GSTAT, SURAT BENCH
Division Bench
Court No. I

APL/11-56/SRT/2026

The Assistant Commissioner, CGST & Central Excise, **.....Appellant**
Division-VII, Bharuch, Vadodara-II Commissionerate.

Versus

M/s Filatex India Limited, **.....Respondent**
GSTIN: 24AAACF0027B1ZM
Plot No. D-2/6/A, Village - Jolva, Dahej-2, GIDC, Dahej, Tal. Vagra,
Dist. Bharuch, Gujarat - 392130

Quorum

Hon'ble Sanjaykumar Dwivedi, Member(Judicial)
Hon'ble Ramesh Kumar Gokalbhai Hadvani, Member (Technical)

Counsel for Appellant
Naveen Kumar, Superintendent (Authorized Representative)

Counsel for Respondent
Adv. Vinay Kansara

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. : ZN650090926000117H **Date of order :** 30/09/2026

1.	GSTIN/Temporary ID/UIN - 24AAACF0027B1ZM	
2.	Appeal Case Reference no. - APL/11-56/SRT/2026	Date - 11/02/2026, 13/02/2026, 05/03/2026 06/03/2026, 12/03/2026, 13/03/2026, 16/03/2026
3.	Name of the appellant - Ram Singh Meena , ramm.g209401@gov.in , 9712771170	
4.	Name of the respondant - 1. FILATEX INDIA LTD , msb@filatex.com , 9811050880	
5.	Order appealed against - AD240923001032S	
	(5.1) Order Type - Refund Order	
	(5.2) Ref Number - ZD240924045450J	Date - 23/09/2024
6.	Personal Hearing - 29/09/2026 08/09/2026 18/08/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	

8.	Order in brief - Appeals filed by the department are dismissed. We direct the department to process the refund claims and pay the refund amounts and interest to the Respondent, to the extent the same have not already been paid

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	The Additional Commissioner (Appeals) vide impugned OIA has set aside the adjudicating authority's order and directed the sanctioning of the refund claim.	Appeals filed by the department are dismissed

Place :SURAT

Date : 30.09.2026

Signature

SANJAYKUMAR DWIVEDI
Digitally signed by SANJAYKUMAR DWIVEDI
Date: 2026.09.30 20:02:20 +05'30'

Sanjaykumar Dwivedi

Designation : Member (Judicial)

Jurisdiction :Surat

Signature

RAMESHKUMAR GOKALBHAI HADVANI
Digitally signed by RAMESHKUMAR GOKALBHAI HADVANI
Date: 2026.09.30 20:00:48 +05'30'

Rameshkumar G. Hadvani

Designation : Member (Technical)

Jurisdiction :Surat

IN THE GOODS AND SERVICE TAX APPELLATE TRIBUNAL, SURAT BENCH

Division Bench Court No. 1

Appeal Nos. APL/11/SRT/2026, APL/12/SRT/2026, APL/13/SRT/2026, APL/14/SRT/2026, APL/15/SRT/2026, APL/16/SRT/2026, APL/17/SRT/2026, APL/18/SRT/2026, APL/19/SRT/2026, APL/20/SRT/2026, APL/21/SRT/2026, APL/22/SRT/2026, APL/23/SRT/2026, APL/24/SRT/2026, APL/25/SRT/2026, APL/26/SRT/2026, APL/27/SRT/2026, APL/28/SRT/2026, APL/29/SRT/2026, APL/30/SRT/2026, APL/31/SRT/2026, APL/32/SRT/2026, APL/33/SRT/2026, APL/34/SRT/2026, APL/35/SRT/2026, APL/36/SRT/2026, APL/37/SRT/2026, APL/38/SRT/2026, APL/39/SRT/2026, APL/40/SRT/2026, APL/41/SRT/2026, APL/42/SRT/2026, APL/43/SRT/2026, APL/44/SRT/2026, APL/45/SRT/2026, APL/46/SRT/2026, APL/47/SRT/2026, APL/48/SRT/2026, APL/49/SRT/2026, APL/50/SRT/2026, APL/51/SRT/2026, APL/52/SRT/2026, APL/53/SRT/2026, APL/54/SRT/2026, APL/55/SRT/2026, APL/56/SRT/2026

[Arising out of Order No. VAD-CGST-002-APP-ADC-349-394-2023-24 dated 28.03.2024, passed by Additional Commissioner (Appeals), CGST Vadodara and corresponding APL-04 Ref. no. ZD240924045450J]

The Assistant Commissioner, CGST & Central Excise,
Division-VII, Bharuch, Vadodara-II Commissionerate. **..... Appellant**

Versus

M/s **Filatex India Limited**,
GSTIN: 24AAACF0027B1ZM
Plot No. D-2/6/A, Village - Jolva, Dahej-2,
GIDC, Dahej, Tal. Vagra, Dist. Bharuch,
Gujarat **……. Respondent**

Appearance:

For the Appellant: Mr. Naveen Kumar, Superintendent (Authorised Representative).

For the Respondent: Adv. Vinay Kansara

CORAM:

Hon'ble Mr. Sanjaykumar Dwivedi, Member (Judicial)
Hon'ble Mr. Rameshkumar G. Hadvani, Member (Technical)

Final Order No. GUJ/SRT/002 to 047/2026

Date of last hearing: 08th September 2026
Date of the Order: 30th September 2026

Per: Shri Sanjaykumar Dwivedi, Member (Judicial)

1. When a High Court or the Supreme Court declares a legal provision ultra vires and unconstitutional, whether the provision becomes ultra vires and unconstitutional after such declaration by the court or right from its inception - this is the principal question posed by these forty-six appeals filed by the department against common Order-in-Appeal No. VAD-CGST-002-APP-ADC-349-394-2023-24, dated 28/03/2024 passed by the Additional Commissioner (Appeals), CGST Vadodara – arising from 46 refund claims of the Respondent. The department contends that the concerned judgment

of the Hon'ble Supreme Court does not state that it is retrospective and in any case the Respondent was not a party to it. Therefore, it is contended that the Respondent is not entitled to claim refund of tax paid by it by taking benefit of the judgment. Since all the appeals involve identical issue, they have been heard together and are being decided by this common order.

Relevant Facts:

2. Briefly stated, the facts of the case are that the Respondent Filatex India Limited is a manufacturer registered under the GST law. During the course of its business, it was also importing certain goods. During the material time, it paid IGST under Reverse Charge Mechanism on the ocean freight on import of goods by them, in terms of the entry 10 of the Notification No. 10/2017-ITR issued under Section 5(3) of the IGST Act, 2017 read with the entry 9(ii) of the Notification No. 8/2017-ITR. While the former notification notified the categories of services on which tax would be payable under Reverse Charge Mechanism, the latter prescribed the rate at which the tax was levied.

2.1. In *Mohit Minerals Pvt. Ltd. v. Union of India,*[1] Hon'ble Gujarat High Court declared the aforesaid two notifications as ultra vires the IGST Act, 2017 and to be unconstitutional. The appeals filed by Union of India against the judgment were dismissed by the Hon'ble Supreme Court vide a detailed judgment dated 19/05/2022 in Civil Appeal No. 1390 of 2022 and others[2].

[1] Judgment dated 23/01/2020 in SCA No. 726 of 2018 and others.

[2] Union of India v. Mohit Minerals Private Limited [2022 INSC 596 = (2022) 9 SCR 300]

2.2. Pursuant to the judgment of the Hon'ble Supreme Court, the Respondent filed 46 claims seeking refund of IGST paid by them on Ocean Freight. All the applications were filed in April 2023. Show Cause Notices were issued proposing denial of the refund on the grounds that:

(i) Hon'ble Supreme Court does not mention any retrospective effect in its judgment. Hence it appeared that the said judgment is effective from 19.5.2022 onwards. Accordingly, it has no impact on the taxes paid on ocean freight by the Respondent in respective months prior to the date of judgment.

(ii) The Respondent had availed the ITC of IGST paid on ocean freight under RCM for respective months and also utilised the same for discharging their tax liabilities. It appeared that claim of availment and utilisation of credit and a simultaneous claim of refund would be a case of "unjust enrichment".

2.3. The Respondent contested the notice and asserted that once any provision, rule, section or notification etc. has been declared ultra vires, the effect of the same is that it was not in existence right from the beginning. On the question of utilisation of credit of IGST, the Respondent submitted before the adjudicating authority that the credit has not been utilised because it had sufficient balance under the CGST and SGST heads; that the balance of ITC is to be considered as a whole and not isolated head wise; that in terms of the prescribed method for utilisation of credits, the IGST is exhausted first; that IGST liability can be discharged even from the balance of ITC in CGST and SGST. The Respondent cited the

following judgments to claim that admissibility of refund has already been decided –

(i) Comsol Energy Pvt. Ltd. v. State of Gujarat – 2021 (55) GSTL 390 (Guj.).

(ii) Louis Dreyfus Company India Pvt. Ltd. v. UOI – 2022 (65) GSTL 261 (Guj.)

(iii) Shree Mahesh Oil Products v. UOI – 2023 (68) GSTL 126 (Raj) upheld by Supreme Court in 2023 (68) GSTL 113 (SC)

(iv) Adi Enterprises v. UOI – 2022 (64) GSTL 392 (Guj.)

(v) Bharat Oman Refineries Ltd. v. UOI – 2020 (41) GSTL 292 (Guj.)

(vi) Gokul Agro Resources Ltd. v. UOI – 2020 (35) GSTL 82 (Guj.)

2.4. The adjudicating authority, after noting the above reply, rejected the refund claim, holding that the judgment of Hon'ble Supreme Court does not apply retrospectively. Without any discussion and without assigning any reason, he also held that *"the judgments cited in the reply are not in ratio of the present case"*. He further held that –

> *"..... this is a settled law that if any ITC has been availed and utilized, then refund of same ITC could not be claimed. Further, observe the claim is filed for IGST paid on Ocean Freight on RCM basis, I observe that the balance of ITC could not be considered as a whole and balance of ITC of IGST must remain in the electronic credit ledger in case of claim of refund of said ITC."*

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2.5. Being aggrieved, the Respondent filed appeals under Section 107 before the Appellate Authority, who, relying on the following judgments has held that the law declared by the Hon'ble Supreme Court was effective from 1st July 2017 itself:

- PV George v. State of Kerala (SLP (C) No. 8305 of 2006)
- MA Murthy v. State of Karnataka [Supreme Court judgment dated 02/09/2003 in CA 6913/ 2003]

The Appellate Authority has held that the levy *"held to be ultra vires/ unconstitutional would be deemed as never existed" [Para 5.6.4 of the Order-in-Appeal].*

2.6. The Appellate Authority has further discussed the judgments cited by the taxpayer asserting that refund was granted to other taxpayers in similar circumstances, and found that the case laws are squarely applicable. We note that in the present appeal the Appellant department has not provided any reason to not follow the judgments relied by the Appellate Authority.

2.7. On the question of utilisation of credit of IGST, the Appellate Authority examined the provisions of Section 49A and 49B, Rule 88A and the Circular no. 98/17/2019-GST dated 23/04/2019, and observed as follows –

> *"I find force in the appellant's contention that due to methodology prescribed under GST law, they were to first exhaust the balance of ITC availed on IGST, and so, there was no balance of ITC in IGST head, but there were sufficient balance in CGST and SGST heads."*

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Applying the principle *lex non cogit ad impossibilia*, he held that –

> *"Obviously, the appellant in hand was unable to entirely maintain the claimed credit of IGST due to a supervening impossibility of GST law, which the appellant could neither prevent nor anticipate. Hence, I have no hesitation to maintain that these additional grounds to reject the impugned refund claims have no legal backing and are fully devoid of substance."*

The Appellate Authority accordingly set aside all the 46 orders and allowed the appeals.

Grounds of Appeal

3. The department has filed this appeal under Section 112(3) on the following grounds:

(i) Rule 89(2) prescribes that the applicant should produce a copy of the order wherein it is held that a refund is due to them. In the instant case, the applicant, not being a party in the Apex Court's decision dated 19.05.2022 of the Mohit Minerals case, cannot treat the same as the Order holding the applicant eligible for the refunds thereunder,

(ii) The judgment of the Supreme Court (in *Mohit Minerals*, *supra*) does not mention any retrospective effect. In other words, the above said judgment dated 19.05.2022 passed by the Hon'ble Supreme Court of India is effective from 19.05.2022 onwards. As such, the judgment has no impact on the tax paid on ocean freight by the claimant,

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(iii) The Hon'ble Apex Court in plethora of judgments has held that any benefit/ any Notification cannot be given retrospective effect unless specifically mentioned in the said Notification. The Appellant placed reliance on:

- Union of India V/s C. Krishna Reddy - 2002 (146) E.L.T. A99,
- Commissioner V/s Adani Exports Ltd. - 2002 (146) E.L.T. A213
- CCE, Chennai V/s Indian Organic Ltd. - 2004 (166) E.L.T. 19 (S.C.)

(iv) In *Mafatlal Industries Ltd. v. UOI* [1997 (89) ELT 247 (SC)], it was noted that

> *"Central Duties of Excise (Retrospective Exemption) Act, 1986 was enacted on 8th September 1986, to give retrospective effect to certain notifications, thereby enabling the excise authorities to refund duties of excise that had already been collected in specific cases. Section 2 of the Act stipulates that the Act shall be deemed to have had, and always have had, effect from 1st March 1986..."*

Drawing a parallel, it is argued that subsequent to the judgment dated 19.05.2022 by the Hon'ble Supreme Court, no such notification has been issued that would provide for the retrospective refund of GST paid on Ocean Freight

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(v) In case of *M. Nagaraj V/s. Union of India* (2006) 8 SCC 212, the Hon'ble Supreme Court has dealt with the issue of prospective application of an amendment to the Constitution of India. The Court clarified that when it is dealing with issues of public policy and constitutional amendments, its judgment could be applied prospectively if such an application is necessary for fairness and justice.

Respondent's Reply

4. The Respondent has filed replies to the appeals contesting the arguments of the Appellant. The submissions of the Respondent can be summarized as follows:

(i) The department has not pointed to any perversity, illegality, or jurisdictional error in the OIA. The grounds of appeal filed by the department are merely an attempt to re-agitate issues which were comprehensively dealt with and correctly decided by the appellate authority.

(ii) Once any provision, section, Rule, Notification etc., has been declared as ultra vires, the legal effect of the same is as if it was not in existence right from the beginning.

(iii) When the Supreme Court, issues a ruling declaring certain provisions as beyond its legal authority, this decision has to be applied retrospectively.

(iv) On the issue of retrospective application of judgments, the Respondent placed reliance on the following case laws:

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- Kanishk Sinha v. State of West Bengal 2025 SCC OnLine SC 443.
- M.A. Murthy v. State of Karnataka [(2003) 7 SCC 517]
- Assistant Commissioner of Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange reported in 2008 (230) E.L.T. 385 (S.C.),
- Louis Dreyfus Company Pvt. Ltd. v. Union of India (2025) 33 Centax 418 (A.P.)/2025 (101) G.S.T.L. 329 (A.P.) [14-08-2025]
- Sunrise Timply Company Pvt. Ltd. v. Union of India (2026) 39 Centax 203 (Cal.)

(i) The judgements in case of UOI v. C. Krishna Reddy; CCE v. Adani Exports Ltd.; CCE Chennai v. Indian Organic Ltd., do not apply as they relate to the question – whether a beneficial exemption Notification or Circular issued by the executive can be read to apply retrospectively to periods prior to its own issuance, in the absence of express words to that effect.

(ii) The Notifications in terms of which the IGST was paid, themselves have been declared ultra vires and thus, the said Notifications are not valid right from the date of their issuance. Thus, the IGST was not required to be paid right from the implementation of the GST and therefore, the department ought not to have raised the ground that the judgment delivered by the Supreme Court is prospective and cannot have any effect before its delivery.

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(iii) The Appellant's contention that refund cannot be allowed since the Respondent was not a party in the Apex Court's decision is misconceived and erroneous, in as much as, once the Hon'ble Supreme Court declares a notification to be ultra vires and void, it binds all authorities and the benefit is available to every person, whether or not they were party to that litigation. This is precisely why refund claims of numerous importers, who did not prefer petition/appeal and were not the part of the proceedings in case of Mohit Minerals litigation have been consistently allowed by the Hon'ble Gujarat High Court.

(iv) The judgment dated 19.05.2022 itself constitutes 'the order' contemplated under Rule 89(2), being the order which establishes, as a matter of declared law binding on all authorities, that the levy under which the Respondent paid IGST never had legal existence.

(v) The judgment dated 19.05.2022 contains no such express direction confining its operation prospectively from the date of pronouncement. Consequently, the Notifications stand void ab initio, i.e., from the date of their issuance.

(vi) The judgment UOI v. C. Krishna Reddy; CCE v. Adani Exports Ltd.; CCE Chennai v. Indian Organic Ltd., *supra* are not applicable to the facts of the present case, as they deal with an entirely different category of legal question namely, whether a beneficial exemption Notification or Circular issued by the executive can be read to apply retrospectively to periods prior to its own issuance, in the absence of express words to that effect.

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(vii) On the Appellant's contention that subsequent to the judgment dated 19.05.2022, no such notification has been issued that would provide for the retrospective refund of GST paid on Ocean Freight, it is submitted that this ground proceeds on the same fundamental misconception referred to above. A judicial declaration that a notification is unconstitutional and ultra vires does not require a further executive Notification to be issued in order to give it effect or to make consequential refunds available. Once Notification No. 8/2017-Integrated Tax (Rate) and Entry No. 10 of Notification No. 10/2017- Integrated Tax (Rate) were declared void by a Constitutional Court, they are obliterated from the statute book for all purposes and stand on the same footing as if they never existed. After such decision/judgment, no notification is required. The consequential refund flows directly from such final decision/judgment.

(viii) The reliance placed by the Appellant on *M. Nagaraj, supra,* is also not correct because it deals with the prospective application of a constitutional amendment.

(ix) The issue whether refund claim in such a case, is available or not, has already been decided by the Hon'ble Supreme Court and High Court, in the following cases:

- Comsol Energy Pvt. Ltd. v. State of Gujarat - 2021 (55) G.S.T.L. 390 (Guj.)

- Louis Dreyfus Company India Pvt. Ltd. v. UOI - 2022 (65) G.S.T.L. 261 (Guj.)

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- Shree Mahesh Oil Products v. UOI - 2023 (68) G.S.T.L. 126 (Raj.) [The ratio of this judgment has been upheld by the Hon'ble Supreme Court reported in 2023 (68) G.S.T.L. 113 (S.C.)]
- Adi Enterprises v. UOI - 2022 (64) G.S.T.L. 392 (Guj.)
- Bharat Oman Refineries Ltd. v. UOI - 2020 (41) G.S.T.L. 292 (Guj.)
- Gokul Agro Resources Ltd. v. UOI - 2020 (35) G.S.T.L. 82 (Guj.)

Oral Arguments

5. We have heard both the sides and have perused the case records.

6. The learned Authorised Representative for the department reiterates the grounds of appeal contained in the appeal memo. He further lays emphasis on the contention that refund cannot be allowed because the IGST of which refund has been claimed, was claimed as credit and was then utilised. It is his contention that once the credit under the head IGST has been utilised, it cannot be refunded even if credits under other heads remained in balance. IGST is a separate pool and cannot be combined with CGST and SGST. He contends that granting refund in the circumstances would amount to "unjust enrichment". According to him it is not relevant as to whether the utilisation of IGST first, was due to legal compulsion or voluntary. The fact remains that it had been utilised. He relies on *SN Tradelink Pvt. Ltd. v. State of Gujarat* [(2025) 36 Centax 100 (Guj.)]. Drawing attention to paragraph 10 of the

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judgment, he submits that in that case, although IGST credit had already been utilised, the petitioner reversed the credit by filing Form GST DRC-03, and the refund was allowed only upon such reversal (para 10); in the present case, by contrast, there has been no reversal.

7. On the other hand, the learned Counsel for the Respondent submits that the issue about "utilisation of IGST and its reversal" now raised by the AR has not been raised in the Appeal filed by the department. He further submits that the correct legal position is that the judgments interpret the law and are always retrospective. When the notifications are declared ultra vires and unconstitutional, it has retrospective effect.

Analysis:

8. Essentially, in its appeal, the department has raised two issues viz.

(i) The judgment of the Hon'ble Supreme Court does not have retrospective effect.

(ii) The Respondent was not a party to the appeal before Hon'ble Supreme Court.

9. But before coming to the grounds raised in the appeal, we wish to deal with the oral submissions made by the learned Authorised Representative, viz. the IGST cannot be refunded because its credit had already been utilised by the Respondent; and that it is immaterial that sufficient balance is available under CGST and SGST heads.

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9.1. We note that this ground is not present in the appeal. We further note that even the Order dated 05/12/2024 passed by the Commissioner under Section 112(3) does not specify this ground. It is not that the issue was not at all present to the mind of the Commissioner. Rather she has noted at paragraph 2.6 of the order that this was one of the grounds on which the notice had proposed to deny the refund. It is also noted that the same was replied by the Respondent (noted para 2.7 (IV)); it was considered and rejected by the Adjudicating Authority (para 2.8 (IV)); and that the Appellate Authority has held that "The methodology prescribed under GST law necessitates exhausting IGST ITC first. Claimant's compliance with this methodology supports their refund claim." (as noted at para 4 (V) of the Order dated 05/12/2024). But the Commissioner has not determined this part of the order of the Appellate Authority to be "not correct, legal or proper".

9.2. Section 112(3) reads as under:

> *(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed or the date, as may be notified by*

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> *the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later, for determination of such points arising out of the said order as may be specified by the Commissioner in his order.*

Thus, Section 112(3):

(1) Empowers the Commissioner to examine record of any order passed by the Appellate Authority or the Revisional Authority.

(2) The purpose of such examination is for satisfying himself as to the legality or propriety of the said order.

(3) Thereupon the Commissioner may direct any officer subordinate to him to apply to the Appellate Tribunal.

(4) The application to the Tribunal shall be for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

9.3. The Authority of the officer (Assistant Commissioner, in this case) to file application before the Tribunal flows from the order of the Commissioner. His authority is confined to the points ***"specified by the Commissioner in his order"***. Here, the Commissioner, in her order, has not expressed any dispute over the Appellate Authority's finding on utilisation of IGST. There is no sanction of appeal on that point.

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9.4. An officer filing appeal under Section 112(3) cannot travel beyond the authorisation granted by the Commissioner. The officer's jurisdiction to appeal at all flows from, and cannot exceed, what the Commissioner has specified. This is not to say that the department cannot raise new grounds if permissible under law. However, a ground which has been considered and dropped by the Commissioner cannot be allowed to be raised by the Authorised Representative.

9.5. In any case, the very judgment cited by the Authorised Representative, viz. *SN Tradelink Pvt. Ltd., supra,* permits reversal of IGST Credit by utilising the balance of CGST and SGST. Similar to the present case, even in that case refund of IGST paid on ocean freight had been claimed pursuant to the same judgment of Hon'ble Supreme Court in Mohit Minerals Pvt. Ltd. One of the grounds raised by the department to oppose the refund was that the *"IGST credit has already been utilised by the petitioner."* The ground was summarised at para 4 (b) of the affidavit in reply filed by the department in the following words:

> *"Since the IGST which is sought to be refunded is already availed and utilized, refund cannot be granted. It was held that even though credit utilization is automatic as per Rule 88A and Section 49(5) law does not recognize constructive non-utilization merely because of availability of SGST or CGST."*

9.6. The paragraph 10 of the judgment, relied by the department reads as under:

> *10. Leamed advocate Mr. Uchit Sheth for the petitioner at the outset invited the attention of the Court to the*

additional affidavit filed on behalf of the petitioner for reversing the utilisation of input tax credit in the Electronic Credit Ledger under the head of SGST towards Integrated Goods and Service Tax so as to enable the availment of refund of excess IGST paid by the petitioner on ocean freight and relied upon the Form GST DRC-03 from page nos. 379D to 379ZZA of the petition. He also referred to the detail statement placed on record along with the additional affidavit at page no.379C of the petition. It was therefore, submitted that the refund claim of the petitioner is required to be allowed as prayed for.

Again, at para 5 and 6 of the affidavit in reply filed before the Hon'ble High Court on behalf of the department it was stated that –

5. It is further submitted that during the pendency of this Petition before the Hon'ble Court, the Petitioner has reversed the unutilized ITC in its electronic credit ledger from the State Goods and Services Tax (SGST) head to the IGST head by filing Form DRC-03.

6. It is submitted that I have verified the additional affidavit dated 19.09.2025 along with the Annexures filed by the Petitioner. The Petitioner has reversed an amount of 21,47,54, 168/- (Rupees One Crore Forty-Seven Lakh Fifty-Four Thousand One Hundred Sixty Eight Only) towards IGST by filing Form DRC-03. I state that upon verification, such reversal has been found to be correct and in order."

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Hon'ble Court held as follows:

> *"13. Referring to above averments, it was submitted that the respondents have verified the reversal of credit utilised under SGST towards IGST by filing Form GST DRC-03 and such reversal was found to be correct. It was therefore, submitted that appropriate order directing the respondents to issue the refund may be passed.*
>
> *14. Considering the above submissions, the impugned order of rejecting the refund claim of the petitioner is hereby quashed and set aside ....."*

Thus, the IGST had already been utilised. What remained in balance was the State GST and for the purpose of claiming refund, the reversal of IGST was made by utilization of State GST. In the present case before us, the IGST has been utilised and what has remained in balance is the credit of Central GST and State GST. Thus, the judgment does not hold that if IGST has been utilised its refund would not be allowed. Thus, the judgment does not support the case of the department. Further, question of unjust enrichment would not arise merely because the IGST equivalent to refund amount is debited by utilising CGST or SGST or both.

Whether availment and utilisation of the IGST credit amounts to unjust enrichment

10. However, there is another fallout of the alleged utilisation of the ITC that requires separate mention, viz. the bar of unjust enrichment. The learned AR has argued that refund of IGST which has already been utilised would lead to a double benefit. This

argument rests on the premise that IGST, CGST and SGST must be treated as separate, non-fungible silos; that for the purpose of determining whether the credit has, in substance, been utilised or not, the balance of CGST and SGST cannot be equated with a balance of IGST. We have already rejected this argument earlier in this order. It follows that for the purpose of refund of IGST, holding a combined unutilised balance of CGST and SGST equivalent to the refund amount, and utilising the same to debit the refund amount in the credit ledger, amounts to non-utilisation of the credit in substance, and no double benefit arises on this account.

11. Coming to the grounds raised in the appeal, we find that the learned Appellate Authority has relied on several judgments to reach the conclusion that the judgment of the Hon'ble Supreme Court applies retrospectively. The appeal filed by the department does not provide any reason as to why those judgments are not applicable. Instead, various judgments have been cited that hold that a legal provision, or a notification applies retrospectively.

Whether Mohit Mineral does not apply retrospectively:

12. The department appears to be under an erroneous belief that similar to laws, the judgments also operate prospectively. It has been contended that –

> *The Hon'ble Apex Court in plethora of judgments has held that any benefit / any Notification cannot be given retrospective effect unless specifically mentioned in the said Notification.*

A few judgments have been cited to support the contention.

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12.1. It is trite that unless otherwise specified, all laws are prospective and all judgments are retrospective. Thus, it is true that a legal provision or a notification cannot be given retrospective effect unless specifically mentioned therein. But the converse is true for the judgments. They always apply with retrospective effect unless the Court expressly make them prospective. The reason is simple – Courts interpret and declare the law; they do not legislate or amend the law. When the Hon'ble High Court and Supreme Court said that the levy was ultra vires and unconstitutional, then it means that the levy was always ultra vires and unconstitutional. The state never had authority to collect the tax. The levy did not become ultra vires or unconstitutional due to the judgments. Rather, it was always so. The courts merely discovered, interpreted, explained and declared it.

12.2. The doctrine of prospective overruling is an exception to the normal principle. The doctrine was for the first time applied by the Hon'ble Supreme Court in Golak Nath v. State of Punjab[3], due to the peculiar circumstances where it found that *"Should we now give retrospectivity to our decision, it would introduce chaos and unsettle the conditions in our country."*

12.3. Hon'ble Supreme Court has repeatedly affirmed that judicial judgments are retrospective by default, whereas legislative statutes are prospective by default unless explicitly stated otherwise. In *Kanishk Sinha vs State of West Bengal* [2025 INSC 278, (2025) 2 S.C.R. 1405] it was held:

> *"Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the*

[3] 1967 INSC 45, (1967) 2 SCR 762

> *legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpretated by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fidely done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.*

12.4. In *Louis Dreyfus Company Private Limited vs Union of India*[4] refund of IGST was claimed following the judgment in Mohit Minerals, supra, the department argued that the refund application was not maintainable because the judgment in Mohit Mineral would operate prospectively. Negating the argument, Hon'ble High Court observed:

> *11. It is settled law that any judgment, declaring the law, would operate both retrospectively and prospectively as the Hon'ble Supreme Court is only declaring the law and is not creating any fresh law which would operate prospectively. In fact, the Hon'ble*

[4] 2025 APHC 32181 (Judgment dated 14/08/2025 in W.P.No.17220/2024)

> *Supreme Court, with an intention to avoid unnecessary dislocation of the state of affairs, had innovated the concept of prospective overruling, whereby the Hon'ble Supreme Court, in a given case, could declare that the said judgment would operate prospectively and not retrospectively. However, this situation would arise only when the Hon'ble Supreme Court itself declares that the said judgment would be prospective in operation. There is no such declaration in the judgment of the Hon'ble Supreme Court in Union of India and Anr. v. M/s. Mohit Minerals.*

12.5. The decision in *M. Nagaraj, supra,* cited by the department does not help its case. The judgment does not declare its own ruling prospective, neither does it contain any general statement that judgments operate prospectively. In this case the Hon'ble Supreme Court examined the validity of constitutional amendments enabling reservation in promotions for Scheduled Castes and Tribes, consequential seniority, and carrying forward unfilled vacancies. While discussing the question of protection of equality as basic feature of the constitution the court has adverted to the paragraph 829 of judgment in Indra Sawhney[5] has been referred wherein the following extract appears:

> *"….. However, taking into consideration all the circumstances, we direct that our decision on this*

[5] In M. Nagaraj (copy as available on the site https://scr.sci.gov.in/ i.e. from Supreme Court Report) the Indra Sawhney judgment has been cited as [(1981) 1 SCC 246]. The correct citation for Indra Sawhney is [1992] Supp. 2 SCR 454, 1992 Supp (3) SCC 217, AIR 1993 SC 477

question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. ….."

It is not to the effect that the judgments are prospective. Rather it reinforces the view that where the Supreme Court wants its judgment to be only prospective then it directs so.

12.6. Thus, the refund cannot be rejected on the ground that the judgment in Mohit Minerals, does not state that it has retrospective effect.

Whether refund can be claimed on the basis of Judgment in Mohit Minerals, to which the Respondent was not a party:

13. The Department's next contention is that the Respondent, not having been a party to *Union of India v. Mohit Minerals Pvt. Ltd.*, cannot claim the benefit of that judgment, and that in any event the judgment cannot constitute "the order" contemplated by Rule 89(2) of the CGST Rules, 2017 for the Respondent's refund claim.

13.1. We are unable to accept this contention.

13.2. Article 265 of the Constitution provides that *"No tax shall be levied or collected except by authority of law."* Further, Article 300A states that, *"No person shall be deprived of his property save by authority of law."*. Where, the levy itself is declared ultra vires and unconstitutional, the collection of tax is without authority of law from the very inception of such levy. The collection of tax from any person is without authority of law. It would not become a collection with authority of law merely because the person from whom it was collected was not a party to the writ petition. So far as the ultra vires

and unconstitutionality of the levy is concerned, there remains no distinction between a taxpayer who was party to the judgment and one who was not. The levy stood equally and ab-initio void as against both. The provision under which he paid the tax, never had a legal existence. Therefore, a taxpayer may claim refund of tax collected under a levy subsequently declared ultra vires or unconstitutional in a judgment even if he was not a party to such judgment.

13.3. We find support to this position from the nine-Judge Bench of the Supreme Court in *Mafatlal Industries Ltd. v. Union of India*, [1996 INSC 1514 (1997) 5 SCC 536]. The judgment classifies the claims for refund into three distinct categories viz. unconstitutional levy, illegal levy and mistake of law. The majority judgment[6] at para 108, sets out eleven summarising propositions. The proposition (ii) reads:

> *(ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way or a suit or by way of a writ petition. This principle is, however, subject to an exception : where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, CJ. in Tilokchand Motichand and we respectfully agree with it.*

[6] Internal paragraph of the judgment delivered by Hon'ble Justice B.P. Jeevan Reddy.

13.4. In his separate judgment the CJI Hon'ble Shri Ahmadi recorded broad agreement with the majority view. In the Class III he included decision rendered in favour of another assessee and observed:

> *"Class III : "Mistake of Law" - where claims for refund are initiated on the basis of a decision rendered in favour of another assessee holding the levy to be : (1) unconstitutional; or (2) without inherent jurisdiction.*
>
> *Ordinarily, no assessee can be allowed to reopen proceedings that have been finally concluded against him on the basis of a favourable decision in the case of another assessee. This is because an order which has become final in the case of an assessee will continue to stand until it is specifically recalled or set aside in his own case.*
>
> *In cases where the levy of a tax has been held to be (1) unconstitutional; or (2) void for want of inherent jurisdiction (as explained in Class II), it is open for the assesses to take advantage of the declaration of the law so made and claim refunds on the ground that they paid the tax under a mistake of law. This is because such claims are outside the ambit of the Excise Act. In such cases, the limitation period applicable will be that specified in Section 17(1)(c) of the Limitation Act."*

13.5. The majority judgment in Mafatlal also discusses the proposition that *"each one must fight his own battle"* but excludes the category "unconstitutional levy" from this proposition. The para 31[7] of the majority judgment describes the third category and explains:

> *22. There is as yet a third and an equally important category. It is this : a manufacturer (let us call him "X")*

[7] Internal paragraph 22.

pays duty either without protest or after registering his protest. It may also be a case where he disputes the levy and fights it out upto first Appellate or second Appellate/Revisional level and gives up the fight, being unsuccessful therein. It may also be a case where he approaches the High Court too, remains unsuccessful and gives up the fight. He pays the duty demanded or it is recovered from him, as the case may be. In other words, so far as "X" is concerned, the levy of duty becomes final and his claim that the duty is not leviable is finally rejected. But it so happens that sometime later - may be one year, five years, ten years, twenty years or even fifty years - the Supreme Court holds, in the case of some other manufacturer that the levy of that kind is not exigible in law. (We must reiterate - we are not speaking of a case where a provision of the Act whereunder the duty is struck down as unconstitutional. We are speaking of a case involving interpretation of the provisions of the Act, Rules and Notifications.) The question is whether 'X' can claim refund of the duty paid by him on the ground that he has discovered the mistake of law when the Supreme Court has declared the law in the case of another manufacturer and whether he can say that he will be entitled to file a suit or a writ petition for refund of the duty paid by him within three years of such discovery of mistake? Instances of this nature can be multiplied. It may not be a decision of the Supreme Court that leads 'X' to discover his mistake; it may be a decision of the High Court. It may also be a case where 'X' fights upto first appellate or second appellate stage, gives up the fight, pays the tax and then pleads that he has discovered the mistake of law when the High Court has declared the law. The fact is that such claims have been entertained both in writ petitions and suits until now, purporting to follow the law declared in Kanhaiyalal, and are being allowed and decreed, sometimes even with interest. The Union of India says that this can

never be. It says, a manufacturer must fight his own battle and only if he succeeds therein, can he claim refund. He cannot take advantage of success of another manufacturer and that no suit or writ is maintainable by him for refund on the ground of alleged discovery of mistake of law on the declaration of law by this Court or a High Court (or a Tribunal or any other authority under the Act) in the case of another person. The Union of India denies that such a person can plead payment of duty under a mistake of law within the meaning of Section 72 of the Contract Act. It also denies that such a writ petition or a suit can be filed within three years of such" discovery of mistake of law".

13.6. Again, at para 79 (internal para 70), the majority judgment expressly excludes the unconstitutional levy

"70. Re. : (II) : We may now consider a situation where a manufacturer B · pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quite. It may also be a case where he files an · appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal / revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or C even much later, a decision rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is

declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as E the case may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiyalal is understood as saying that such a course is permissible. Later decisions commencing from Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any

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proceeding, be it a suit or any other proceeding. Where a duty has A been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long at that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained."

13.7. It follows from the judgment that where the levy has been held unconstitutional –

(a) The claimant is not fettered by the provisions of the taxing statute (except for the bar of "unjust enrichment). He may even proceed by way of a civil suit or writ.

(b) The limitation under the statute would also not apply. Rather the period under Section 17(1)(c) of the Limitation Act,1963 would be available; and

(c) The refund is not barred merely because the claimant was not a party to the judgment that declared the provision unconstitutional. The only exception to this is that a person who *himself* unsuccessfully challenged the very provision, and allowed that adverse decision to attain finality against him, cannot then claim refund on the basis of judgment in the case someone else.

13.8. Here, it is not the case that the Respondent himself challenged the validity of levy of tax on ocean-freight and lost it. It simply paid tax under a levy that has since been declared void *ab initio*.

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14. To summarise, we find that the levy of IGST on ocean freight has been declared unconstitutional by the Hon'ble Gujarat High Court and the declaration upheld by the Hon'ble Supreme Court. The Respondent paid tax under that very levy. It did not itself litigate the question of constitutional validity and lose on the constitutional question. In the words of Mafatlal – *"it is open for the assesses to take advantage of the declaration of the law so made and claim refunds on the ground that they paid the tax under a mistake of law."*

15. We accordingly reject the Department's contention that the Respondent cannot claim refund merely because it was not a party to the judgment in Mohit Minerals. For the same reason, the objection that the judgment is not an order contemplated by Rule 89(2), is also rejected. The declaration by the court that the levy was *ab initio* void is itself the legal foundation for entitlement to refund. No further order in the name of the claimant is required. The entitlement to refund flows directly from Article 265 and does not depend on adjudication *inter partes*.

16. We note that in identical facts Hon'ble High Courts have allowed refund of IGST paid on ocean freight on the basis of the judgment in Mohit Mineral.

16.1. In *Comsol Energy Pvt. Ltd. v. State of Gujarat* - 2021 (55) G.S.T.L. 390 (Guj.) Hon'ble High Court set aside the deficiency memo and directed the department to process refund. It held that:

> *12. Similarly, this Court, in the case of Bharat Oman Refineries Ltd. v. Union of India (Special Civil Application No.8881 of 2020, decided on 18.8.2020) directed the respondent to sanction the refund of the*

IGST paid by the assessee pursuant to the Entry No.10 of the Notification No.10/2017-IGST dated 28.06.2017 declared to be ultra vires in the case of Mohit Minerals Pvt. Ltd. (supra).

13. In view of the aforesaid, this writ-application succeeds and is hereby allowed. The deficiency memo issued in the prescribed form RFD-03 vide Nos.ZD240720008807J and ZD240720008830U both dated 17.07.2020 are hereby quashed and set-aside.

14. The respondent is directed to process the refund claim filed in the prescribed form RFD-01 online portal for the month of February 2018 and March 2018 for an amount of Rs.93.54 lakh along with simple interest at the rate of 6% per annum.

16.2. In *Shree Mahesh Oil Products v. UOI* (WP no. 14177/2019 decided on 13/07/2021), Hon'ble Rajasthan High Court considered the question of refund on the basis of Mohit Mineral. Relevant portion of the judgment is reproduced below:

"..... The counsel for the petitioner has further submitted that in view of the decision given by the Gujarat High Court in the case of M/s COMSOL Energy Private Limited v. State of Gujarat (R/Special Civil Application No. 11905 of 2020) decided on 21.12.2020, the petitioner is also entitled for refund of Integrated Goods and Service Tax (IGST) paid by him.

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Learned counsel for the respondents have failed to controvert the fact that the issue involved in the present case is covered by decisions given by the Gujarat High Court relied upon by the learned counsel for the petitioner.

Learned counsel for the respondents has, however, submitted that the judgment passed by the Gujarat High Court in the case of Mohit Minerals Private Limited (supra) is under challenge before the Apex Court but operation of the judgment has not been stayed."

Thereafter, the Hon'ble High Court noted the operative portion of the judgments in Mohit Mineral and Comsol Energy, and held:

"Keeping in view the submissions made by the learned counsel for the parties, this petition is disposed of in terms of the decisions given by the Gujarat High Court in Mohit Minerals Private Limited (supra) & M/s. COMSOL Energy Private Limited (supra)."

17. We may note here that in *Comsol Energy* the retrospective application of Mohit Mineral was not in issue before the Hon'ble High Court. Rather the refund was sought to be denied on the grounds of limitation and the Hon'ble Court held that in case of unconstitutional levy the limitation under Section 54 would not apply rather the Limitation Act would prevail. In the case before us, limitation is not a ground of appeal by the department.

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ORDER

18. In view of the above, the order of the Appellate Authority is upheld and the appeals filed by the department are dismissed. We direct the department to process the refund claims and pay the refund amounts and interest to the Respondent, to the extent the same have not already been paid. We make it clear that interest at appropriate rate under Section 56 would be payable for the period of delay beyond 60 days computed from the date of original application. For example, where the refund applications were filed on 22nd April 2023, the interest would be computed from 22nd June 2023 till the date of actual payment to the Respondent. Similar would be the case for the refunds filed on other dates.

(*Operative part of the order pronounced in open court on 29th September 2026).*

SANJAYKUMAR DWIVEDI
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Date: 2026.09.30 20:01:52 +05'30'

(Sanjaykumar Dwivedi)
Member (Judicial)

RAMESHKUMAR GOKALBHAI HADVANI
Digitally signed by RAMESHKUMAR GOKALBHAI HADVANI
Date: 2026.09.30 20:01:12 +05'30'

Date: 30/09/2026
Place: Surat

(Rameshkumar G. Hadvani)
Member (Technical)

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