



GOVERNMENT OF INDIA  
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CENTRAL TAXES  
KOLKATA-NORTH COMMISSIONERATE, CGST BHAWAN:  
1<sup>ST</sup> FLOOR-180, SHANTIPALLY, RAJDANGA MAIN ROAD, E.M BYPASS KOLKATA-700107

C. No. V(30)84/RTI/HQ/CGST & CX/Kol-North/2021

Dated: -

To  
Shri Nanda Kishore Kothari,  
24E, Baghmari Road,  
Kolkata-700054

Sir/Madam,

**Sub: Information under the RTI Act, 2005 — Regarding:**

Please refer to your RTI application dated-29.07.2021, which has been received in this Commissionerate on 02.08.2021 and received to this section on 03.08.2021. Subsequently the said RTI application was registered at this office vide Registration No.93/RTI/Kol-North/2021 dated-03.08.2021.

The desired informations as received from the A.C.(T&R), Kolkata North CGST&CX Commissionerate is enclosed herewith.

If you are aggrieved or dissatisfied with the above information, you may prefer an appeal within 30 (thirty) days of receipt of the information before the 1<sup>st</sup> Appellate Authority namely Ms Mohsina Tabassum, Joint Commissioner & FAA, CGST & CX, Kolkata-North Commissionerate, O/o The Principal Commissioner of CGST & CX, 2nd Floor, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107

Encl: 01(One) sheet.

Yours faithfully,

(Indu Bikas Das)  
CPIO & Assistant Commissioner  
HQ, RTI Cell  
CGST: Kol-North Comm'te.

Dated 3.08.2021

C. No. As above/ 14072  
Copy forwarded for information to:-

1. The Assistant Commissioner (Systems), Computer Cell, CGST & CX, Kolkata North Commissionerate with a request to upload the RTI application dated-29.07.2021, submitted by Shri Nanda Kishore Kothari, 24E, Baghmari Road, Kolkata-700054 (enclosed Seven sheets).
2. The CPIO & Assistant Commissioner, CCO, O/o the Pr. Chief Commissioner CGST & CX, Kolkata Zone.

(Indu Bikas Das)  
CPIO & Assistant Commissioner  
HQ, RTI Cell  
CGST: Kol-North Comm'te

Handwritten notes: "Suresh (System)" and "14072" with a checkmark.



GOVERNMENT OF INDIA  
OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST & CX,  
KOLKATA-NORTH COMMISSIONERATE, GST BHAWAN (2<sup>ND</sup> FLOOR),  
180, SHANTIPALLY, RAJDANGA MAIN ROAD, KOLKATA - 700107  
Phone No. (033)2441-3308; Fax No. (033)2441-6865.

C No. V(30)153/RTI Matter/T&R/CGST&CX/Kol North (ST)/19-20/13513 Date: 12-7-AUG-2021

To,  
The Assistant Commissioner & CPIO  
HQ, RTI Cell, CGST: Kol-north Comm'te,

**Sub: RTI application dated 29.07.2021 filed by Shri Nanda Kishore Kothari, 24E, Baghmari Road, Kolkata-700054 being transferred under Sec. 5(4) of Right Act\*2005 —Reg.**

Please refer to your letter under C No. V(30)84/RTI HQ,CGST&CX Kol North,2021/15740 dated 26.08.2021 on the captioned subject.

The details of information as sought by the application are as follows:

Q No. 1- Whether department has accepted this order and decided not to challenge it before the High Court.

- **CESTAT Final Order bearing No. 75076/2021 dttd. 09.03.2021 has been accepted by the Department basing on the monetary limit.**

Q No. 2- Whether the aforesaid order of the CESTAT, Ahmedabad has been challenged before any higher appellate authority.

- **The aforesaid CESTAT order pertains to CESTAT, Eastern Zonal Bench, Kolkata only.**

Q No. 3- In case the order has been challenged before any higher appellate authority, Please provide the copy of such appeal.

- **As per reply to Point no (1) above.**

This is for your kind information and for further action at your end please.

Encl: As above.

(P. Murlikrishnan)

Assistant Commissioner (HQ T&R)  
CGST&CX, Kolkata North Comm'te

2086  
03/08/21



**Most Urgent  
RTI Matter**

भारतसंस्कार  
GOVERNMENT OF INDIA

प्रधान मन्त्र्यावास, नया दिल्ली

OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER

केन्द्रीय वस्तु एवं सेवा कर, कोलकाता क्षेत्र

CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE, KOLKATA ZONE

केन्द्रीय वस्तु एवं सेवा कर भवन, टाउनशिप, 180, शांतिपाली, एच. बी. कनेक्टर, कोलकाता - 700 107

GST Bhawan (2<sup>nd</sup> Floor), 180 Shanti Pally, R. B. Connector, Kolkata - 700 107

Phone No. 033-2441-6797/6842 Fax No. 033- 2441-6834/6798

F. No. GCCO/RTI/A/P/475/2021-TECH-Pr.CC-CGST-ZONE-Kolkata/10/20

Date: 30.07.2021

The CPIO,  
Office of the Commissioner  
CGST & CX Kolkata North Commissionerate

Sir,

**Sub: RTI Application filed by Shri Nand Kishore Kothari under Right to Information Act 2005 -reg.**

Please find enclosed herewith RTI application having registration No. GSTKT/R/E/21/00090 dated 29.07.2021 received in this office on 30.07.2021, filed by Shri Nand Kishore Kothari, 24E, Baghmari Road, Kolkata 700054. The RTI Application is transferred to you under section 6(3) of the RTI Act, 2005.

You are requested to supply the information directly to the applicant under RTI Act, 2005.

Encl: As Above.

Yours faithfully,

*Uttam Sardar* 30/7/21

(Uttam Sardar)

CPIO & Assitant Commissioner,  
Pr. CGO, Kolkata Zone

## RTI REQUEST DETAILS

**Registration No. :** GSTKT/R/E/21/00090      **Date of Receipt :** 29/07/2021  
**Type of Receipt :** Online Receipt      **Language of Request :** English  
**Name :** Nand Kishore Kothari      **Gender :** Male  
**Address :** 24E, Baghmari Road, Kolkata 700054, KOLKATA, Pin:700091  
**State :** West Bengal      **Country :** India  
**Phone No. :** +91-9831794711      **Mobile No. :** +91-9831794711  
**Email :** nand.kishore.kothari@pwc.com  
**Status(Rural/Urban) :** Urban      **Education Status :** Graduate  
**Is Requester Below Poverty Line ? :** No      **Citizenship Status :** Indian  
**Amount Paid :** 10 )      **Mode of Payment :** Payment Gateway  
**Does it concern the life or Liberty of a Person ? :** No(Normal)      **Request Pertains to :**  
**Information Sought :** 29th July, 2021

To  
 The Central Public Information Officer  
 Assistant Commissioner, T&R Section,  
 GST Bhawan,  
 180, Shantipally,  
 Rajdanga Main Road  
 Kolkata 700 107

Sir,

Sub: Application seeking Information u/s 6 of the RTI Act, 2005

I seek the following information u/s 6 of the RTI Act, 2005:

Details of Information sought

Decision of the CESTAT, Kolkata in the case of M/s.  
 PricewaterhouseCoopers Service Delivery Center (Kolkata) Private  
 Limited vs Commissioner of CGST & ST, Kolkata North  
 Commissionerate vide Final Order No. 75076/2021 dated 09.03.2021  
 in Service Tax Appeal No.70114 of 2019 arising out of Order-in-  
 Appeal No. 15/S.Tax-1/KOL/2019 dated 31.01.2019 passed by  
 Commissioner of CGST & Central Excise, Kolkata Appeal-I  
 Commissionerate, Kolkata:

Q. No. 1-Whether department has processed this order and decided not to challenge it before the High Court

Q. No. 2-Whether the aforesaid order of the CESTAT, Ahmedabad has been challenged before any higher appellate authority.

Q. No. 3-If case the order has been challenged before any higher appellate authority, please provide the copy of such appeal

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.76114 of 2019**

(Arising out of Order-in-Appeal No.15/S.Tax-1/KOL/2019 dated 31.01.2019 passed by Commissioner of CGST & Central Excise, Kolkata Appeal-I Commissionerate, Kolkata.)

**M/s.PricewaterhouseCoopers Service Delivery Center (Kolkata)  
Private Limited**

(South City Pinnacle, 4<sup>th</sup> - 8<sup>th</sup>, 13<sup>th</sup> Floor, Plot No.X-1-1, Block EP, Sector V,  
Salt Lake, Kolkata-700091.)

**...Appellant**

VERSUS

**Commissioner of CGST & CX, Kolkata North Commissionerate  
.....Respondent**

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

**APPEARANCE**

Shri N.K.Kothari, Chartered Accountant for the Appellant (s)  
Shri K.Choudhury, Authorized Representative of the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75076/2021**

DATE OF HEARING : 2 December 2020  
DATE OF DECISION : 09 March 2021

**P.K.CHOUDHARY :**

The instant appeal has been filed by M/s.PricewaterhouseCoopers Service Delivery Center (Kolkata) Pvt. Ltd., against the Order-in-Appeal dated 31.01.2019 passed by the learned Commissioner (Appeals), Kolkata, upholding the rejection of refund claim as adjudicated by the Asst. Commissioner vide Order-in-Original dated 19.05.2015, for the period April 2011 to September 2011.

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

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Salt Lake, Kolkata-700091.)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Kolkata North Commissionerate**

**.....Respondent**

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

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Shri N.K.Kothari, Chartered Accountant for the Appellant (s)  
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**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

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'South City Pinnacle' (for occupying 8th to 13th floor) which is solely used by the appellant company and not the one, PricewaterhouseCoopers Pvt. Ltd. as alleged by the Department. He submitted copy of the lease agreement and a certificate obtained from the landlord company to support his contentions.

For dispute in item No. (ii) he submitted that credit has been denied on 'general insurance services' on the ground that said insurance services relate to premises No. Y-14 and used on shared basis both by the appellant company and the other company PricewaterhouseCoopers Pvt. Ltd..

In respect of dispute in item No. (iii) he submitted that both the authorities below have made a computation error in determining the 'eligible refund amount' by applying the ratio of export turnover to total turnover (incl. domestic turnover) on the credit amount net of amount utilised for payment of output Service Tax on domestic services. He accordingly submitted that the same is not in accordance with Rule 5 of the Credit Rules.

In respect of issue No. (iv), he submitted that since there has been delay in payment of refund amount, they are entitled to interest under Section 11BB of the Act. He relied upon the decision of Hon'ble Gujrat High Court in the case of CCE vs. Reliance Industries Ltd. [2010 (259) ELT 356 (Guj)] as affirmed by the Hon'ble Supreme Court reported in 2011 (274) ELT A110 (SC).

5. Supporting the findings made in the impugned appeal order, Shri K.Choudhury, learned Authorized Representative for the respondent Revenue reiterated the findings made therein and prayed that the appeal be rejected being devoid of any merit.

6. With regard to issue No.(i), I have perused the lease agreement dated 1st August, 2010, which shows that property in question, occupied on rent by the appellant, is premises being Plot No. X1-1 and

question of making any deduction of the amount of credit utilised for payment of output service tax on domestic services in order to arrive at "net CENVAT credit" since not prescribed in the Rules.

Even otherwise also, when the ratio of "value of export turnover to the total turnover" is applied on the net CENVAT Credit amount, the resultant amount is the proportionate amount relating to export of services which stands refundable to the exporter of services. The Department therefore made a fundamental error in so far as computation of refundable amount is concerned. I therefore allow the claim of the appellant in this regard.

8. In so far as the subject of interest is concerned as is referred in point no. (iv) above, I find that the law is amply clear that when there has been a delay in payment of refund amount, the assessee is entitled for interest under Section 11BB. The relevant portion of the observation made by Hon'ble Gujarat High Court in Reliance Insurance Ltd. (Supra) is reproduced below:-

10. Section 11-BB of the Act makes provision for payment of interest from the date immediately after expiry of three months from the date of receipt of the application under sub-section (1) of that section, till the date of refund of such duty at such rate as may be fixed by the Central Government by notification in the Official Gazette subject to the minimum and maximum limits specified thereunder, if any duty ordered to be refunded under sub-section (2) of Section 11-B to any applicant is not refunded within three months from the date of receipt of such application. Thus, section 115B of the Act would be attracted in case where there is delay in refunding the amount of duty ordered to be refunded under sub-section (2) of section 11B of the Act. Refund under Rule 5 of the Rules also being a refund under sub-section (2) of Section 11B of the Act would therefore, squarely fall within the ambit of Section 11BB of the Act and interest would be payable under Section 11BB of the Act in case of delay in sanctioning refund under Rule 5 of the Rules.

11. There is a basic fallacy in the premise on which the contention of Revenue is based. Cenvat credit is nothing else but credit for duty paid by the supplier of inputs, which are dutiable goods manufactured by the supplier or dutiable services rendered by the service provider. In principle such goods/services when utilised for further manufacture or providing service which are dutiable already carry the duty paid on them and hence the duty payable on



the ultimately manufactured goods/services rendered stands reduced to the extent of duty already paid on the inputs. Thus the duty paid on inputs by the supplier has already been actually received by the exchequer. Therefore, this contention is, to say the least, misconceived.

12 On the facts and in the circumstances of the present case, admittedly the refund has been ordered under Rule 5 of the Rules and there was a delay in sanctioning the refund, in the circumstances, the provisions of Section 11BB of the Act would clearly be attracted and as such the Tribunal was justified in holding that the provisions of clause (c) of the proviso to sub-section (2) of Section 11B and consequently Section 11BB of the Act are clearly applicable to the facts of the present case and as such the respondent is entitled to interest on delayed refund of Cenvat Credit as claimed by it.

13 Another aspect of the matter is that when Section 11BB of the Act had newly been inserted by the Finance Act, 1995, the Government of India, Ministry of Finance (Department of Revenue) has issued Circular : 130/41/95-CX., dated 30th May, 1995 (which finds reference in the impugned order of the Tribunal) issuing instructions regarding refunds claimed under Section 11BB of the Act. The Annexure thereto provides for the checklist of documents which are required to be filed with refund claims. Item No. 3 thereunder relates to "Refund of credit of duty paid on excisable goods used as input in accordance with Rule 57FD". Thus, as per the instructions issued by the Central Government refunds under Rule 57F of the erstwhile Central Excise Rules, 1944 would be governed by the provisions of Section 11BB of the Act. Rule 57F of the said Rules made provision for the manner of utilisation of inputs and credit allowed in respect of duty paid thereon. Sub-rule (13) of rule 57F made provision for refund of accumulated credit in case where for any reason it was not possible to adjust the same in the manner provided under the said sub-rule. Sub-rule (13) of Rule 57F of the said Rules is more or less in parimateria to the provisions of Rule 5 of the Cenvat Credit Rules, 2002/2004. Thus, the instructions issued by the Central Government under the aforesaid Circular would also be applicable to refunds under rule 5 of the Rules, which instructions are binding on the revenue.

14. In light of the aforesaid, it is not possible to state that the Tribunal has committed any legal error so as to warrant interference. In the absence of any question of law, much less, a substantial question of law, the appeals are dismissed.

I find that the original authority has not dealt with the entitlement of interest. Further, in appeal also, the learned Commissioner has not given any finding despite that the appellant assessee has taken the same in their grounds of appeal. Since there

has been a delay in sanctioning refund, **I uphold** the appellant's entitlement to interest by following the **ratio of the** above cited decision.

In view of the aforesaid finding, I consider **it fit to remand** the matter to the original authority who would **quantify and grant** refund arising out of the issues No. (i), (ii) and (iii) and **applicable interest** thereon as per law. Appeal is thus allowed by way of **remand in the** above terms.

(Order pronounced in the open court on 09 March 2021.)

SD/  
**(P.K.CHOUDHARY)**  
**MEMBER (JUDICIAL)**