IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH
COURT NO. 1

Appeal No. APL/20/KLK/2026

SANTOSH JAISWAL,
FOR THE COMMISSIONER OF CGST & C.EX.,
SILIGURI COMMISSIONERATE
C.R. Building, Naya Basti, Jalpaiguri – 735101

……Appellant

VERSUS

MANAGING DIRECTOR,
M/S TEESTA AGRO INDUSTRIES LIMITED
H.No.B-5/890 Lajpat Nagar
Nawanshahr, PBNAW 144514

……..Respondent

In appearance:
For the appellant : SHRI IMMANUEL NEIHSIAL, SUPERINTENDENT, CGST
For the respondent : SHRI NITIN BANSAL, CA AND SHRI SAKETH KUMAR AGARWAL, CA

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member

Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 18.08.2026
Date of Order : 30.09.2026

Per S.G. Chattopadhyay (JM):

[1]. The Order dated 25.06.2025 passed by the First Appellate Authority is in challenge before us in the form of an appeal filed by

the Revenue under Section 112(1) of The Central Goods and Services Tax Act, 2017 ('The CGST Act' for short).

[2]. The genesis of the case is rooted in Order No. ZD190724025383B dated 15.07.2024, whereby the Refund Sanctioning Authority of the Revenue partially allowed the refund claim of the taxpayer by sanctioning refund of a sum of Rs. 63,19,046/- towards unutilized Input Tax Credit (ITC) accumulated on account of Inverted Duty Structure contemplated under clause (ii) of sub-section (3) of Section 54, CGST Act.

[3]. The taxpayer, namely M/s Teesta Agro Industries Ltd., of Mazabari, Post Office Rajganj, Jalpaiguri, holding GSTIN - 19AABCT1252D1ZP is a trader engaged in supplying 'Sulphur' falling under HSN 2503 and fertilizers under HSN 3103 and 3105 who is carrying out his business from Jalpaiguri in West Bengal. The case of the taxpayer, as projected before us, is that the taxpayer purchases loose Sulphur in bulk which attracts 5% GST and sells the same product in customized packets in smaller units of specified quantities. The packaging materials classified under HSN 3923 attracts 18% GST. As a result, inversion occurred in the duty structure and unutilized ITC accumulated which entitled him to claim

the refund of such accumulated ITC under Section 54(3)(ii), CGST Act. Accordingly, he filed the said refund application in Form GST RFD-01 on 25.05.2024 actually claiming a refund of accumulated ITC of Rs. 64,78,000/- pertaining to the period from 01.05.2022 to 31.05.2022 on account of Inverted Duty Structure which was partially sanctioned by the Refund Sanctioning Authority for Rs.63,19,046/- by Order No. ZD190724025383B dated 15.07.2024 in form GST RFD-06.

[4]. The Revenue challenged the said Order dated 15.07.2024 passed by the Refund Sanctioning Authority by filing an appeal under Section 107(1) CGST Act, 2017 before the First Appellate Authority, mainly on the following grounds:

(i) Refund was sanctioned to the taxpayer without appreciating the fact that clause (ii) of sub-section (3) of Section 54, CGST Act would not apply in a case where input and output supplies are same and they attract the same rate of GST.

(ii) Particularly, in the Circular No. 135/05/2020 dated 31.03.2020 issued from the Central Board of Indirect Taxes and Customs (CBIC) in paragraph 3.2, it has been clearly

stipulated that refund of accumulated ITC under clause (ii) of sub-section (3) of Section 54, CGST Act would not be applicable in cases where the input and the output supplies are the same.

(iii) In the present case, the taxpayer is involved in buying loose 'Sulphur' in bulk and selling the same product and as such the inward and outward supply being the same and both attracting the same rate of 5% GST, the taxpayer is not eligible for refund of accumulated ITC on account of Inverted Duty Structure in terms of clause (ii) of sub-section (3) of Section 54 CGST Act.

(iv) The Refund Sanctioning Authority did not also appreciate the subsequent Circular No. 173/05/2022 dated 06.07.2022 issued from CBIC on the same subject matter, whereby paragraph 3.2 of the previous Circular dated 31.03.2020 was amended and the same principle was reiterated.

[5]. The First Appellate Authority examined the appeal in the light of the Judgment of the Hon'ble High Court at Calcutta delivered in **Shivaco Associates and Another Vs. Joint Commissioner of State**

Tax, Directorate of Commercial Taxes and Others reported in **[2024] 122 GSTR 303 (Cal)** and the Judgement of the Hon'ble Delhi High Court in the case of **Indian Oil Corporation Limited Vs. Commissioner of Central Goods and Services Tax and Others** reported in **[2024] 122 GSTR 318 (Delhi)**. The First Appellate Authority also referred to Circular No. 135/05/2020, dated 31.03.2020 and the subsequent Circular No. 173/05/2022, dated 06.07.2022 issued from CBIC containing clarification on the issue of refund under Inverted Duty Structure and came to the conclusion that in the present case, the taxpayer after buying loose 'Sulphur' used to sell 'Sulphur' by packaging the same and as such it would be considered as an inverted-rated supply since the rate of GST on packing materials (inputs) is higher (18%) than the rate of GST on outputs – (5%). Thus, the taxpayer would be entitled to refund in terms of clause (ii) of sub-section (3) of 54 CGST Act read with Rule 89(5) of the CGST Rules and in this view of the matter, the First Appellate Authority turned down the appeal filed by the Revenue against the order of the Refund Sanctioning Authority.

[6]. Aggrieved by the impugned order, Revenue has approached this Tribunal by way of filing the present appeal and it has resorted to the

same grounds on which the appeal was filed before the First Appellate Authority against the order of the Adjudicating Authority.

[7]. The taxpayer has uploaded cross-objections against the contentions set out in the memorandum of appeal. The gist of such cross-objections is that the taxpayer is actually engaged in the business of manufacture and sale of Agro Chemicals, and depending upon the requirements of its customers, 'Sulphur' purchased by them in bulk quantity is packaged in smaller units of specified quantities for outward supplies. The respondent has further pleaded that packing is an integral part of the supply made by the respondent, without which the outward supply of 'Sulphur' purchased by the taxpayer in bulk cannot be made. It has been further contended by the taxpayer that the packing materials are 'inputs' in terms of Section 2(59) of the CGST Act, which in unambiguous terms contemplates that "Input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business". According to the taxpayer, the packing materials are 'goods' used by the taxpayer in the course and in furtherance of his business. They have referred to both the Circulars dated 31.03.2020 and 06.07.2022 issued by CBIC and contended that the Revenue

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cannot derive any benefit from those Circulars because the statute governing the area does not require any aid from such circular for interpretation. Moreover, it has been stated in the cross-objections that a Circular cannot supersede the substantive provisions contemplated under the statute. According to the taxpayer, the scheme of Inverted Duty Structure provided under clause (ii) of sub-section (3) of Section 54, CGST Act stipulates that where the rate of tax on inputs is higher than the rate of tax on output supplies, ITC accumulation takes place due to inversion in the duty structure entitling the taxpayer to the refund of such unutilized ITC.

[8]. In the course of arguments, the Authorized Representative of the Revenue has vehemently argued that the case of the taxpayer is that he purchases loose 'Sulphur' in bulk and makes outward supplies of 'Sulphur' in packets and as such virtually there is no difference in his inward and outward supplies and both being the same attracting same rate of GST (5%), the taxpayer is not entitled to the benefit of accumulation of unutilized ITC due to Inverted Duty Structure as per section 54(3)(ii), CGST Act. The Authorized Representative of the Revenue, therefore, urges this Tribunal to allow the appeal. The Authorized Representative representing the taxpayer, on the other

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hand, argues that there is no substance in the contention of the taxpayer. The AR has relied on the Judgment of the Hon'ble High Court at Calcutta in **Shivaco Associates** (Supra) and the Judgement of the Hon'ble Delhi High Court in the case of **Indian Oil Corporation Limited** (Supra) and contended that the Hon'ble Calcutta High Court has succinctly held in **Shivaco Associates** (Supra) that a Circular cannot overreach the provisions as laid down in the Act. The AR of the taxpayer, therefore, contends that for argument's sake, even if it is conceived that in the case in hand inputs and outputs are same, refund of accumulated ITC cannot be denied to the taxpayer relying on the Circular issued by CBIC as the criteria laid down in clause (ii) of sub-section (3) of Section 54, CGST Act has been clearly satisfied in the case. The AR of the taxpayer has, with reference to the Judgment of the Hon'ble Delhi High Court in the case of **Indian Oil Corporation Limited** (supra), has further contended that the Hon'ble Delhi High Court has also taken similar view and held that CBIC can neither add to the provisions of CGST Act nor curtail the import of any part of the enactment by issuing such Circular in exercise of power conferred under Section 168(1) CGST Act. The AR of the respondent, therefore, contends that the impugned order does not call for any interference.

[9]. A similar issue was dealt with by this Tribunal in the case of **The Principal Commissioner Versus M/s Tea Linker of Siliguri** in which the taxpayer was engaged in the purchase of tea in bulk and supply of packaged tea in containers, packets, pouches, and sachets. Almost the same question was posed before the Tribunal for consideration as to the entitlement of the taxpayer to the refund of accumulated ITC for Inverted Duty Structure contemplated under clause (ii) of sub-section (3) of Section 54 CGST Act. The contentions of the parties were also the same. This Tribunal, after examining the merits of the contentions of the parties, came to the conclusion that any packing materials, cartons, and plastic containers were indispensable for marketing packaged tea, and therefore those materials qualified as 'inputs' in terms of Section 2(59), CGST Act. Both the Circulars issued from CBIC were examined by the Tribunal. This Tribunal also relied upon the Judgement rendered by the Hon'ble Calcutta High Court in **Shivaco Associates and Another** (Supra) and the Judgement of Hon'ble Delhi High Court rendered in **Indian Oil Corporation Limited** (Supra) and came to the following conclusion in its order dated 03.09.2026.

> *"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 (as composite supply) 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."*
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> *In view of the observation made by the Hon'ble Court, the argument advanced by the Revenue authority has no force and the Circular No.135/5/2020 GST is not applicable in fact and circumstances of this case.*

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). 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 No. 135/5/2020 GST. 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."

[10]. The present appeal is squarely covered by the decision held by this Tribunal (DB-II) in the case of **The Principal Commissioner Vs. M/s Tea Linker of Siliguri, dated 03.09.2026**. In the present case, admittedly the taxpayer used to purchase loose 'Sulphur' in bulk as inputs and the rate of GST on such inputs was 5%. The taxpayer used to make outward supplies of 'Sulphur' in customized packets and the packing materials (inputs) carried GST at 18%. Resultantly, ITC has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, entitling the taxpayer to the refund of such unutilized accumulated ITC in terms of clause (ii) of sub-section (3) of Section 54, CGST Act, 2017. We have examined the contention of the Revenue that the inputs and outputs being same, the claim of refund of the taxpayer is impermissible in view of the circulars dated 31.03.2020 and 06.07.2022 issued by CBIC. The High Court at Calcutta in the case of **Shivaco Associates and Another** (Supra) has succinctly held that even in a case where the inputs and outputs are same attracting different rates of taxes, the claim for refund on the ground of Inverted Duty Structure provided under clause (ii) sub-section (3) of Section 54, CGST Act cannot be restricted or denied to the claimant relying on such circular issued by CBIC. The observation of the High Court is reproduced hereunder which is as under :

"17. The claim of the petitioners for refund stood rejected on the ground that the input and output supplies are the same. The said restriction on

claiming refund has been imposed by the circular dated 31.03.2020. The said circular was issued in exercise of the powers conferred under Section 168(1) of the CGST Act, 2017.

18. According to Section 168(1) of the Act the Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

19. The respondents, relying upon the aforesaid circular, are restricting the claim of the petitioners which is otherwise admissible under the Act. Had the circular not been there, then the petitioners' claim would have been allowed.

20. The issue at present is whether the benefit which is available under the Act can be taken away and/or restricted by the circular.

21. Any circular issued under Section 168(1) of the Act is only for the purpose of bringing uniformity in the implementation of the Act. The intention of the legislature as expressed in Section 54(3) of the Act is clear and unambiguous. The Section, in absolute uncertain terms, mentions that refund of any unutilized input tax credit may be claimed where credit has accumulated on account of rate of tax on inputs being higher than the rate of 5 tax on output supplies. The Act does not restrict refund only in respect of supplies which are different at the input and output stage. The Board thought it fit to reduce the tax in respect of domestic consumers with effect from 25.01.2018 and there is no reason as to why the benefit of accumulated input tax credit will not be passed on to the petitioners.

22. 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.

23. The circular dated 31.03.2020 is imposing a restriction to release certain benefits which are provided under the Act.

24. In M/s. Jindal Stainless Ltd. (supra) the Hon'ble Court took into consideration various other judgments to arrive at a decision. The Court took note of the judgment in the matter of Dilip Kr. Ghosh Vs. Chairman; AIR 2005 SC 3485 wherein it was held that circular cannot override the Rules occupying the field and if there is a clash between the Rule and the Circular, the Circular has to be treated as non est."

[11]. Similar view was taken by the Hon'ble Delhi High Court in the case of **Indian Oil Corporation Limited (Supra)**, wherein the Hon'ble High Court examined the said circulars and held as under :

> *"15. It is apparent from the above that the Appellate Authority had accepted that Circular No.135/05/2020 was applicable in cases where accumulation of ITC was due to reduction in tax. Nonetheless, the Appellate Authority was of the view that the petitioner was not entitled to refund by virtue of the last sentence of paragraph 3.2 of the Circular 135/5/2020, which provided that provisions of Clause (ii) of Sub- section (3) of Section 54 was inapplicable, where input and output supplies are the same.*
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> *16. Before proceedings to examine the import of Circular No.135/05/2020 issued by the Central Board of Indirect Taxes and Customs (CBIC), it is important to note that the said Circular was in exercise of powers under Section 168(1) of the CGST Act. This is expressly stated in the opening paragraph of the said Circular. It is thus relevant to refer to Sub-section (1) of Section 168 of the CGST Act, which reads as under:*
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> *"168(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."*
>
> *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."*

[12]. The Hon'ble High Court of Karnataka at Bengaluru in **M/s Indian Oil Corporation Ltd. Vs. The Assistant Commissioner of Central Tax, South Division 1, Bengaluru,** reported in **[2026] 153 GSTR 647 (Karn)**, while

adjudicating upon the similar issues viewed as under :

9. As rightly contended by the learned Senior counsel for petitioner, the Circular No.135/05/2020-GST dated 31.03.2020 was issued with two restrictions viz., the input and output being the same in such cases, though attracting different tax rates at different points in time, would not be covered under 54(3)(ii) of CGST Act, 2017 and accumulated ITC under Section 54(3)(ii) of the CGST Act would not be applicable in cases where the input and the output supplies are the same. However, by way of substitution vide Circular No. 173/05/2022-GST dated 06-07-2022, the restriction that refund of accumulated credit on account of inverted duty structure, in case where input and output supplies are the same has been deleted. It is therefore clear that the petitioner is eligible claim refund of inverted duty structure, even when input and output are same and consequently, the impugned orders passed by the respondent refusing to grant refund in favour of the petitioner deserves to be set aside and directions are to be issued to the respondent to grant refund in favour of the petitioner.

10. It is also significant to note that substitution of Para 3.2 of the aforesaid Circular dated 31.03.2020 by subsequent Circular No.173/05/2022-GST dated 06.07.2022 being beneficial in nature, the same has to be applied retrospectively and the Circular dated 06.07.2022 is clarificatory in nature and is binding on the Department as held by the Apex Court in the cases of Suchitra Components Ltd vs CCE, Guntur - 2006(12) SCC 452 and K.P. Varghese Vs Income Tax Officers - (1981) 131 ITR 597 (SC) and consequently, the petitioner would be entitled to refund on this ground also.

11. Learned Senior counsel is also correct in his submission that Section 54(3)(ii) of the CGST Act is absolutely unambiguous and does not carve out any exception that Input Tax Credit under the Inverted Tax Structure would not be applicable where the input and the output goods are the same and the impugned orders deserve to quashed and the respondent is to be directed to grant refund in favour of the petitioner on this ground also.

12. It is also seen that where there are multiple inputs attracting different rates of tax, as per the formula provided in Rule 89(5) of the CGST Rules, the expression/term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax as per paragraph-54 of the Circular bearing No.125/44/2019-GST dated 18.11.2019 issued by the respondent and the claim of the petitioner deserves to be upheld on this ground also.

13. Under identical circumstances in relation to the petitioner's own case, the Delhi High Court in the case of Indian Oil Corporation Ltd vs Commissioner of

CGST - 2023(13) Centax 228 (Del), held as under:-

" 1. The petitioner (hereafter 'IOCL') has filed the present petition being aggrieved by denial of claims for the refund of accumulated Input Tax Credit (hereafter 'ITC'). The same was denied to the petitioner on the ground that the rate of tax on input supply and output supply are the same. According to the Revenue, the refund is not permissible in view of Clause (ii) of the proviso to Section 54(3) of the Central Goods & Service Tax Act, 2017 (hereafter 'the CGST Act').

2. The petitioner states that it accumulates unutilized ITC on account of rate of tax on certain inputs being higher than the rate of tax, chargeable on bottled Liquid Petroleum Gas (hereafter 'LPG') - the petitioner's output supply. Thus, according to the petitioner, refund of unutilized ITC is not proscribed in terms of the proviso to Section 54(3) of the CGST Act.

QUESTION TO BE ADDRESSED

3. The principal question that arises for consideration is whether in the given facts refund of accumulated ITC is proscribed by virtue of Clause (ii) of the proviso to Section 54(3) of the CGST Act.

BRIEF FACTS

4. The petitioner, is a public sector undertaking and is, inter alia, engaged in the business of bottling and distributing LPG for domestic as well as industrial use.

5. The principal source of LPG is oil refineries processing crude oil. LPG vapour is produced in the oil refineries during the refining process. It is stated that LPG consists of various hydrocarbons such as propylene, butane and butylene. The said hydrocarbons are liquefied on compression. LPG is transported in bulk through road and rail to the petitioner's bottling plant. It is unloaded and compressed into liquid form and the same is refilled and bottled in cylinders. The cylinders are thereafter sealed and safety valves are fixed. The said cylinders are then distributed to customers.

6. Once the seals of the cylinder are opened, the LPG returns to the gaseous state, which is used by the end consumers. The Supreme Court had considered the said process in Commissioner of Income Tax-I, Mumbai v. Hindustan Petroleum Corporation Ltd.1 in the context of whether the same amounts to manufacture or production for the purpose

of Section 80-HH, 80-I and 80-IA of the Income Tax Act, 1961. The Court concluded that the LPG produced at the oil refineries is not in a state which can be supplied directly to the consumers for domestic use. LPG bottling is a highly technical and complex activity, which requires precise functions of machines operated by technical experts. And, bottling LPG in cylinders effectively renders the product marketable for domestic use. In view of the aforesaid findings, the Supreme Court held that the same amounts to production.

7. The petitioner has two bottling plants in Delhi for supply of LPG. One is located at Tikri Kalan and the other at Madanpur Khadar.

8. The bulk LPG used as the principal input, as well as bottled LPG supplied by the petitioner, are chargeable to Goods and Service Tax (hereafter 'GST') at the rate of 5% in terms of Entry No.165 and 165A of Schedule I appended to CGST Notification Ref. No.1/2017 - CT (Rate) dated 28.06.2017. However, the petitioner also uses various other items in the production of bottled LPG, which includes (2017) 15 SCC 254 accessories required for the purpose of safety. The said items are chargeable to varying rates of GST.

9. The petitioner applied for refund of accumulated ITC for various tax periods. A summary of the applications filed in Form GST RFD-01 and the period for which the said applications were filed are set out below:

Sl No	*Date of filing*	*Period*	*Amount (in Rs.)*
1	*4-3-2022*	*October, 2018 to December, 2019*	*8,63,48,590*
2	*4-3-2022*	*January, 2020*	*2,03,31,108*
3	*11-3-2022*	*February, 2020*	*2,21,91,912*
4	*22-6-2022*	*July, 2020*	*58,46,517*
5	*24-6-2022*	*August, 2020*	*1,22,98,882*

10. The said applications were acknowledged but the same were not processed. The concerned officer issued show cause notices (in Form GST RFD-08) pursuant to the respective refund applications filed by the petitioner. The petitioner responded to the said show causes notices.

However, the petitioner's claims were not accepted. The Adjudicating Authority rejected the applications filed by the petitioner for various tax periods by respective Orders-in- Original. A tabular statement indicating the details of the Orders-in-Original (five in number) denying refund for the respective tax-periods is set out below:

Sl No	Date of Order-in-Original	Tax Period	Refund Amount (in Rs.)
1	11-8-2022	October, 2018 to December, 2019	8,63,48,590.00
2	11-8-2022	January, 2020	2,03,31,308.00
3	11-8-2022	February, 2020	2,21,91,912.00
4	24-8-2022	July, 2020	58,46,517.00
5	24-8-2022	August, 2020	1,22,98,882.00

11. The petitioner filed separate appeals against the respective Orders-in-Original passed by the Adjudicating Authority before the Appellate Authority. However, the said appeals were rejected by a common Order-in-Appeal No.19-23/2023-24 dated 21.04.2023 (hereafter the 'impugned order') which is assailed in the present petition. REASONS AND CONCLUSION

12. At the outset, it is material to note that in terms of Section 112 of the CGST Act, the petitioner has a remedy of appealing the impugned order before the Appellate Tribunal. However, the petitioner is unable to avail of the said remedy as the Tribunal is not constituted. Thus, we consider it apposite to entertain the present petition.

13. A perusal of the Orders-in-Original indicates that the petitioner's claim for refund was denied on the ground that the bulk LPG as well as bottled LPG is the same product chargeable to GST at the rate of 5%. The Adjudicating Authority held that in the circumstances, the petitioner's case is not one of inverted duty structure and therefore, the refund is proscribed in terms of Clause (ii) to Section 54(3) of the CGST Act. The Adjudicating Authority referred to the Circular No.135/5/2020-GST dated 31.03.2020 (hereafter also referred to as 'Circular No.135/5/2020') and noted that in terms of Clause (ii) of the proviso to Section 54(3) of the CGST Act, the refund of ITC is impermissible in cases where input and output supplies are the same.

14. The Appellate Authority found no fault with the orders passed by the Adjudicating Authority and accordingly upheld the denial of refund of accumulated ITC to the petitioner. The relevant extract of the impugned order is set out below:

> *"6. I find that the adjudicating authority has rejected the appellant's all five refund claims on identical ground i.e. by relying on para 3.2 of Circular No.135/5/2020-GST dated 31.03.2020 that the input and the output both are taxable @5% GST and the inverted duty structure is not applicable in the appellant's case and the other inputs which are taxable @18% GST formed a very minor part of total input utilized / availed by them. In this context, the adjudicating authority has*

mentioned para 3.2. of Circular No.135/05/2020-GST dated 31.03.2020 in the impugned order, which is reproduced hereunder:

"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 rate 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."

6.1 In this context, the appellant submitted that the above clarification is not applicable in their case as it is applicable only in the cases where there is accumulation of ITC due to reduction in tax rate by the Government i.e. same goods were procured at different tax rates at two different points of time which resulted in accumulation of ITC to the recipient of such goods.

6.2 On going through the relevant portion of Circular No.135/05/2020-GST dated 31.03.2020, I find that though, there is force in the submission made by the appellant that the clarification is applicable in those cases where accumulation of ITC was due to reduction in tax rate by the Government yet these clarifications applicable upon them which is evident from the last sentence of para 3.2 of the above Circular which clearly clarifies 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.

In the appellant's case, the adjudicating authority observed that the major input used by the appellant in LPG (HSN 2711) which was procured in bulk quantity from refiners and taxable @5% GST. The said LPG is repacked in domestic cylinder and supplied / marketed also @5% GST. Hence, the observations of the adjudicating authority, in this context, are sustainable and the appellant's submissions are not acceptable."

15. It is apparent from the above that the Appellate Authority had accepted that Circular No.135/05/2020 was applicable in cases where accumulation of ITC was due to reduction in tax. Nonetheless, the Appellate Authority was of

the view that the petitioner was not entitled to refund by virtue of the last sentence of paragraph 3.2 of the Circular 135/5/2020, which provided that provisions of Clause (ii) of Sub- section (3) of Section 54 was inapplicable, where input and output supplies are the same.

16. Before proceedings to examine the import of Circular No.135/05/2020 issued by the Central Board of Indirect Taxes and Customs (CBIC), it is important to note that the said Circular was in exercise of powers under Section 168(1) of the CGST Act. This is expressly stated in the opening paragraph of the said Circular. It is thus relevant to refer to Sub-section (1) of Section 168 of the CGST Act, which reads as under:

> *"168(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."*

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.

[13]. In view of the earlier decision of this Tribunal (Division Bench-II) on similar issue in the case of **The Pr. Commissioner Vs. M/s Tea Linker** (supra) and relying on ratio decided by the Hon'ble Calcutta High Court in the case of **Shivaco Associates and another** (supra) and the decision rendered by the Hon'ble Delhi High Court in the case of **Indian Oil Corporation Limited** (supra), and the Judgement of the Hon'ble Karnataka High Court in the case of **Indian Oil**

Corporation Ltd. (supra), we are of the considered view that the present case falls within the ambit of clause (ii) of sub-Section (3) of Section 54, CGST Act and, therefore, the first appellate authority rightly decided the case upholding the refund claim of the taxpayer due to Inverted Duty Structure. Therefore, there is no reason to interfere with the impugned order. Consequently, the appeal stands dismissed and disposed off. The revenue is directed to refund the amount sanctioned and upheld by the first appellate authority to the taxpayer within a period of 03 months.

No order as to costs.

The Order is pronounced in the open court in presence of the parties. The same shall be uploaded at once and certified copies of the order be given to the parties.

S.G.Chattopadhyay
Judicial Member

Bijoy Kumar Kar
Technical Member