerned. As per refund sanctioned order dated 31.03.2022 (Annexure-10 to the personal affidavit of the respondent No.1 dated 25.04.2022), the reason for granting refund has been recorded as under:

“With reference to order 17/2018 dated 30-06-2018 issued by Additional Commissioner, Grade-2 (Appeal), second, commercial tax, Jhansi zone, Jhansi.”

25. The communication of the aforesaid appellate order dated 30.06.2018 was made to the respondents on 09.07.2018 which fact could not be disputed by the respondents. Thus, the relevant date as per explanation 2(d) of the explanation appended to Section 54 of the Act, 2017 is 09.07.2018, i.e. date of communication of the appellate order. As per the proviso to Section 56 of the Act, 2017, where the appellate order has attained finality and refund arisen therefrom is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding 9% 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.** Thus, the amount refunded by the respondents pursuant to the appellate order dated 30.06.2018 communicated

on 09.07.2018, the interest shall be liable to be paid by the respondents to the petitioner for the period from 09.09.2018 to 31.03.2022.

26. In the present set of facts, the respondents have committed wrong **firstly** by not showing the deposit under IGST Act, **secondly** by showing the deposit by creating temporary ID at its own and **thirdly**, not informing the petitioner the password for the temporary ID so created, to enable him to apply in the prescribed form. The Respondent No.1 in paragraphs-16, 17 and 18 of her personal affidavit dated 25.04.2022 (aforequoted) has herself stated that due to technical glitches, the temporary I.D. of the petitioner was not available at the end of proper officer's login as it was at development stage of GST Portal and hence it was not possible to provide the password to the petitioner from the proper officer's end, and it was the effort made at the end of the respondent No.1 that it became possible to activate the temporary ID at the login of the proper officer to provide password when the entire problem came into knowledge of the respondent No.1 and thereafter, on receiving the password, the petitioner made online application in RFD-01 on 31.03.2022. Thus, the respondents arbitrarily and illegally withheld the amount of refund despite the order of the first appellate authority dated 30.06.2018 for refund.

27. It is well settled that **“construction which permits one to take advantage of one's own wrong or to impair one's own objections under a Statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language”**, vide **Commissioner of Customs (Prev.), Mumbai vs. M. Ambalal, 2010 (260) ELT 487 (para-11)**. It has also been settled that **no one can take advantage of his own wrong** vide **Union of India vs. Shakti LPG Lt., 2008 (223) ELT 129 (SC) (para-9)**. Therefore, applying the aforesaid settled principles, the respondents cannot be allowed to take advantage of their own wrong so as to deny the payment of interest to the petitioner on delayed refund.

28. For all the reasons afore-stated, **both the writ petitions are allowed.**
The respondents are directed to pay interest to the petitioner within a month from today, for the period from 09.09.2018 to 31.03.2022, at the rate notified under Section 56 of the Act.

Date :27.04.2022
SK/NLY