GSTAT

Division Bench Court No. Court II

APL/11/RNC/2026

PRAMOD CHANDAN SURIN ....**Appellant**

Versus

SHIVAM IRON & STEEL CO.LTD., DIRECTOR, STATION ROAD STATION ROAD GIRIDIH JHGIR 815301 ....**Respondent**

Counsel for Appellant
TANMOY KUMAR MANDAL, ASSISTANT COMMISSIONER, CGST, RANCHI

Counsel for Respondent
RAHUL KUMAR MODI, CA

Hon'ble Tushsar Kanti Satapathy, Member(Judicial)
Hon'ble Bijoy Bihari Mahapatra, 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. : ZN600160926000017H **Date of order :** 23/09/2026

1.	GSTIN/Temporary ID/UIN - 20AAECS1926J1ZM	
2.	Appeal Case Reference no. - APL/11/RNC/2026	Date - 02/03/2026
3.	Name of the appellant - Pramod Chandan Surin , pcs.c109201@gov.in , 9431351542	
4.	Name of the respondant - 1. SHIVAM IRON & STEEL CO.LTD. , arunshivamiron@gmail.com , 9204652144	
5.	Order appealed against - AD201224002165Z	

	(5.1) Order Type - Refund Order
	(5.2) Ref Number - ZD200226006773U — Date - 25/02/2026
6.	Personal Hearing - 23/09/2026 17/09/2026 16/09/2026 27/07/2026 07/07/2026 07/05/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The Goods and Services Tax Appellate Tribunal (GSTAT), Ranchi dismissed the Revenue's Appeal and upheld the GST Refund. The Hon'ble Tribunal held that historical ledger reversals from previous tax periods cannot be deducted from the contemporary "NET ITC" under rule 89(4) of the CGST Rules to artificially reduce refund eligibility. Further, the Hon'ble Tribunal observed that the paragraph 43 (c) of the CBIC circular No. 125/44/2019-GST cannot be interpreted so as to enlarge or override the statuary prescription contained in rule 89(4) of the CGST Rules.
	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	Disallowed the refund of Rs.31,64,930/- and allowed refund of Rs.4,19,127/- only.	Upheld the impugned order and rejected the Appeal

FINAL ORDER

The present appeal has been filed by the appellant (Revenue) under Section 112(3) of the Central Goods and Services Tax Act, hereinafter (referred to as the "CGST Act"), challenging Order-in-Appeal No. 464/CGST/RAN/2025 dated 11.09.2025, on the ground that the Appellate Authority has incorrectly upheld the order passed by the adjudicating authority and allowed the refund of GST amounting to Rs. 35,84,057/- in respect of ITC (Cess) accumulated on account of zero-rated supplies, i.e., export of goods without payment of tax, during the period from July 2022 to March 2023 in violation of paragraph 43(c) of CBIC Circular No. 125/44/2019-GST dated 18.11.2019.

2. Brief facts of the case:

(I) The respondent /Registered person is a manufacturer and exporter of mild steel billets, which primarily require iron ore and scrap steel, along with coal and limestone, as raw materials for production. The respondent has extensive business operations covering both domestic and international markets. Being an exporter to the international market, the respondent duly furnished a Letter of Undertaking (LUT) to the Government for export of goods without payment of GST.

(II) The raw materials, primarily coal, purchased for the production of steel billets attract Compensation Cess, whereas the final product, i.e., steel billets, is not subjected to Compensation Cess. This resulted in accumulation of unutilized Cess credit in the electronic credit ledger. Being an exporter, the respondent filed a refund claim for the unutilized Cess in Form GST RFD-01, in terms of Rule 89(1) of the CGST Rules, on 07.06.2024 vide Reference No. AA200624002367Q, in respect of exports made during the period from July 2022 to March 2023. The adjudicating authority, after issuing a Show Cause Notice in FORM-GST-RFD-08 vide Reference No. ZD200624003707S dated 19.06.2024 and by considering the reply submitted by the respondent in Form GST RFD-09 sanctioned Refund amounting to Rs. 35,84,057/- dated 21.06.2024. (Reference No. ZD2006240043623).

(III) The refund sanction order passed by the adjudicating authority was reviewed by the Principal Commissioner, CGST & Central Excise, Ranchi, vide Review Order No. 05/2025-26 dated 13.02.2026 in terms of Section 107(2) of the CGST Act, 2017. Accordingly, an appeal was preferred against the impugned refund order before the 1st Appellate Authority vide Appeal No. 464/CGST/RAN/2025. However, the said appeal was decided against the appellant (Revenue) and confirmed the Order passed in GSTR RFD-06 dtd. 21.06.2024 by the adjudicating authority.

The detailed findings of the First Appellate Authority are reproduced below:

12 "On perusal of available records, I find that the respondent has availed total input tax credit of Cess amounting to Rs. 2,27,94,0621- through GS1R-3B during the tax period from July 2022 to March 2023, out of which they have reversed ITC of Cess amounting to Rs.8,52,706/- [July 2022: Rs. 60,760/-, September 2022: Rs. 7,38,610/-

& October 2022: Rs. 53,336/-]. As a result, the Net ITC of Cess has been availed by the respondent dining the tax period July 2022 to March 2023 as Rs. 2,19,41,3561- which is also evident from the electronic credit ledger as available in the GST portal. The details of Net ITC of Cess availment reflected in electronic credit ledger during the tax period July 2022 to March 2023 are tabulated below:

Details reflected in Electronic credit ledger		
Tax period	*ITC of Cess*	
	Credit	*Debit*
Jul-22	*11,73,896*	*6,22,376*
Aug-22	*45,95,156*	*89,256*
Sep-22	*-*	*1,92,61,390*
Oct-22	*62,42,880*	*-*
Nov-22	*23,84,684*	*-*
Dec-22	*30,96,564*	*-*
Jan-23	*21,58,748*	*-*
Feb-23	*6,43,936*	*-*
Mar-23	*16,45,600*	*-*
Total	*2,19,41,356*	*1,99,73,022*

13. As far as the reversal of ITC of Cess amounting to Rs. 2,00,00,000/- is concerned, I find that it is fact that the respondent has reversed ITC of Cess amounting to Rs. 2,00,00,000/- through GS IR-3B during the tax period September 2022, which is related to the credit of earlier tax periods and had no nexus with the refund period. The total ITC of Cess availed during the tax period July 2022 to March 2023 was only Rs. 65,07,662/-, which itself demonstrates that the reversal of Rs. 2,00,00,000/- could not possibly relate to ITC availed during the relevant period or to zero-rated supplies forming the basis of the present refund claim. Further, it is clearly evidenced from the electronic credit ledger wherein the ITC of Cess amounting to Rs. 2,19,41,356/- has been credited dining the refund period. The said credited amount of ITC reflected in the electronic credit ledger after adjusting the reversal amount of ITC made in the relevant GSTR-3B. That means, the credited amount reflected in the electronic credit ledger is the Net ITC amount availed by the respondent. Hence, in view of the facts, I find that the Net ITC of Cess in the instant case is Rs. 2,19,41,356/- which has been availed by the respondent through GSTR-3B during the tax period from July 2022 to March 2023…..

14. It is observed from the above discussion that the facts and circumstances was correct in sanctioning the refund claim to the tune of refund of Rs. 35,84,057/- (Cess: Rs. 35,84,057 (Rupees Thirty-five lath eighty-four thousand fifty-seven only). Therefore, I do not see any reason to differ the view from the adjudicating authority for the instant refund.

3. Being aggrieved by the order of the First Appellate Authority, the appellant (Revenue) filed an appeal under Section 112(3) of the CGST Act before this Hon’ble Tribunal and challenged the legality of the impugned order with reference to paragraph 43(c) of CBIC vide Circular No. 125/44/2019-GST dated 18.11.2019 including other factual issues.

SUBMISSION OF THE APPELLANT

4. The appellant contended that, as clarified in CBIC Circular No. 125/44/2019-GST dated 18.11.2019 in paragraph no 43(c), ITC which has been reversed cannot be held to have been "availed" during the relevant period. Therefore, any ITC reversed in GSTR-3B during the refund period must be deducted from the "Net ITC", irrespective of whether such reversal pertains to the ITC availed during the relevant period or to an earlier period.

5. The appellant submitted that the reversed ITC has been accounted for in the book of account of the respondent as a cost which would have reduced the income tax liability. Hence, the said amount can't be at the same time be refunded to them in the ratio of export turnover. Therefore, the said ITC reversed in the GSTR-3B return in the refund period be deducted from the Net ITC as per Rule 89(4)(B) of the CGST Rule,2017.

6. The appellant vehemently argued by applying Rule 89(4)(B) vis-à-vis the CBIC circular that any subsequent reversal pertaining to earlier periods can't be any stretch of interpretation, be imported into the computation of Net ITC for the refund period. Further the authorized representative of the appellant submitted that the appellant authority observed in its order that the reversal of ITC Rs.2,00,00,000/- is made in September 2022 in GSTR-3B was related to unutilized credit of earlier tax period is based on assumption without backed by any documentary evidence. Therefore, the order of the 1st Appellate Authority does not appear to be proper and legal.

REPLY OF THE RESPONDENT

7. The respondent filed a memorandum of cross-objection and submitted that, throughout the memorandum of appeal, the appellant has conspicuously refrained from denying or even disputing the fundamental fact that the Cess amount reversed in September 2022 pertained to tax periods wholly outside the refund period in question.

8. The Respondent further submitted that Rule 89(4)(B) of the CGST Rules, 2017, unequivocally defines NET ITC to mean only such input tax credit which has been availed during the relevant refund period. The Rule is deliberately precise, it speaks solely of "ITC availed" and makes no reference whatsoever to "ITC reversed," much less to reversals pertaining to periods outside the refund window. The omission is intentional and reflects the legislative design that the refund formula must be confined strictly to credits availed within the relevant period and nothing beyond. Any reversal-whether voluntary, mandatory, or compliance-driven-falls outside the scope of the formula unless such reversal pertains to the same period and directly affects the quantum of ITC availed therein. Reversals made for earlier periods, or reversals undertaken subsequently as part of post-refund accounting adjustments, cannot by any stretch be imported into the computation of NET ITC for the relevant period. To interpret the Rule otherwise would amount to rewriting the statutory formula by introducing elements that the Rule consciously excludes.

9. The Respondent/registered person respectfully submitted that the Appellant has completely failed to appreciate the foundational fact that the ITC reversed in September 2022 pertains exclusively to earlier tax periods and has no nexus whatsoever with the refund period presently under consideration. Despite this, the Appellant has erroneously proceeded on the assumption that the reversal undertaken in September 2022 represents a reversal relatable to the refund period of July 2022 to March 2023. Such an assumption is fundamentally flawed, factually incorrect, and legally untenable.

10. The ITC reversed in September 2022 has no nexus- direct or indirect-with the proportionate ITC forming the basis of the refund claim. The refund claim is computed strictly in accordance with Rule 89(4) of the CGST Rules, 2017, which requires determination of NET ITC relatable to the relevant refund period alone. The present approach of the appellant is contrary to the plain language of Rule 89(4), the legislative intent behind the refund mechanism, and the settled principle that refund eligibility must be determined strictly with reference to the ITC position during the relevant period alone. Therefore, reversals-particularly those pertaining to previous periods-cannot form part of the NET ITC calculation under Rule 89(4), and the Appellant's attempt to rely on such reversals is legally unsustainable and contrary to the statutory scheme.

11. The Respondent/registered person submitted that the Appellant has placed undue and misplaced reliance on the clarification issued by the CBIC vide Circular dated 18.11.2019, particularly Para 43(c). Such reliance is fundamentally misconceived because the interpretation advanced in the said Circular travels far beyond the scope of Rule 89(4) of the CGST Rules, 2017, and seeks to introduce a condition that the Rule itself does not contemplate. The Circular, in effect, attempts to redraft the statutory formula by importing elements that the legislature has consciously omitted. It is a well-settled principle that Circulars issued by the Board are merely administrative interpretations of law and do not bind the register person, nor can they override or expand the statutory provisions. Courts have consistently held that while Circulars may guide departmental officers, they cannot impose obligations or restrictions that do not emanate from the Act or the Rules. Any interpretation in a Circular that contradicts, supplements, or enlarges the statutory scheme is unenforceable and must yield to the express language of the law. Such an attempt is ultra vires the CGST Act and the Rules framed thereunder, and therefore cannot be relied upon to curtail the Respondent's statutory entitlement. Thus, the clarification contained in Para 43(c) of the Circular dated 18.11.2019 is not only non-binding on the Respondent but is also legally unsustainable to the extent it seeks to impose conditions not found in the parent statute. The Appellant's reliance on such an over-extended interpretation is therefore wholly misplaced and deserves to be rejected.

12. The respondent averred that Appellant's contention that the reversed ITC has been treated as a cost for income-tax purposes and therefore cannot simultaneously be refunded in proportion to export turnover-is wholly misconceived, factually incorrect, and legally untenable. The Appellant proceeds on the erroneous assumption that the entire CESS reversal was booked as a cost, thereby reducing the income-tax liability of the Respondent. This assumption is fundamentally flawed. The Respondent clarifies that the CESS amount for which refund was denied pertains exclusively to domestic turnover and not to zero-rated supplies. Only that portion of the CESS reversal which related to domestic transactions was accounted for as cost. The balance CESS-relatable to zero-rated supplies was never treated as cost and therefore did not yield any income-tax benefit. Thus, the Appellant's sweeping assertion that the entire reversal was claimed as a cost deduction is factually incorrect and proceeds on a gross misappreciation of the Respondent's accounting treatment.

13. The respondent explained that Appellant’s elucidated that the same amount cannot be refunded because it has already reduced income-tax liability collapses on its own footing. The refund claim pertains only to the portion of ITC attributable to zero-rated supplies, which was never treated as cost and never resulted in any reduction of income-tax liability. The Appellant's objection therefore lacks both factual foundation and legal value. Furthermore, the very premise of the Appellant's argument betrays a misplaced concern with the Respondent's income tax position-an area wholly extraneous to the GST statutory framework. There exists no statutory linkage between the GST law and the Income-tax Act; the two operate in distinct spheres, with different taxable events, different computation mechanisms, and different legislative objectives. The treatment of a transaction under one statute cannot be imported into the other unless expressly provided by law. No such provision exists under the CGST Act or the Rules. The Appellant's attempt to create an artificial nexus between GST refunds and income-tax computations is therefore legally impermissible and contrary to the settled principle that tax statutes must be applied strictly within their own domain. Any effort to deny GST refund on the basis of alleged income-tax implications is wholly unfounded, ultra vires the statutory scheme, and bad in law.

14. The respondent without prejudice to the above submissions, reiterates that the Appellant has neither distinguished nor denied-nor even attempted to dispute the categorical findings recorded by the Appellate Authority. These findings go to the root of the matter and conclusively established the correctness of the refund sanctioned order. The Appellate Authority has clearly recorded that the Respondent/register person had availed total ITC of Cess amounting to Rs. 2,27,94,062/- through GSTR-3B during the period July 2022 to March 2023, out of which the Respondent reversed ITC of Cess amounting to Rs. 8,52,706/- [July 2022: Rs. 60,760/-, September 2022: Rs. 7,38,610/- & October 2022: Rs. 53,336/-). Accordingly, the Net ITC of Cess availed during the relevant period stood at

Rs.2,19,41,356/-. In contrast, the larger reversal of Cess amounting to Rs. 2,00,00,000/-also made during the refund period, was found to pertain entirely to earlier tax periods and to have no nexus whatsoever with the refund period. This conclusion is supported by the undisputed fact that the total ITC / Cess availed during the refund period (July 2022 to March 2023) was only Rs. 65,07,662/-. It is therefore mathematically impossible for a reversal of ITC Rs. 2,00,00,000/- availed during the relevant period or to the zero-rated supplies forming the basis of the refund claim.

15. The electronic credit ledger further corroborates the above position. The ledger reflects a credited ITC balance of Rs. 2,19,41,356/- during the refund period tallied with the reversal made in the corresponding GSTR-3B. This credited amount is, therefore, the true and correct NET ITC availed by the Respondent for the relevant period in terms of Rule 89(4). On this basis, the Appellate Authority has rightly concluded that the Net ITC of Cess for the period July 2022 to March 2023 is Rs.2,19,41,356/- which has been credited during the refund period, and accordingly held that the refund of Rs. 35,84,057/- sanctioned by the adjudicating authority is correct, proper, and in full conformity with the statutory provision.

APPELLANT REPLY TO THE CROSS OBJECTION FILED BY THE RESPONDENT

16. The appellant, in response to the cross-objection filed by the respondent, submitted a detailed reply/rejoinder and contended that the respondent had failed to produce any supporting document to establish that the reversal related to earlier tax periods. In the absence of such documentary evidence, according to the appellant, it could not be proved that the reversal pertained to earlier periods. Apart from the respondent’s statement, the appellant contended that there was no material evidence on record to substantiate the claim. The appellant once again submitted that, in terms of paragraph 43(c) of CBIC Circular No. 125/44/2019-GST dated 18.11.2019, reversed ITC cannot be treated as ITC “availed” during the relevant period and, therefore, cannot form part of NET ITC .

FINDING AND DECISION

17. Considering the factual matrix giving rise to the present dispute, the only question that falls for our consideration is: -

A. Whether, on the facts and in the circumstances, the adjudicating authority is justified in sanctioning the refund of unutilized ITC (Cess) in cases of zero-rated supplies under section 54(3) of the CGST Act read with Rule 89 (4) of the CGST Rules, 2017, having regard to the clarification contained in paragraph 43(c) of Circular No. 125/44/2019-GST dated 8.11.2019, particularly when the ITC in question has been reversed during the relevant period credit or earlier periods?

18. Heard both the parties.

19. Considering the submissions made by both the parties and upon perusal of the appeal memorandum, cross-objection, and reply/rejoinder, it is appropriate to examine the relevant provisions of Section 54(3) of the CGST Act, which permits refund of unutilized ITC in cases of zero-rated supplies, and the corresponding Rule 89(4) of the CGST Rules, 2017, which prescribe the formula and mechanism for determining such refund.

Rule 89(4) provides as follows:

***"(4)** In the case of zero-rated supply of goods or services or both without payment of tax under bond or Letter of Undertaking in accordance with the provisions of sub-section (3) of Section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula:*

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Where—

***(A)** "Refund amount" means the maximum refund that is admissible;*

***(B)** "Net ITC" means input tax credit availed on inputs and input services during the relevant period;*

****

***(F)** "Relevant period" means the period for which the claim has been filed."*

****

20. The present case, it is relevant to understand the legislative intent; therefore, the statutory test is not merely whether an amount is credited or debited in the electronic credit ledger during the relevant period. The primary question is whether the ITC in question was actually availed during the relevant period for the purpose of determining the refund in terms of Rule 89(4) of the CGST Rules.

21. The expression "input tax credit availed" under Rule 89(4)(B) of the CGST Rules, particularly for determining "Net ITC" for the purpose of refund of accumulated credit arising on account of zero-rated supplies under Section 54(3) of the CGST Act, has to be understood with reference to the credit actually availed and attributable to the relevant refund period. Therefore, where ITC is reversed and reported in GSTR-3B during the relevant period, the authority must ascertain whether the ITC so reversed is itself availed during the relevant refund period or not. However, the present case is distinguishable according to the record, it is evident that Rs 2,00,00,000/- is pertaining to earlier tax period and never been considered in the refund period in question. The reversal reflected in GSTR-3B during the relevant period is pertaining to an earlier tax period and more importantly, is made only after the refund of the proportionate eligible ITC had already been sanctioned. Therefore, such reversal could not be in any circumstances reduced the Net ITC for the refund period under consideration. The First Appellate Authority, after carefully examining the material on record, including the GSTR-3B returns for the tax period from July 2022 to March 2023, and the screenshots of the electronic credit ledger for the relevant period, concluded that the respondent has availed ITC of Cess amounting to Rs. 2,19,41,356/- during the period in question. Further, the adjudicating authority has also verified the same and determined that the Respondent is eligible for refund of Rs. 35,84,057/-.Therefore the ground of the Appellant that Rs. 2,00,00,000/- has been considered during the refund period while determining the NET ITC is only on presumption without any material evidence. Further it is submitted by the Appellant that no evidence has been adduced/produced by the Respondent to establish the NET ITC under Rule 89(4) of the CGST Rules, this contention of the Appellant is unreasonable because in the GST regime, all the documents are available in the GST portal as such there is no need to produce any evidence to claim Refund.

22. The above findings of the adjudicating authority and the first appellate authority have demonstrated that the refund is sanctioned strictly within the framework of Rule 89(4) of the CGST Rules. Both authorities, after examining the records available with them, have considered the Input Tax Credit (ITC) availed during the relevant refund period. Therefore, the appellant’s allegation that an amount of 2,00,00,000/- was considered as ITC pertaining to the refund period without any basis or nexus and is without substance. Accordingly, the said ground of appeal is devoid of merit. Moreover, the appellant (Revenue) contended that the respondent had reversed Rs.2,00,00,000/- during the period, this contention could not be accepted because, for the tax period from July 2022 to March 2023, the total ITC of Cess availed was only 65,07,662/- Therefore, the reversal of Rs. Rs.2,00,00,000/- could not logically be attributed to the ITC availed during the relevant period. Hence, the averment asserted by Appellant is baseless because the provision of refund is clear and admits no ambiguity.

23. The record discloses that reversal in the present case represented the unutilized credit remaining in the electronic credit ledger after sanction of the refund claim for the previous tax period, which could neither be adjusted against output tax liability nor claimed as a refund. Hence, the appellant has, in our considered view, misinterpreted Rule 89(4) vis-à-vis the clarification contained in the Circular and filed the present appeal without sufficient legal basis. “Law is well-settled that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusion alteris", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. (Indian Bank's Association v. Devkala Consultancy Service, AIR 2004 SC 2615 & 54 VST page-1in case of Jindal Stainless steel Ltd v state of Orissa &other).” Hence, the refund sanction order has been passed in conformity with law.

24. We have gone through the Circular no. 125/44/2019/GST dated 08.11.2019 (paragraph 43(c)) and observed that the jurisprudence relating to legal sanctity of circulars of revenue has matured substantially through constitutional adjudication and judicial scrutiny. While the legislature has empowered CBIC to issue instructions for uniform implementation of indirect tax laws, such power remains subordinate to constitutional principles, statutory provisions and judicial precedents. The contemporary legal framework carefully balances administrative efficiency with taxpayer protection and rule of law. Circulars undoubtedly play a critical role in reducing ambiguity and ensuring consistency across tax administration. Nevertheless, they cannot become instruments for enlarging taxation powers or curtailing substantive legal rights. The settled doctrine today is unequivocal departmental circulars bind the department but cannot bind courts or override statutes. Tax administration must therefore operate within constitutional discipline, ensuring that executive convenience never supersedes legislative mandate. Hence, the settled constitutional right remain that in taxation matter, statutory provisions prevail over all the executive instructions and any administrative action must confirm the supremacy of law. Therefore to eliminate the issue we take note of the following judgements on the same subject discussed herein above:-.

(1) Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, reported in 2008(12) S.T.R.416 (S.C.), the Supreme Court observed as under :-

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the Clarifications / circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. The Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

(2) J.K. Lakshmi Cement Limited v. Commercial Tax Officer, Pali, reported in 2018(14) G.S.T.L. 497 (S.C.), the Supreme Court observed as under :

"25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to31st March, 1997 (up to 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See : UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal – (1999)4 SCC 599.

Therefore the, paragraph 43(c) of the circular cannot be read as laying down a proposition that every reversal made during the relevant refund period must necessarily be treated as a reduction of the ITC availed during that very period, irrespective of the period to which the underlying credit relates. Such an interpretation would effectively add words to Rule 89(4). The Rule does not say that "NET ITC" shall mean the ITC availed during the relevant period minus every ITC reversal made during that period. It specifically refers to ITC availed during the relevant period.

Further the circular expressly clarifies that: "ITC which is reversed cannot be held to have been 'availed' in the relevant period." The Circular further provides that where the reversed amount is subsequently availed in a later tax period, subject to Section 16(4), it may be considered for refund in that later tax period. The above clarification is significant. The expression "availed" and the expression "reversed" cannot be treated as interchangeable. Availment creates the credit for purposes of the statutory scheme; reversal neutralises or reduces the credit to the extent reversed. However, paragraph 43(c) cannot be read as laying down a scheme that every reversal made during the relevant refund period must necessarily be treated as a reduction of the ITC availed during that very period, irrespective of the period to which the underlying credit relates. Such an interpretation would effectively add words to Rule 89(4) of the CGST Rule. The Rule does not say that "NET ITC" shall mean the ITC availed during the relevant period minus every ITC reversal made during that period. It specifically refers to

ITC availed during the relevant period. The Paragraph 43(c) must consequently be applied consistently with Rule 89(4) but clarification and its interpretation is also disconnecting the letter & spirit of the Rule 89(4) of the CGST Rule formula from the actual ITC availed during the relevant period in as much as most interestingly in this case of Reversal ITC never be a part of "NET ITC" for calculation of actual refund.

25. Considering the present facts and the law decided by the Hon'ble Supreme Court and High Courts in the similar issues, we are of the opinion that the circular confined to Paragraph 43(c)of Circular No. 125/44/2019-GST dated 8.11.2019 cannot run contrary to the statutory rules 89(4) of the CGST Rule. However, we are of the view that when the entitlement of refund is not disputed and both the authorities have confirmed the claim of the Respondent and the conditions of section 54(3) of the Act and Rule 89(4) of the Rules are being complied with, in such facts and circumstances, procedure/clarification in the circular would not prevail over the statutory prescription under which the right of the Respondent to get refund is established.

Therefore, the refund of accumulated ITC (cess) in the present case has been calculated under Section 53(3) of CGST Act and in accordance with rule 89 (4) of CGST Rule and there is no defect found in the order passed by the 1st Appellate Authority. The Paragraph 43(c) circular has not been issued in term of rule 89(4) of CGST Rule. Hence, question framed is answered against the Appellant and in fever favour of the Respondent

We, therefore, find no infirmity in the order passed by the First Appellate Authority and uphold the same. Consequently, the appeal filed by the Appellant-Revenue is dismissed.

Order pronounced in open court on 23rd September 2026.

(Tushsar Kanti Satapathy)

(Bijoy Bihari Mahapatra)

Dated: 23.09.2026