

07 October 2023

## Issue Involved

The validity of the circular bearing no. 162/18/2021 dated 24.09.2021, which extends the time limit for filing the refund application under section 77 in cases where the tax was deposited under wrong head.

## Held that

Where assessee had made payment in wrong head and had applied for refund under section 77 which was rejected on ground of limitation, since circular bearing no. 162/18/2021 read with notification no. 35/2021-Central Tax, dated 24.09.2021 provide for extension of limitation of refund in case of wrong deposit, order rejecting refund was to be set aside and department was directed to consider refund application of assessee in lights of latest circular.

## Case Reference

[2023] 150 taxmann.com 423 (Jharkhand)

## Facts of the Case:

### Revenue:

- The assessee in this case made a payment under the wrong head, and as a result, the revenue authority rejected their refund application on the grounds of limitation.
- The revenue authority argued that the refund claim was barred by the law of limitation as prescribed under Section 54 of the Central Goods and Services Tax Act, 2017.
- They contended that Section 77 of the Act, which governs cases of payment under the wrong head, does not prescribe any specific period of limitation for filing refund claims.

### Petitioner:

- The petitioner, on the other hand, challenged the order rejecting their refund application through a writ petition. They argued that the revenue authority's rejection of the refund claim on the grounds of limitation was illegal and contrary to the scheme of the GST Act.
- The petitioner asserted that Section 77 of the Act, which deals with payment under the wrong head, does not impose any time limit for filing refund claims.
- They also cited Circular No. 162/18/2021-GST issued by the CBIC, which extended the limitation period for refund in cases of wrong deposits.

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- The petitioner sought a direction to refund the amount paid under the wrong head, along with applicable interest.

### Summary:

In the case of Gajraj Vahan (P.) Ltd. v. State of Jharkhand, the assessee made a payment under the wrong head and filed a refund application, which was rejected due to limitation. However, Circular No. 162/18/2021-GST dated 25.9.2021 issued by the CBIC provided an extension of the limitation period for refund in the case of a wrong deposit. The High Court of Jharkhand set aside the order rejecting the refund and directed the department to consider the refund application based on Circular No. 162/18/2021-GST. The court allowed the writ petition, granting the assessee the opportunity to claim the refund within a specified period.

#### Notes to News & Updates:

Please note that Facts of the Case and Queries are as summarized by us based on our reading of case law and our interpretation based on law prevailing as on the judgement date. No assurance is being given on the correctness of the facts, and our opinion / analysis is given solely based on facts provided herein above.

Please note that this news and update is prepared by author for spreading knowledge, and the view is a matter of interpretation, and law is subject to various interpretations. The application of law and impact can vary widely based on the specific facts and interpretation of statute. Our views expressed above is based on facts and assumptions indicated above. No assurance is given that the authorities and/or Courts will concur with our views. We do not accept any liability, for any loss or damage caused as a result of any action taken on the above opinion expressed by us.

We hope you will find the above in order and we shall be too glad to provide any other assistance as may be required. In case you are looking specific expert help in relation to matters connected to this update or otherwise, please feel free to write to us on [vaibhavjain@mehragoelco.com](mailto:vaibhavjain@mehragoelco.com) ; [mg@mehragoelco.com](mailto:mg@mehragoelco.com)

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