

HC: Pre-deposit Refund Not Barred by Limitation Even If Claimed After Two Years of Appeal Decision

CA Prakash Chandra Jain

P.O. Brajrajnagar
Odisha- 768216
Cell: 94375-41690 / 70087-12242
Email: prakashchjain@yahoo.co.in



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

BLA Infrastructure Pvt. Ltd. vs. State of Jharkhand; Dated 30th January, 2025.

FACTS:

An order confirming GST demand for mismatch between GSTR 1 and GSTR 3B was passed in September 2019 under section 74 of CGST Act, 2017. Against this order, petitioner filed an appeal and deposited 10% of the disputed tax as a statutory pre-deposit. The appeal was allowed in petitioner's favour, and Order-In-Appeal in Form APL-04 was issued on 10th February, 2022. Subsequently, on 11th September, 2024, petitioner filed a refund application for the pre-deposit made at the time of filing the appeal. However, Respondent rejected the application on the ground that it was filed beyond the two-year period prescribed under section 54(1) of the CGST Act, 2017. Hence challenging the rejection, the present petition is made.

Hon'ble High Court Judgement:

Refund of the statutory pre-deposit is a vested right of the assessee, once the appeal is decided in its favour. Further, application for refund of pre-deposit made beyond the period i.e. 2 years from the date of communication of appellate order cannot be rejected on the basis of time bar as per section 54(1) of the CGST Act, 2017 by reading 'may' as 'shall' looking into the intent of legislature by relying Rakesh Ranjan Shrivastava vs. State of Jharkhand [2024] 4 SCC 419 and Lenovo (India) (P.) Ltd. vs. Jt. Commissioner — 2023 (79) G.S.T.L. 299 (Mad.). The Court in its analysis stated that such rejection of refund and retention of money would defeat the purpose of Article 265 of the Constitution of India which restricts Government to levy and collect tax without authority of law and resulting in conflict with the Limitation Act. Accordingly, the High Court allowed the petition and instructed the Respondent to process the refund application.

Section 54 of Central Goods and Services Tax Act, 2017.