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[2026] 184 taxmann.com 104 (Article)[©]Date of Publishing: [March 7, 2026](#)**When Tax is Not Tax: Mistake of Law, Constitutional Restitution and Refund under GST****ASHWARYA SHARMA**

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I. Introduction – Can the State Retain What It Was Never Entitled to Collect?

Taxation statutes operate through precision—rates, valuation, timelines, compliance architecture. Yet, occasionally, a far deeper constitutional question surfaces: what happens when money is paid to the State under a mistaken understanding of law? Does such payment automatically acquire the character of "tax" merely because it was deposited through a statutory mechanism? Can the Revenue retain it simply because the refund application does not fit neatly within Section 54 of the CGST Act i.e., the enabling provision dealing with refunds in general? Or does Article 265 of the Constitution intervene at that stage?

The doctrine of mistake of law refund answers these questions. It is not merely a statutory remedy embedded in refund provisions; it is a constitutional principle rooted in the prohibition against levy and collection without authority of law. In the GST era—marked by frequent judicial invalidation of notifications, interpretational shifts and retrospective clarifications—this doctrine has assumed renewed and practical significance.

II. What is a Mistake of Law?

A mistake of law arises where payment is made under an incorrect understanding of legal liability. The mistake may stem from ambiguity in statutory interpretation, departmental insistence, judicial uncertainty later clarified, calculation errors like double payment of tax for same transaction or reliance upon a levy subsequently declared ultra vires. The defining element is that the payment was not legally due, though made under a belief that it was.

The Supreme Court in *Salonah Tea Co. Ltd. v. Superintendent of Taxes, Nowgong, 1988 (33) E.L.T. 249 (S.C.)*, as far as back in 1980's clearly held that tax realized without authority of law must be refunded as a corollary to Article 265. The Court observed that retention of money collected without authority of law is constitutionally impermissible.

Later in *Union of India v. ITC Ltd. 1993 Supp (4) SCC 326*, where the Supreme Court clarified that even if payment was initially made without protest, refund cannot be denied once the legal position is clarified and the mistake is established.

These authorities firmly establish that payment under mistake does not convert an illegal levy into lawful tax.

III. Constitutional Foundation – Article 265 and Restitution

Article 265 of the Constitution declares that no tax shall be levied or collected except by authority of law. This constitutional mandate operates not merely at the stage of imposition but equally at the stage of retention. If there is no authority of law, there can be no lawful retention.

In *ShriVallabh Glass Works Ltd. v. Union of India* 1984 taxmann.com 495 (SC), the Supreme Court held that ignorance of illegality at the time of payment does not legitimize the collection. The Court observed that once it is demonstrated that the levy was without authority, refund follows as a natural consequence.

The doctrine of restitution thus emerges as a constitutional necessity. It ensures that the State does not unjustly enrich itself at the expense of taxpayers. Procedural technicalities cannot override the constitutional prohibition against unlawful exaction.

IV. Mistake of Law Refund and Section 54 of the CGST Act

Under GST, refund disputes frequently arise in the context of Section 54 and its two-year limitation. The departmental position often is that all refunds, irrespective of their nature, must conform to Section 54. However, judicial interpretation has consistently drawn a crucial distinction between refund of tax validly levied but excess paid, and refund of amounts collected without authority of law.

In cases where the levy itself is unconstitutional or inapplicable, the amount never had the character of "tax" under the statute. Therefore, Section 54—which presupposes a lawful levy under the Act—cannot be invoked to defeat constitutional restitution.

The controversy became particularly prominent in the ocean freight cases following *Union of India v. Mohit Minerals Pvt. Ltd.* [2022] 138 taxmann.com 331/61 GSTL 257/92 GST 101 (SC), where the Supreme Court declared the levy of IGST on ocean freight under reverse charge as *ultra vires*. Several High Courts thereafter directed refund of amounts paid pursuant to the invalid notification, rejecting limitation objections under Section 54. The consistent reasoning was that once the levy itself was declared unconstitutional, the amount collected ceased to be tax within the meaning of the statute.

V. Special Emphasis – BLA Infrastructure and the Contextual Nature of Refund

The recent Supreme Court's order in *State of Jharkhand v. BLA Infrastructure (P.) Ltd.* [2026] 182 taxmann.com 405/114 GST 6/106 GSTL 4 (SC), assumes particular importance in understanding refund jurisprudence under GST. Though the issue concerned refund of statutory pre-deposit under the appellate mechanism, the Court made a vital clarification: refund must be governed by the nature of the payment and the specific statutory provision applicable to it, not mechanically by Section 54.

The Supreme Court set aside the High Court's approach of routing the refund through Section 54 and clarified that pre-deposit refunds are governed by the appellate provisions themselves. The significance of this ruling lies in its interpretative approach. It emphasizes that refund provisions cannot be applied indiscriminately. The character of the payment determines the governing legal framework.

This reasoning has direct implications for mistake of law refunds. If a statutory pre-deposit cannot be forced into Section 54, then a payment made without authority of law cannot be confined within its limitation regime either. BLA Infrastructure thus strengthens the proposition that refund analysis must be contextual and aligned with the true nature of the payment.

VI. Rajendra Narayan Mohanty – Orissa High Court on Mistaken Payment

The Orissa High Court in *Rajendra Narayan Mohanty v. Joint Commissioner of State Tax* 2026-TIOL-347-HC-ORISSA-GST, dealt directly with the issue of mistaken payment under GST. In that case, tax had been paid twice on the same transaction owing to an erroneous understanding of legal liability. The department rejected the refund claim as time-barred under Section 54 of the CGST Act.

The High Court refused to accept this mechanical application of limitation. It categorically held that payment made under mistake cannot be treated as tax lawfully collected within the meaning of the Act. Invoking Article 265 of the Constitution, the Court observed that once it is established that the collection lacked authority of law, retention of such amount becomes unconstitutional. Refund in such circumstances flows from constitutional mandate and cannot be defeated by procedural technicalities.

Importantly, the Orissa High Court did not decide the issue in isolation. It relied upon a consistent line of precedents that reinforce the distinction between statutory refund and constitutional restitution.

In *Delhi Metro Rail Corpn. Ltd. v. Additional Commissioner, Central Goods and Services Tax (Appeals)-II* [2023] 154 taxmann.com 567, the Delhi High Court held that where GST was not leviable at all, the amount paid could not be retained merely because the refund claim did not satisfy the timeline under Section 54. The Court clarified that Section 54 presupposes a lawful levy and cannot be invoked to perpetuate unconstitutional retention.

Similarly, in *Cosol Energy Private Limited v. State of Gujarat* [2021] 127 taxmann.com 736/55 GSTL 390, the Gujarat High Court held that amounts collected without authority of law do not assume the character of tax under the Act. The Court emphasized that Article 265 operates independently of the refund machinery under Section 54. Where payment is made under mistake of law, constitutional principles override statutory limitation.

The Orissa High Court further relied upon the Supreme Court's judgment in *Union of India v. ITC Ltd.* [1993] Supp.1 SCR 272), wherein the Supreme Court again recognized that retention of amounts collected without authority of law is impermissible and that limitation principles must be applied in a manner consistent with constitutional equity. The Supreme Court observed that once the mistake of law is established, refund cannot be denied merely on technical grounds.

By placing reliance on these authorities, the Orissa High Court in *Rajendra Narayan Mohanty's* case (*supra*) reaffirmed that the decisive inquiry is not whether the refund application fits within Section 54, but whether the collection itself had authority of law. If it did not, constitutional restitution must follow.

The judgment thus aligns doctrinally with the Supreme Court's approach in *BLA Infrastructure*. Both decisions underscore that refund jurisprudence under GST must be contextual, principled and constitutionally anchored. Mechanical invocation of Section 54 cannot legitimise retention of amounts that never had the character of lawful tax.

VII. Limitation and Discovery of Mistake

Judicial precedents have consistently recognized that in cases of mistake of law, limitation begins from the date of discovery of the mistake. In *Salonah Tea* and related jurisprudence, the Supreme Court acknowledged that where a levy is invalidated subsequently, the cause of action to seek refund accrues upon such declaration.

Section 17 of the Limitation Act, which postpones limitation in cases of mistake until its discovery, has also been relied upon in several contexts. Courts have harmonized statutory limitation with constitutional equity to ensure that the State does not benefit from judicial delay or interpretational uncertainty.

VIII. The Governing Distinction – Lawful Levy versus Unconstitutional Exaction

The jurisprudence ultimately rests upon a clear distinction. If tax is validly leviable and excess paid due to computational error it will fall within the meaning of the term mistake of law. Similarly, if the levy itself is unconstitutional, the amount never acquires the character of lawful tax. It remains a deposit recoverable under constitutional principles.

Retention of such money amounts to unjust enrichment by the State. Article 265 prohibits not only illegal levy but also illegal retention. Procedural provisions cannot transform an unconstitutional collection into lawful revenue.

IX. Conclusion – Constitutional Supremacy over Procedural Rigidity

In a tax regime increasingly structured around timelines, electronic forms and statutory limitation, refund disputes are often reduced to procedural compliance. Yet, the doctrine of mistake of law reminds us that taxation ultimately derives legitimacy from constitutional authority.

The Supreme Court's reasoning in *BLA Infrastructure* and the High Court's judgment in *Rajendra Narayan* case (*supra*), reaffirm that refund jurisprudence must be grounded in the true character of the payment.

Where there is no authority of law, there can be no retention. Mistake of law refund is not a concession extended by the State—it is a constitutional imperative flowing from Article 265. In the final analysis, the State cannot enrich itself by retaining what it was never entitled to collect. Constitutional supremacy prevails over procedural rigidity, and restitution becomes the inevitable consequence of illegality.

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