IN THE HIGH COURT OF JUDICATURE AT PATNA

M/S Sai Steel

v

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 13163 of 2024

28 July 2025

(Honourable Mr. Justice Rajeev Ranjan Prasad &

Honourable Mr. Justice Shailendra Singh)

Issue for Consideration

Whether the limitation period for filing a refund claim under Section 77 of the BGST/CGST Act, 2017 should be reckoned from the date of initial incorrect tax payment or from the date of payment under the correct head, in light of Circular No. 162/18/2021-GST.

Headnotes

Impugned order has though taken note of Section 77(1) of the BGST/CGST Act, 2017 but the same has not been duly considered and appreciated by the Joint Commissioner State Taxes. He has also not taken into consideration a clarificatory Circular. The said Circular clarifies the position with regard to the application of limitation in these matters. (Para 15)

Court has no iota of doubt that in the present case, the relevant date for counting the period of limitation would start from the date when the petitioner had deposited the tax under IGST Act, in the present case, the said date is 04.03.2023. (Para 16)

Respondent authority seems to have committed an error in taking a view that the period of two years would be counted from the month of January 2018 when the amount on account of SGST and CGST were deposited with the Returns of the Financial Year 2017-18. If the order of the Respondent authority is allowed to remain in existence, it would amount to rendering Section 77 of the BGST/CGST Act, 2017 read with Section 19 of the IGST Act and clarificatory Circular redundant. (Para 17)

Petition is allowed. (Para 19)

Case Law Cited

Gajraj Vahan (P.) Ltd. v. State of Jharkhand, ***2023 SCC OnLine Jhar 3929***

List of Acts

BGST Act, 2017; CGST Act, 2017; IGST Act, 2017

List of Keywords

Refund claim; Section 77 BGST/CGST Act; Limitation period; Wrong head; tax payment; Circular No. 162/18/2021-GST

Case Arising From

Order dated 06.05.2024 passed by the Joint Commissioner of State Tax, Patna City West, rejecting refund application Reference No. ZD100524003509V.

Appearances for Parties

For the Petitioner: Mr. Bijay Kumar Gupta; Mr. Manish Kumar, Advocate

For the State: Mr. Vikash Kumar, SC-11

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13163 of 2024

==========

M/S Sai Steel, a Proprietorship Concern having GSTIN- IOAFDPK5IO5J1ZO and its office at PMC Sump House, Bypass Road, Dhanuki, Agam Kuan, Patna- 800007 through its Proprietor Sri Nirmal Kumar, Gender- Male, aged about 53 years, Son of Sri Gugan Ram Agarwal, Resident of Flat No.- B-605, Hari Om Apartment, Behind L.I.C. Building, Exhibition Road, Patna, P.S.- Kotwali, P.O.- G.P.O., Bihar- 800001.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. Joint Commissioner of State Tax, (Audit), Patna East Division, Bihar, Patna.
4. Joint Commissioner of State Tax, (Administration), Patna East Division, Bihar, Patna.
5. Assistant Commissioner of State Tax, Patna City West, Patna East, Bihar, Patna.
6. Joint Commissioner of State Tax, Patna City West, Patna East, Bihar, Patna.
7. The Union of India, through the Under Secretary, Department of Revenue, Govt. of India, New Delhi.
8. The Government of India, Ministry of Finance (Department of Revenue), through the Principal Commissioner, CBIC, New Delhi.

... ... Respondents

==========

Appearance :

For the Petitioner/s : Mr. Bijay Kumar Gupta, Advocate
Mr. Manish Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

==========

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 28-07-2025

Heard learned counsel for the petitioner and learned SC-11 for the State Respondents.

WEB COPY

2. The petitioner in the present writ application is seeking the following reliefs:-

> "(i) For issuing a writ of certioriari or any other appropriate writ quashing/ setting aside the Order for rejection of Refund Application filed by the Petitioner on the ground of being barred by the law of limitation as prescribed under Section 54 of BGST/CGST Tax, Act, 2017 vide order dated 06.05.2024 (as contained in Annexure-P4) and refund rejection order vide Reference No- ZD100524003509V, dated 06.05.2024 in the FORM RFD-06 (as contained in Annexure-P-4A) passed by the Respondent No-6 rejecting the refund of excess tax paid of Rs.2,54,097.00 under the CGST and Rs.2,54,097.00 under the BGST Act total amounting to Rs.5,08,194.00 relating to January 2018 for the assessment Year 2017-2018 in violation of the provision of Section 77 BGST/CGST Act, 2017 read with sub-rule (1A) of Rule 89 BGST/CGST Rule 2017 which render the entire proceedings of the Respondent No-6 being violative of the BGST/CGST Act and Rules and thus the order is liable to be set aside.
>
> (ii) For issuing of a writ of certiorari or any other appropriate writ quashing/ setting aside the order dated 06.05.2024 (as contained in Annexure-P4) and refund rejection order vide Reference No- ZD100524003509V, dated 06.05.2024 in the FORM RFD-06 (as contained in Annexure-P-4A) passed by the Respondent No-6 rejecting refund application of the Petitioner on the ground 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 and

WEB COPY

act of the Respondent No-6 is illegal and de hors the schem of the Goods and Services Tax Act and Rules 2017.

(iii) 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 Jan, 2018 for the assessment year 2017-18 was rejected which was paid on 04.03.2023 vide DRC-03 subsequent to Audit Objection and Refund Application was filed on 17.01.2024 which was well within 2 years from the date of payment which is relevant date for calculation of Limitation in view of the provision of Section 77 BGST/CGST Act, 2017 read with sub-rule (1A) of Rule 89 BGST/CGST Rule 2017.

(iv) For issuing of a writ of certiorari or any other appropriate writ quashing/ setting aside the order dated 06.05.2024 (as contained in Annexure-P4) and refund rejection order vide Reference No- ZD100524003509V, dated 06.05.2024 in the FORM RFD-06 (as contained in Annexure-P-4A) passed by the Respondent No-6 rejecting refund application of the Petitioner in violation of the Circular bearing No. 162/18/2021-GST, dated 25.09.2021 issued by the CBIC on the subject/ clarification in respect to refund to tax specified in section 77(i) of the CGSt Act and section 19(i) of the IGST Act and thus the order is liable to be set aside.

(v) For issuing of a writ of certiorari or any other appropriate writ quashing/ setting aside the order dated 06.05.2024 (as contained in Annexure-P4) and refund rejection order vide Reference No-ZD100524003509V, dated 06.05.2024 in the FORM RFD-06 (as contained in Annexure-P-4A) passed by the Respondent No-6 rejecting refund application of the Petitioner in violation of Notification No. 35/2021-Central Tax, dated 24.09.2021 which inserted sub-rule (1A) of rule 89 of

WEB COPY

CGST Rules, 2017 which provide that refund application shall be filed before expiry of a period of two years from date of payment of tax.

(vi) For issuing of a writ of certiorari or any other appropriate writ/ order commanding the Respondents to refund petitioner's lawful refund along with interest.

(vii) For granting any other relief(s) to which the petitioner is otherwise found entitled to in accordance with law."

Brief Facts of the Case

3. It is the case of the petitioner that for the financial year 2017-18, the petitioner filed his all GSTR-01, GSTR-3B & GSTR-09 and paid all due taxes according to the returns. Later on, The petitioner's Book of Account was selected for Audit under Section 65(1) of the Bihar Goods and Services Tax/ Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'BGST/CGST Act, 2017'). The Audit Report prepared under Section 65(6) in GST ADT-02 Form observed that the petitioner short paid Integrated Goods and Services Tax (in short 'IGST') of Rs.5,08,195/- identifying certain transactions to be Inter-State transactions which the petitioner had treated as Intra-State transactions under CGST/SGST Act, 2017 and had paid the taxes.

4. Learned counsel for the petitioner submits that in view of the Audit observation, the petitioner paid a sum of

WEB COPY

Rs.5,08,195/- by DRC-03 on 04.03.2023. In this regard, Annexure ‘P2A’ has been placed before this Court.

5. Learned counsel for the petitioner submits that after payment of the short paid IGST of Rs.5,08,195/-, the petitioner applied for refund of excess paid CGST of Rs.2,54,098/- & SGST of Rs. 2,54,098/- in RFD-01. Thereafter, respondent no. 6 issued a show cause notice (SCN) dated 18.03.2024 which was replied by the petitioner on 02.04.2024. Copies of the same have been brought on record as Annexure ‘P3’, Annexure ‘P3A’ and Annexure ‘P3B’ respectively.

Submissions on behalf of the Petitioner

6. The grievance of the petitioner is that respondent no. 6, even though found that the petitioner would be entitled for the refund, rejected the refund application of the petitioner relying upon Section 54 of the BGST Act, 2017 on the ground of limitation. It is submitted that the rejection of the refund application is in violation of the provision of Section 77 of the BGST/CGST Act, 2017 read with sub-rule (1A) of Rule 19 of the BGST/CGST Rule, 2017. Copy of the rejection order has been placed before this Court. It is Annexure ‘P4’ of the writ application.

WEB COPY

7. Learned counsel has taken this Court through Circular No. 162/18/2021-GST dated 25th September, 2021 issued by the Government of India in its Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (in short 'CBIC'), GST Policy Wing. It is submitted that the Circular was brought to clarify certain issues in respect of refund of tax specified under Section 77(1) of the BGST/CGST Act, 2017 and Section 19(1) of the Integrated Goods and Services Tax, 2017 (in short 'IGST Act).

8. Learned counsel has also relied upon the judgment of the Hon'ble Jharkhand High Court in the case of **Gajraj Vahan (P.) Ltd. vs. State of Jharkhand** reported in **2023 SCC OnLine Jhar 3929** wherein the Hon'ble Jharkhand High Court had occasion to consider the Circular dated 25.09.2021 and the relevant provisions of the CGST Act and IGST Act. The Hon'ble Jharkhand High Court had allowed the writ application holding that the CBIC Circular had extended a benevolent provision for extension of limitation of refund in case of wrong deposit.

Stand of the State

9. Mr. Vikash Kumar, learned SC-11 for the State has contested the writ application by filing a counter affidavit. It is submitted that in view of the provisions under Section 54(1) read

WEB COPY

with Explanation 2(h) of Section 54 of the CGST/BGST Act, 2017, a refund application must be filed within two years of payment of tax sought to be refunded. It is his submission that since the tax sought to be refunded has been paid in January 2018, the refund application was filed by the petitioner on 17.01.2024, therefore, it was delayed by almost four years.

10. In course of argument, learned SC-11 has submitted that even though the respondents were willing to refund the amount but on the face of Section 54 of the CGST/BGST Act, 2017, the refund could not have been made after expiry of two years period of limitation.

Consideration

11. We have heard learned counsel for the petitioner and learned SC-11 for the State. It is evident on reading of the impugned order (Annexure ‘P4’) that at more than one places, the Joint Commissioner State Taxes had observed that the amount paid by the Assessee on account of SGST and CGST are eligible for refund but towards the end of the order, the refund application has been rejected citing Section 54 of the BGST Act, 2017 and by observing that it is barred by limitation.

12. First of all, we reproduce Section 54(1) of the BGST Act, 2017 as under:-

WEB COPY

> "**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 the return furnished under section 39 in such manner as may be prescribed."

13. Section 77 talks of refund of tax wrongfully collected and paid to the Central Government or State Government. The legislatures have enforced Section 77 of the BGST Act, 2017 w.e.f. 01.07.2017 vide Notification No. 9 of 2017-Central Tax dated 28.06.2017. Section 77 is, thus, extracted hereunder for a ready reference:-

> "**77. Tax wrongfully collected and paid to Central Government or State Government.** –
> (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
> (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay

WEB COPY

> any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

14. There is a similar kind of provision under the IGST Act, 2017. Section 19 of the IGST Act, 2017 is reproduced hereunder:-

> "**19. Tax wrongfully collected and paid to Central Government or State Government.** – (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
> (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."

15. We find that the impugned order has though taken note of Section 77(1) of the BGST/CGST Act, 2017 but the same has not been duly considered and appreciated by the Joint Commissioner State Taxes. He has also not taken into consideration the clarificatory Circular No. 162/18/2021-GST. The said Circular clarifies the position with regard to the application of limitation in these matters. Clarity may be found in paragraphs '3'

WEB COPY

to ‘6’ of the said Circular. Those are important to take note of, hence, we extract the same hereunder:-

> “**3. Interpretation of the term “subsequently held”**
>
> **3.1** Doubts have been raised regarding the interpretation of the term **“subsequently held”** in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter- tate respectively.
>
> **3.2** In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-tate respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.
>
> **4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017**
>
> **4.1** Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier

WEB COPY

considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 Circular No. 162/18/2021-GST (hereinafter referred to as "CGST Rules") vide notification No. 35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 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- ule, be filed before the expiry f a period of two years from the date on which this sub-rule comes into force."*

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of

WEB COPY

subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021- entral Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

*A taxpayer "**A**" has issued the invoice dated **10.03.2018** charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:*

Sl. No.	**Scenario**	**Last date of filing the refund claim**
1	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on **10.05.2021.**	Since "**A**" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in **FORM GST RFD-01** would be **23.09.23** (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on **10.11.2021 i.e. after issuance of notification No.** 35/2021-Central Tax dated 24.09.2021	Since "**A**" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in **FORM GST RFD-01** would be **09.11.2023** (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid	Since "**A**" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in

WEB COPY

	the IGST in respect of the said transaction on **10.05.2019**	**FORM GST RFD-01** would be **23.09.23** (two years from date of notification)
4	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on **10.11.2022 i.e. after issuance of notification No.** 35/2021- Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in **FORM GST RFD-01** would be **09.11.2024** (two years from the date of payment of tax under the correct head, i.e. integrated tax)

The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would beapplicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow"

WEB COPY

16. On a bare reading of Section 77 of the CGST Act, 2017 read with Section 19 of the IGST Act and the clarificatory Circular, this Court has no iota of doubt that in the present case, the relevant date for counting the period of limitation would start from the date when the petitioner had deposited the tax under IGST Act, in the present case, the said date is 04.03.2023.

17. The Respondent authority seems to have committed an error in taking a view that the period of two years would be counted from the month of January 2018 when the amount on account of SGST and CGST were deposited with the Returns of the Financial Year 2017-18. If the order of the Respondent authority is allowed to remain in existence, it would amount to rendering Section 77 of the BGST/CGST Act, 2017 read with Section 19 of the IGST Act and clarificatory Circular No. 162/18/2021-GST redundant.

18. We find that the Hon'ble Jharkhand High Court had occasion to consider the Circular No. 162/18/2021-GST. It has been held in the case of **Gajraj Vahan (P.) Ltd.** (supra) that the said Circular had extended a benevolent provision for extension of limitation of refund in case of wrong deposit.

19. In result, we are of the considered opinion that the impugned order rejecting the refund application of the petitioner is

WEB COPY

bad in law and cannot be allowed to remain in existence. The impugned order as contained in Annexure ‘P4’ is set aside.

20. The petitioner is entitled to get refund of the amount paid on account of SGST and CGST in January, 2018, together with interest at the rate of 6% per annum from a date which would be beginning after three months from the date of filing of the application for refund, till the date of payment. We award cost of litigation assessed at Rs.10,000/- (Rupees Ten Thousand/-). The entire payments shall be made as early as possible but not later than three months from the date of receipt/communication of a copy of this judgment.

21. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.07.2025
Transmission Date	

WEB COPY