IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10766 of 2024

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M/s Ahluwalia Contractors India Office at A-177, Okhala Industrial Area, Phase-I, New Delhi and Regional Office at International Convention Centre, ICCP, Near Magadh Mahila College, North Gandhi Maidan, Patna, Bihar, - 800001 through its Autorized representative Mithilesh Kumar singh aged 49 years S/o Late Dinesh Kumar Singh.

... ... Petitioner/s

Versus

1. The Union of India through its Secretary and Commissioner, (GST), Ministry of Finance, Department of Revenue, having its office at Central Secretariat, North Block, New Delhi- 110001.
2. The Central Goods and Service Tax, through Chairperson has its registered office, 4th Floor, East Wing, World Mark-1, Aero City, Indira Gandhi International Airport, New Delhi.
3. The Chief Commissioner, CGST and CX, Office at - C.R Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
4. The State of Bihar through the Seretary cum-Commissioner, Bihar Goods and Service Tax, Kar Bhawan, Beer Chand Patel Marg, Govt. of Bihar, Patna.
5. Joint Commissioner of State Tax, Special Circle, Gandhi Maidan, Patna.
6. Deputy Commissioner of State Tax (SGST), Special Circle, Gandhi Maidan, Patna.
7. Assistant Commissioner of State Tax (SGST), Special Circle, Gandhi Maidan, Patna.
8. The Additional Commissioner (Appeal) Central Division, Kar Bhawan, Beer Chand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Abhinav Alok, Advocate
Ms. Prity Kumari, Advocate
Mr. Abhishek Kumar, Advocate
Ms. Sharda Raje Singh, Advocate
Mr. Ankesh Bibhu, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-09-2024

The petitioner is concerned with the withholding of an amount of refund, which was already granted by Annexure-P/15. The petitioner was a registered dealer under the Value Added Tax Act (for brevity, VAT Act) and then the Central Goods and Services Tax Act, 2017 (for brevity, CGST Act).

2. On 01.07.2017, when the GST regime was introduced, the petitioner sought transitional credit of the input tax available under the VAT Act. Under Section 140 of the CGST Act, the petitioner claimed input tax credit to the extent of Rs. 32,29,195/- as per Annexure-P/2. The petitioner also had filed returns claiming set-off on the output tax. The Assessing Officer, however, refused to allow the same, passed an order which is produced as Annexure-P/3. An appeal was filed which also stood rejected. However, the petitioner approached this Court under Article 226 of the Constitution of India, wherein on consent, the matter was remanded to the Assessing Officer especially finding violation of principles of natural justice. On remand, the Department allowed the claim of the petitioner as is seen from Annexure-P/14.

3. In the meanwhile, the petitioner had filed a refund application, not connected with the transitional credit

claimed, which was sanctioned as per Annexure-P/15, totalling an amount of Rs. 5,38,20,214/- as can be discerned from Annexure-P/15. As against the refund of the total amount in Annexure-P/12, Rs. 5,09,13,939/- was refunded. The transitional credit which was dis-allowed, was withheld which is permissible under sub-section (11) of Section 54 of the CGST Act.

4. When, on remand, the transitional credit was allowed, necessarily the petitioner had to be refunded the amount as per sub-section (12) of Section 54 of the CGST Act along with interest as notified on the recommendations of the Council.

5. The only contention of the respondent-State is that, there should be a refund application filed pursuant to Annexure-P/15. We are not inclined to accept the same, since the refund is not with respect to the input tax claimed, which can only be set-off as against the output tax. There was a refund of Rs. 5,38,20,214/- which was sanctioned as payable to the petitioner, which also was unrelated to the input tax sought, for transitional credit in the GST period. The withholding of Rs. 32,29,195/- was only by reason of the additional demand, which would have been forfeited if the dis-allowance of the input tax claim

was upheld.

6. Admittedly, the input tax claimed was allowed and withholding of the refund amounts, to that extent, has to be now disbursed as per sub-section (12) of Section 54 of the CGST Act. There is no requirement for filing of refund application, since already a major portion of the refund sanctioned under Annexure-P/15 has been refunded to the petitioner. The refund shall be made with interest as applicable within a period of one month from the date of uploading of the judgment.

7. The writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.09.2024.
Transmission Date	