

IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO. 1

Appeal No. APL/128//KLK/2026

SANTOSH JAISWAL

..... Appellant

Versus

MADANLAL MURARILAL

..... Respondent

In appearance :

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

For the respondent : Mr. Ramesh Kumar Agarwal, CA

&

Ms. Bhawna Singhal, CA.

CORAM :

Shri Satya Gopal Chattopadhyay : Hon'ble Judicial Member

Shri Anindya Mitra : Hon'ble Technical Member

FINAL ORDER

Date of Hearing: 08/10/2026

Date of Order : 14/10/2026

Per Anindya Mitra (TM):

[1]. This appeal under section 112(3) of CGST Act, 2017 has been preferred by the Revenue against the appeal order (No. 232/SLG-GST/2024-25/ dated 04.09.2024) passed by the Additional Commissioner (Appeal) CGST, Siliguri Appeal Commissionerate under section 107(11) of CGST Act, 2017.

[2]. The Respondent M/s Madanlal Murarilal holding GSTIN—19ACBPA5671Q1Z7 is a trader of tea falling under HSN-0902 . He filed Refund Application on 30.03.2024 claiming Refund of accumulated ITC to the tune of Rs.10,75,233/- (SGST) on the ground of "ITC Accumulated Due to Inverted Tax Structure" for the period April,2022 to September,2022.

[3]. After examining the application, the Refund Sanctioning Authority observed that the inward and outward supply of the taxpayer are same commodity i.e. tea attracting same rate of taxes at the rate of 5% [@2.5% as CGST, @2.5% as SGST or @5% as IGST as the case may be]. In his opinion, the respondent was not eligible for refund under Section 54(3)(ii) of the CGST Act.

[4]. Aggrieved by the rejection of the refund, the taxpayer filed an appeal before the Additional Commissioner (Appeals), Siliguri Appeal Commissionerate. The First Appellate Authority allowed the appeal in favour of the taxpayer.

He relied on Para 62 of the Circular No. 128/44/2019- GST, dated 18-11-2019 issued by CBIC clarifying the meaning of 'Input'.

“It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. It is clarified that the ITC of the GST paid on inputs, including 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, capitalized goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been 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.”

The First Appellate Authority also relied on the judgement of the Hon’ble Delhi High Court in the case of INDIAN OIL CORPORATION LTD VS. COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX, [W.P. (C) No. 10222 of 2023 and C.M. No. 39561 of 2023] who held that the word 'inputs' used in plural in section 54(3)(ii) indicated refund of accumulated ITC was not confined to ITC accumulated on a single input. Further, the provision did not require comparison of tax rate of principal input with tax rate of principal output supply.

The Hon’ble HC emphasised that refund under inverted duty structure does not depend on the number of inputs and outputs and, accordingly, cannot be restricted on account of singularity of input. Setting aside the refund rejection order of the Adjudicating Authority (AA), the HC stated that the refund provisions do not prescribe comparison between tax rate of 'principal input' with output to determine refund under inverted duty structure. The HC elaborated on broader interpretation of 'inputs' and held that the Circular cannot insert any provision, which is not available in the Act. However, at the same time, it affirmed refund of accumulated ITC cannot be permitted on account of reduction in GST rate on same goods over the period of time, as also clarified by the CBIC circular. Earlier, the Calcutta HC on similar basis permitted the refund in the case of **Shivaco Associates**, wherein refund of accumulated ITC was denied on the ground that input and output supply were the same though taxed at different rates. The HC observed that by way of the above CBIC Circular, the refund benefit was being curtailed leading to creation of a class inside a class, which cannot be permitted. Similar decisions were given by

the Rajasthan HC in Baker Hughes Asia Pacific Limited and by Gauhati HC in BMG informatics (P) Ltd, wherein the Courts held that the circular is unsustainable and liable to be ignored.

The Additional Commissioner (Appeals), Siliguri Appeal Commissionerate concluded “ I find that facts of the instant case are similar to above mentioned cases” and allowed the refund claim.

[5]. The Revenue has assailed the order of the First Appellate Authority on various grounds:

“(i). inward and outward supply are same and attract same rate of GST.

(ii). Para 3.2 of Circular No. 135/5/2020-GST dated 31st March, 2020 and also Circular No. 173/05/2022-GST dated 6th July, 2022 which prohibits inverted duty structure refund where input and output supplies are the same.

(iii). The reliance of the first appellate authority on the judgement of the Delhi High Court in the case of Indian Oil Corporation was misplaced as the facts of the IOC case were different.

(iv). only packing material attracting higher rate of tax than the rate of tax of ‘principal input’ cannot be ground for claiming refund of accumulated input tax credit on account of inverted duty structure.”

[6]. At the outset, it is necessary to deal with a contention of the Revenue. In APL-07, it has been contended that

“the LPG attracting two different rates Le. @ 18% [Sl. Entry No. 34 of Schedule III) and 5% [SL. Entry No. 165 of Schedule-1] of Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, as amended. In the instant case the rate of inward supply and outward supply is same is 5%. The same point has not been

considered by the First Appellate Authority in case of giving decision”

However, this ground has no merit. It is clear from para 6 of the judgement of the Hon’ble Division Bench of the Delhi High Court that IOC’s principal input i.e. bulk LPG was taxable @5% while bottled LPG supplied by him too was taxable @5%.

“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.”

[7]. In a number of cases, the GSTAT, Kolkata Bench has had the occasion to consider the eligibility of refund due to inverted duty structure u/s 54(3)(ii). In the **‘Principal Commissioner Versus M/s Tea Linker of Siliguri’ [APL/25/KLK/2026] passed on 03.09.2026**, the taxpayer was engaged in the purchase of tea in bulk and supply of packaged tea in containers, packets, pouches, and sachets. Almost similar 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.

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 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 [2024] 122 GSTR 303 (Cal)** and the Judgement of Hon'ble Delhi High Court rendered in **Indian Oil Corporation Limited [2024] 122 GSTR 318 (Delhi)** and came to the following conclusion in its order.

“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.” 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.

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.”

[8]. The present appeal is squarely covered by the decision held by this Tribunal in the case of The Principal Commissioner Vs. M/s Tea Linker of Siliguri, dated 03.09.2026.

The respondent’s principal input tea attracts GST @5% while other inputs such as packaging materials, PET jar containers, printed flexible packaging materials attract GST @18%. But the rate of tax on output supplies is 5%. This inverted duty structure has resulted in accumulation of input tax credit.

[9]. In **Shivaco Associates and Another (Supra)**, the Hon’ble Calcutta High Court 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."

[10]. 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)**, we are of the considered view that the respondent is eligible for refund in terms 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, we see no reason to interfere with the impugned order. Consequently, the appeal stands dismissed and disposed of. 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.



S.G. Chattopadhyay
Judicial Member

Anindya Mitra
Technical Member