IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1801 of 2021

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M/s Gajraj Vahan Private Limited, Sindur, Hazaribagh... Petitioner

-Versus-

1. The State of Jharkhand
2. The Commissioner of State Taxes, Jharkhand.
3. The Joint Commissioner of State Taxes, (Admn.) Hazaribagh.
4. The Deputy Commissioner of State Taxes, State Goods and Service Tax, Hazaribagh... Respondents.

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**CORAM : SRI SANJAYA KUMAR MISHRA, C.J.**
**SRI ANANDA SEN, J.**

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For the petitioner(s) : M/s Nitin Kr. Pasari and Sidhi Jalan, Advocates.
For CGST : Mr. Amit Kumar, Sr. SC CGST and Mr. A.K. Shekhar, Adv.
For the State : Mr. Ravi Prakash Mishra, AC to AAG-II

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**08/ Dated: 10.05.2023**

Upon hearing the learned counsel for the parties, this Court passed the following, (Per, Sanjaya Kumar Mishra, C.J.)

**ORDER**

By filing this writ petition, the petitioner has prayed for following relief(s);

> *(a) For issuance of an appropriate writ,order or direction directing upon then respondents to show cause as to how and under what authority of law, the refund application of the petitioner has been rejected, purportedly on the ground of being barred by the law of limitation as prescribed under Section 54 of Central Goods and Services Tax, act, 2017 when admittedly the case of the petitioner is that of payment of tax under wrong head which is to be governed by section 77 of the Act, which in no manner prescribes any period of limitation for filing any refund claims.*
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> *(b) Consequent upon showing cause, if any, and on being satisfied that the action of the respondents in recruiting the refund application of the petitioner on the ground that the same is barred by law of limitation, is illegal and de hors the scheme of the Goods and Services Tax Act, the Respondents be directed to refund the amount of tax inadvertently paid under the wrong head together with applicable rate of interest available under the Goods and Services Tax Act and the rules framed thereunder.*
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> *(c) For a direction upon the respondents to show cause as to how and under what authority of law, the claim of the petitioner for refund of excess tax paid for the period August, 2017 to March 2018 was rejected.*
>
> *(d) Consequent upon showing cause, if any, and on being satisfied that the petitioner is entitled for refund for the period in question, the orders of rejection for refund for the period in question, be quashed and set aside.*

2. It is apparent from the record that the petitioner made payment in a wrong head and there is no dispute regarding the same. However, his claim for refund has been rejected by the authority on the ground of limitation vide order dated 23.4.2020 i.e. Annexure-7 to the writ petition.

3. In the meantime, Circular bearing No. 162/18/2021-GST dated 25.9.2021 was issued by the CBIC on the subject/clarification in respect to refund of tax specified in Section 77(i) of the CGST Act and Section 19(i) of the IGST Act. Earlier, vide Notification No. 35/2001-Central Tax dated 24.9.2021, Sub-Rule (1A) of Rule 89 of CGST Rules 2017 has been inserted, which reads as follows;

> "*(1A) Any person, claiming refund under Section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra- State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in Form GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*
>
> *Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."*

4. Thus the relevant CBIEC had extended a benevolent provision for extension of limitation of refund in case of wrong deposit.

5. In that view of the matter, we are inclined to allow this petition and dispose of the writ petition by quashing Annexure-7 to the writ petition.

6. We further give liberty to the petitioner to file an application within a period of thirty days hence for refund of excess CGST paid to the respondent, which shall be considered in light of the latest circular within a period of thirty days, thereafter.

7. With the aforesaid observation and direction, this petition stands **allowed.**

8. No orders as to costs.

9. Urgent certified copies as per Rules.

**(Sanjaya Kumar Mishra, C.J.)**

**(Ananda Sen, J.)**

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