

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18609 of 2023

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M/s Induvarna LPG Bottling Private Limited having its office at Pooja Grih, Gayatri Nagar, Motihari, Purbi Champaran, Bihar, 845401 through its Managing Director, Jnanendra Jha (Male) aged about 53 Years, S/o Dr. (Prof) Binodanand Jha Residing at Pooja Grih, Gayarti Nagar, Motihari, P.S.-Town Motihari, District-East Champaran, Bihar, 845401

... .. Petitioner/s

Versus

1. The Union of India through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. The State of Bihar through the Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner of State Tax (Appeal), Tirhut Pramandal Muzaffarpur, Bihar.
6. The Joint Commissioner of State Tax, Motihari Circle, Motihari, Bihar.
7. The Asst. Commissioner of State Tax, Motihari Circle, Motihari, Bihar.

... .. Respondent/s

Headnotes

Central Goods and Service Tax Act, 2017 – Section 54(3)(ii) – Central goods and Service Tax Rules, 2017 – Rule 89(5)- Refund of differential tax under ‘Inverted Duty structure’ for the period of 2018-2019 was claimed by the Petitioner – Petitioner purchased LPG in bulk after paying the applicable tax – thereafter bulk LPG purchased is bottled in cylinders and sale is made to customers – From commercial users, the same rate of tax is charged as purchased, but from domestic users, lesser rate is charged – Petitioner took recourse of section 59 which provides for refund of higher tax paid on purchase than levied on subsequent sale – Limitation period for filing refund application was 2 years – but the Petitioner filed the refund application on 12.04.2023 – objection against the refund was raised on the ground of limitation – Held that clause (2) of the second explanation to section 54 provides that when tax becomes refundable as consequence of judgment, decree, order or direction of the Appellate Authority, the date of communication of order is relevant date for the calculation of limitation period – Since appellate order is received on 15.08.2022, hence 15.08.2022 is the relevant date – Held that application for refund of tax was perfectly in order – Amount remaining in the credit of the Petitioner is the tax amounts refunded on the appellate order-physical application for refund be treated under clause 2 of the second explanation to sec.54 – writ petition allowed – The refund was ordered to be effected within 2 (two) months from the date of receipt of certified copy.[paras 2,4,7,12,13,14 and 15]

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7. The Asst. Commissioner of State Tax, Motihari Circle, Motihari, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocate Mr. Akash Chaturvedi, Advocate Mr. Vijay Kumar Singh, Advocate
For the UOI	:	Dr. K.N. Singh, Additional Solicitor General Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vikash Kumar, SC-11 Mr. Raghwanand, GA-11 Mr. Pratik Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-02-2024

The petitioner is before this Court claiming a refund of the tax paid by the petitioner on the 'Inverted Duty Structure' applicable to the business carried on by the petitioner; being



bottling of LPG.

2. The petitioner purchases LPG in bulk after paying the applicable tax. The bulk LPG purchased is bottled in cylinders and sale is made to customers, collecting tax from commercial users; at the same rate of purchase of LPG and to the domestic users, at a lesser rate. As per Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (for brevity 'CGST Act') read with Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (for brevity 'CGST Rules') a refund of such differential tax is provided which is defined by the term 'Inverted Duty Structure'.

3. Section 54 has the nominal heading of 'Refund of tax' under which the refund of higher tax paid on purchase, than that levied on subsequent sale; is provided by sub-section (1). It is also a mandate that such refund application shall be filed before the expiry of two years from the relevant date, in such form and manner as may be prescribed. The petitioner had paid tax in accordance with the statute and had filed all its returns in time.

4. The period in the present case relates to the Financial Year 2018-19, specifically to the period between October 2018 to March 2019. The petitioner filed an application



for refund in the format RFD-01 on 12.04.2023 in terms of Rule 89(1) read with Section 54 of the GST Act much later to the limitation period and claimed a refund of Rs 6,12,487/- paid under IGST.

5. The 6th respondent who is the Assessing Officer of the petitioner issued Annexure-P/4 pointing out that the application is filed beyond the limitation period, to which the petitioner replied by Annexure-P/5. It was the contention of the petitioner, in the reply filed, that since the petitioner did not succumb to the Assessing Officer's claim for bribe, he had wrongly raised demands, far in excess of that due for the years 2018-2019 and 2019-2020. The amounts so assessed and demanded were also set off from the credit ledger of the petitioner's input credit. The copy of the demand orders and the recovery made are produced as Annexure-P/6 series. An appeal was filed in which the Appellate Authority by Annexure-P/7 series allowed the appeal and the recovered amounts were credited back to the credit ledger on 24.08.2022.

6. It is claimed by the petitioner that the order in appeal passed on 20.02.2022 was received after six months on 15.08.2022 and the limitation had to commence from the said date. It is also contended that the due date for filing of refund,



for the Financial Year 2018-2019 has been extended till 31.03.2023 by the Central Board of Indirect Taxes and Customs vide its Notification No. 13/2020- Central Tax dated 05.07.2022.

7. The relevant date from which the limitation of two years commence, as noticed in Section 54, in so far as unutilized input tax credit under sub-section (3), is the end of the financial year in which such claim for refund arises; as per Explanation (2)(a). Hence, for the Assessment Year 2018-19, the relevant date would be 31.03.2019 and in that context the expiry of limitation for filing a refund application falls on 31.03.2021. In the present case, the application for refund was made by the petitioner on 12.04.2023. Even as per the notification of the Central Board of Indirect Taxes, the refund claim for the Financial Year 2018-19 stood extended only till 31.03.2023.

8. However, it has to be noticed that even without reckoning the allegation of demand of bribe, there was an assessment carried out for the Financial Years 2018-19 and 2019-20 against which a demand order was raised on 29.01.2021. Copy of the ledger produced along with Annexure-P/6 series also shows a recovery having been effected from the credit ledger of the petitioner on 20.03.2021. The amount set off



were the amounts under the 'Inverted Duty Structure', which normally ought to be refunded to the assessee/petitioner. The recovered amount was credited back only on 24.08.2022.

9. As of now, in addition to the refund application produced as Annexure-P/3, the petitioner has filed a further application for refund produced as Annexure-P/13. The present application is filed for refund of the amounts set off from the credit ledger as demands raised for the year 2018-19 and 2019-20.

10. We have to pertinently reckon the peculiar facts that arise in the above case. There was a credit available in the ledger of the petitioner for the Financial Years 2018-19 which was to be refunded. However, before the limitation period for filing a refund application expired on 20.03.2021, the amounts were set off as against the demand raised for the Financial Years 2018-19 and 2019-20; on 20.03.2021. Hence, there was no amount remaining in the credit ledger of the petitioner as inverted duty for the purpose of refund.

11. When the amounts remaining in the credit ledger was set off as against the demand, the character of the said amounts which remained in the credit ledger changed and acquired the status of tax recovered by the department. An



appeal was filed from the aforesaid demand raised by the Assessing Officer which was allowed, as we indicated hereinabove, on 20.02.2022. The appellate order is also said to have been received only on 15.08.2022.

12. The petitioner has now filed an application for refund of the amounts credited to the credit ledger on the appeal being allowed. Hence, what remains in the credit ledger of the petitioner is the amount of tax recovered which is enabled for refund as per the appellate order. Clause (2) of the second Explanation to Section 54 provides that when tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, the date of communication of such judgment, decree, order or direction is the relevant date. Hence, the relevant date as per the Explanation is 15.08.2022 on which date the order was communicated.

13. We find an application for refund of the tax credited back to the ledger to be perfectly in order and direct the refund to be made of the amounts set off from the credit ledger of the petitioner as tax due on the enhanced demand made for the Assessment Years 2018-19 and 2019-20, which now stands refunded as per the appellate order.

14. We notice that the petitioner's online application



was not uploaded, presumably by reason of a technical glitch. The Government Advocate, however, points out that the uploading was not possible since the 'Inverted Duty Structure' refund is possible only for two years. We reiterate, that the amount now remaining in credit of the petitioner is the tax amounts refunded on the appellate order. It lost the character of amounts due under the 'Inverted Duty Structure' when it was recovered and set off on the demand raised in assessment. The physical application filed by the petitioner shall hence be considered under Clause (2) of the second Explanation to Section 54.

15. The writ petition is allowed with the above direction. The refund shall be effected, at any rate within two months from the date of receipt of the certified copy of this judgment.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	05.03.2024
Transmission Date	

