(2025) 01 JH CK 0116

Jharkhand High Court

Case No: Writ Petition (T) No. 6527 Of 2024

M/s. BLA Infrastructure Private Limited		APPELLANT
	Vs	
State Of Jharkhand		RESPONDENT

Date of Decision: Jan. 30, 2025

Acts Referred:

- Constitution of India, 1950 - Article 265Limitation Act, 1963 - Article 137
- Jharkhand Goods and Services Tax Act, 2017 - Section 54, 54(1), 74, 107(6)(b)

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Nitin Kumar Pasari, Mohan Kr. Dubey

Final Decision: Allowed

Judgement

Deepak Roshan, J.

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for the following reliefs:

a. For issuance of an appropriate writ, order or direction, directing upon the Respondents to show cause as to why the refund application of the Petitioner has

not been processed which pertains to refund of the pre-deposited amount with the government exchequer in order to maintain the appeal under Section 107 of the

Act.

b. Consequent upon showing cause, if any, and on being satisfied that the Respondents were obligated to grant refund of the pre-deposit amount and the refund

application of the Petitioner could not have been automatically rejected on the ground of being time barred, the Respondents be directed to refund the amount of

pre-deposit forthwith along with statutory interest.

c. For issuance of an appropriate writ, order or direction, holding and declaring that once the appeal preferred by the assessee is allowed, withholding of the

pre-deposit amount without any reasonable cause would be hit by Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected

except by authority of law.

d. For issuance of an appropriate writ, order or direction, quashing and setting aside the deficiency memos issued in Form GST RFD-03 dated 06.11.2024

(Annexure-5) being wholly illegal and arbitrary and consequently direction be issued to grant refund of Rs. 1,13,454/- illegally retained by the Respondents,

along with applicable interest and costs;

e. For issuance of any other appropriate writ(s)/ order(s)/ direction(s) as Your Lordships may deem just and proper in the facts and circumstances of the case for

imparting substantial justice to the Petitioner.

3. The brief facts of the case are that the petitioner is a registered dealer under the Goods & Services Tax Act and is carrying out business of loading,

unloading of Coal and transportation of coal loaded into tipper. In the month of January 2021, alleging mismatch in GSTR-1 and GSTR-3B for the

month of September 2019, Show Cause Notice under Section 74 of the JGST Act, 2017 was issued and ex-parte order was passed vide order dated

31.08.2021, imposing liability of Rs. 16,90,442/-, which inter alia included tax, interest and penalty.

4. Aggrieved thereof, the petitioner preferred an appeal within time making a statutory pre-deposit of the 10% of the disputed tax amount under

Section 107(6)(b) of the Act, in order to maintain the appeal.

5. After hearing the petitioner and scrutinizing the documents, the appeal was allowed on 09.02.2022 and Form GST APL-04 dated 10.02.2022 was

issued.

6. The petitioner made an application for refund of the pre-deposit amount on 11.09.2024, which by virtue of a Deficiency Memo dated 06.11.2024

was held to be beyond the period prescribed under section 54(1) of the Goods & Services Tax Act and hence, aggrieved thereof, the petitioner is

before this Court.

7. Counter Affidavit has been filed by the respondents, defending the actions of the Department inter alia purportedly in terms of Section 54 and also

referring to Circular No. 125/44/2019-GST dated 18.11.2019 issued by the Government of India, Ministry of Finance, GST Policy Wing, treating the

application to be time barred and further submitting that the Jurisdictional Officer has no authority/discretion to condone the delay.

8. In the aforesaid background, we have to decide as to whether the application for refund made beyond a period of 2 years should be entertained or

not or if it is time barred.

9. For better appreciation, Section 54 of the Act is hereto quoted for ease:

Section 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 1[such form and] manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations

(Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section

55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may

be prescribed, before the expiry of 1[two years] from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt

supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

9[****]

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims

refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and

interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of

such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other

evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest

had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order

accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or

services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the

Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, 8[****], in such manner and subject to such conditions, limitations and

safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents

furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such

amount is relatable to-

(a) refund of tax paid on 2[export] of goods or services or both or on inputs or input services used in making such 1[exports];

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been

issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

3[(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other

provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the

provisions of sub-section (8).

(10) Where any refund is due 4[***] to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty,

which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this

Act or under the existing law . Explanation.-For the purposes of this sub-section, the expression ""specified date"" shall mean the last date for filing an appeal

under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and

the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of

malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such

rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled

to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident

taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of

registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if the amount is less

than one thousand rupees.

10[(15) Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax

paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.]

Explanation.- For the purposes of this section,-

(1) ""refund"" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies,

or refund of tax on the supply

of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) ""relevant date"" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input

services used in such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating

to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid

is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return

under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input

services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had

been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any

court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39

for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

10. Since reference has been made of a Circular of 2019, Rule 89 also is required to be dealt with:

89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of any tax, interest, penalty, fees or any other amount paid

by him, other than refund of integrated tax paid on goods exported out of India, may 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 any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49 may be

made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the

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(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of

the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies regarded as deemed exports, the application may be filed by the recipient of deemed export supplies:

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of

registration, shall be claimed in the last return required to be furnished by him.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable,

to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in

such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the

refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case

may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second

proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details

of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in

a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the

refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on

account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any

unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the

rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional

assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where

the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of

sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any

other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause

(c) or clause (d) or clause (f) of subsection (8) of section 54; Explanation. - For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression ""invoice"" means invoice conforming to the provisions contained in

section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so

claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of

sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following

formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC Ã· Adjusted Total Turnover Where, -

(A) ""Refund amount"" means the maximum refund that is admissible;

(B) ""Net ITC"" means input tax credit availed on inputs and input services during the relevant period;

(C) ""Turnover of zero-rated supply of goods"" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond

or letter of undertaking;

(D) ""Turnover of zero-rated supply of services"" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking,

calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of

services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances

received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E)â€Adjusted Total Turnover"" means the turnover in a State or Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt

supplies other than zerorated supplies, during the relevant period;

(F) ""Relevant period"" means the period for which the claim has been filed.

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC Adjusted Total Turnover} - tax payable on such inverted rated

supply of goods Explanation: - For the purposes of this sub-rule, the expressions ""Net ITC"" and â€œAdjusted Total turnover"" shall have the same meaning as

assigned to them in sub-rule (4).

11. Though, reference has been made to Rule 89, however, Rule 89 is a procedural rule governing Section 54 and as such, there is no separate

influence of Rule 89 and it is only in order give effect to Section 54, Rule 89 has been formulated. Hence, there is no requirement to deal with Rule 89

separately.

In Section 54, â€˜relevant dateâ€™ has been defined giving situations and in Rule 89, â€˜relevant periodâ€™ has been defined to mean â€œthe period

for which the claim has been filedâ€.

12. In order to buttress the submission, Mr. Nitin Kumar Pasari, learned counsel for the petitioner, assisted by Mr. Shubham Choudhary, has relied

upon the judgment of Honâ€™ble Madras High Court reported in 2023 SCC Online Mad. 7810(Lenovo India Pvt. Ltd. Vs. Joint Commissioner of

GST), wherein the Madras High Court had dealt with the word â€˜mayâ€™ as is appearing in Section 54 of the Act and the Court has recorded its

finding as under:

15.7 Thus, a reading of the section 54(1) of the CGST Act would make it clear that the assessee can make the application within two years. The terms used in said

section â€œmay make application before two years from the relevant date in such form and manner as may be prescribedâ€, which means that the assessee may

make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can

be made even beyond two years. The time-limit fixed under section 54(1) is directory in nature and it is not mandatory. Therefore, even if the application is filed

beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

13. Mr. Mohan Dubey, counsel appearing for the respondents, has highly emphasised on the statements made in the Counter Affidavit, more

particularly Paragraph-15 & 17.

14. During the pendency of the writ petition, this Court had given a direction orally to the authorities concerned to issue refund, failing which, adverse

consequence would follow as against the State, however, as would appear from the Counter Affidavit, in Paragraph-22, following statement has been

made:

â€œâ€¦As per direction dated 17.12.2024 of this Honâ€™ble Court, the proper authority has visited the portal and tried to issue the refund, but same was became

unsuccessful as a Deficiency Memo has been issued and no further process can be performed in the portal for initiating the refund.â€

15. In the aforesaid background, we will deal with the issue of limitation under Section 54, if it is mandatory or directory.

16. Article 265 of the Constitution of India provides for -

â€œ265. Taxes not to be imposed save by authority of law

No tax shall be levied or collected except by authority of law.â€

17. There is no dispute to the effect that once refund is by way of statutory exercise, the same cannot be retained neither by the State, nor by the

Centre, that too by taking aid of a provision which on the face of it is directory, inasmuch as, the language couched in Section 54 is â€œmay make an

application before the expiry of 2 years from the relevant dateâ€.

The word â€œrelevant dateâ€ has been defined in Explanation 2 of Section 54, which thus reads as follows:

(2)""relevant date"" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input

services used in such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating

to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid

is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return

under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input

services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange 6[or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had

been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any

court, the date of communication of such judgment, decree, order or direction;

(e) 7[in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section

39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

What is relevant in the aforesaid Explanation is Explanation 2(d) and it is this explanation which probably is haunting the minds of the Officer of the

State.

18. The word â€˜mayâ€™ has been interpreted by the Honâ€™ble Apex Court in numerous cases and the Honâ€™ble Apex Court has opined that

the word â€˜mayâ€™ as would appear in different statutes, is normally directory in nature and not mandatory.

19. Recently, the Honâ€™ble Apex Court in the matter of Muskan Enterprises & Anr. vs. State of Punjab & Anr. reported in 2024 SCC Online

SC 4107 has interpreted the word â€˜mayâ€™ and while dealing with the statute the Negotiable Instrument Act, 1881, has been inter alia pleased to

hold as under:

24. Law is well-settled that user of the verbs â€˜mayâ€™ and â€˜shallâ€™ in a statute is not a sure index for determining whether such statute is mandatory or

directory in character. The legislative intent has to be gathered looking into other provisions of the enactment, which can throw light to guide one towards a

proper determination. Although the legislature is often found to use â€˜mayâ€™, â€˜shallâ€™ or â€˜mustâ€™ interchangeably, ordinarily â€˜mayâ€™, having

an element of discretion, is directory whereas â€˜shallâ€™ and â€˜mustâ€™ are used in the sense of a mandatory provision. Also, while the general impression is

that â€˜mayâ€™ and â€˜shallâ€™ are intended to have their natural meaning, it is the duty of the court to gather the real intention of the legislature by carefully

analysing the entire statute, the section and the phrase/expression under consideration. A provision appearing to be directory in form could be mandatory in

substance. The substance, rather than the form, being relevant, ultimately it is a matter of construction of the statute in question that is decisive.

25. It is also a well-accepted rule that interpretation must depend on the text and the context - the text representing the texture and the context giving it colour -

and, that interpretation would be best, which makes the textual interpretation match the contextual. While wearing the glasses of the statute-maker, the

enactment has to be looked at as a whole and it needs to be discovered what each section, each clause, each phrase and each word means and whether it is

designed to fit into the scheme of the entire enactment. While no part of a statute and no word of a statute can be construed in isolation, statutes have to be

construed so that every word has a place and everything is in its place. We draw inspiration for the above understanding of the manner of interpreting a statute

from the decision of this Court in Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.

20. The Honâ€™ble Apex Court in the matter of Rakesh Ranjan Shrivastava Vs. State of Jharkhand & An.r reported in (2024) 4 SCC 419 has

pleased to deal with the word â€˜mayâ€™ and has been inter alia pleased to hold as under:

11. There is no doubt that the word â€œmayâ€ ordinarily does not mean â€œmustâ€. Ordinarily, â€œmayâ€ will not be construed as â€œshallâ€. But this is not

an inflexible rule. The use of the word â€œmayâ€ in certain legislations can be construed as â€œshallâ€, and the word â€œshallâ€ can be construed as

â€œmayâ€. It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative

intent also plays a role in the interpretation of such provisions. Even the context in which the word â€œmayâ€ has been used is also relevant.

18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143-A provides for passing a drastic

order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the

accused. The power can be exercised at the threshold even before the evidence is recorded. If the word â€œmayâ€ is interpreted as â€œshallâ€, it will have

drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20% of the cheque amount. Such an

interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to

the vice of manifest arbitrariness. The provision can be held to be violative of Article

14 of the Constitution. In a sense, sub-section (1) of Section 143-A provides for penalising an accused even before his guilt is established.

19. Considering the drastic consequences of exercising the power under Section 143-A and that also before the finding of the guilt is recorded in the trial, the

word â€œmayâ€ used in the provision cannot be construed as â€œshallâ€. The provision will have to be held as directory and not mandatory. Hence, we have no

manner of doubt that the word â€œmayâ€ used in Section 143-A, cannot be construed or interpreted as â€œshallâ€. Therefore, the power under sub-section (1) of

Section 143-A is discretionary.

20. Even sub-section (1) of Section 148 uses the word â€œmayâ€. In Surinder Singh Deswal v. Virender Gandhi [Surinder Singh Deswal v. Virender Gandhi,

(2019) 11 SCC 341 : (2019) 3 SCC (Civ) 765 : (2019) 3 SCC (Cri) 461] , this Court, after considering the provisions of Section 148, held that the word

â€œmayâ€ used therein will have to be generally construed as â€œruleâ€ or â€œshallâ€. It was further observed that when the appellate court decides not to

direct the deposit by the accused, it must record the reasons. After considering the said decision in Surinder Singh Deswal [Surinder Singh Deswal v. Virender

Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Civ) 765 : (2019) 3 SCC (Cri) 461] , this Court in Jamboo Bhandari v. M.P. SIDC Ltd. [Jamboo Bhandari v. M.P.

SIDC Ltd., (2023) 10 SCC 446 : (2024) 1 SCC (Cri) 90 : (2024) 1 SCC (Civ) 547] , in para 6, held thus : (SCC p. 449)

â€œ6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in

imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be

unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically

recorded.â€

(emphasis supplied)

21. In terms of the interpretation extended by the Honâ€™ble Apex Court, as also, taking into consideration that the refund of statutory pre-deposit is

a right vested on an assessee after an appeal is allowed in its favour, we have no reason to say that the pre-deposit made by an assessee cannot be

forfeited taking aid of section 54 of the Act and the same cannot be the intent of the Act of 2017.

22. It is not even a case that there is any unjust enrichment on the part of the assessee, inasmuch as, the pre-deposit has been made from the own

pocket by an assessee and by restricting the refund in reading the word â€˜mayâ€™ as â€˜shallâ€™ would be unreasonable and would otherwise be

arbitrary and in conflict with the Limitation Act, 1963.

23. Otherwise also, Article 137 of the Limitation Act, 1963, provides for 3 years limitation period for filing a Money Suit and if section 54 and the word

â€˜mayâ€™ is given effect to as â€˜mandatoryâ€™, then in that event an assessee is otherwise also barred from filing a Money Suit, which cannot be

the intent of the Act.

24. When the Constitution of India restricts levy of any tax without authority of law, the retention of the same on the ground of statutory restriction,

which is in conflict with the Limitation Act, appears to be being misread by the authorities of the GST Department.

25. Under the circumstances, we have every reason to follow in what has been held by the Honâ€™ble Apex Court (Supra), as also, the orders

passed by the Madras High Court in the matter of Lenovo India Pvt. Ltd. (Supra).

26. Having regard to the above discussions, it is held that the action of the respondents in rejecting the refund application considering it as time barred

has no legs to stand in law and accordingly, the rejection order by way of Deficiency Memo dated 06.11.2024, is hereby, quashed and set-aside.

Consequently, the concerned respondent is directed to process the refund application of the petitioner, which exercise shall be completed within a

period of Six weeks from today. The petitioner shall also be entitled to interest in terms of Section 54, which also shall be paid to the petitioner within

the aforesaid stipulated time.

27. Accordingly, the instant writ application stands allowed. Pending I.As, if any stands closed.