IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO.1

Appeal No. APL/22/KLK/2026

The Commissioner CGST & CX
Siliguri Commissionerate GST Bhawan
C.R.Bhawan, Haren Mukherjee Road
Hakimpara, Siliguri, Darjeeling-734001

…… Appellant

VERSUS

M/s Santosh Fragrance
Prop.Sidhartha Agarwala
GSTIN-19BLJPA1802M1Z6
Office at H/39/235/185/170
Agrasen Road, Siliguri-734005

…… Respondent

In appearance :

For the appellant : Mr. Dulal Sinha Roy, Superintendent, CGST
For the respondent : Mr. Apurba Saha, Ld. Advocate
Ms. Priyashi Jajoo, Ld. Advocate

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 08.09.2026
Date of Order : 16.09.2026

Per S.G. Chattopadhyay (JM):

[1]. The case originates from the refund sanction order dated 18.01.2024 issued by the Assistant Commissioner, Siliguri, CGST & CX Division (hereinafter called the adjudicating authority) whereunder a

refund claim of Rs.4,00,000/- was allowed in favour of the respondent (taxpayer herein). For the sake of clarity and convenience, the said refund sanction order is reproduced hereunder :

> *M/s. SIDDHARTH AGARWALA (hereinafter referred to as the said "claimant") having GSTIN: 198LUPA1802M126 has claimed refund of Rs. 4,00,000/- in the category of "ITC ACCUMULATED DUE TO INVERTED TAX STRUCTURE" vide ARN: AA1912230259281 dated: 16-12-2023 for the period from April-2022 to March-2023. The said refund claim has been acknowledged vide Acknowledgement no: ZM1912230269072 dated: 19-12-2023.*
>
> *a) As per Section 54(1) of the CGST Act, 2017, "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 2 years from the relevant date in such form and manner as may be prescribed.*
>
> *As per Explanation 2(e) to Section 54(14) of the CGST Act, 2017, relevant date means:*
>
> *In the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;*
>
> *In the instant case, it is observed that the refund application has been filed for the period from April-22 to March-23. Due date for filing return under Sec. 39 for April-2022 was on 20th May-2022, whereas the refund claim has been filed on 16th Dec-2023. Hence, I find that the instant refund claim has been filed within the limitation of time as provided under Sec 54(1) of the CGST Act, 2017.*
>
> *b) The list of invoices against which refund has been claimed has been submitted with the Refund application by the claimant as Anx-B.*
>
> *c) I observe from the portal that the claimant has filed all due returns which are required to be filed as per Para 6 of the CBIC Circular no: 125/44/2019-GST dated: 18/11/2019. The name of the claimant is not reflected in the list of taxpayers of this division from whom clearly recoverable arrears are due.*
>
> *d) During verification of the refund claim of total Rs. 4,00,000/- (IGST: Rs. 1,00,000/- CGST: Rs. 1,50,000/- SGST: Rs. 1,50,000/-], no provisional order was sanctioned to the claimant.*

e) No SCN was issued to the claimant

f) As found from the RFD-01 filed by the claimant, Turnover of Inverted Rated supply of Goods is Rs. 74,75,075/-, Tax payable on such Inverted Rated supply is Rs. 3,75,359/-, Adjusted Total Turnover is Rs. 74,75,075/- and NET ITC is Rs. 8,14,380/-. Therefore, the admissible refund as per RFD-01 is Rs. 4,39,021/-. However, the claimant has claimed refund of Rs. 4,00,000/-

g) Now, as per departmental verification, Turnover of Inverted Rated supply of Goods is Rs. 74,75,075/-(As per Statement-1A), Tax payable on such inverted Rated supply is Rs. 3,75,359/- (As per Statement-1A), Adjusted Total Turnover is Rs. 74,75,075/- (As per RFD-01) and NET ITC is Rs. 8,02,428/- (Excluding ITC on Input Services and ITC on HSN: 4202 & 4401). Therefore, the admissible refund as per RFD-01 is Rs. 4,27,069/-. However, the claimant has applied for refund of Rs. 4,00,000/-. Thus, the entire amount is due for rejection.

h) I find from the common portal that Rs. 4,00,000/-(Rs. 1,00,000 (IGST) + Rs. 1,50,000 (CGST) + Rs. 1,50,000(SGST)] has been debited from the Electronic Credit Ledger vide debit entry D11912230063478 dated: 16-12-2023.

In view of the above and upon examination of the application, the amount of refund sanctioned to the claimant, after adjustment of dues (where applicable) is as follows:

Description	IGST			CGST			SGST			CESS		
	T	I	P	T	I	P	T	I	P	T	I	P
1. Amount of refund claimed	1,00,000			1,50,000			1,50,000			0		
2. Refund sanctioned on provisional basis:	0			0			0			0		
3. Refund Amount Inadmissible:	0			0			0			0		
4. Gross Amount to be paid (1-2-3)	1,00,000	0	0	1,50,000	0	0	1,50,000	0	0	0	0	0
5. Amount adjusted against outstanding demand	0			0			0					
6. Net amount to be paid	1,00,000	0	0	1,50,000	0	0	1,50,000	0	0	0	0	0

Note : "T" stands for Tax; "I" stands for Interest, "P" stands for Penalty

I hereby sanction an amount of Rs.4,00,000/- To M/s Siddharth Agarwala, having GSTIN:198UPA1802M1Z6 under Section 54 of the CGST Act, 2017".

[2]. Aggrieved by the said refund sanction order passed by the adjudicating authority, the revenue preferred an appeal under Section 107

(1) of the Central Goods and Services Tax Act, 2017 (hereinafter called 'the CGST Act, 2017') before the first appellate authority mainly on the following grounds :

i) In view of para 3.2 of CBIC Circular No.135/05/2020-GST dated 30.11.2020 the provision of Section 54(3)(ii), CGST Act, 2017, was not applicable in the case and, therefore, the adjudicating authority committed error by sanctioning the refund in favour of the claimant-taxpayer in terms of Section 54(3)(ii), CGST Act, 2017.

ii) In view of CBIC Circular No.173/05/2022-GST dated 06.07.2022 no refund on account of Inverted Tax Structure would be admissible in the cases where the input and output supplies were same and, therefore, the adjudicating authority should not have allowed the refund claim of the taxpayer.

iii) The adjudicating authority did not appreciate the fact that the instant claim did not fall under the scheme of Inverted Tax Structure envisaged under Section 54(3)(ii), CGST Act, 2017.

[3]. After providing opportunity of hearing to the taxpayer, the first appellate authority rejected the appeal filed by the revenue upholding the order of the adjudicating authority.

[4]. The revenue has further challenged the order dated 07.01.2025 passed by the first appellate authority before us by filing the present appeal under Section 112(1) of the CGST Act, 2017. The revenue has

reiterated the same grounds on which appeal was filed before the first appellate authority and re-agitated the following issue before us :

i) In view of paragraph 3.2 of Circular No.135/05/2020-GST dated 31.03.2020 issued by the CBIC, the instant case does not come within the purview of Section 54(3)(ii), CGST Act, 2017 and as such the refund claim of the taxpayer is devoid of merit.

[5]. The taxpayer, on the other hand, has uploaded cross objections contending, *inter alia*, that;

i) during the period between April, 2022 and March, 2023 he procured raw materials and inputs including perfumes, fragrances, chemicals, packaging materials etc., the GST rate of which varied from 12% to 18%.

ii) the taxpayer being an Agarbati manufacturer supplied Agarbati on payment of GST @Rs.5% whereas for inputs used in manufacturing Agarbati he paid GST at higher rates resulting in accumulation of unutilized ITC on account of Inverted Tax Structure.

iii) Agarbati produced by the taxpayer under HSN Code 3307 is a completely a distinct produce whereas the inward supplies of various raw materials including perfume fragrances, chemicals, packaging materials, card board etc. are

commercially distinct goods and cannot be regarded as same goods.

iv) As a result of paying higher rate of GST on the inward supply of raw materials/inputs as compared to the rate of GST payable on outward supply of Agarbati, the taxpayer obviously accumulated unutilised input tax credit on account of Inverted Tax Structure within the meaning of clause (ii) to the first proviso to Section 54(3), CGST Act, 2017.

v) Para 3.2 of the said circular No.135/05/2020-GST dated 31.03.2020 is not applicable in this case because paragraph 3.2 of the said circular of 2020 merely clarifies that refund under clause (ii) of Section 54(3) is not admissible where the input and output supplies are same goods, though attracting different rate of tax at different points of time. In the present case the input and output supplies are completely different and distinguishable

Under the premises aforesaid, the taxpayer has contended that the revenue's appeal is devoid of merit and as such it is liable to be dismissed.

[6]. We have heard Mr. Apurba Saha, learned Advocate appearing along with Ms. Priyashi Jajoo, Advocate appearing for the respondent. Ms. Jajoo, learned Advocate has vehemently argued that this case is squarely covered under clause (ii) to the first provision of sub-Section (3) of Section 54, CGST Act, 2017 and paragraph 3.2 of Circular No.135/05/2020 GST

dated 31.03.2020 does not have any application in this case and under no circumstances the refund can be denied to the taxpayer based on the said circular issued by CBIC. According to Ms. Jajoo, learned Advocate the appellant could not make out any ground for interfering with the concurrent findings of the adjudicating authority and the first appellate authority.

[7]. Mr. Dulal Sinha Roy, Superintendent, CGST, on the other hand, argues that the first appellate authority has committed gross error by rejecting the appeal of the revenue and upholding the order of the adjudicating authority. According to Mr. Sinha Roy, in the given facts situation, the impugned order passed by the first appellate authority cannot be sustained because the first appellate authority did not appreciate that the present case does not come within the purview of Section 54(3)(ii) of the CGST Act, 2017. Mr. Sinha Roy, Superintendent has, therefore, urged this Tribunal for allowing this appeal.

[8]. In view of the rival contentions of the parties, following questions are posed for our determination:

i) Whether the refund claimed by the taxpayer has been accumulated on account of the rate of GST on inputs being higher than the rate of GST on output supplies in terms of Section 54(3)(ii) of the CGST Act, 2017.

ii) Whether the clarification provided in paragraph 3.2 of Circular No.135/05/2020-GST dated 31.03.2020 issued by

the CBIC stands as an embargo on the way of allowing the refund claim of the taxpayer.

[9]. As indicated above, the claim of refund of the taxpayer is to be examined in terms of Section 54(3)(ii), CGST Act, 2017. Both the adjudicating authority as well as the first appellate authority were of the concurrent view that the refund claim of the taxpayer was squarely covered under Section 54(3)(ii) of the CGST Act, 2017 and on such reasoning, they allowed the claim of the taxpayer which has been challenged by the revenue before us. Since the appeal involves Section 54(3)(ii), it would be appropriate to refer to the said provision which deals with the refund claims in Chapter XI of the CGST Act, 2017. Sub-Section (3)(ii) of Section 54 reads as under :

> ***Section 54. Refund of tax.-***
> *(1) xxxxxx*
>
> *(2) xxxxxx*
>
> *(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*
>
> ***Provided** that no refund of unutilised 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** 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.

[10]. Undisputedly, the taxpayer paid higher rate of GST ranging from 12% to 18% on the inputs purchased by him compared to the rate of GST on his output supplies. What is inputs is defined in clause (59) of Section 2, CGST Act, 2017. As per clause (59) of Section 2, inputs mean any goods other than capital goods used for or intended to be used by a supplier in the course or furtherance of business. Similarly, under clause (60) of Section 2, input service means any service used or intended to be used by a supplier in the course or furtherance of business. The taxpayer in this case has made it very clear that in furtherance of his Agarbati business perfumes, fragrances, chemicals, packaging materials, card board etc. were used by him as inputs falling within the definition of clause (59) of Section 2 of the CGST Act, 2017 for which he paid GST at higher rate compared to the distinct production of Agarbati on which he used to pay GST @5%. As a result, there cannot be any doubt that ITC was accumulated on account of Inverted Duty Structure contemplated under Section 54(3)(ii), CGST Act, 2017.

[11]. The respondent has relied on the decision of the Hon'ble Supreme Court in the case of **Union of India and others Versus VKC Footsteps India Private Limited, reported in (2022) 2 SCC 603.** The crux of the dispute before the Hon'ble Supreme Court in this case pertained to how sub-section (3) to Section 54 and Explanation 1 to sub-Section (1) of

Section 54 were to be understood and interpreted. The Hon'ble Supreme Court in paragraphs 98 & 99 of the Judgment, held as under :

> *"98. Sub-section (3) of Section 54 begins, in its main part, with the stipulation that a registered person may claim refund of any "unutilised ITC at the end of any tax period". Whether we construe the first proviso as an exception or in the nature of a fresh enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso. That clauses (i) and (ii) are the only two situations in which b a refund can be granted is evident from the opening words of the first proviso which stipulates that "no refund of unutilised input tax credit shall be allowed in cases other than". What follows is clauses (i) and (ii). The intent of Parliament is evident by the use of a double-negative format by employing the expression "no refund" as well as the expression "in cases other than". In other words, a refund is contemplated in the situations provided in clauses (i) and (ii) and no other. To put it differently, the first proviso can be recast, without altering its meaning to read that a refund of unutilised ITC shall be allowed only in the cases governed by clauses (i) and (ii). Clause (i) deals with zero-rated supplies without payment of tax. Explanation 1 to Section 54 clarifies that the expression "refund" includes refund of tax paid on zero-rated supplies on goods or services or both, or on inputs or input services used in making such zero-rated supplies. On the other hand, in the case of deemed exports, Ex Explanation 1 refers to a refund of tax on the supply of goods. Likewise in regard to domestic supplies, governed by clause (ii) of the first proviso, the expression "refund" means refund of unutilised ITC as provided under sub-section (3). With the clear language which has been adopted by Parliament while enacting the provisions of Section 54(3), the acceptance of the submission which has been urged on behalf of the assessee would involve a judicial re-writing of the provision which is impermissible in law. Clause (ii) of the proviso, when it refers to "on account of" clearly intends the meaning which can ordinarily be said to imply "because of or due to". When proviso (ii) refers to "rate of tax", it indicates a clear intent that a refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies. Reading the expression "input" to cover input goods and input services would lead to recognising an entitlement to refund, beyond what was contemplated by Parliament.*
>
> *99. We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services*

or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' the counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We, therefore, accept the submission which has been urged by Mr N. Venkataraman, learned ASG."

[12]. Under such restrictions imposed under Section 54, no refund of unutilized ITC shall be allowed in the cases other than clauses (i) and (ii) to the first proviso to sub-Section (3) of Section 54 of the CGST Act, 2017.

[13]. Obviously, in the present case, an Inverted Duty Structure arose in terms of clause (ii) to the first proviso to sub-Section (3) of Section 54 due to the rate of tax on inputs being higher than the rate of tax on output supplies.

[14]. As regards the application of Circular No.135/05/2020 GST dated 31.03.2020 issued by CBIC, it is not disputed that the said circular contains clarification on refund related issues. Paragraph 3 of the said circular deals with the refund of accumulated ITC on account of reduction in GST rate. Under sub-paragraph 3.1 it deals with the case of refund claim on unutilized ITC on account of Inverted Duty Structure where the inversion is due to change in the GST rate on the same goods.

[15]. Turning to paragraph 3.2 of the circular, we find that by issuing the clarificatory note in paragraph 3.2, CBIC has clarified that refund of accumulated ITC under clause (ii) of sub-Section (3) of Section 54 of the

CGST Act, 2017 would not be applicable in cases where the input and the output supplies are same.

[16]. The CBIC amended paragraph 3.2 of Circular No.135/05/2020-GST dated 31.03.2020 by issuing a subsequent clarification vide Circular No.173/05/2022-GST dated 06.07.2022. The relevant paragraph 4 of the said circular dated 06.07.2022, reads as under :

> *4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.* ***Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under****:*
>
> > *"3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to 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 the first proviso to sub-section (3) of section 54 of the CGST Act.*
> >
> > *3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause."*

[17]. The adjudicating authority granted relief to the taxpayer by allowing his refund claim solely on the ground that the taxpayer could make out a case of accumulation of unutilised ITC on account of Inverted Duty Structure within the meaning of clause (ii) to the proviso to sub-Section (3) of Section 54, CGST Act, 2017. It was held by the adjudicating authority that the refund claim was filed within the time prescribed under the law after duly submitting all returns. The first appellate authority concurred with the findings of the adjudicating authority accepting the reasoning of the adjudicating authority.

[18]. Question is where the law, as interpreted by the Hon'ble Apex Court in the case of **VKC Footsteps (supra)**, is very clear to us, whether we should take the aid of the CBIC Circulars referred by the revenue for interpreting the law. In the final order dated 05.08.2026 passed by us, in **Appeal No.APL/62/KLK/2026(The Commissioner Vs. M/s Power Tech Global Private Limited)**, we have held that CBIC Circulars contain instructions/directions to the departmental officers, which do not have any binding effect on the Tribunal. Paragraph 32 of our order on this issue reads as under :

> *[32]. From the language of Sections 120 and 168(1) of the CGST Act, 2017, it is clear that such circulars contain instructions/directions to the officers of the central tax, who are legally bound to follow such instructions/directions. But insofar as the Tribunal is concerned, a CBIC Circular does not have a binding effect on the Tribunal. In this regard, the Principal Bench of the GST Appellate Tribunal in its final order dated 04.06.2026 in the case of **M/s Dow Chemical International Private Limited, Appellant Vs. Commissioner of***

State Tax, Mazgaon, Mumbai *in paragraph 17 has succinctly held as under :-*

> *17. The circular issued by the CBDT and CBIC are having binding character as far as its officers are concerned not as far as judicial authorities like High Court exercising jurisdiction under Article 226 or 227 of the Constitution of India. We are also of the opinion that since the Tribunal is not department under CBIC any circular issued by the CBIC does not have a binding effect on Tribunal. However, it can be looked into for the purpose of interpretation, having persuasive role. In this connection, we rely upon two judgments.*
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> *1. K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 (SC),*
>
> *2. Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC)*
>
> *[italics supplied by us]*

[19]. Therefore, we are of the view that the adjudicating authority as well as the first appellate authority rightly interpreted the law and provided the benefit of refund to the taxpayer as a result of accumulation of ITC on account of rate of tax on inputs being higher than the rate of tax on output supplies within the meaning of clause (ii) to the proviso to sub-Section (3) of Section 54, CGST Act, 2017. Resultantly, the impugned order of the first appellate authority is upheld and revenue's appeal stands dismissed. No order as to costs.

Order pronounced in open Court in presence of the authorised representatives of the parties. The Registry is directed to upload the Final Order on the Portal immediately.

S.G.Chattopadhyay
Judicial Member

Bijoy Kumar Kar
Technical Member