IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5398 of 2026

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KPIL-JWIL Joint Venture being a joint venture between two Companies, having its place of business at Ward No. 33, Plot No. 1070-1075, Khata No. Sheet No. 05, Vetvan Bazar Shadipur, Kasturba Water Works, Munger, Bihar-811201, through its authorized signatory Mr. Jagesh Shah (male), aged about 52 years, Son of Shri Arvind Bhai Shah, Resident of 508, Abhilasha Complex, Opp. Rahul Tower, Anandnagar 100ft Road, Satellite Ahmedabad-380015.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner cum Secretary, Commercial Taxes Department, Vikas Bhawan, Bailey Road, Patna-800 015.
2. Joint Commissioner of State Tax, Munger Circle, Munger.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rahul Tangri, Advocate, through V.C.

For the Respondent/s : Mr. Ravish Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 13-08-2026

1. Heard the parties.

2. The petitioner has filed the present writ application for quashing of the Deficiency Memo / Show Cause Notice in Form GST RFD-03 dated 01.03.2025 issued by the respondent no. 2-Joint Commissioner of State Tax, Munger Circle, Munger by which the respondent proposes to reject the refund of Rs. 1,75,00,000/- which has accumulated in the Electronic Cash Ledger of the petitioner. The petitioner has further prayed for issuance of writ of mandamus directing the respondent no. 2 to refund the aforesaid amount.

3. The brief facts of the case is that the petitioner is a works contractor registered with the Munger Circle of the Commercial Tax Department. The petitioner had applied for refund of excess balance in its Electronic Cash Ledger on 15.12.2023 to the tune of Rs. 1,75,00,000/-. The refund application of the petitioner was rejected on 31.05.2024 on the ground that the petitioner had availed ineligible input tax credit to the tune of Rs. 24,13,37,314.00 for the year 2022-23 as was arrived at by analysis of inward e-way bills generated by its suppliers, GSTR - 3B and GSTR-2A. Aggrieved by the same, the petitioner filed statutory Appeal before the Appellate Authority and the Appellate Authority set aside the order rejecting refund of the petitioner on 31.12.2024. A revision application was filed by revenue on 28.01.2025 challenging the order passed by the Appellate Authority before the Commissioner of State Taxes under Section 108 of the CGST / BGST Act, 2017.

4. The petitioner filed a fresh refund application on 05.02.2025. The adjudicating authority issued deficiency memo on 01.03.2025 which has been challenged before this Court in the present writ application stating therein that as per data available on GSTBO refund is not admissible under Section 54

of the the CGST / BGST Act, 2017 read with Rule 90 of the CGST / BGST Rules, 2017 because of undischarged assessed tax liability of the petitioner for previous years. During pendency of the writ application the respondents authorities filed an Appeal on 30.06.2026 under Section 112 of the CGST / BGST Act, 2017 before the GST Appellate Tribunal, Patna.

5. Mr. Rahul Tangri, learned counsel for the petitioner appearing through virtual mode argued that action of the respondents authorities is in violation of statutory provisions inasmuch as per Section 54 (11) of the CGST Act, 2017 they cannot withhold refund during pendency of appeal before the Tribunal unless the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the Appeal filed by it. The Commissioner after giving the taxable person an opportunity of being heard can withhold the refund till such time as he may determine. In the present matter the respondent authorities have failed to pass any order withholding refund of the petitioner during pendency of Appeal before the GST Appellate Tribunal.

6. Mr. Ravish Chandra, learned counsel for the State on the other hand argued that Show Cause Notice has been issued to the petitioner under Rule 90(3) of the Central Goods &

Services Tax Rules, 2017 (for short "CGST Rules, 2017") but petitioner instead of awaiting final order passed by Joint Commissioner has filed the present writ application which is premature in nature.

7. We have heard learned counsel for the parties and have gone through the relevant provisions including the materials available on record. It appears that impugned Show Cause Notice has been issued under Rule 90(3) of the CGST Rules, 2017 which says that if any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

8. It is specific case of the petitioner that after rejection of petitioner's claim of refund by the Appellate Authority, the petitioner filed an application for refund upon which a deficiency note has been issued by the respondents. The further case of the petitioner is that the respondents cannot withhold the refund on the ground that they have filed revision application before the Tribunal until a specific order in this regard is passed by the Commissioner under Section 54(11) of the CGST Act, 2017.

9. From the submissions made by learned counsel for the State and the relevant records it do not appear that any proceeding or any exercise was taken by the Commissioner in terms of Section 54(11) of the CGST Act, 2017 warranting the Revenue to withhold Rs. 1,75,00,000/- of the petitioner.

10. In these circumstances, we direct the Commissioner to pass a specific order in terms of Section 54(11) of the CGST Act, 2017 during pendency of the Appeal before the Tribunal with regard to payment / withholding of refund after giving Show Cause Notice and proper opportunity of hearing to the petitioner.

11. Consequently, the present writ application is disposed with a direction to the respondent - Commissioner to issue Show Cause Notice to the petitioner within a period of one week from today, which should be duly served upon him through common portal, SMS and email. The petitioner is given liberty to file its reply within a further period of one week after receipt of the Show Cause Notice. After receipt of reply filed by the petitioner, a date shall be fixed by the Commissioner with prior information to the petitioner for personal hearing and after hearing the petitioner and considering the reply to the Show Cause Notice, the Commissioner shall pass a reasoned order

within a period of further one month from the date of closure of the hearing.

12. With the aforesaid observation and direction, the writ application is disposed of.

(Anil Kumar Sinha, J)

(Vikash Kumar, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14-08-2026
Transmission Date	N/A