IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.20374 of 2026
Decided on 19th November 2026

Balaji Autos

…Petitioner

Vs.

State of Himachal Pradesh and others

…Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

[1]Whether approved for reporting? Yes

For the petitioner	**:**	**Dr. Malkiat Singh, Advocate, through V.C. and Ms. Meenakshi Katoch, Advocate.**
For the respondents	**:**	**Mr. Pushpinder Jaswal, Additional Advocate General.**

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, the petitioner has, *inter alia*, prayed for the following reliefs:-

a. *"Issue an appropriate writ, Order or direction in the nature of Certiorari/Mandamus for setting aside/quashing the impugned order bearing No.2/2026-27 dated 09.07.2026 (Annexure P-8) for rejecting the claim of refund an amounting to Rs.19,96,328/- by issuing YFORM-GST-RFD-08 dated 03.06.2026 in violation of Section 54 read with Rules 89 to 97A of the Central Goods and Service Tax the nature of Mandamus for direction of refund along with interest on account of delay of refund as per Section 56 of GST Act, 2017, which was legitimately due but illegally rejected towards the petitioner; The Hon'ble High Court of Jharkhand at Ranchi vide Order dated 30.01.2025*

(Annexure P-9) passed in W.P.(T) No. 6527 of 2024 titled as "M/S. BLA Infrastructure Private Limited versus the State of Jharkhand and others" has set-aside and quashed the rejection order and allowed the interest along with interest. Same was affirmed by the Hon'ble supreme court of India vide order dated 09.01.2026 (Annexure P-10). Further the respondents authorities have violated the fundamental rights of the petitioner, which is enshrined under Article 265 of the Constitution of India, 1950 and legal rights stipulated in Section 54/56 and Rules 89 to 97A of GST Act and Rules, 2017.

b. Issue such other appropriate orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice and fair play."

2. The petitioner is aggrieved by Annexure P-8, in terms whereof, the prayer of the petitioner for the refund of the amount, which was deposited by the petitioner at the time of filing of the appeal before the learned Appellate Authority, which appeal was subsequently withdrawn, stands rejected. The impugned order reads as under:-

"The applicant had filed a refund application vide ARN AA020426010138T dated 24.04.2026 for refund of the condition amount deposited by him at the time of filing appeal before the 1l Appellate Authority in respect of Order no. ZD02112000336E dated 21/11/20 passed by ACSTE, Dhalli. Subsequently, the appeal was withdrawn voluntarily by the RTP on 24.03.2025 for availment of benefit of waiver scheme under Section 128A of the HPGST Act, 2026. The application of the dealer for waiver was accepted by the Proper Officer.

The RTP has now claimed refund of an amount of Rs 19,96,328/- on the ground that the demand order has been quashed and no tax liability survives. The

refund claim filed by the taxpayer has been examined and it is observed that the demand raised vide order no. ZD021120003336E dated 21.11.20 was quashed as per the provisions of Section 128A of the CGST Act, 2017 read with Rule 164 of the CGST Rules, 2017.Section 128A grants waiver of interest and penalty in specified cases subject to fulfillment of the prescribed conditions, one of which is withdrawal of the appeal. However the provision does not entitle the RTP for any refund of the mandatory pre deposit made under Section 107. Further, Section 150 of the Finance Act(No. 2)of 2024 which is reproduced below provides that no refund of any tax paid or the input tax credit reversed shall be granted on account of the retrospective insertion of sub sections (5) and (6) of Section 16 of the CGST Act, 2017:

"No refund shall be made of all the tax paid or the input tax credit reversed which would not have been so paid, or not reversed, had section 118 been in force at all material times."

Thus the legislative intent underlying the Finance Act (No. 2) of 2024 is to grant relief without creating an entitlement to consequential refunds. The scheme does not provide for the refund of the amount deposited as a condition for filing the appeal. The Hon'ble Supreme Court in State of Jharkhand & Ors vs BLA Infrastructure Pvt. Ltd has held that pre deposit under section 107(6) is a statutory deposit linked to appeal filing and its refund is governed by appellate provisions-he-sections 107 and 115 and not by general refund provisions(Section 54), thus implying that refund is not automatic but it must be backed by statute. In the instant case there is neither any appellate order in favour of the dealer nor any statutory provision for granting refund, in the absence of which the claim of the dealer is inadmissible.

In view of the foregoing facts and circumstances this application for refund is devoid of merits and is hereby rejected."

3. Though, learned counsel for the petitioner submitted that against the order of rejection of the prayer of the petitioner, in terms whereof, the refund of the amount, which was deposited at the time of filing of the appeal has been rejected cannot be assailed under the statutory provisions of the HP GST Act and the only remedy available to the petitioner is under Article 226 of the Constitution of India, but, we are of the considered view that in light of the provisions of Section 107 of the HP GST Act, as, it is an order passed by an Authority, the remedy available to the petitioner is under Section 107 of the HP GST Act.

4. Learned counsel for the petitioner also submitted that a fundamental right of the petitioner has been infringed, but, we are of the considered view that in light of the fact that the petitioner is aggrieved by an order, which was passed under Section 54 of the HP GST Act, as there is a statutory remedy available to the petitioner in terms of Section 107 of the HP GST Act, the present writ petition is not maintainable and the petitioner, if so advised, can avail the remedy as is available under the statute itself.

5. With these observations, the petition stands disposed of, so also pending miscellaneous application(s), if any.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

November 19, 2026
(Vinod)