

Commissioner's Opinion Alone Insufficient to Withhold GST Refund – HC

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REFER THE DECISION OF THE HON'BLE DELHI HIGH COURT IN THE CASE OF

Shalender Kumar Vs Commissioner Delhi West CGST Commissionerate & Ors.

Key Issues:

Is Commissioner's Opinion Alone sufficient to withhold GST Refund?

Legal Position:

A perusal of Section 54(11) of the Act would show that the refund can be held back on the satisfaction of the following two conditions –

(i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and

(ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.

The Hon'ble High Court Judgement:

The Department's opinion under Section 54(11) cannot be relied upon on a standalone basis. In the absence of an appeal or any other proceeding pending, challenging the order of the Appellate Authority, the opinion under Section 54(11) cannot result in holding back the refund.

Sections 54 of Central Goods and Services Tax Act, 2017