'Possibility' is not 'Proceeding': Orissa High Court curbs routine Withholding of GST Refunds under Section 54(11)

Ashwarya Sharma, Advocate | Co-Founder & Legal Head, RB LawCorp

There is a growing tendency under the GST regime for refunds that are otherwise indisputably due to the taxpayer to be delayed and pushed back by the department, taking shelter under Section 54(11) of the GST Act. This is one of the more drastic provisions in the refund architecture, meant to apply only in exceptional circumstances, but it is, unfortunately, being invoked as a matter of routine to block refunds that have already been adjudicated in the taxpayer's favour. The Hon'ble Orissa High Court's recent decision in ***Rashmi Agency v. Deputy Commissioner CT & GST*** [*2026-VIL-642-ORI*], takes direct aim at this practice and is a welcome judgement providing relief to such taxpayers.

The Court quashed an order withholding a refund that had already been sanctioned by an appellate authority, holding that the mere possibility of a future appeal cannot substitute for the actual pendency of one. The ruling correctly interprets how narrowly Section 54(11) must be read and its limited applicability.

1. Facts Leading to the Dispute

The petitioner, had Rs. 33,00,000 recovered from it during a search conducted by the DGGI under Section 67 of the GST Act. The amount was paid under protest, but was deposited against the wrong GSTIN. When the petitioner sought a refund of the sum, the claim was denied by the lower authority, prompting an appeal under Section 107 of the CGST Act which came to be allowed by the Appellate Authority and ruled squarely in the petitioner's favour.

Armed with this favourable appellate order, the petitioner filed a fresh refund application which was rejected by the Deputy Commissioner, CT & GST Circle reasoning that Section 112(3) of the GST Act gives the State six months to approach the Appellate Tribunal and therefore the appellate order has not attained finality. Thus, he concluded that sanctioning the refund at that stage would be premature and could adversely affect the interest of revenue.

2. The Petitioner's Case

The petitioner argued that the power to withhold a refund under Section 54 (11) of the CGST Act, vests in the Commissioner and not the Deputy Commissioner, and can only be exercised once the Commissioner has formed an opinion that the refund would adversely affect revenue. By acting on his own, the Deputy Commissioner had exceeded his authority and, in effect, sat in judgment over an order passed by his own superior, the Additional Commissioner (Appeals).

Second, section 54(11) does not authorise an officer to withhold refund merely because the department could, in theory, contest the appellate order at some future date. On the date the refund application was considered, no appeal or any other proceeding was pending before any forum. Denying the refund on the speculative ground that the six-month window under Section 112 had not yet closed, had no basis in the statute. Reliance was placed on the settled principle that subordinate authorities are bound to give effect to orders of appellate bodies until those orders are reversed, varied, or stayed by a competent authority relying upon plethora of Supreme Court judgements.

3. The Revenue's Defence

The department argued that releasing the refund before the six-month appeal window under Section 112 expired would create genuine recovery difficulties should the Appellate Tribunal eventually rule in the State's favour. Section 54(11), it was submitted, exists precisely to balance the scales from the department's side, permitting refunds to be withheld where the underlying order is under appeal or other proceedings. Paying out the refund now, the Revenue argued, would only compound the department's difficulty in recovering the money later if the Tribunal were to reverse the appellate order.

4. The High Court's Analysis

4.1 Section 54(11) Requires an Actual, Not a Hypothetical, Proceeding

The Bench noted that the Deputy Commissioner's order read as though Section 54(11) empowered him to withhold refund even before any appeal had been filed, effectively allowing him to sit over an order passed by his own appellate authority.

The power under Section 54(11) can be invoked only where the refund is genuinely "the subject-matter of an appeal or further proceedings" or where "any other proceedings under this Act" are actually pending not merely contemplated. Equally, the authority concerned must independently form an opinion that grant of the refund is likely to adversely affect revenue on account of malfeasance or fraud. Both conditions are cumulative, and neither, in the Court's assessment, was satisfied when the Deputy Commissioner passed his order.

4.2 Recording of Reasons Is Not Optional

The judgment places considerable weight on Rule 92(2) of the GST Rules and Form GST RFD-07 part-A, holding that recording of reasons while withholding a refund is a mandatory requirement, not a formality. Form GST RFD-07, is not merely a form for communicating a decision; it is itself an order, with a dedicated column requiring the authority to record reasons consistent with Section 54(11) and Rule 92(2). The impugned order, neither recorded the opinion of the kind the provision demands, and nor did it engage with the petitioner's reply to the show cause notice.

4.3 The Timeline of filing appeal

As per the Provisional Acknowledgement in Form GST APL-02A (Part A) produced by the department, the Court noted that the appeal was filed after the issuance of the impugned order and the writ petition. In other words, on the date the Deputy Commissioner refused to consider the refund, no appeal was pending anywhere, and the appeal that eventually materialised did so only after the petitioner had already approached the High Court. The Court concluded that this itself shows that the conditions necessary to invoke Section 54(11) simply did not exist on the date of the impugned order.

4.4 Precedents Relied Upon

The Court drew heavily on its own earlier ruling in Unit Construction Co. (P.) Ltd. v. CCTes, Cuttack, *2014-VIL-318-ORI*, delivered in the context of the analogous power to withhold refund under Section 60 of the Odisha Value Added Tax Act, 2004. That decision had observed:

> *"10. Perusal of the impugned order reveals that the first condition is satisfied, i.e., the order from which the refund flows is the subject-matter of second appeal. The impugned order does not speak anything about the satisfaction of other two conditions. The said order also does not contain the basis for forming the opinion by the Commissioner that grant of refund would adversely affect the Revenue. 11. The use of expression 'may' as in Section 60 of the OVAT Act in the context, confers discretion upon the Commissioner to withhold refund but it does not confer an absolute power on the Commissioner to withhold refund in each and every case where an order gives rise to refund is the subject-matter of an appeal or further proceeding. 12. .the discretion vested with the Commissioner to withhold refund due to the dealer arising out*

of an order passed by the quasi judicial authority must be exercised judicially as Article 265 of the Constitution enjoins that no tax shall be levied or collected except by authority of law. . 16. .if a subordinate authority will not obey the instruction/order/circular issued by the higher authority in the hierarchy of administration, it would cause chaos in the field of administration. 26. .the order passed in exercise of power vested under section 60(1) of the OVAT Act withholding refund due to the dealer is certainly detrimental to the interest of the dealer. Therefore, even though section 60(1) of the OVAT Act does not say for providing an opportunity of hearing to the dealer before passing the order withholding refund, such opportunity of hearing should be afforded to the dealer in the interest of natural justice."

The Bench then turned to a number of Delhi High Court decisions dealing directly with Section 54(11) i.e., ***Truth Fashion v. Commissioner of DGST Delhi***, *2025-VIL-164-DEL*, ***Alex Tour & Travel (P) Ltd. v. Commissioner (CGST)***, *2023-VIL-284-DEL* and ***Shalender Kumar v. Commissioner Delhi West CGST Commissionerate***, *2025-VIL-325-DEL* all of which had distilled Section 54(11) into two cumulative conditions : pendency of an appeal or other proceeding, followed by an opinion of the Commissioner that refund would adversely affect revenue and held that the department's opinion "cannot be relied upon on a standalone basis" absent an actual pending challenge. It was observed therein also that solely on the ground that the department has decided to file an appeal where no appeal has actually been filed and no stay obtained, section 54(11) cannot be mechanically invoked.

5. The Verdict

Reading these threads together, the High Court held that the Deputy Commissioner had no jurisdiction to invoke Section 54(11) "in the garb of holding that the consideration of refund application is premature." Prior to filing of appeal before the Appellate Tribunal the authority does not have the authority to assume jurisdiction to withhold refund under Section 54(11) of the GST Act read with Rule 92(2) of the GST Rules. As neither appeal nor any other proceeding was pending, and the appeal that eventually followed later came too late, the withholding order was accordingly quashed.

6. Concluding Observations

In the end, the High Court has drawn the line on the department's power in exactly the place it belongs. That a provision confers a power is never license to invoke it as a default; discretion vested in the department must still be exercised on the facts of each case, not reached for as a matter of routine. Read the way it was applied here, Section 54(11) would mean that no refund survives scrutiny until the order granting it attains finality and true finality, on a strict view, arrives only after the Supreme Court has had the last word in our country. That cannot have been the legislative intent. Had Parliament meant to withhold every refund until the last appellate avenue stood exhausted, Section 54(11) would have said so in as many words; instead, it speaks of an order actually being the subject-matter of a pending appeal or proceeding, coupled with a reasoned apprehension of revenue loss and angle of fraud.

The Court's reliance on Article 265 of the Constitution that no tax shall be levied or collected except by authority of law is a fitting anchor for this reasoning, because the converse holds equally true: a taxpayer cannot be kept from what is due except by authority of law, and an officer's apprehension of a future appeal is not law. ***Rashmi Agency***, at bottom, is less a case about GST refunds than about restraint and a reminder that the power to withhold is not the power to withhold whenever it is convenient to do so.

[Date: 20/07/2026]

(The views expressed in this article are strictly personal.)