



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 27259 OF 2024 (T-RES)

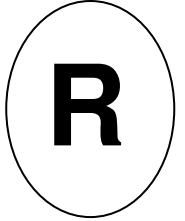
C/W

WRIT PETITION NO. 27261 OF 2024 (T-RES)

WRIT PETITION NO. 27552 OF 2024 (T-RES)

WRIT PETITION NO. 27691 OF 2024 (T-RES)

WRIT PETITION NO. 28151 OF 2024 (T-RES)



IN WP No. 27259/2024

BETWEEN:

1. M/S MERCK LIFE SCIENCE PRIVATE LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
MS. SNEHA PATIL D/O PANDURANG PATIL
AGED ABOUT 35 YEARS,
HAVING OFFICE AT
GODREJ ONE, 8TH FLOOR,
PIROJSHA NAGAR
EASTERN EXPRESS HIGHWAY
VIKHROLI (EAST), MUMBAI - 400 079
A PRIVATE COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013

...PETITIONER

(BY SRI. BHARAT B. RAICHANDANI, ADVOCATE AND
SRI. RAAGHUL PIRAANESH, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE,





NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DLEHI - 110 001

2. CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS
REPRESENTED HEREIN BY THE CHAIRMAN
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DLEHI - 110 001
3. ASSISTANT COMMISSIONER OF CENTRAL TAXES
NORTH WEST DIVISION-1
NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC COMPLEX
SHIVAJINAGAR BUS STAND
BENGALURU - 560 051

...RESPONDENTS

(BY SMT. SWATI PANDURANGA, ADVOCATE FOR R1;
SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R2 AND R3)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
IMPUGNED ORDER PASSED BY THE R-3 VIDE ORDER
NO.31/2024-25 DATED 27.05.2024 IN ANNEXURE-B AS BAD IN
LAW AND ETC.

IN WP NO. 27261/2024

BETWEEN:

1. M/S MERCK LIFE SCIENCE PRIVATE LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
MS. SNEHA PATIL
AGED ABOUT 35 YEARS
DAUGHTER OF PANDURANG PATIL
HAVING OFFICE AT GODREJ ONE, 8TH FLOOR
PIROJSHA NAGAR



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

EASTERN EXPRESS HIGHWAY
VIKHROLI (EAST) , MUMBAI - 400 079
A PRIVATE LIMITED COMPANY
INCORPORATED UNDER
THE COMPANIES ACT, 2013

...PETITIONER

(BY SRI. BHARAT B. RAICHANDANI, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED HEREIN BY
THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DELHI - 110 001
2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED HEREIN BY
THE CHAIRMAN
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DELHI - 110 001
3. ASSISTANT COMMISSIONER OF CENTRAL TAXES
NORTH WEST DIVISION-1
NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC COMPLEX
SHIVAJINAGAR BUS STAND
BENGALURU - 560 051

...RESPONDENTS

(BY SMT. SWATI PURANDARA, ADVOCATE FOR R1;

SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R2 & R3)



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE R-3 VIDE ORDER NO. 29/2024-25 DATED 25.05.2024 IN ANNEX-B AS BAD IN LAW AND ETC.

IN WP NO. 27552/2024

BETWEEN:

1. M/S MERCK LIFE SCIENCE PRIVATE LIMITED
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MS. SNEHA PATIL
AGED ABOUT 35 YEARS
DAUGHTER OF PANDURANG PATIL

HAVING OFFICE AT: GODREJ ONE, 8TH FLOOR
PIROJSHA NAGAR,
EASTERN EXPRESS HIGHWAY
VIKHROLI (EAST)
MUMBAI - 400 079

...PETITIONER

(BY SRI. BHARAT BHAGWAN RAICHANDANI, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DELHI 110001
2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED HEREIN BY THE CHAIRMAN
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI - 110 001

3. ASSISTANT COMMISSIONER OF CENTRAL TAXES
NORTH WEST DIVISION-1
NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC COMPLEX
SHIVAJINAGAR BUS STAND
BENGALURU - 560 051

...RESPONDENTS

(BY SMT. SWATI L. KAMAT, ADVOCATE FOR R1;

SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R2 & R3)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DIRECT AND SET
ASIDE THE IMPUGNED ORDER PASSED BY THE R-3 VIDE
ORDER NO. 30/2024-25 DATED 27.05.2024 IN ANNEXURE-
B AS BAD IN LAW AND ETC.

IN WP NO. 27691/2024

BETWEEN:

1. M/S MERCK LIFE SCIENCE PRIVATE LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
MS SNEHA PATIL D/O PANDURANG PATIL
AGED ABOUT 35 YEARS
HAVING OFFICE AT GODREJ ONE
8TH FLOOR, PIROJSHA NAGAR
EASTERN EXPRESS HIGHWAY
VIKHROLI (EAST)
MUMBAI - 400 079

...PETITIONER

(BY SRI. BHARAT BHAGWAN RAICHANDANI, ADVOCATE)

AND:

1. THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY
DEPARTMENT OF REVENUE



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

MINISTRY OF FINANCE, GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI - 110 001

2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPERESNTED HEREIN BY THE CHAIRMAN
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI - 110 001.
3. ASSISTANT COMMISSIONER OF CENTRAL TAXES
NORTH WEST DIVISION-1
NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC COMPLEX
SHIVAJINAGAR BUS STAND
BENGALURU - 560 051

...RESPONDENTS

(BY SMT. SWATI L. KAMAT, ADVOCATE FOR R1;

SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R2 AND R3)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DIRECT AND SET
ASIDE THE IMPUGNED ORDER PASSED BY THE R-3 VIDE
ORDER NO. 27/2024-25 DATED 25.05.2024 IN ANNEXURE-
B AS BAD IN LAW AND ETC.

IN WP NO. 28151/2024

BETWEEN:

1. M/S MERCK LIFE SCIENCE PRIVATE LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
MS. SNEHA PATIL D/O PANDURANG PATIL,
AGED ABOUT 35 YEARS,
HAVING OFFICE AT GODREJ ONE,
8TH FLOOR, PIROJSHA NAGAR,
EASTERN EXPRESS HIGHWAY,
VIKHROLI (EAST), MUMBAI - 400 079

...PETITIONER

(BY SRI. BHARAT BHAGWAN RAICHANDANI, ADVOCATE)



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

AND:

1. THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE
GOVERNMENT OF INDIA,
NORTH BLOCK,
NEW DELHI - 110 001
2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED HEREIN BY THE CHAIRMAN
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
GOVERNMENT OF INDIA,
NORTH BLOCK,
NEW DELHI - 110 001
3. ASSISTANT COMMISSIONER OF CENTRAL TAXES,
NORTH WEST DIVISION-1,
NORTH WEST COMMISSIONERATE,
2ND FLOOR, BMTC COMPLEX,
SHIVAJINAGAR BUS STAND,
BENGALURU - 560 051

...RESPONDENTS

(BY SMT. SWATI L. KAMAT, ADVOCATE FOR R1;

SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R2 AND R3)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DIRECT AND SET
ASIDE THE IMPUGNED ORDER PASSED BY THE R-3 VIDE
ORDER NO.28/2024-25 DTD 25.05.2024 IN ANNEXURE-B
AS BAD IN LAW AND ETC.

THESE PETITIONS, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In W.P.No.27259/2024, petitioner seeks for the following reliefs:

- a) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and set aside the Impugned Order passed by the Respondent No.3 vide Order No. 31/2024-25 dated 27.05.2024 in Annexure-B as bad in law.*
- b) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the Impugned Order passed by the Respondent No. 3 vide Order No. 31/2024-25 dated 27.05.2024 in Annexure-B was passed without the authority of law and without jurisdiction.*
- c) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the action of the Respondent No. 3 is retaining or withholding the IGST of Rs. 52,63,596/- is without authority of law and against the Article 265 of the Constitution of India.*
- d) *Issue a writ of mandamus, or a writ or order or direction in the nature of writ of mandamus by ordering the Respondent No. 3 to refund the IGST of Rs.52,63,596/- paid during the GSTR-3B return filed for the month of November 2017 along with interest.*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

- e) *Issue any other direction or grant any other relief, as deemed fit in the facts and circumstances of this case, in the interest of justice.*
- f) *Issue a direction to provide for the cost of this petition.*

In W.P.No.27261/2024, petitioner seeks for the following reliefs:

- a) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and set aside the Impugned Order passed by the Respondent No.3 vide Order No. 29/2024-25 dated 25.05.2024 in Annexure-B as bad in law.*
- b) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the Impugned Order passed by the Respondent No. 3 vide Order No. 29/2024-25 dated 25.05.2024 in Annexure-B was passed without the authority of law and without jurisdiction.*
- c) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the action of the Respondent No. 3 is retaining or withholding the IGST of Rs. 82,91,091/- is without authority of law and against the Article 265 of the Constitution of India.*
- d) *Issue a writ of mandamus, or a writ or order or direction in the nature of writ of mandamus by ordering the Respondent No. 3 to refund the IGST of*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

Rs.82,91,091/- paid during the GSTR-3B return filed for the month of July 2017 along with interest.

- e) *Issue any other direction or grant any other relief, as deemed fit in the facts and circumstances of this case, in the interest of justice.*
- f) *Issue a direction to provide for the cost of this petition.*

In W.P.No.27552/2024, petitioner seeks for the following reliefs:

- a) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and set aside the Impugned Order passed by the Respondent No.3 vide Order No. 30/2024-25 dated 27.05.2024 in Annexure-B as bad in law.*
- b) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the Impugned Order passed by the Respondent No. 3 vide Order No. 30/2024-25 dated 27.05.2024 in Annexure-B was passed without the authority of law and without jurisdiction.*
- c) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the action of the Respondent No. 3 is retaining or withholding the IGST of Rs. 69,88,339/- is without authority of law and against the Article 265 of the Constitution of India.*
- d) *Issue a writ of mandamus, or a writ or order or direction in the nature of writ of mandamus by*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

ordering the Respondent No. 3 to refund the IGST of Rs.69,88,339/- paid during the GSTR-3B return filed for the month of October 2017 along with interest.

- e) Issue any other direction or grant any other relief, as deemed fit in the facts and circumstances of this case, in the interest of justice.*
- f) Issue a direction to provide for the cost of this petition.*

In W.P.No.27691/2024, petitioner seeks for the following reliefs:

- a) Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and set aside the Impugned Order passed by the Respondent No.3 vide Order No. 27/2024-25 dated 25.05.2024 in Annexure-B as bad in law.*
- b) Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the Impugned Order passed by the Respondent No. 3 vide Order No. 27/2024-25 dated 25.05.2024 in Annexure-B was passed without the authority of law and without jurisdiction.*
- c) Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the action of the Respondent No. 3 is retaining or withholding the IGST of Rs. 54,52,930/- is without authority of law and against the Article 265 of the Constitution of India.*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

- d) *Issue a writ of mandamus, or a writ or order or direction in the nature of writ of mandamus by ordering the Respondent No. 3 to refund the IGST of Rs.54,52,930/- paid during the GSTR-3B return filed for the month of August 2017 along with interest.*
- e) *Issue any other direction or grant any other relief, as deemed fit in the facts and circumstances of this case, in the interest of justice.*
- f) *Issue a direction to provide for the cost of this petition.*

In W.P.No.28151/2024, petitioner seeks for the following reliefs:

- a) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and set aside the Impugned Order passed by the Respondent No.3 vide Order No. 28/2024-25 dated 25.05.2024 in Annexure-B as bad in law.*
- b) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the Impugned Order passed by the Respondent No. 3 vide Order No. 28/2024-25 dated 25.05.2024 in Annexure-B was passed without the authority of law and without jurisdiction.*
- c) *Issue a writ of certiorari, or a writ or order or direction in the nature of writ of certiorari and to hold that the action of the Respondent No. 3 is retaining or withholding the IGST of Rs. 52,72,686/- is without*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

authority of law and against the Article 265 of the Constitution of India.

- d) *Issue a writ of mandamus, or a writ or order or direction in the nature of writ of mandamus by ordering the Respondent No. 3 to refund the IGST of Rs.52,72,686/- paid during the GSTR-3B return filed for the month of September 2017 along with interest.*
- e) *Issue any other direction or grant any other relief, as deemed fit in the facts and circumstances of this case, in the interest of justice.*
- f) *Issue a direction to provide for the cost of this petition."*

2. Heard learned counsel for the petitioner, learned counsel for respondent No.1 as well as learned counsel for respondent Nos.2 and 3 and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner is said to be a Science and Technology Company operating across healthcare, life science and electronics and has been engaged in providing intermediary services to foreign entities including the periods under dispute i.e., November 2017, July, 2017, October, 2017, August, 2017 and September 2017, for which, the petitioner is said to be in receipt of commission income.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

4. It is contented that the petitioner who is regularly filing its returns under GST Law was under the *bonafide* belief/impression that the services provided by them to the foreign entity qualified as export of services and accordingly, paid IGST in their GST or 3B returns filed for the periods November 2017, July, 2017, October, 2017, August, 2017 and September 2017 under the provisions of the Integrated Goods and Services Tax Act, 2017 ('IGST Act' for short). The petitioner paid the said IGST to the Central Government in December, 2017, July, 2017, October, 2017, August 2017 and September, 2017. Subsequently, the petitioner having realised that the services rendered by them did not qualify as export of services and that the same was not Inter-State supply, but was actually in fact Intra-State supply, discharged and paid State GST under the Provisions of the Karnataka Goods and Services Tax Act, 2017, by making the payment in Form GST or 3B in the month of March 2018. Subsequently, refund application dated 30.03.2024 was filed by the petitioner before respondent Nos.2 and 3 - Central Tax Authorities, *inter-alia* contending that the tax wrongly/erroneously paid by them to the Central Authorities under the *bonafide* belief that it was Inter-State



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

supply and it deserves to be refunded in favour of the petitioner in terms of Section 19(1) of the IGST Act and Section 77(1) of the Central Goods and Services Act, 2017 ('CGST Act' for short) read with Rule 89(1A) of the CGST Rules, 2017.

5. In pursuance of the said refund application, the respondents issued refund rejection notice dated 08.05.2024, to which, the petitioner submitted reply dated 24.05.2024 culminating into the impugned orders dated 25.05.2024 and 27.05.2024 rejecting the refund sought for by the petitioner on the ground that the refund application having been filed on 30.03.2024 was barred by limitation in terms of the provisions contained in Section 54 of the CGST Act. Aggrieved by the impugned orders rejecting the refund claim of the petitioner, petitioner is before this Court by way of the present petitions.

6. Learned counsel for the petitioner would reiterate the various contentions urged in the petition and invite my attention to the provisions contained in Section 19(1) of the IGST Act, 77(1) of the CGST Act read with Rule 89(1A) of the CGST Rules, 2017 in order to point out that the source of power to grant refund



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

emanates from these provisions and not Section 54 of the CGST Act, which was inapplicable to a case where respondent Nos.2 and 3 had retained the amount paid by the petitioner especially when exactly the same amount had been paid by the petitioner to the State GST Authorities. It is submitted that by virtue of the doctrine/principle of unjust enrichment, respondent Nos.2 and 3 - Central Authorities was not entitled to retain the amount in excess collected/received by them especially when exactly the same amount had been received/paid by the petitioner to the State GST Authorities and had been collected and received by the State GST Authorities and respondent No.3 committed an error in rejecting the refund, as having been barred by limitation. It is also submitted that respondent No.3 committed an error in holding that the refund application was barred by limitation without appreciating that Section 54 of the CGST Act is directory in nature and not mandatory, as held by the High Court of Madras in the case of ***Lenovo (India) Pvt. Ltd v. Joint Commissioner of GST in (Appeals-1) -[(2023) 12 Centax 230 (Mad.)*** and by the High Court of Andhra Pradesh in the case of ***Nspira Management Services Private Limited v. Assistant/Deputy Commissioner of Central***



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

Tax in W.P.Nos.18287 and 14905/2024 dated 26.09.2025. He would place reliance upon the following judgments:

- i. ***Lenovo (India) Pvt. Ltd. vs. Joint Commissioner of GST (Appeals-1) - (2023) 12 Centax 230 (Mad.);***
- ii. ***Louis Dreyfus Company Pvt. Ltd. vs. Union of India (2025) 33 Centax 418 (A.P.) [14-08-2025];***
- iii. ***Nspira Management Services Private Limited vs. Assistant/Deputy Commissioner of Central Tax [WRIT PETITION Nos.18287 & 14905 of 2024].***

7. The High Court of Madras in the case of ***Lenovo (India) Pvt. Ltd v. Joint Commissioner of GST in (Appeals-1) - (2023) 12 Centax 230 (Mad.)***, has held as under:

"13. In the present case, the applications made by the petitioner for refund of IGST paid for the supply of goods made to SEZ units in respect of December, 2019, January, 2020 and February, 2020 came to be rejected partially on the following grounds:

(i) Inordinate delay in obtaining endorsement; inappropriate endorsement; endorsement does not state that goods supplied were for authorized operations;

(ii) POD was made not at the time of filing applications but at the time of filing reply/personal hearing, and the same is barred by limitation; and



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

(iii) Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

Inordinate delay in obtaining endorsement; Inappropriate endorsement; endorsement does not state that the goods supplied were for authorized operations:

14. *So far as the rejection of the petitioner's claim on the above said ground is concerned, it is the contention of the petitioner that though the respondent-Department referred to rule 30(4) of the SEZ Rules, 2006, which mandates that endorsement has to be obtained within 45 days from the date of invoice, as far as the petitioner's case is concerned, the said rule 30(4) of the SEZ Rules, 2006 will not come into picture since the petitioner had supplied the goods to SEZ unit not without payment of tax under section 16(3)(a) but on payment of tax under section 16(3)(b) of the IGST Act, which enables the petitioner to seek for refund of IGST paid by them, and the provisions of GST Act does not require the petitioner to obtain endorsement within period of 45 days from AO from the date of invoice.*

14.1 *To resolve the issue as to whether the petitioner has to obtain endorsement within 45 days as per the SEZ Rules, 2006 or whether as per the provisions of GST, the petitioner is not required to obtain endorsement within a stipulated period, firstly, it has to be find out as to under which provisions the petitioner's case would fall. In this context, it would be beneficial to refer to section 16(3) of the IGST Act*



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

and rule 30(4) of the SEZ Rules, 2006, which are extracted hereinbelow:

“Section 16(3) of the IGST Act, 2017:

‘A registered person making zero-rated supply shall be eligible to claim refund either of the following options, viz.,

(a) he may supply goods or service or both under bond or letter of undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input-tax credit; or

(b) he may supply goods or service or both, subject to such conditions, safeguards and procedures as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.’

Rule 30(4) of the SEZ Rules, 2006:

‘A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that the goods have been admitted in full into the special economic zone shall be treated as proof of export and copy with such endorsement shall also be forwarded by the unit or developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA supplier



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

within 45 days failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the domestic tariff supplier'."

14.2 A conjoint reading of section 16(3) of the IGST Act, 2017 and rule 30(4) of the SEZ Rules, 2006 would make it clear that the goods can be supplied to SEZ under two situations. One in terms of section 16(3)(a) and another in terms of section 16(3)(b). In terms of section 16(3)(a), goods can be supplied without payment of tax, upon execution of bond or letter of undertaking. In terms of section 16(3)(b), goods can be supplied on payment of tax. Rule 30(4) of the SEZ Rules deals with issue of endorsement by the AO to ensure that the goods have been admitted in full into the SEZ and to treat the same as proof of export. Once the endorsement is made, it would be considered that the goods have been exported. In any event, any duty has been paid in terms of section 16(3)(b) of the Act, the assessee would be entitled for refund. In the event, without payment of duty, if the goods had entered into SEZ, endorsement shall be made in terms of rule 30(4) within 45 days and the same has to be forwarded by the unit or developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the DTA supplier within 45 days, failing which, the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the DTA Supplier.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

14.3 As far as rule 30(4) of the SEZ Rules is concerned, the significance of the endorsement made by AO are as follows:

(i) The endorsement would only ensure that goods have reached the SEZ. Upon production of endorsement, refund of tax can be made.

(ii) In the event, if no endorsement is made within 45 days from the date of entry of goods into SEZ, the concerned officer, viz., the Goods and Services Tax or Central Excise Officer shall raise demand of tax or duty against the DTA supplier to ensure that either the goods will reach the SEZ within 45 days or else to pay tax.

14.4 In the present case, the question of payment of tax does not arise since the petitioner has paid IGST but there was delay in obtaining the endorsement. Thus, once the assessee had paid the tax and the goods have entered SEZ and obtained endorsement to that effect and furnished the same for the purpose of refund, at any cost, refund cannot be denied for any reason whatsoever. The Officer, who is processing the refund should be concerned only about the aspect as to whether the goods have reached SEZ zone and whether tax for such entry has been remitted or not. In the present case, there is no doubt on the aspect of payment of tax by the petitioner and also entry of goods into SEZ and endorsement also obtained. The delay in obtaining the endorsement and producing the same at any cost would result only in a delay of entertaining the application for



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

refund and in which case, the affected party would only be the petitioner and the interest of the Department not going to be affected in any way. Thus, the refund cannot be denied on any other reason whatsoever, since, it is the petitioner's legal entitlement to get back the refund of tax paid by him. If at all, there is any lapse, the same has to be sought to be rectified by the petitioner and the application can be processed by the Department to grant refund. If the goods entered into SEZ and endorsement is made after the expiry of 45 days, in such circumstances, if the concerned Officer raised a demand under rule 30(4) of the SEZ Rules, and the assessee paid demand of tax, in those cases also, the assessee is entitled to for refund. Therefore, significance of the endorsement is only to ensure that the goods have entered into SEZ and also for the purpose of payment of tax or demand against the DTA supplier.

14.5 In the case on hand, it is an admitted fact that the goods have entered into SEZ and duty has also been paid by the petitioner. Therefore, the failure to obtain endorsement within 45 days is not due to fault on the part of the petitioner and it is for the AO to make endorsement in time, for which, the petitioner cannot be found fault with. Hence, the denial of refund claim by citing that endorsement obtained was not within 45 days and therefore, claim is barred by limitation and said findings to such effect are liable to be set aside since the failure of obtaining endorsement in time is only due to the fault of AO and the petitioner cannot



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

be denied the claim on the ground of inordinate delay in obtaining endorsement.

14.6 As regards the other issue relating to “inappropriate endorsement”, as rightly pointed out by the learned counsel for the petitioner, as per SEZ Act or Rules, the AO is not required to make endorsement in any particular manner, since the invoices submitted by the petitioner were endorsed by AO, there is no doubt that the goods were supplied to SEZ units under section 16 of the IGST Act, and the petitioner is entitled for zero-rated tax benefit and delay in obtaining the endorsements, or mistake, if any, in such endorsements are all technical irregularity and so long as the signature is not doubted, the petitioner cannot be penalized for the actions of AO, which is beyond the control of the petitioner and by such means, deprive the petitioner's right to claim benefit under section 16(3)(b) of the IGST, instead, the respondent-Department should have assisted the assessee in rectifying the defects, rather than rejecting the petitioner's applications by citing technical reasons.

14.7 With regard to the issue that “endorsement does not state that goods supplied were for authorized operations”, it is seen that provisions of section 16 of the IGST Act does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof and the amendment to section 16 stipulating the rules for use of goods for authorized operations was made prospectively with effect from October 1, 2023 onwards only and since the petitioner made claim with regard to the supply made to SEZ



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

unit prior to October 1, 2023, the respondent-Department cannot insist that that endorsement must state that goods supplied, were for authorized operations, and such other endorsement. Therefore, this court holds that the rejection of the petitioner's claim on the reason that the endorsement does not specifically states that the goods that have been admitted in full was for authorized operations, and it only states that the goods were received in full and that the endorsement is incomplete/insufficient/inappropriate, is not tenable. Hence, the findings rendered by the respondent-Department with regard to the denial of claim by citing the delay in obtaining endorsement, endorsement is inappropriate, etc., are set aside.

Rejection of claim as barred by limitation since POD was made not at the time of filing applications but at the time of filing reply/personal hearing.

15. *So far as the second issue relating to denial of claim on the ground that the application is barred by limitation is concerned, it is seen that section 54(1) of the CGST Act prescribes time-limit of two years only for filing the refund application and accordingly, the petitioner filed claim for the months of December, 2019, January 2020 and February 2020 on the following dates (i) December 14, 2021, (ii) January 27, 2022, and (iii) February 26, 2022, which were well within the period of limitation and the same is not disputed by the respondent-Department, however, the respondent-Department objection is only with regard to the non-furnishing of supportive documents at the time of filing application but producing the same at the*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

time of personal hearing and therefore, only from the date on which all relevant documents are received along with application in full, period of limitation would start reckoned and hence, the claim is barred by limitation. This court is unable to accept the contention of the learned Senior Standing Counsel for the respondent-Department.

15.1 To decide the issue as to whether the POD at the time of filing applications but at the time of filing reply/personal hearing, would be fatal to the petitioner's case, it is beneficial to refer to rule 90(2) and (3) of the CGST Rules, which is extracted hereinbelow:

"Rule 90(2) of the CGST Rules, 2017:

'The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer, who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be incomplete in terms of sub-rules (2), (3) and (4) of rule 89, an acknowledgment in form GST RFD-02 shall made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.'

90(3) of the CGST Rules, 2017:



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

‘Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file fresh refund application after rectification of such deficiencies.’”

15.2 In terms of rule 90(2) of the CGST Rules, the proper officer shall, within period of fifteen days of filing of the said application, scrutinize the application for its completeness and in case the application is found to be complete, an acknowledgment shall be made available to the applicant through the common portal or in case, the Officer is in want of any particular documents, as per rule 90(3) of the CGST Rules, the Officer is mandated to issue a deficiency memo calling for the applicant (petitioner) to comply with the deficiencies pointed out in the memo and file a fresh application.

15.3 In the present case, admittedly, the second respondent in respect of the claim made for the month of January 2020 has issued an acknowledgment indicating that the application has no deficiencies but thereafter, issued a show-cause notice in Form RFD-08 proposing to reject the claim for refund to an extent of Rs. 84,80,988, which is incorrect. If it is the case of the respondent-Department that the petitioner has filed the applications with deficiencies, the respondent-Department ought to have issued any memo pointing out such deficiency under rule 90(3), instead the second respondent has accepted the petitioner's applications and issued acknowledgment, and therefore, it is



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

not open to the respondent to contend that the supporting documents were filed with a delay.

15.4 Further, it is noticed that, in respect of the claim made for the month of December, 2019, the petitioner has furnished supportive documents only at the time of filing of reply/personal hearing on January 28, 2022 and the same had been accepted by the respondent-Department and the Department also processed the application, while that being so, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by citing that the documents were filed belatedly, and therefore, claim is not acceptable.

15.5 At this juncture, this court would like to refer to a Circular issued by the Central Board of Direct Taxation, bearing CBDT No. 14 of 1955 dated April 11, 1955, wherein, certain administrative instructions were given for guidance of Income-tax Officers on matters pertaining to assessment, which remains in force as on date. For better appreciation, the relevant guidelines of CBDT are extracted hereinbelow:

"1. The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed.

2. Complaints are still being received that while ITO's are prompt in making assessments likely to result into demands



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assesseees under the Act. Dilatoriness or indifference in dealing with refund claims (either under section 48 or due to appellate, revisional, etc., orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assesseees on whom it is imposed by law, officers should:

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

4....

5. While officers should, when requested, freely advise assesseees the way in which entries should be made in various forms, they should not themselves make any in them on their behalf. Where such advice is given, it should be clearly explained to them that they are responsible for the entries made in any form and that they cannot be allowed to plead that they were made under official instructions. This equally applies to the Public Relation Officers.

6. The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or that where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him."

15.6 Thus, on a reading of the above circular would make it clear that when the taxpayer made a claim for refund and if there is any discrepancies or defects in the application made for such claim, the Officer concerned should come forward to assist the assessee bearing in mind the above principles laid down by the CBDT. This court also expects the Officer concerned to assist the assessee, whenever, the assessee intends to make a claim for refund or any other issue in line with the circular issued by CBDT. Even in terms of rule



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

90(3), the Officer is supposed to have intimated the deficiencies contained in the application and allowed the assessee to rectify those deficiencies and thereafter, he shall proceeded to consider as to whether the claim for refund is just and proper. But, in the present case, it is seen that the respondent-Department has acted in a way, which is totally contrary to the Circulars issued by the CBDT. Had the respondent-Department intimated about the deficiencies at the point of time, when the applications were entertained by issuing any deficiency memo, obviously, the petitioner would have rectified those defects pointed out by the respondent-Department and would have made fresh application. Even rule 90(3) provides an opportunity to the assessee to file fresh refund application after rectification of certain deficiencies pointed out by the Officer concerned. When such being the intention of the rule, officer concerned ought to have acted in a manner facilitating the assessee to get his claim for refund. Instead, both the respondents have passed the impugned orders, which are contrary to the provisions of rule 90(3) of the CGST Rules, 2017 and circular issued CBDT, dated April 11, 1955. Even section 54(1) of the CGST states that “any person claiming refund of any tax and interest, if any, paid on such tax, or any other amount paid by him, may make application before expiry of two years from the relevant date in such form and manner as may be prescribed”.

15.7 Thus, a reading of the section 54(1) of the CGST Act would make it clear that the assessee can make the



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

application within two years. The terms used in said section “may make application before two years from the relevant date in such form and manner as may be prescribed”, 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.

15.8 In the present case, the application was filed within two years and therefore, the question of making claim after two years does not arise even assuming AO made endorsement after two years, the same would in no way debar the claim as barred by limitation. Further, even rule 90(3) of the CGST Act permits to make fresh application, which means that in appropriate cases, the Officer concerned can permit the refund application even beyond the period of limitation. Therefore, I do not find any substance in the submission made by the learned Senior Standing Counsel for the respondent and both respondents have miserably failed to consider the said aspect while passing the impugned orders and hence, the same are liable to be set aside. Hence, this court holds that when the petitioner has filed application, which is within a period of limitation, viz., two years as stipulated under section 54(1) of



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

the CGST Act, the delay in filing the supporting document at the time of filing of reply/personal herein would only extend the time-limit to pass an order under section 54(7) of the CGST Act and non-submission of documents at the time of filing application for refund cannot be deemed to have filed with a delay, since there had been a delay in obtaining the endorsement owing to Covid-19, the petitioner could not produce the same at the time of filing application, however, produced the same at the time of personal hearing. Further, when the respondent-Department has accepted the supportive documents produced by the petitioner at the time of filing of personal hearing, in respect of the claim made for the month of December, 2019 and processed the application, the respondent-Department cannot take a different stand in respect of the claim made for subsequent period, viz., January 2020, by stating that the documents were filed belatedly, and hence, refund claim cannot be allowed. That apart, in terms of notification issued by Central Tax dated July 5, 2022, vide No. 13/2022, which excludes the period from March 1, 2020 to February 28, 2022 for computation of period of limitation for the purpose of filing refund application under section 54 of the CGST Act. Thus, the petitioner's claim cannot be rejected on the ground of limitation. Hence, the findings of the respondents on the aforesaid aspect are liable to be set aside.

Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

16. So far as the rejection of the claim on the ground of mismatch of details is concerned, though the respondent-Department pointed out that the date of endorsement in the invoices is different from the date of endorsement mentioned in Statement-4, in respect of the claim for refund made for the month of December 2019, since said defect was rectified by the petitioner at the time of filing of reply on January 28, 2022 and the petitioner also furnished revised Statement-4, and the same is also accepted by the learned Senior Standing Counsel for the respondent-Department, findings rendered by the respondent-Department on the ground of mismatch are also liable to be eschewed.

17. Thus, in the light of the aforesaid findings, this court is of the view that both the first and second respondent have committed a serious flaw in the decision making process and therefore, the impugned orders have to be held to be unsustainable. Accordingly, the writ petitions are allowed, the impugned orders are set aside and consequently, the second respondent is directed to process the petitioner's applications for refund and issue the refund within a period of 30 days from the date of receipt of a copy of this order. No costs."

8. The High Court of Andhra Pradesh in the case of **Louis Dreyfus Company Pvt. Ltd. v. Union of India - (2025) 33 Centax 418 (A.P.) [14-08-2025]**, has held as under:



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

"As identical issues are involved in the present set of cases and as the writ petitioner and the respondents are same, they are being disposed of by way of this common order.

2. Heard Sri. M. Sai Sundeep, learned counsel appearing for the petitioner, Sri. Narasimha Rao Gudiseva learned Central Government Standing Counsel appearing for the 1st respondent, learned G.P. for Revenue appearing for the 2nd respondent and Sri. P.S.P. Suresh Kumar, learned counsel appearing for respondents 3 to 6.

3. The petitioner is a registered person and is in the business of import of agricultural products for onward use and sale within India. The petitioner had imported certain agricultural products on CIF basis and paid GST on ocean freight charges, on reverse charge mechanism basis, for various months in 2017. The petitioner had paid GST, on the ocean freight charges, on account of the notification No. 8/2017-GST and Notification No. 10/2017-GST. These notifications were challenged before the Hon'ble High Court of Gujarat in Mohit Minerals Pvt. Ltd. v. Union of India¹ and came to be struck down, by judgment dated 23.01.2020. Aggrieved by the said judgment, the central Government had approached the Hon'ble Supreme Court, which, by judgment, dated 19.05.2022, in Union of India v. Mohit Minerals², had affirmed the view of the Hon'ble High Court of Gujarat and set aside these notifications.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

4. The petitioner, after the judgment of the Hon'ble Supreme Court, filed applications, dated 30.03.2023, for refund of GST, paid on ocean freight charges, in 2017. These applications came to be dismissed by separate orders, dated 25.05.2023. Aggrieved by these orders of rejection, the petitioner approached the appellate authority, by appeal Nos. 63 to 67 of 2023 (G) GST. All the 5 appeals were dismissed, by way of a common order, dated 27.02.2024. Aggrieved by these orders, the present set of writ petitions have been filed.

5. The details of the writ petitions and dates of applications are given below.

<i>W.P. No.</i>	<i>Period for which W.P. is filed</i>	<i>Date of return for that period</i>	<i>Last date on which application u/S 54 should be filed</i>	<i>Date of application for refund</i>
<i>WP No. 17220/2024</i>	<i>September 2017</i>	<i>18.10.2017</i>	<i>17.10.2019</i>	<i>30.03.2023</i>
<i>WP No. 17224/2024</i>	<i>November, 2017</i>	<i>23.12.2017</i>	<i>22.12.2019</i>	<i>30.03.2023</i>
<i>WP No. 17226/2024</i>	<i>August, 2017</i>	<i>20.09.2017</i>	<i>19.09.2019</i>	<i>30.03.2023</i>
<i>WP No. 17229/2024</i>	<i>July, 2017</i>	<i>23.08.2017</i>	<i>22.08.2019</i>	<i>30.03.2023</i>
<i>WP No. 17232/2024</i>	<i>December, 2017</i>	<i>20.01.2018</i>	<i>19.01.2020</i>	<i>30.03.2023</i>



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

6. The contention of the petitioner was that no GST could be levied on ocean freight charges paid, on CIF basis, for goods imported into India, by virtue of striking down of Notification Nos. 8 & 10/2017 by the Hon'ble Supreme Court of India. Consequently, GST, on ocean freight charges, paid by the petitioner, would have to be refunded to the petitioner. Both the original authority and the appellate authority took the view that an application for refund could be made, within a period of two years from the date of filing of the return, under which the GST which is sought to be refunded, was paid and that the said period of limitation has expired and no refund application was maintainable. There is no dispute that the applications for refund have been filed beyond the time stipulated under section 54 of the G.S.T. Act.

7. The learned counsel for the petitioner relying upon the judgment of the Hon'ble High Court of Gujarat in Comsol Energy Private Limited v. State of Gujarat³ and the judgment of the Hon'ble High Court of Madras in Lenovo (India) Pvt. Ltd. v. Joint Commissioner of GST (Appeals-1), Chennai⁴, would contend that the refund application was maintainable, on the ground that Section 54 of the GST Act, would not be applicable as this was payment of amounts under a mistake of law and in relation to a tax which was not permissible. Consequently, refund of tax cannot be denied on the ground of limitation under Section 54 of the GST Act.

8. Sri. P.S.P. Suresh Kumar, learned Standing Counsel appearing for respondents 3 to 6 would contend that the refund application was not maintainable on the ground that



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

Section 54 of the GST Act has stipulated a period of limitation within which such an application has to be made and no further application can be made after the period of limitation. Apart from this, the learned Standing Counsel would also contend that the judgment of the Hon'ble Supreme Court in Union of India v. Mohit Minerals⁵, which was delivered on 19.05.2022, would operate prospectively, and the payment of tax prior to this date, by the petitioner, would not be affected by the subsequent judgment of the Hon'ble Supreme Court of India. He relies upon the judgment of the Hon'ble Supreme Court of India in the case of Baburam v. C.C. Jacob⁶.

9. There is no dispute that, by virtue of the judgment of the Hon'ble Supreme Court, GST cannot be levied, on ocean freight charges, in CIF contracts, in the course of import of goods into India. The only controversy left before us is whether an application for refund, on 30.03.2023 is permissible.

10. Sri. P.S.P. Suresh Kumar, learned Standing Counsel for the respondents would contend that the judgment of the Hon'ble Supreme Court in Union of India v. Mohit Minerals, would operate prospectively from 19.05.2022, and relied upon the judgment of the Hon'ble Supreme Court in Baburam v. C.C. Jacob.

11. It is settled law that any judgment, declaring the law, would operate both retrospectively and prospectively as the Hon'ble Supreme Court is only declaring the law and is not



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

creating any fresh law which would operate prospectively. In fact, the Hon'ble Supreme Court, with an intention to avoid unnecessary dislocation of the state of affairs, had innovated the concept of prospective overruling, whereby the Hon'ble Supreme Court, in a given case, could declare that the said judgment would operate prospectively and not retrospectively. However, this situation would arise only when the Hon'ble Supreme Court itself declares that the said judgment would be prospective in operation. There is no such declaration in the judgment of the Hon'ble Supreme Court in Union of India v. Mohit Minerals⁷.

12. *In fact, our understanding of the law, as stated above, is fortified by paragraph 5 of the judgment, of the Hon'ble Supreme Court, in Baburam v. C.C. Jacob⁸ relied upon by the learned Standing counsel, Paragraph -5 is set out below:*

“5. *The prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal case, [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] we are of the opinion that the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995.”

13. *The second ground, raised by Sri. P.S.P. Suresh Kumar, is that Section 54 of the CGST Act, which is extracted below, stipulates a limitation of 2 years and as such applications filed beyond this period are not maintainable.*

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 the return furnished under section 39 in such manner as may be prescribed.

(2) *A specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities)*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

Act, 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 six months 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 unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized 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:

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

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



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

draw back 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.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

(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, excluding the amount of input tax credit provisionally accepted, 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 subsection (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 export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilized 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;



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

(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. [(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]76

(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 there under 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 under sub-section (3) 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



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

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



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

remained in force, furnished all the returns required under section 39.

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

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 unutilized 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



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

(iii) if the goods are exported by post, the date of dispatch 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;

(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 unutilized input tax credit under clause (ii) of the first proviso to sub-section (3), the due date



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

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 there under, 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.

14. The Hon'ble High Court of Gujarat had an occasion to consider a similar question, of whether an application for refund could be made, beyond the period specified under Section 54 of the CGST Act, in Comsol Energy Private Limited v. State of Gujarat. Another similarity between the case before the Hon'ble High Court of Gujarat and the present case is that both arise out of the invalidation of Notification Nos. 8 and 10/2017, dated 28.06.2017. In the case before the Hon'ble High Court of Gujarat, applications for refund of tax, paid on ocean freight, after the Hon'ble High Court of Gujarat had struck down Notification Nos. 8 & 10/2017. In this regard, the applicability of the period of limitation, set out under Section 54, came to be considered. The Hon'ble High Court of Gujarat, after considering the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh v. Bhailal Bha⁹ had held in the following manner.

7. Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law, which is as under:

“Section 17(1) of the Limitation Act, 1963

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

*(b) ****

(c) the suit or application is for relief from the consequences of a mistake; or

*(d) ***”*

8. *This Court, in the case of Binani Cement Ltd. v. Union of India, (2013) 288 ELT 193 (Guj), held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally. The period of limitation prescribed under*



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

the Limitation Act would apply. The relevant abstract of the decision at paragraphs nos. 23 and 25 are as under:

“XXXXXX.....”

11. The issue is squarely covered by the decision of this Court in the case of Gokul Agro Resources Ltd. v. Union of India (Special Civil Application No. 1758 of 2020, decided on 26.02.2020), wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks. The relevant paragraph of the finding of this Hon'ble Court is as under:

“6 We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of Mohit Minerals (supra). The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order.”



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

15. In State of Madhya Pradesh v. Bhailal Bhai, the Hon'ble Supreme Court was considering whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could direct the refund of amounts, which had been paid towards a tax, which has subsequently been declared invalid. The Hon'ble Supreme Court held that the High Courts could, in exercise of such jurisdiction, and for enforcement of fundamental rights and statutory rights, give directions for repayment of money realized by the Government without authority of law.

16. The view of the Hon'ble High Court of Gujarat appears to be that any collection of tax would have to meet the requirements of Article 265 of the Constitution of India, which stipulates that no tax can be collected without authority of law. Where the levy of tax itself is found to be invalid or based upon an enactment or charging provision, which is subsequently found to be invalid or violative of the Constitution of India, any payment made in discharge of such a liability, cannot be treated as an exaction of a tax at all. In such circumstances, payment of such an invalid tax would not be collection of tax and can be treated only as payment made by the dealer or a registered person, under a mistake of law. Once the payment of money is not treated as payment of tax, the question of applying any period of limitation, set out in any provision of the Act, for refund of money cannot be applied. We are in respectful agreement with this proposition of law.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

*17. The Hon'ble High Court of Madras, in **Lenovo (India) Pvt. Ltd., v. Joint Commissioner of GST (Appeals-1), Chennai**, considered another aspect of this issue in terms of the language of Section 54 (1) of the CGST Act. The Hon'ble High Court of Madras, after considering the language in Section 54(1) of the CGST Act had observed as follows:*

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 "may make application before two years from the relevant date in such form and manner as may be prescribed", 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.

18. We would, with respect, leave this view open, for consideration, in a more appropriate case.

*19. In the circumstances, the application for refund, cannot be treated to be beyond time and would have to be considered in the light of the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Mohit Minerals**.*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

20. Accordingly, these writ petitions are allowed setting aside the orders of rejection as well as the common appeal order of the appellate authority, confirming the order of rejection by the original authority with a further direction to the original authority, viz., the 6th respondent-Assistant Commissioner of Tax, to reconsider the application of the petitioner, dated 30.03.2023, for refund of tax without going into the question of whether the said application is within time or not. The 6th respondent shall consider and pass orders, on the application of the petitioner, dated 30.03.2023, within a period of four weeks from the date of receipt of this order. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any shall stand closed."

9. The High Court of Andhra Pradesh in the case of **M/s. Nspira Management Services Private Limited v. Assistant/Deputy Commissioner of Central Tax** in **W.P.Nos.18287 and 14905/2024 dated 26.09.2025**, has held as under:

"1. Since the issue involved in both the writ petitions is one and the same, they are being disposed of by this common order.

2. The petitioner is a company incorporated under the Companies Act 2013, having registered with the respondent department vide GSTN-37AAECN3984D1ZB.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

The petitioner inter alia engaged in management of educational institutions, educational consultancy besides providing the same, also engaged in providing hostel accommodation services to students of various educational institutions.

3. *In the process of its business, the petitioner had taken residential dwellings on rent from the respective landlords so as to provide accommodation to the students. As the landlords had been charged tax on the invoices issued by them, the petitioner has been paying tax on the renting of residential dwelling services. It is the case of the petitioner that the services received by the petitioner from the landlords fall under Entry No.12 of the Exemption Notification No.12 of 2017 - Central Tax (Rate) dated 28.06.2017 under Heading 9963 or 9972. As already stated the petitioner paid tax to its landlords inasmuch as they had been charging tax on the invoices. In view of the Exemption Notification, the petitioner filed refund application dated 01.05.2024 seeking to refund the tax amount of Rs.11,49,32,214/- for the period July, 2017 to January, 2020. Similarly, for the period February, 2020 to June, 2022, refund application was filed on 29.02.2024. Initially, the respondent authorities issued defect memos informing the petitioner to furnish certain details. Later, by defect memos dated 21.05.2024, it was informed to the petitioner that the refund applications are not fit for processing as the time limit of two (02) years time period for submissions of refund application is already completed. Questioning the said memos, the above writ petitions were filed.*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

4. *The contention of the counsel for the petitioner is that the question of eligibility of refund cannot be decided by issuance of defect memos as the same requires adjudication in accordance with the procedure contemplated under law. It is further contended that the respondent authorities have to issue show cause notice in Form RFD-08 and allow the petitioner to file reply in Form RFD-09 and to pass a speaking order in Form RFD-06 as per the procedure contemplated under Rule 92 (3) of CGST Rules, 2017. He would further contend that in the absence of following the procedure under the said Rule, the impugned memos under challenge are liable to be interdicted by this Court.*

5. *A counter affidavit is filed by the respondents contending that as per Circular No.125/44/2019-GST, dated 18.11.2019 issued by CBIC once a deficiency memo has been issued, the refund application would not be further processed. It is further contended that as per Section 54 of CGST Act, 2017, an application claiming refund of any tax and interest has to be made within a period of two (02) years from the relevant date in such form and manner as may be prescribed. He would further contend that as per Notification No.13/2022-Central Taxes, dated 05.07.2022 the period from the 1st day of March, 2020 to 28th February, 2022 is excluded for computation period of limitation for filing refund application under Sections 54 or 55 of the Act. He would further contend that in view of the above application shall be submitted on or before 19.01.2024, but in the instant case the refund application was initially filed on 01.04.2024, which*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

is beyond due date for filing refund claim and prayed to dismiss the writ petition.

6. *On the other hand, the petitioner filed rejoinder inter alia contending that the delay caused in filing the application is not deliberate and the same had occurred due to technical and procedural hurdles. It is further stated that since the respondent authorities did not raise the ground of limitation in the first memo, the same ought not to have been raised in the subsequent memos.*

7. *On over all consideration of the cases on hand, it is not in dispute that the petitioner filed application seeking to refund under Section 54 of the CGST Act. It is the specific case of the petitioner that, though it is not under obligation to pay tax on renting of residential dwelling services as per Entry No.12 of Exemption Notification No.12 by 2017-Central Tax (Rate), dated 28.06.2017, nevertheless it had paid the tax inasmuch as its landlords had been charging tax on the invoices issued. In view thereof, the petitioner filed applications seeking to refund the taxes paid by it. The respondent authorities by impugned deficiency memos, informed the petitioner that the refund applications are not fit for processing as the stipulated time of two (02) years time period for submission of the said applications is already completed.*

8. *In this connection it is pertinent to note that as per Entry No.12 of Exemption Notification No.12 by 2017-Central Tax (Rate), dated 28.06.2017, services by way of renting of residential dwellings for use as residents is exempted, nevertheless the petitioner paid taxes inasmuch*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

as invoices raised by the landlords included the GST component. It is needless to point that any collection of tax shall be in accordance with Article 265 of the Constitution of India which postulates that no tax can be collected without authority of law. As already stated in the case on hand though the petitioner is not liable to pay tax, the same was paid as per the invoices raised by the landlords and therefore it had filed application seeking to refund of the same. Further by impugned deficiency memos, the authorities have informed the petitioner that the applications are not fit for processing as the same were filed beyond the two (02) years as per Section 54 of CGST Act, 2017.

9. Further, the Hon'ble Gujarat High Court in the case of **Cmsol Energy Private Limited Vs. State of Gujarat** had considered the applicability of period of limitation set out under Section 54 of CGST Act and held as under:-

"7. Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law, which is as under:

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

*(b) ****

(c) the suit or application is for relief from the consequences of a mistake; or

*(d) ****

8. This Court, in the case of Binani Cement Ltd. V. Union of India, (2013) 288 ELT 193 (Guj), held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally. The period of limitation prescribed under the Limitation Act would apply. The relevant abstract of the decision at paragraphs nos.23 and 25 are as under:

:xxxxx....."

11. The issue is squarely covered by the decision of the Court in the case of Gokul Agro Resources Ltd. v. Union of India (Special Civil Application No.1758 of 2020, decided on 26.02.2020), wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks. The relevant paragraph of the finding of this Hon'ble Court is as under:



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

"We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of Mohit Minearls (supra). The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order."

10. Further, this Court while dealing with the similar issue, allowed Writ Petition No.17220 of 2024 and batch by order dated 14.08.2025 following the above referred Judgment by directing the respondents therein to consider the refund application without going into the question, whether the said application is filed within time or not.

11. In view of the above reasons and following the above Judgment, the deficiency memos under challenge are set aside and the respondents are directed to consider the application of the petitioner for refund of tax without going into the question of limitation. Further, the respondents are directed to pass appropriate orders on the petitioner's



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

application within a period of four (04) weeks from the date of receipt of copy of the order.

12. *Accordingly, the writ petitions are allowed. No order as to costs.*

As a sequel, pending applications, if any shall stand closed."

10. In addition, respondent No.2 has issued a Circular dated 25.09.2021, which also reads as hereunder:

*Circular No.162/18/2021-GST
F.No.CBIC-20001/8/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 25th September, 2021

*To,
The Principal Chief Commissioners/Chief
Commissioners/Principal Commissioners/Commissioners of
Central Tax (All)
The Principal Directors/General/Directors (All)*

Madam/Sir,

Subject: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act – Reg

Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and section 19(1) of the Integrated Goods and



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues detailed hereunder:

2.1 Section 77 of the CGST Act, 2017 read as follows:

"77. Tax wrongfully collected and paid to Central Government or State Government. - (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed.**

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

Section 19 of the IGST Act, 2017 reads as follows:

"19. Tax wrongfully collected and paid to Central Government or State Government-----(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is **subsequently held**



*to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject to such conditions as may be prescribed.***

*(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."*

3. Interruption of the term "subsequently held"

3.1 *Doubts have been raised regarding the interpretation of the term "**subsequently held**" in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.*

3.2 *In this regard, it is clarified that the term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/held as*



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

4. The relevant date for claiming refund under section 77 of the CGST Act/Section 19 of the IGST Act, 2017

4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") vide notification No. 35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

"(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."

4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e., integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

4.3 Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations.

A taxpayer "**A**" has issued the invoice dated **10.03.2018** charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return of



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

March, 2018 tax period. The following scenarios are explained hereunder:

Sl.no.	Scenario	Last date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGSSST in respect of the said transaction on 10.05.2021	Since "A" has paid the tax in the correct head before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10.11.2021 ie., after issuance of notification No.35/2021-Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3	Proper officer or adjudication authority or appellate authority of "A" has held the transaction, as an inter-State supply and accordingly, "A" has	Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

	<i>paid the IGST in respect of the said transaction on 10.05.2019</i>	<i>Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)</i>
4	<i>Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021</i>	<i>Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e., integrated tax)</i>

The examples above are only indicative one and not an exhaustive list. Rule 89(1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

4.4 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through insurance of credit note under section 34 of the CGST Act in respect of the said transaction.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow."

11. *Per contra*, learned counsel for respondent Nos.2 and 3 would reiterate the various contentions urged in the Statement of Objections and submits that there is no merit in these petitions and the same are liable to be dismissed. It is submitted that the provisions contained in Section 54 of the CGST Act and Rule 89(1A) of the CGST Rules, 2017 are mandatory and not directory and any refund application filed beyond the period of 2 years from when it becomes due was not maintainable and has been rightly rejected by respondent No.3 by passing the impugned orders, which does not warrant interference by this Court in the present petitions.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

12. I have given my anxious consideration to the rival submissions made and perused the material on record.

13. Before adverting to the rival contentions, it would be apposite to extract the relevant statutory provisions of CGST Act, IGST Act and CGST Rules, which reads as under:

Section 77 of CGST Act, 2017:

"77. Tax wrongfully collected and paid to Central Government or State Government. -

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

Section 19 of the IGST Act, 2017:



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

"19. Tax wrongfully collected and paid to Central Government or State Government.

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable."

Rule 89(1A) of the CGST Rules:

89(1A). Any person, claiming refund under section 77 of the Act of any tax paid by him in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, 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 the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of



**NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS**

two years from the date on which this sub-rule comes into force."

14. A plain reading of Section 77(1) of the CGST Act will clearly indicate that the taxpayer who pays tax to the Central Authority by oversight, inadvertence and erroneously, would be entitled to refund of the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

15. A similar provision exists in the IGST Act which relates to Inter-State supply and Section 19(1) of the IGST Act also contemplates that, if an Integrated Tax on a supply considered by the taxpayer to be an Inter-State supply is subsequently held to be an Inter-State supply, such taxpayer shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

16. Rule 89(1A) of the CGST Rules, 2017 stipulate that the refund claim under Section 77 of the CGST Act and Section 19 of the IGST Act would have to be made within a period of 2 years from the date of payment by filing an application in the prescribed format.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

17. In this context, it is the specific contention of the petitioner that Rule 89(1A) of the CGST Rules, 2017 and Section 54 of the CGST Act, which provide a period of 2 years is directory and not mandatory.

18. It is also pertinent to note that in the Statement of Objections filed by the respondents in all these petitions, the payment in excess made by the petitioner to the Central Authorities, though not contested, have not been disputed by the Central Authorities as can be seen from paragraph No.11 of all respective petitions, one of which (W.P.No.27259/2024) reads as under:

11. It is further submitted that the respondent has not contested that the petitioner has paid Rs.52,63,596/- under IGST Head in excess whereas the same was later discharged under the correct head of CGST and SGST during March 2018. Respondent agrees that the tax was discharged in excess by the petitioner. However, the refund for the said excess payment should have been filed on the portal within due date as applicable as per the CGST Act,2017. Rule 89 of CGST Rules 2017 read with Notification No.13/2022-Central Tax dated 05.07.2022 i.e., within



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

February 2024. The petitioner has failed to ascertain that the excess payment of Rs.69,88,339/- has been made by them towards IGST in time and therefore, they have failed to file the refund application in time. On the other hand, the Department has done the verification as per law, issued a show cause notice to the petitioner, granted a personal hearing, vetted the reply submitted by the noticee in light of the provisions applicable and have reached to a conclusion that the refund claim has been hit by the limitation of time. Accordingly, a speaking order was passed for rejection of the refund of Rs.69,88,339/-.

19. As can be seen from the aforesaid Statement of Objections, payment made by the petitioner towards IGST to the Central Authorities have not been disputed by the respondents, who on the other hand only merely contend that the refund claim of the petitioner is barred by limitation. In fact, respondent Nos.2 and 3 also admit that the petitioner had made payment to the State GST Authorities subsequent to the payment made to the Central GST Authorities. It is therefore clear that respondent Nos.2 and 3 have admitted that the petitioner had made such payment in favour of the Central GST Authorities towards IGST prior to making similar payment to the State GST Authorities.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

20. As held by the High Court of Madras and the High Court of Andhra Pradesh in the aforesaid judgments, Section 54 of the CGST Act and Rule 89(1A) of the CGST Rules, 2017 have been held to be directory and not mandatory. It is also significant to note that having regard to Article 265 of the Constitution of India, the respondent – Central GST authorities were not entitled to collect IGST from the petitioner, who was not liable to pay the same and consequently, upon the petitioner paying the same amount to the State GST authorities subsequently, the respondent – Centre was not entitled to retain the IGST and consequently, by applying the principles of restitution and unjust enrichment, the respondent – Centre was obligated to refund IGST back to the petitioner.

21. Under these circumstances, I am of the considered opinion that the impugned orders passed by respondent No.3 holding that the refund claim is barred by limitation is contrary to facts and law and the same deserves to be set aside by holding that the refund application/claim of the petitioner is within time and is not barred by limitation.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

22. The next question that arises for consideration is, as to the grant of refund in favour of the petitioner as sought for in the refund application filed by the petitioner. In this regard, it is pertinent to note that respondent No.3 has not considered the refund claim of the petitioner nor passed any orders on the merits of the refund claim of the petitioner.

23. Under these circumstances, after having held that the petitioner is entitled to refund of the amount undisputedly paid by him towards IGST and having paid exactly the same/identical amount to the State GST Authorities, since respondent No.3 has not passed any orders on merits, I deem it just and appropriate to set aside the impugned orders by holding that the refund claim is not barred by limitation and remitting the matter back to respondent No.3 for passing appropriate orders on the refund application in accordance with law within a stipulated time frame, bearing in mind the observations made in the body of this order.

24. In the result, I pass the following:

ORDER

- (i) These petitions are hereby allowed.



NC: 2025:KHC:45573
WP No. 27259 of 2024
C/W WP No. 27261 of 2024
WP No. 27552 of 2024
AND 2 OTHERS

- (ii) The impugned orders bearing No.31/2024-25 dated 27.05.2024; No.29/2024-25 dated 25.05.2024; No.30/2024-25 dated 27.05.2024; No.27/2024-25 dated 25.05.2024; No.28/2024-25 dated 25.05.2024 passed by respondent No.3 are hereby set aside.
- (iii) It is held that the refund application/claim of the petitioner is not barred by limitation.
- (iv) The matters are remitted back to respondent No.3 for passing appropriate orders on the refund application filed by the petitioner, bearing in mind the observations made in the body of this order and in accordance with law, within a period of three (3) months from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SJK/SRL
List No.: 2 Sl No.: 4
CT-SG