IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14403 of 2024

==

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, Gayatri 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 Principal Secretary, State Taxes, Government of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Admin), Motihari, Tirhut, Bihar.
6. The Joint Commissioner, State Taxes Department, Motihari Circle, Motihari, Bihar.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Akash Chaturvedi, Advocate Mr. Shashank Shekhar Kumar, Advocate Mr. Vijay Kishor Singh, Advocate
For the Respondent/s	:	Mr.Additional Solicitor General

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

11 05-05-2025 In the instant petition, petitioner has prayed for the following relief(s):-

> (i) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the refund order dated 29.06.2024 and the Refund Sanction/Rejection order in FORM GST RFD-06 dated 29.06.2024, passed by

Respondent No. 6 for the period of Oct-2018 to Mar-2019 FY 2018-19 (Annexure-P/11 Series), whereby the claim of tax refund of Rs.6,12,487/- pertaining to 'Inverted Duty Structure' has been partially allowed, rejecting Rs. 1,31,240/- on 29.06.2024, after a lapse of almost three and a half months from the date of the order in CWJC 18609 of 2023 dated 29.02.2024 whereas this Hon'ble Court vide this order had issued clear directions to the respondents that the physical application filed by the petitioner shall be considered, and the refund shall be effected within two months from the date of receipt of the certified copy of this judgment;

(ii) For issuing a writ of mandamus and thereby directing Respondent No. 5 & 6 to refund the balance amount Rs.1,31,240/, considering that the petitioner is rightfully entitled to the refund as also held in CWJC 18609 of 2023 dated 29.02.2024 whereas this Hon'ble Court vide this order had issued clear directions to the respondents that the physical application filed by the petitioner shall be considered, and the refund shall be effected within two months from the date of receipt of the certified copy of this judgment;

(iii) For issuing a writ of mandamus and thereby directing Respondent No. 5 & 6 to pay Interest at the applicable rate according to Section 56 of the GST Act, 2017, on the delayed refund amounting to Rs.6,12,487/-. This interest is for the deliberate delay in processing the refund for the period from October 2018 to March 2019_FY 2018-19;

(iv) For issuing a writ of mandamus

and thereby directing Respondent No. 5 & 6 to pay Rs.1,65,000/-, the expenses incurred by the petitioner to obtain the refund for the period of October 2018 to March 2019 FY 2018-19. These expenses were incurred for engaging professionals to handle GST appeal petitions, to re-process the refund application through the GST online portal as per the respondents' direction, and for filing writ petitions to resolve the matter and seek justice;

(v) For pass an order directing the respondents to bear the costs for their bad conduct, willfully disregarding the order dated 29.02.2024 of the Hon'ble High Court and deliberately withholding the refund of the petitioner for the period October 2018 to March 2019_FY 2018-19 from 14.08.2022 the date when the petitioner had filed its first refund application for the same period;

(vi) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The petitioner has rushed to this Court without exhausting remedy of appeal before the appellate authority.

3. Learned counsel for the petitioner submitted that this is second round litigation before this Court. Earlier, he had invoked writ jurisdiction in filing CWJC No. 18609 of 2023 which was disposed on 29.02.2024, therefore, he need not be relegated to appellate authority.

4. Perusal of the Co-ordinate Bench order dated

29.02.2024 passed in CWJC No. 18609 of 2023, there is no observation that petitioner need not exhaust statutory remedy of appeal before the appellate authority so as to entertain the present writ petition. On merits of the case, grievance of the appellant is that he had claimed refund of Rs. 6,12,487/- it was determined that petitioner is entitled to a sum of Rs. 4,81,247/- and rejected balance amount of Rs. 1,31,240/- in the light of section 54 of Central Goods and Services Tax Act, 2017 read with Rule 89(5) of the Central Goods and Services Tax Rules, 2017. Feeling aggrieved by the order dated 29.06.2024, petitioner has rushed to this Court, without exhausting statutory remedy of appeal.

5. Perusal of the pleadings, it is evident that there are certain disputed issues for the reasons that original authority proceeded to allow petitioner's claim only to the extent of Rs. 4,81,247/- as against Rs. 6,12,487/-. The remaining amount of 1,31,240/- has been rejected in the light of section 54 of Central Goods and Services Tax Act, 2017 read with Rule 89(5) of the Central Goods and Services Tax Rules, 2017. Therefore, it is a disputed issue which cannot be adjudicated under Article 226 of the Constitution of India. The petitioner has not pointed out as to transaction on purchase of capital goods (Gas cylinder) which

was not sold/supplied by the petitioner and therefore he was qualified for the purpose of refund. No doubt petitioner has stated as under:-

> “We had participated in the LPG Empty Cylinder & LPG Gas. We have purchase LPG empty cylinder & distribution of the LPG Empty Cylinder to Domestic Consumer on the basis of Adhar Card basis. LPG Empty Cylinder has no Sale to Consumer. LPG Gas purchase from 18% IGST & Sale to domestic consumer on 5% GST (2.5% CGST & 2.5% SGST) & 18% GST (9%CGST & 9% SGST) to Hotel, School & other Commercial Place etc.”

6. In support of such pleadings before the concerned authority, petitioner has not furnished material information and so also not in the present litigation. Further, we have noticed from the pleadings of the petitioner before the concerned authority that LPG Empty Cylinder has not sold to consumer, on the other hand, he must have sold only gas, that means *prima facie* section 54 of Central Goods and Services Tax Act, 2017 read with Rule 89(5) of the Central Goods and Services Tax Rules, 2017 would attract.

7. Be that as it may, having regard to the disputed issues the petitioner is relegated to the appellate authority in the event of filing memorandum of appeal before the appellate

authority within a period of eight weeks from today. The concerned appellate authority is hereby directed to take note of and decide the memorandum of appeal to be filed on behalf of the appellant within a reasonable period of four months from the date of receipt of such appeal.

8. With the above observation, the present CWJC No. 14403 of 2024 stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit/Prabhakar/

U			