GSTAT

Court No. Court I

APL/23/KLK/2026

The Pr. Commissioner

CGST & CX, Siliguri Commissionerate

GST Bhawan, C. R. Bhawan, Haren Mukherjee Road

Hakimpara, Siliguri, Darjeeling-734001

..... **Appellant**

Versus

M/s Dalmia Tea Packaging Private Ltd., Plot No. 35-36, Parivahan Nagar, Siliguri-734005. GSTIN/Temporary ID /UIN-19AACCD8659F1ZB ..... **Respondent**

Counsel for Appellant

SHRI DULAL SINHA RAY, SUPERINTENDENT, CGST, AUTHORISED REPRESENTATIVE

Counsel for Respondent

SHRI AVIJIT DUTTA, CA AUTHORIZED REPRESENTATIVE

Hon'ble Shri Sunil Kumar Singh, Member(Judicial)

Hon'ble Shri Bijoy Kumar Kar, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : **Date of order :**

1.	GSTIN/Temporary ID/UIN - 19AACCD8659F1ZB	
2.	Appeal Case Reference no. - APL/23/KLK/2026	Date – 20.02.2026
3.	Name of the appellant – SANTOSH JAISWAL	

4.	Name of the respondent - M/s Dalmia Tea Packaging Private Limited	
5.	Order appealed against –	
	(5.1) Order Type – Appeal Order	
	(5.2) Ref Number – 427/SLG-GST/2024-25	Date – 26.11.2024
6.	Personal Hearing – 11/06/2026, 02/07/2026, 23/07/2026 and 13/08/2026	
7.	Status of Order under Appeal - Dismissed – Order under Appeal is Dismissed	

8.	Order in brief - Impugned OIA is upheld and the Revenue appeal is dismissed.
Summary of Order	
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Erroneous Refund	Appeal was allowed in favor of taxpayer.	The revenue appeal is dismissed.

Place

:KOLKATA

Date :

Signature

Shri Sunil Kumar Singh

Designation : Member

Jurisdiction :Kolkata

IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL

KOLKATA BENCH

COURT NO.1

Appeal No.: APL/23/KLK/2026

The Pr.Commissioner

CGST & CX, Siliguri Commissionerate

GST Bhawan, C. R. Bhawan, Haren Mukherjee Road

Hakimpara, Siliguri, Darjeeling-734001

…….APPELLANT

Versus

M/s Dalmia Tea Packaging Private Ltd., Plot No. 35-36, Parivahan Nagar, Siliguri-734005.

GSTIN/Temporary ID /UIN-19AACCD8659F1ZB

……RESPONDENT

In appearance :

For the appellant: Mr. Dulal Sinha Ray, Superintendent, CGST

For the respondent : Mr. Avijit Dutta, Chartered Accountant

CORAM :

Hon'ble Shri Sunil Kumar Singh : Judicial Member

Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing :

Date of Order :

Per: Shri Sunil Kumar Singh, Judicial Member

1. The present appeal has been preferred by the petitioner (Revenue) before the GSTAT, Kolkata Bench under sub-section (1) of Section 112 of the Central Goods & Services Tax Act, 2017 (in short 'CGST Act') against the Order-in-Appeal No. 427/SLG-GST/2024-25 dated 26.11.2024 passed by the Additional Commissioner (Appeals), CGST & CX, Siliguri Appeal Commissionerate (in short 'the first Appellate Authority'). The said appeal has been filed before the first Appellate Authority by the present respondent i.e., M/s Dalmia Tea Packaging Private Limited under sub-section (1) of Section 107 of the CGST Act against the Order-in-Original bearing Ref No. ZE1910230243714 dated 19.10.2023 passed by the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri Commissionerate.

2. The petitioner stated that M/s Dalmia Tea Packaging Private Limited (respondent herein) having GST Registration No.19AACCD8659F1ZB situated at Plot No. 35-36, Parivahan Nagar, Siliguri-734005 is engaged in the purchase of tea in bulk and after blending the same is sold in packaged form in containers, pouches/ jars/ sachets, etc. The supply of packaged tea is under a brand name and packing tea is an integral part of the supply without which the tea cannot be sold. The inputs are bulk tea taxable @ 5% and packing materials viz., plastics, cartons, jars, etc taxable @ 12% and @18%. The output supply of packaged tea is taxable @ 5%. The output supply is a composite supply attracting 5% tax rate as the primary supply is tea. Further, the respondent also claims refund of accumulated Input Tax Credit (in short 'ITC') under Section 54(3)(ii) of the CGST Act, 2017 arising due to inverted tax structure on regular basis.

3. The Revenue (petitioner) have further disclosed that the respondent has filed for refund of accumulated ITC under the inverted tax structure for an amount of Rs.19,99,283/- for the period from 01.05.2020 to 30.06.2020 with the jurisdictional Officer i.e., the Assistant Commissioner of CGST and Central Excise,

Siliguri Division, Siliguri Commissionerate (in short 'the original adjudicating authority' or 'OAA').

4. During the scrutiny of the said refund claim, the OAA has noticed certain deficiencies in the aforesaid refund claim and accordingly issued Show Cause Notice (in short 'SCN') bearing Ref Nos. ZG1910230079303 dated 06.10.2023 to the respondent. The respondent has furnished reply to the SCN vide Ref No. ZG1910230079303 dated 16.10.2023. The OAA after following the due process of law has modified the refund claim and sanctioned an amount of Rs.16,80,024/- out of the total claim of Rs.19,99,283/- to the respondent vide Refund Sanction Order bearing Ref No. ZE1910230243714 dated 19.10.2023 (in short 'the impugned order').

4.1 Being aggrieved by the impugned order, the OAA preferred an appeal before the first Appellate Authority on 15.04.2024. However, the first Appellate Authority has allowed the refund claim filed by the respondent and upheld the impugned order vide Order-in-Appeal No. 427/SLG-GST/2024-25 dated 26.11.2024 (in short 'the impugned OIA')

5. The petitioner i.e., the Revenue, being aggrieved by the order of the first Appellate Authority, filed the present appeal before this Tribunal mainly on the following grounds:

5.1 That the first Appellate Authority has not considered the fact that the respondent is not eligible for refund under inverted tax structure under Section 54(3)(ii) of the CGST Act, 2017 since in the instant case both the input and output are same i.e., tea which attracts GST @ 5%.

5.2 Further, the Revenue has also stated that vide para 3.2 of the Circular No. 135/5/2020 -GST Dated 31st March 2020 issued by CBIC, the refund is barred since both the input and output are same, though attracting different tax rates at different points in time and hence do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act for the purpose of refund of inverted duty structure. The Revenue also stated that CBIC vide circular No. 173/05/2022-GST dated 6th July 2022 amended para 3.2 of the Circular No.135/5/2020-GST dated 31.03.2020 in order to bring uniformity wherein it was clarified that the

refund on account of inverted tax structure would not be admissible in case where the input and output supply are same.

5.3 On the basis of the above facts mentioned in the appeal, notice was issued to the respondent and the case was admitted. The respondent appeared and filed his Cross Objection through Authorized Representative Shri Avijit Dutta, Chartered Accountant.

5.4 During the course of argument, the Revenue contended that the first Appellate Authority has relied upon the decision of Hon'ble High Court of Calcutta in the matter of M/s. Shivaco Associates. The Hon'ble Court has held in the instant case that Act does not mention about non-granting of the benefit of accumulated input tax credit where the input and output supplies are the same. The circular is trying to restrict the refund to a particular set of supplies. The circular is trying to create a class inside the class, which is impermissible. According to the act, refund is permissible in respect of all classes where the input tax is higher than the output tax. By way of the circular, the Board is curtailing the said benefit and making refund permissible only if the input and output

supplies are different. The same amounts to overreaching the provisions as laid down in the Act. It cannot be said that the legislature was unmindful of the fact that there may be instances where the input and output supplies are the same. On the contrary, it can be said that the legislature consciously did not create any distinction for allowing refund in all cases where the input tax is more than the output tax. The said benefit is applicable to all similar cases. In this case, the issue involved is that the petitioners are engaged in the business of purchasing LPG gas in bulk through tanker and thereafter bottling the same in bottles /cylinders of 4kgs, 6kgs, 14kgs, 17kgs and 21kgs and sell the same to commercial customers on GST applicable at the rate of 18% and to the domestic customers at the rate of 5%. Prior to 25.01.2018 the input and output tax on liquefied petroleum gases to commercial as well as domestic consumers was 18%. By a notification dated 28.06.2018 published in the Gazette of India, extraordinary, the rate of output tax on domestic LPG has been reduced to 5%. The petitioners claim refund of the unutilized ITC accumulated on account of inverted tax structure as the rate of tax on inputs is higher than the rate of tax on output supply. The bulk LPG is used as the principal input

as well as bottled LPG supplied by the Petitioner is chargeable to GST @ 5%. The above decision of Kolkata High Court cannot be applied in the instant case in toto as the issue is different. The LPG attracting two different rates i.e. @18% [Sl. Entry No. 34 of Schedule-III] and @ 5% [Sl. Entry No. 165 of Schedule I] of Notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017, as amended. In the instant case the rate of inward supply and outward supply is same i.e., @5%. The said point has not been considered by the first Appellate Authority so the judgement cited is not applicable in fact and circumstance of this case.

5.5 The Revenue has further contended that only packing materials are attracting higher rate of tax than the rate of tax of principal input cannot be ground for claiming refund of accumulated input tax credit under the category of refund on account of ITC accumulated due to inverted tax structure as per the intent of the provision of clause (ii) of first proviso to section 54(3) of the CGST Act, 2017. It has been submitted by the respondent before the first Appellate Authority that they purchase tea in lose form from the local market and then the same is further sold and also into customized packets of different weights as per the requirement of the buyer. The First

Appellate Authority has not considered the above and rejected the appeal filed by the Department and passed order in favour of the respondent which is not in accordance with the provision of clause (ii) of first proviso to section 54(3) of the CGST Act, 2017.

5.6 Shri Dulal Sinha Ray, Superintendent, CGST, Authorized Representative of the Revenue appeared through virtual mode and argued the case at length.

6. Shri Avijit Dutta, CA, Authorized Representative of the respondent appeared and advanced his arguments on the grounds raised by the Revenue.

6.1 With respect to the ground raised by the Revenue vide para 5.1 above, the respondent(herein) submits that the Revenue is contesting on the fact that in the instant case, both the principal input and output are same i.e., tea which attracts GST @ 5%. However, in the instant case the inputs are bulk tea and packing materials and the output supply is tea in packaged condition. Packaging is an integral part of the supply without which the tea cannot be sold. The output supply is a composite supply in which tea is the primary supply. Thus, tax rate of 5 % is attracted on the output supply. The inputs and output supply are not same. Further, there has been no

distinction made between principal input and packing materials in section 54(3) of the CGST Act, 2017. The packing materials are inputs in terms of section 2(59). Further, CBIC vide Circular No. 79/53/2018 dated 31.12.2018 also clarified that packing materials are eligible inputs. The higher tax rate in packing materials results in accumulation of ITC for which refund has been claimed in accordance with section 54(3)(ii) of the CGST Act, 2017. Hence, the respondent is eligible for refund under inverted duty structure under Section 54(3)(ii).

6.2 With respect to the grounds raised in para 5.2 above, the respondent submits that Circular No. 135/5/2020-GST dated 31.03.2020 is applicable only in cases where the accumulation of ITC arises **due to reduction in the rate of tax**. However, in the case of respondent the issue is entirely different because there is no change in the rate of tax on tea and accordingly the provisions contained in para 3.2 of the said circular are not applicable in the instant case. Further, with respect to the Circular No.173/05/2022-GST dated 06.07.2022, the respondent submits that the contention of the Revenue is factually incorrect as the said circular gives clarification in respect of refund of ITC due to inverted tax structure due to goods supplied under concessional

notification. This circular further amends the para 3.2 of the Circular No. 135/5/2020-GST dated 31.03.2020 to omit the line *"It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and output supplies are same"*, thus removing all ambiguities in interpretation of the para 3.2 of the circular.

6.3 With respect to the grounds raised by the Revenue vide para 5.4 above, the respondent submits that the Hon'ble Calcutta High Court has held that the provisions of the section 54(3) of the CGST Act, 2017 are clear and unambiguous. It does not restrict refund in case where inputs and output supply are same. The objective of section 168(1) of the CGST Act 2017 is to bring uniformity in application of the provisions. Section 168(1) strives to lay down that for the purpose of uniformity in the implementation of the Act, orders, instructions or directions may be issued. 'Uniformity in implementation' does not mean curbing benefits available in the Act by introducing new provisions. A circular cannot supplant or implant any provision which is not available in the Act. The same principle is applicable in the case of the respondent taxpayer also.

6.4 Further, with respect to the grounds raised by the Revenue vide para 5.5 above, the respondent contends that there is no distinction between principal input and packing materials in section 54(3) of the CGST Act, 2017. The packing materials are inputs in terms of section 2(59). Further, CBIC vide Circular No. 79/53/2018 dated 31.12.2018 also clarified that packing materials are eligible inputs. The higher tax rate in packing materials results in accumulation of ITC for which refund has been claimed in accordance with section 54(3)(ii).

7. We have carefully heard the arguments of both the parties, gone through grounds of Appeal and examined the records minutely. The legal issue involved in the present case is

(a) Whether the respondent is entitled for the refund under the inverted duty structure covered under Section 54(3(ii) of the CGST Act, 2017 and

(b) Whether the Circular No.135/5/2020 GST is applicable in the facts and circumstances of the case.

8. We are of the view that the Revenue is contesting the refund filed by the respondent mainly on the ground that the same is not available under the provisions

contained in clause (ii) of sub-section (3) of Section 54 of the CGST Act, 2017 since both the input and output are same i.e., tea. For brevity, relevant portion of the provisions contained are reproduced as below:

"54(3)(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 unutilised 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 drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

9. On plain reading of Section 54(3)(ii) of the Act, it is amply clear that the statute permits the refund where credit has accumulated because the rate of tax on inputs is higher than the rate of tax on output supplies. The legislature has consciously employed the expression "inputs" in plural. Further, there is no distinction made between principal input and ancillary inputs. Reading such restriction into the statute will not meet the ends of justice. Further, there is no such intention of the legislature in restricting the refund on such comparison. Hence, we are of the view that comparing purchase of tea in bulk with the sale of tea in small packages and ignoring the other inputs viz., packing materials as both inward and outward supply is tea is factually incorrect and the Revenue's argument

is without any basis and lacks logic. Further, this view is also taken by the Hon'ble High Court of Delhi in the case of M/s. Indian Oil Corporation Limited in WP (C) 10222/2023 & CM No.39561/2023 [2023]67 TAXLOK.COM011 (Delhi). The Hon'ble Court has observed in paras 22 and 26 as under:

"22. It is material to note that Clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act is applicable only where ITC has accumulated on account of "rate of tax on inputs being higher than the rate of tax on output supplies". ***The use of the word 'inputs' in plural*** *clearly indicates that the refund of accumulated ITC is not confined to ITC accumulated on a singular input. Thus, there may be multiple inputs that may be used or consumed for effecting the output supplies. The use of the words 'output supplies' also indicates that the taxpayer's output supply may not be singular. In such circumstances, it would be necessary to determine whether the accumulation of any unutilised ITC is on account of the rate of tax on inputs exceeding the rate of tax on the output or for any other reason. In case where the accumulation of ITC is attributable solely to the rate of tax on inputs exceeding the rate of tax on output supplies, the taxpayer's claim for refund on accumulated unutilised ITC will squarely fall under Clause (ii) of proviso to sub- section (3) of Section 54 of the CGST Act."*

---

26. As stated at the outset, a taxpayer's claim for refund, which is admissible under Section 54 of the CGST Act, cannot be denied on account of a Circular issued by CBIC under Section 168(1) of the CGST Act. Plainly, if the Circular No.135/05/2020 is read in the manner as contended by the Revenue, it would be in conflict with the provisions of Section 54(3) of the CGST Act and thus, would be liable to be set aside and disregarded. However, plain reading of the Circular 135/5/2020 indicates that it does not proscribe grant of refund ***in cases where the principal input and the output supply are similar. It is apparent from Article 3 of the said Circular that it relates to a clarification regarding refund of ITC, which has accumulated on account of reduction in the GST rate."***

10 We also find that term 'input' has already been defined in Section 2(59) of the CGST Act, 2017. Further, the eligibility of

ITC in respect of packing materials is also discussed in para 13 of CBIC Circular No.79/53/2018- GST dated 31.12.2018. For brevity, relevant provisions (portion) contained are reproduced as below:

"2(59) —input means any goods other than capital goods used or ***intended to be used by a supplier in the course or furtherance of business****;"*

"13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. ***The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act****. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods."*

11. Thus, on conjoint reading of Section 2(59) of the CGST Act, 2017 and para 13 of the Circular No. 79/53/2018 – GST, it is amply clear that the term "input" has a broad meaning and include all goods used in the course or furtherance of business other than capital goods. Packing materials, labels, cartons and plastic containers are indispensable for marketing packaged tea and therefore clearly qualify as inputs. Further, with respect to

the eligibility of packing materials for being taken as ITC the same is supported by the CBIC vide para 13 of the Circular No.79/53/2018 – GST dated 31.12.2018 which specifically recognises packing materials as eligible inputs. Hence, in light of the above, we are of the view that packing materials are eligible for availing ITC. Once goods are eligible for availing ITC, the same is allowed for refund under Section 54 of the CGST Act, 2017 unless the same is specifically disallowed by the statute.

12 With respect to the issue raised by the Revenue by relying on para 3.2 of the CBIC Circular No.135/05/2020-GST dated 31.03.2020, we are of the view that the provisions of the said circular are applicable for the cases where there is a reduction of GST and the same is also mentioned in the heading of para 3 of the said circular. For brevity we reproduce the entire para 3 of the circular as below:

"3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as

accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, ***though attracting different tax rates at different points in time****, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."*

13. On plain reading of the heading contained in para 3 of the Circular, it is amply clear that the provisions of the circular are only applicable in cases where there is a reduction in the rate of GST. Further, the wordings contained in para 3.2 of the Circular viz., "***though attracting different tax rates at different points in time"*** clearly mention that the provisions will be applicable only when the same goods attract different rates of tax at different points of time. However, in the instant case, the issue is entirely different since the tea when purchased in bulk and when sold in small packages attract the same rate of GST i.e., 5%. Hence, the Revenue's reliance on this ground is factually incorrect and liable to be set aside.

14 The argument of the Revenue that in view of Circular No. 135/5/2020, the respondent is not entitled for the refund claim. This argument of the Revenue has no force as the Hon'ble High Court of Delhi in the case of M/s. Indian Oil Corporation Limited in WP (C) 10222/2023 & CM No.39561/2023 [2023]67 TAXLOK.COM011 (Delhi) have clearly held in para 17 as below:

"17. It is apparent from the plain reading of Sub-section (1) of Section 168 of the GST Act that CBIC can issue such orders, instructions, or directions only if it considers it necessary and expedient to do for the purpose of uniformity in implementation of the CGST Act. Plainly, CBIC has no power to issue circulars in derogation of the provisions of the CGST Act. CBIC can neither add to the provisions of the CGST Act nor curtail the import of any part of the enactment. Section 168(1) of the CGST Act confines the powers of CBIC to issue circulars for uniformly implementing the provisions of the CGST Act. It can do nothing further. Plainly, if the IOCL is entitled to refund in terms of Section 54(1) of the CGST Act, the same cannot be denied by virtue of any circular issued under Section 168(1) of the CGST Act."

In view of the observation made by the Hon'ble Court, the argument advanced by the Revenue authority has no force.

15 We find that since the issue of eligibility of ITC with respect to the packing materials is already addressed and we find that the same is available under the CGST Act, 2017 and hence the same is also eligible for taking refund under Section 54(3)(ii) *supra.* Further, the Revenue's reliance on para 3.2 of the Circular No.135/5/2020 – GST dated 31.03.2020 is

misplaced as the circular is applicable in cases where there is a reduction of tax over a period of time on same goods which is also clearly mentioned in the heading mentioned at para 3 of the said circular. Hence, we find merit in the submissions made by the respondent as in this case, the rate of tax on both bulk tea at the time of purchase and sale in small packages attract same rate of GST i.e., @ 5% and does not fall under the purview of the said circular. In light of the above, we find that there is no force in the contentions raised by the revenue and the order passed by the first appellate authority is justified.

16. For the facts and reasons discussed above, the appeal filed by the Revenue is accordingly dismissed. The parties shall bear their own cost.

(Shri Sunil Kumar Singh)
Member – Judicial

(Shri Bijoy Kumar Kar)
Member – Technical

Dated: