GSTAT

Court No. Court II

APL/15/KLK/2026 &

APL/17/KLK/2026

The Pr. Commissioner

CGST & CX, Siliguri Commissionerate

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

Hakimpara, Siliguri, Darjeeling-734001

..... **Appellant**

Versus

M/s Rajshahi Banijya Private Limited, 1st, H/127/1/70/436/1, Biswakarma Weigh Bridge Building, Burdwan Road, Jalpanimore, Siliguri, Darjeeling, West Bengal – 734 005

GSTIN/Temporary ID /UIN-19AACCR3475M1ZU **Respondent**

Counsel for Appellant

SHRI DULAL SINHA RAY, SUPERINTENDENT, CGST, AUTHORISED REPRESENTATIVE

Counsel for Respondent

SHRI S N DHURIA, Ld. ADVOCATE

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

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

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : No

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

1.	GSTIN/Temporary ID/UIN - 19AACCR3475M1ZU

2.	Appeal Case Reference no. - APL/15/KLK/2026 & APL/17/KLK/2026	Date – Both dated 12.02.2026
3.	Name of the appellant – ANIL KUMAR SINGH	
4.	Name of the respondent - M/s Rajshahi Banijya Private Limited	
5.	Order appealed against –	
	(5.1) Order Type – Appeal Order	
	(5.2) Ref Number – ZD1909250221973 & ZD1909250221973	Date – Both dated 11.09.2025
6.	Personal Hearing – 19.05.2026, 12.06.2026, 03.07.2026, 24.07.2026, 07.08.2026 & 21.08.2026	
7.	Status of Order under Appeal - Dismissed – Orders under Appeal are Dismissed	

8.	Order in brief - Impugned OIAs are upheld and the Revenue appeals are dismissed.
Summary of Order	
9.	If demand order then whether demand quantified: No

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

Place

:KOLKATA

Date :

Signature

Shri Sunil Kumar Singh

Designation : Member

Jurisdiction :Kolkata

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IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL

KOLKATA BENCH

COURT NO.1

Appeal No.: APL/15/KLK/2026

The Pr.Commissioner

CGST & CX, Siliguri Commissionerate

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

Hakimpara, Siliguri, Darjeeling-734001

…….APPELLANT

Versus

M/s Rajshahi Banijya Private Limited, 1st, H/127/1/70/436/1, Biswakarma Weigh Bridge Building, Burdwan Road, Jalpanimore, Siliguri, Darjeeling, West Bengal – 734 005

GSTIN/Temporary ID /UIN-19AACCR3475M1ZU

……RESPONDENT

AND

Appeal No.: APL/17/KLK/2026

The Pr.Commissioner

CGST & CX, Siliguri Commissionerate

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

Hakimpara, Siliguri, Darjeeling-734001

…….APPELLANT

Versus

M/s Rajshahi Banijya Private Limited, 1st, H/127/1/70/436/1, Biswakarma Weigh Bridge Building, Burdwan Road, Jalpanimore, Siliguri, Darjeeling, West Bengal – 734 005

GSTIN/Temporary ID /UIN-19AACCR3475M1ZU

……RESPONDENT

In appearance :

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

For the respondent : Mr. S N Dhuria, Ld. Advocate

CORAM :

Hon'ble Shri Sunil Kumar Singh : Judicial Member

Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 21.08.2026

Date of Order : 08.10.2026

Per: Shri Sunil Kumar Singh, Judicial Member

1. Since both the appeals bearing Nos APL/15/KLK/2026 and APL/17/KLK/2026 arise from the same *litigium* and revolve around substantially similar facts and questions of law, they are taken up together for disposal by a

common order with the consent of the parties for the sake of convenience and to avoid multiplicity of proceedings.

2. The present appeals have been preferred before the GSTAT, Kolkata Bench under sub-section (1) of Section 112 of the Central Goods & Services Tax Act, 2017 (in short 'CGST Act') against the Order-in-Appeal No. 264/SLG-GST/2025-26 (pertaining to APL/15/KLK/2026) and 265/SLG-GST/2025-26 (pertaining to APL/17/KLK/2026) both dated 28.08.2025 passed by the Joint Commissioner (Appeals), CGST & Central Excise (Appeal), Siliguri Appeal Commissionerate (in short 'the first Appellate Authority'). The said appeals have been filed before the first Appellate Authority by the present respondent i.e., M/s Rajshahi Banijya Private Limited under sub-section (1) of Section 107 of the CGST Act against the Order-in-Original bearing Ref No. ZD190924025946T dated 18.09.2024 (pertaining to APL/15/KLK/2026) and ZD190924025975S dated 18.09.2024 (pertaining to APL/17/KLK/2026) passed by the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri Commissionerate.

3. The respondent i.e., M/s Rajshahi Banijya Private Limited (19AACCR3475M1ZU) situated at 1st, H/127/1/70/436/1, Biswakarma Weigh Bridge Building, Burdwan Road, Jalpanimore, Siliguri, Darjeeling, West Bengal – 734 005 is engaged in the business of purchase of tea in bulk and supply of the same in customized retail packs of different quantitates as per the requirement of the customers. The inputs are bulk tea taxable @ 5% and packing materials taxable @ 18%. The output supply of packaged tea is taxable @ 5%. The Revenue further stated that the respondent claims refund of accumulated Input Tax Credit (in short 'ITC') under Section 54(3)(ii) of the CGST Act, 2017 arising due to inverted tax structure on regular basis.

4. The Revenue (petitioner) have further disclosed that the respondent has filed for refund of accumulated ITC under the inverted tax structure for an amount of Rs.5,37,664/- (SGST) for the period from April 2024 to June 2024 (pertaining to APL/15/KLK/2026) and for an amount of Rs. 2,54,458/- (CGST – Rs.2,00,000/- and SGST – Rs.54,458/-) for the period from October 2023 to March 2024 (pertaining to APL/17/KLK/2026) with the jurisdictional Officer i.e., the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri

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

5. During the scrutiny of the said refund claims, the OAA has noticed certain deficiencies in the aforesaid refund claims and accordingly issued two separate Show Cause Notices (in short 'SCNs') in the forms GST RFD 08 bearing Ref Nos. ZD1908240559021 dated 27.08.2024 (pertaining to APL/15/KLK/2026) and ZD1908240463058 dated 22.08.2024 (pertaining to APL/17/KLK/2026) to the respondent. The respondent has furnished replies to both the SCNs in the form GST RFD 09 on 02.09.2024. The OAA after following the due process of law has rejected both the refund claims vide Refund Sanction Order bearing Ref Nos. ZD190924025946T dated 18.09.2024 (pertaining to APL/15/KLK/2026) and ZD190924025975S dated 18.09.2024 (pertaining to APL/17/KLK/2026) (in short 'the impugned orders') on the ground that the inputs and output are same which are falling under same HSN and hence not eligible for refund under Section 54(3)(ii) of the CGST Act, 2017. Being aggrieved by the impugned orders, the respondent preferred appeals before the first Appellate Authority in forms GST APL 01 vide Ref No. AD191124004901G dated 12.11.2024 (pertaining to APL/15/KLK/2026) and

AD191124003700N dated 09.11.2024 (pertaining to APL/17/KLK/2026). However, after due process of law, the first Appellate Authority has allowed both the refund claims to the tune of Rs.5,37,664/- and 2,54,458/-, respectively filed by the respondent vide Order-in-Appeal No. 264/SLG-GST/2025-26 and No. 265/SLG-GST/2025-26 both dated 28.08.2025 (in short 'the impugned OIAs').

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

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

6.2 Further, the Revenue has stated that vide para 3.2 of the Circular No. 135/5/2020 -GST dated 31st March 2020 issued by CBIC, the refund is barred since both the input and output are same, though attracting different tax rates at different points in time and hence do not get covered under the provisions of clause (ii) of sub-section

(3) of section 54 of the CGST Act for the purpose of refund of inverted duty structure. The Revenue also stated that CBIC vide circular No. 173/05/2022-GST dated 6th July 2022 has clarified that the refund is not admissible on account of inverted duty structure since both the input and output are same. Further, the Revenue contended that the inputs are tea and packaging material attracting different rate of GST @ 5% and 18%, respectively. Tea being the primary supply, outward tax rate is 5%. Thus, there would always be accumulated ITC on account of lower rate of tax on outward supply when compared to inward supplies.

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

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

rate of tax on inputs is higher than the rate of tax on output supply. The bulk LPG is used as the principal input as well as bottled LPG supplied by the Petitioner is chargeable to GST @ 5%. The above decision of Calcutta High Court cannot be applied in the instant case in *toto* as the issue is different. The LPG attracting two different rates i.e. @18% [Sl. Entry No. 34 of Schedule-III] and @ 5% [Sl. Entry No. 165 of Schedule I] of Notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017, as amended. In the instant cases the rate of inward supply and outward supply is same i.e., @5%. The said point has not been considered by the first Appellate Authority in case of giving the decision.

6.4 The Revenue has further contended that only packing materials are attracting higher rate of tax than the rate of tax of principal input cannot be ground for claiming refund of accumulated ITC under the category of inverted tax structure as per clause (ii) of first proviso to section 54(3) of the CGST Act, 2017. It has been submitted by the respondent before the first Appellate Authority that they purchase tea and the same is further sold into customized packets of different weights as per the requirement of the buyer. The First Appellate Authority has not considered the above contention of the

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

7. Shri Dulal Sinha Ray, Superintendent, CGST, Authorized Representative of the Revenue appeared through virtual mode and argued the case at length. He reiterated the facts and submissions which are already submitted in the Grounds of Appeal filed by the Revenue.

8. We have heard the arguments of the petitioner on the point of admission. Both the appeals were admitted and accordingly notice was issued to the respondent. The respondent filed his authorization and appeared through Shri S N Dhuria, Ld. Advocate. The Ld. Advocate has filed his Cross Objection against the instant appeals which is as under:

8.1 With respect to the ground raised by the Revenue vide para 6.1 above, the respondent submits that Section 54(3)(ii) of the CGST Act, 2017 permits the refund where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. Further, the statutory provision nowhere stipulates that the refund would be unavailable where the

input and output goods are identical. The only statutory requirement is the existence of accumulation caused by a higher rate of tax on inputs vis-à-vis output supplies.

8.2 With respect to the ground raised in para 6.2 above, the respondent submits that the entire Revenue's appeal is based on para 3.2 of the Circular No. 135/5/2020-GST dated 31.03.2020. However, it is settled law that the executive circulars cannot override, amend, restrict or whittle down the provisions of the act. Further, if Section 54(3) of the CGST Act, 2017 grants refund wherever accumulation arises because of the rate of tax on inputs is higher than the rate of tax on output supplies, such benefit cannot be denied by the introducing an additional condition through a circular. Therefore, the respondent contends that the Revenue's reliance on para 3.2 of the Circular is misconceived and legally unsustainable. Further, with respect to ground raised by the Revenue based on Circular No.173/05/2022-GST, the respondent submits that the ground is equally unsustainable since the primary Circular No. 135/5/2020 GST is not applicable for the case on hand.

8.3 With respect to the ground raised by the Revenue vide para 6.3 above, the respondent submits that the

Hon'ble Calcutta High Court categorically has held that Section 54(3) of the CGST Act, 2017 does not deny refund merely because the input and output supplies are same. The circular creates an impermissible classification not contemplated by the act and the refund is available wherever the rate of tax on inputs is higher than the rate of tax on output supplies. The respondent further submits that the Hon'ble High Court has held that the Board Circular cannot restrict the statutory entitlement granted under the Section 54(3) of the CGST Act, 2017. Hence, the ratio of judgment directly applies in the case in hand. Further, the respondent submits that the Revenue's attempt to distinguish Shivaco Associates is misplaced because the legal principle laid down therein concerns interpretation of Section 54(3) and validity of the circular. The Hon'ble High Court did not make the applicability of the principle dependent on LPG alone.

8.4 Further, with respect to the ground raised by the Revenue vide para 6.4 above, the respondent contends that the Revenue seeks to ignore packing materials merely because tea constitutes the principal commodity and such contention is contrary to the scheme of GST law. Packing materials are admittedly 'inputs' under the CGST Act and ITC availed thereon is legally available.

Once packaging materials attract GST @ 18% and the output supply i.e., tea is taxable at 5%, accumulation of ITC necessarily arises. Further, Section 54(3) of the CGST Act, 2017 nowhere provides that only the principal input is to be considered while examining the inversion. The expression used by the legislature is 'inputs' and not 'principal input'. Therefore, the accumulation of ITC arises from packing materials cannot be ignored.

9. We have carefully heard the arguments of both the parties, Grounds of Appeal and examined the records minutely. The issue involved is

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

b) Whether the Circular No. 135/5/2020 GST and Circular No. 173/05/2022 GST are applicable in the facts and circumstances of the case.

10. We are of the view that the Revenue is contesting the refund filed by the respondent mainly on the ground that the same is not available under the provisions contained in clause (ii) of sub-section (3) of Section 54 of the CGST Act, 2017 since both the input and output are same i.e., tea. For brevity, relevant portion of

provisions contained in Section 54(3)(ii) of the CGST Act, 2017 are reproduced as below:

"54(3)(ii) where the credit has accumulated on account of ***rate of tax on inputs being higher than the rate of tax on output supplies*** *(other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

11. On plain reading of Section 54(3)(ii) of the Act, it is amply clear that the statute permits the refund where credit has accumulated because the rate of tax on inputs is higher than the rate of tax on output supplies. The legislature has consciously employed the expression "inputs" in plural. Further, there is no distinction made between principal input and ancillary inputs. Reading such restriction into the statute will not meet the ends of justice. Further, there is no such intention of the legislature in restricting the refund on such comparison. Hence, we are of the view that comparing purchasing of tea in bulk with the sale of tea in small packages (composite supply) and ignoring the other inputs viz., packing materials as both inward and outward supply is tea is factually incorrect and we are of the view that the Revenue's argument is without any basis. We also wish to draw the attention to the Judgment

passed by Hon'ble High Court of Delhi in the case of M/s. Indian Oil Corporation Limited in WP (C) 10222/2023 & CM No.39561/2023 [2023]67 TAXLOK.COM011 (Delhi). The Hon'ble Court has observed in paras 22 and 26 as under:

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

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

12. The term 'input' has been defined in Section 2(59) of the CGST Act, 2017. Further, the eligibility of ITC in respect of packing materials is also discussed in para 13 of CBIC Circular

No.79/53/2018- GST dated 31.12.2018. For brevity, relevant provisions (portion) contained are reproduced as below:

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

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

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

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

14 With respect to the issue raised by the Revenue by relying on para 3.2 of the CBIC Circular No.135/05/2020-GST dated 31.03.2020 and Circular No. 173/05/2022 GST dated 06.07.2022, we find it appropriate to discuss first about the relevancy of the provisions contained in Circular No. 135/05/2020 GST dated 31.03.2020 in the instant case. On careful reading of the Circular, we find that the provisions of the said circular are applicable for the cases where there is a reduction of GST and the same is also mentioned in the heading of para 3 of the said circular. For better understanding we reproduce the entire para 3 of the Circular No. 135/05/2020 GST as below:

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

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an

illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

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

15. 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.

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

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

In view of the observation made by the Hon'ble High Court of Delhi, 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.

17. The argument of the Revenue that in view of Circular No. 173/05/2022, the respondent is not entitled for the refund claim

since both the input and output are same. In this regard we find that the clarification issued in the said Circular is applicable to cases where the supply of goods is made under some concessional notification. We find it appropriate to reproduce the subject of the Circular as under:

"Subject: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods ***under some concessional notification*** *– reg."*

Further, we also feel appropriate to reproduce relevant portion of para 4 of the Circular as below:

"4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 ***would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification*** *issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under"*

In light of the above discussion, we find that the instant cases do not cover the provisions contained in the said Circular and hence the argument of the Revenue has no force.

18. 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 these cases, 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. Further, we also find that Circular No.173/05/2022 GST has amended the provisions of para 3.2 of the Circular No. 135/5/2020 GST. The refund claims are not governed by the provisions of Circular No. 135/5/2020 GST. As far as the Circular No. 173/05/2022 GST is concerned that is only a clarification of Circular No.135/05/2020 GST. Since, the Circular No. 135/05/2020 GST is not applicable in these cases, the clarification made in the Circular No. 173/05/2022 GST has the same fate and is not applicable in the instant cases. In light of the above, we find that there is no force in the contentions raised by the revenue and the orders passed by the first appellate authority have no infirmity.

19. For the facts and reasons discussed above, the appeals bearing Nos. APL/15/KLK/2026 and APL/17/KLK/2026 filed by

the Revenue have no merit, hence dismissed. The parties shall bear their own cost.

The order is pronounced in the open court in presence of the authorized representatives of the parties. The Registry is directed to upload the Final Order on the portal immediately.

(Shri Sunil Kumar Singh)
Member – Judicial

(Shri Bijoy Kumar Kar)
Member – Technical

Dated: