

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (T) No. 5035 of 2024

M/S. GTL INFRASTRUCTURE LIMITED, A Company within the meaning of section 2 (20) of the Companies Act, 2013, having its registered office at 3rd Floor, H/O Pradip Kumar Jain, Kutchery Road, Ranchi, through its authorized representative, Dharam Nath Jha, son of Late Mahendra Jha, aged about 54 years, resident of Village Bishanpur, P.O. & P.S- Phulpras, Town & District- Madhubani, Bihar

... .. Petitioner
Versus

1. The State of Jharkhand
 2. COMMISSIONER, STATE GOODS & SERVICES TAX,
JHARKHAND, having its office at Utpad Bhawan, 1st Floor, Opposite C.M. House, Kanke Road, P.O. & P.S.- Gonda, Town & District- Ranchi-834008 (Jharkhand).
 3. ADDITIONAL COMMISSIONER (Admin), STATE GOODS & SERVICES TAX, JHARKHAND, Commercial Tax Department, Court Compound, Behind Jaipal Singh Stadium, Kutchery Road, P.O. -G.P.O., P.S-Kotwali, Ranchi-834001 (Jharkhand).
 4. STATE TAX OFFICER, Ranchi West Circle, Commercial Tax Department, Court Compound. Behind Jaipal Singh Stadium, Kutchery Road, P.O.- GPO, P.S. Kotwali, Ranchi-834001 (Jharkhand)
- Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Nitin Kumar Pasari, Advocate
For the Respondents: Mr. Ashok Kumar Yadav, Sr. SC 1

05/Dated: 20.08.2025

1. The instant petition has been filed for grant of following reliefs:

(a) *For issuance of an appropriate writ, order or direction, directing upon the Respondents to show cause as to why the refund application of the Petitioner has not been processed which pertains to refund of the pre-deposited amount with the government exchequer in order to maintain the appeal under Section 107 of the Act.*

- (b) *Consequent upon showing cause, if any, and on being satisfied that the Respondents were obligated to grant refund of the pre-deposit amount and the refund application of the Petitioner could not have been automatically rejected on the ground of being time barred, the Respondents be directed to refund the amount of pre-deposit forthwith along with statutory interest.*
- (c) *For issuance of an appropriate writ, order or direction, holding and declaring that once the appeal preferred by the assessee is allowed, withholding of the pre-deposit amount without any reasonable cause would be hit by Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law.*
- (d) *For issuance of an appropriate writ, order or direction, quashing and setting aside the deficiency memos issued in Form GST RFD-03 dated 07.06.2024 (Annexure-6) and 02.08.2024 (Annexure-8) being wholly illegal and arbitrary.*
2. The application for refund of pre-deposit amount has been rejected through an automated order dated 07.06.2024 on the ground of limitation as prescribed under section 54 of the CGST/Jharkhand GST Act.
3. The moot question is whether the said provision is mandatory. The question is no longer *res-integra* as regards this Court and has been authoritatively decided by the Division Bench of this Court in W.P.(T) No. 6527 of 2024, the case title *M/s.BLA Infrastructure Private Limited v. The State of Jharkhand and others*, which shall have to be reproduced:

“9. For better appreciation, Section 54 of the Act is hereto quoted for ease:

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 1[such form and] 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 (46 of 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 1[two years] 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:*

9 [****]

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, 8[****], 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 2[export] of goods or services or both or on inputs or input services used in making such 1[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.

3[(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 4[***] 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 subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

10[(15) Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.] **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;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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 [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.

17. *There is no dispute to the effect that once refund is by way of statutory exercise, the same cannot be retained neither by the State, nor by the Centre, that too by taking inasmuch as, the language couched in Section 54 is "may make an application before the expiry of 2 years from the relevant date".*

The word "relevant date" has been defined in Explanation 2 of Section 54, which thus reads as follows:

(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;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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 for 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) 7[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.

What is relevant in the aforesaid Explanation is Explanation 2(d) and it is this explanation which probably is haunting the minds of the Officer of the State.

18. The word 'may' has been interpreted by the Hon'ble Apex Court in numerous cases and the Hon'ble Apex Court has opined that the word 'may' as would appear in different statutes, is normally directory in nature and not mandatory.
19. Recently, the Hon'ble Apex Court in the matter of **Muskan Enterprises & Anr. vs. State of Punjab & Anr.** reported in **2024 SCC Online SC 4107** has interpreted the word „may“ and while dealing with the statute the Negotiable Instrument Act, 1881, has been inter alia pleased to hold as under:

24. Law is well-settled that user of the verbs 'may' and 'shall' in a statute is not a sure index for determining whether such statute is mandatory or directory in character. The legislative intent has to be gathered looking into other provisions of the enactment, which can throw light to guide one towards a proper determination. Although the legislature is often found to use 'may', 'shall' or 'must' interchangeably, ordinarily 'may', having an element of discretion, is directory whereas 'shall' and 'must' are used in the sense of a mandatory provision. Also, while the general impression is that 'may' and 'shall' are intended to have their natural meaning, it is the duty of the court to gather the real intention of the legislature by carefully analysing the entire statute, the section and the phrase/expression under consideration. A provision appearing to be directory in form could be mandatory in substance. The substance, rather than the form, being relevant, ultimately it is a matter of construction of the statute in question that is decisive.

25. It is also a well-accepted rule that interpretation must depend on the text and the context the text representing the texture and the context giving it colour and, that interpretation would be best, which makes the textual interpretation match the contextual. While wearing the glasses of the statute-maker, the enactment has to be looked at as a whole and it needs to be discovered what each section, each clause, each phrase and each word means and whether it is designed to fit into the scheme of the entire enactment. While no part of a statute and no word of a statute can be construed in isolation, statutes have to be construed so that every word has a place and everything is in its place. We draw inspiration for the

above understanding of the manner of interpreting a statute from the decision of this Court in *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.*

20. The Hon'ble Apex Court in the matter of **Rakesh Ranjan Shrivastava Vs. State of Jharkhand & Anr.** reported in (2024) 4 SCC 419 has pleased to deal with the word 'may' and has been *inter alia* pleased to hold as under:

11. There is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant.

18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Subsection (1) of Section 143-A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word "may" is interpreted as "shall", it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20% of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of

Article 14 of the Constitution. In a sense, sub-section (1) of Section 143-A provides for penalising an accused even before his guilt is established.

19. Considering the drastic consequences of exercising the power under Section 143-A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143-A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143-A is discretionary.

20. Even sub-section (1) of Section 148 uses the word "may". In *Surinder Singh Deswal v. Virender Gandhi* (Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341: (2019) 3 SCC (Civ) 765: (2019), 3 SCC (Cri) 461], this Court, after considering the provisions of Section 148, held that the word "may" used therein will have to be generally construed as "rule" or "shall". It was further observed that when the appellate court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in *Surinder Singh Deswal* (Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341: (2019) 3

SCC (Civ) 765 : (2019) 3 SCC (Cri) 461), this Court in *Jamboo Bhandari v. M.P. SIDC Ltd.* [Jamboo Bhandari v. M.P. SIDC Ltd., (2023) 10 SCC 446: (2024) 1 SCC (Cri) 90: (2024) 1 SCC (Civ) 547)], in para 6, held thus: (SCC p. 449)

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded."

(emphasis supplied)

21. *In terms of the interpretation extended by the Hon^{ble} Apex Court, as also, taking into consideration that the refund of statutory pre-deposit is a right vested on an assessee after an appeal is allowed in its favour, we have no reason to say that the pre-deposit made by an assessee cannot be forfeited taking aid of section 54 of the Act and the same cannot be the intent of the Act of 2017."*

4. The learned counsel for the State would, however, contend that a contrary view has been taken by the Delhi High court. We need only to state that the view taken by the Division Bench of this Court is binding on this Bench and as regards the view taken by the Delhi High

Court, in ***Sethi Sons (India) v. Assistant Commissioner and Others*** reported in **2023 SCC OnLine Del 8351**, the same has only a persuasive value . Even otherwise, we are clearly of the view that the action of the State in retaining the amount of the petitioner would amount to undue enrichment of the State, which otherwise, is impermissible.

5. In view of the aforesaid discussions and for the reasons stated above, we have no option but to allow this petition by directing the respondents to refund the pre-deposit amount to the petitioner. The amount be refunded to the petitioner within

a period of four weeks from today, failing which the respondents shall be liable to pay interest @ 6% per annum from the date it was due till the date of actual payment.

(Tarlok Singh Chauhan, C.J.)

(Rajesh Shankar, J.)

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