

# GRC BULLETIN

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## Case Law

Supreme Court Upholds Timely Tax Refunds and Limits on  
Adjustment Against Dues

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## JUDICIAL INSIGHT

### Case Title

Commissioner of  
Trade and Taxes Vs.  
Femc Pratibha Joint  
Venture [Civil Appeal  
No. 3940 of 2024]

# "SUPREME COURT UPHOLDS TIMELY TAX REFUNDS AND LIMITS ON ADJUSTMENT AGAINST DUES"

### FACTS OF THE CASE:

- Femc Pratibha Joint Venture, engaged in executing works contracts for the Delhi Metro Rail Corporation, claimed refunds of excess tax credit.
- The respondent claimed a refund of Rs. 17,10,15,285/- for the 4<sup>th</sup> quarter of 2015-16 and Rs. 5,44,39,148/- for the 1<sup>st</sup> quarter of 2017-18.
- The refunds were claimed through revised returns filed on 31.03.2017 and 29.03.2019 respectively.
- The tax department did not process the refunds promptly. In response, the respondent sent a letter on 09.11.2022 to follow up on their refund.
- The Value Added Tax Officer then issued an adjustment order on 18.11.2022, adjusting the respondent's refund claims against outstanding dues under default notices dated 30.03.2020, 23.03.2021, 30.03.2021, and 26.03.2022.
- The Delhi High Court, in a judgment dated 21.09.2023, quashed the adjustment order. It directed the tax department to refund the claimed amounts along with interest as per Section 42 of the Act. It allowed the respondent to appeal the default notices under Section 74 of the Act separately.
- The tax department appealed against the High Court's decision, arguing that the timeline under Section 38(3) is for calculating interest and does not restrict the department from adjusting refunds against outstanding dues.

### ISSUE:

Whether the Department could delay refund processing beyond stipulated timelines under Section 38(3) of the Delhi Value Added Tax Act, 2004, and subsequently adjust refunds against dues from default notices issued after the refund timelines?

### SUPREME COURT'S VERDICT:

- **Justice Pamidighantam Sri Narasimha and Justice Prasanna Bhalachandra Varale** affirmed that the Delhi High Court's decision to quash the adjustment order and emphasizes that



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Section 38(3) of the Delhi Value Added Tax Act imposes a mandatory obligation on the tax department to refund excess tax credit within specified timelines from the date of filing returns or refund claims. These timelines are not merely procedural guidelines but statutory obligations aimed at ensuring timely disbursement of refunds to taxpayers.

### “38. Refunds

- (1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.
- (2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).
- (3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

a) Refunded to the person, -

- i. Within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;
- ii. within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

b) Carried forward to the next tax period as a tax credit in that period... . “

- Furthermore, the Court clarified that the purpose of these timelines is not solely for calculating interest on delayed refunds but to enforce the fundamental right of taxpayers to receive prompt refunds.
- Adjustments against dues can only be made if such dues existed at the time of refund processing, not afterward
- Therefore, adjustment order was deemed unjustifiable, and the Court dismissed the appeal and upheld the High Court’s decision to quash the adjustment order and direct refund of the amounts along with interest as per Section 42 of the Act claimed by the respondent.

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