

The Pr. Commissioner

CGST & CX, Siliguri Commissionerate

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

Hakimpara, Siliguri, Darjeeling-734001

..... **Appellant**

Versus

M/s Vaishnodevi Buildcon Private Limited, 8, Ganeshyan Building, Sevoke Road, Siliguri-734001

GSTIN/Temporary ID /UIN-19AADCV6874D1ZZ..... **Respondent**

Counsel for Appellant

SHRI RAKESH KUMAR, SUPERINTENDENT, CGST,
AUTHORISED REPRESENTATIVE

Counsel for Respondent

SHRI GARUAV SHARMA, FCA
AUTHORIZED
REPRESENTATIVE

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 - 19AADCV6874D1ZZ	
2.	Appeal Case Reference no. - APL/33/KLK/2026	Date – 02.06.2026

3.	Name of the appellant – ANIL KUMAR SINGH	
4.	Name of the respondent - M/s Vaishnodevi Buildcon Private Limited	
5.	Order appealed against –	
	(5.1) Order Type – Appeal Order	
	(5.2) Ref Number – 525/SLG-GST/2024-25	Date – 07.01.2025
6.	Personal Hearing – 11/06/2026, 02/07/2026, 24/07/2026, 14/0/2026 and 21/08/2026	
7.	Status of Order under Appeal - Dismissed – Order under Appeal is Dismissed	

8.	Order in brief - Impugned OIA is upheld and the Revenue appeal is 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		Order by GST Appellate Tribunal
Erroneous Refund		The revenue appeal is dismissed.
Issues as determined by Appellate/Revisional authority		Appeal was allowed in favor of taxpayer.

Place

:KOLKATA

Date :

Signature

Shri Sunil Kumar Singh

Designation : Member

Jurisdiction :Kolkata



**IN THE GOODS AND SERVICES TAX APPELLATE
TRIBUNAL**

KOLKATA BENCH

COURT NO.1

Appeal No.: APL/33/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 Vaishnodevi Buildcon Private Limited, 8, Ganeshyan

Building, Sevoke Road, Siliguri-734001

GSTIN/Temporary ID /UIN-19AADCV6874D1ZZ

.....RESPONDENT

In appearance :

For the appellant: Mr. Rakesh Kumar, Superintendent, CGST

For the respondent : Mr. Gaurav Sharma, FCA

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 : 14.10.2026

Per: Shri Sunil Kumar Singh, Judicial Member

1. The present appeal has been preferred by the petitioner (Revenue) before the GSTAT, Kolkata Bench under sub-section (3) of Section 112 of the Central Goods & Services Tax Act, 2017 (in short 'CGST Act') against the Order-in-Appeal (in short 'OIA') No. 525/SLG-GST/2024-25 dated 07.01.2025 passed by the Additional Commissioner (Appeals), CGST & CX, Siliguri Appeal Commissionerate (in short 'the first Appellate Authority'). The said appeal has been filed before the first Appellate Authority by the Revenue i.e., the Assistant Commissioner of GST & Central Excise, Siliguri Division, Siliguri Commissionerate in the capacity of Authorized Officer under sub-section (3) of Section 107 of the CGST Act against the Order-in-Original bearing Ref No. ZE1910230073592 dated 06.10.2023 passed by the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri Commissionerate.

2. The petitioner stated that M/s Vaishnodevi Buildcon Private Limited (respondent herein) having GST Registration No. 19AADCV6874D1ZZ situated at 8, Ganeshyan Building, Sevoke Road, Siliguri-734001 is engaged in the business of manufacturing of crushed stone/ stone aggregates from pebbles/ rock/ gravel, etc. Both the inward and outward supplies made by the respondent are falling under the same HSN i.e., 2517 which attracts GST @ 5%. The input and output supplies are same attracting same rate of GST. Further, the primary input is boulders and final output is crushed stone/ stone aggregates. 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 arising due to inverted tax structure on regular basis.

3. 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.7,04,974/- (SGST) for the period from 01.05.2022 to 31.08.2022 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').

4. During the scrutiny of the said refund claim, the OAA has noticed certain deficiencies in the aforesaid refund claim and accordingly issued Show Cause Notice (in short 'SCN') bearing Ref Nos. ZG1909230258779 dated 20.09.2023 to the respondent. The respondent has furnished reply to the SCN dated 03.10.2023. The OAA has accepted the reply submitted by the respondent and accordingly sanctioned the refund in full for an amount of Rs.7,04,974/- to the respondent vide Refund Sanction Order bearing Ref No. ZE1910230073592 dated 06.10.2023 (in short 'the impugned order'). The impugned order was subject to the review by the Commissioner of GST & Central Excise, Siliguri Commissionerate (in short 'the reviewing authority') and found that the same is not according to the law and accordingly the Reviewing authority has directed the OAA i.e., the Assistant Commissioner of GST & Central Excise, Siliguri Division, Siliguri Commissionerate to file an appeal as an authorized officer before the first Appellate Authority. In pursuance of the orders given by the reviewing authority, the OAA in the capacity of an authorized officer preferred an appeal before the first Appellate Authority vide Ref No. GAPPL/ADC/GSTD/1104/2024/Slg-Appeal dated

20.03.2024. However, the first Appellate Authority has allowed the refund claim of the respondent and rejected the Revenue's appeal vide Order-in-Appeal No. 525/SLG-GST/2024-25 dated 07.01.2025 (in short 'the impugned OIA').

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

5.1 That the first Appellate Authority has committed error in not considering the facts and circumstances of the case in proper manner and has wrongly concluded that refund of unutilized ITC claimed on the ground of "ITC accumulated due to inverted tax structure" should be allowed in terms of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 though inward and outward supply are same and attract same rate of GST @ 5%.

5.2 Further, the Revenue has also 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 its Circular No. 173/05/2022-GST Dated 6th July 2022 has also clarified that the refund on account of inverted tax structure would not be admissible in cases where the input and output supply are same.

5.3 The Revenue further contended that the first Appellate Authority referred para 3.2 of the Circular No. 135/05/2020 GST, dated 31/03/2020 and *inter alia* stated that apart from stone/stone aggregates from pebbles/rock/gravel which are major inputs, there are other inputs attracts tax @28% and 18% and subsequently the outward supply of natural aggregates (stone chips) only attracts tax @5%. In the case on hand, the respondent taxpayer is involved in activities of manufacturing of crushed stone/stone aggregates from pebbles/rock/gravel etc. Both raw material and final product fall under HSN code 2517 and attracts 5% rate of GST. Since, both the inward & outward supply are same, refund is not eligible in terms of Section 54(3)(ii) of the CGST Act. Further, in order to claim undue refund of accumulated ITC in the category of inverted tax structure, the respondent taxpayer has wrongly included

various other inputs which attract higher rate of GST (18% and/or 28% rate of GST) such as Grease, Mobil and Other Lubricants, Sand Washing unit AMC, Vehicle Tyres, Vehicle Parts and Maintenance, Loader & Excavator Parts, Aggregates Washing Spare Parts, maintenance Cost for Screening Plant, Crusher Plant Spare Parts/Heavy Parts & Screening Plant Spare parts. These inputs have no use in manufacturing of crushed stone/stone aggregates as raw material is boulders and final output is crushed stone/stone aggregates. Only to avail refund in the category of inverted duty structure, the respondent taxpayer has wrongly shown miscellaneous inputs attracting higher rate of GST.

5.4 On the basis of above facts mentioned in the appeal, notice was issued to the respondent and the case was admitted for hearing. The respondent appeared and filed his Cross Objection through Authorized Representative Shri Gaurav Sharma, FCA.

5.5 During the course of final argument, Shri Rakesh Kumar, Superintendent, CGST, Authorized Representative of the Revenue appeared through virtual mode and argued the case at length. He drew the attention of this Tribunal on the judgement passed by the Hon'ble High

Court of Calcutta in the matter of M/s. Shivaco Associates. The Hon'ble High Court has held that in the instant case the act does not mention about non-granting of the benefit of accumulated input tax credit 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 cases 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.

5.6 The Revenue has further contended that only to avail undue refund in the category of inverted tax structure, the respondent has wrongly shown inputs

attracting higher rate of GST such as grease, mobil and other Lubricants, sand washing unit AMC, vehicle tyres, vehicle parts and maintenance, loader & excavator parts, aggregates washing spare parts, maintenance cost for screening plant, crusher plant spare parts/heavy parts & screening plant spare parts, which has no direct use in the manufacturing of final product.

6. Shri Gaurav Sharma, FCA, Authorized Representative of the respondent appeared through virtual mode and advanced his arguments on the grounds raised by the Revenue in the appeal and during the course of argument.

6.1 With respect to the ground raised by the Revenue vide para 5.1 above, the respondent submits that with respect to the allegation raised by the Revenue regarding the input and output being same and classifiable under same HSN attracting 5% tax rate is misplaced, arbitrary and unjust. The respondent submits that their inputs and the final output are completely different/ distinct and exhibits no similarities in terms of their nature, and composition and states that while their primary input is River Bed Material (RBM) and boulders and output is natural aggregates & stone chips. The manufacturing

process may appear similar, but the input used and output they produce are fundamentally different in nature. The final product bears no direct resemblance to the raw materials at the outset, as it undergoes a highly complex transformation involving several stages, processes, and resources. This distinction is critical in understanding the intricacies of the manufacturing operations. The primary raw material and output might look similar but the nature of the inputs and outputs are completely different. The raw material is passed through a long and complex manufacturing process in order to produce the final output. The Revenue has proceeded and relied upon on the erroneous assumption that goods classified under the same HSN automatically become identical goods for the purpose of refund under Section 54(3) of the CGST Act; concluding that the input and output in the given case is same, without providing any collusive basis for such claims. The respondent submits that they are engaged in the manufacturing industry and not in a trading business. The raw materials procured by the respondent, including the primary raw material, undergo substantial processing and various manufacturing operations before being converted into the final finished product. It is noteworthy to mention

that once the manufacturing process is undertaken, the raw materials and inputs lose their original identity and character and emerge as a distinct and commercially different product. Therefore, the final output cannot be equated with the same goods as the raw materials or inputs used in the manufacturing process. Hence, the Revenue's grounds stating the inputs and outputs to be the same is without any collusive basis and evidence. In light of the above submissions, the respondent is eligible for refund under inverted duty structure under Section 54(3)(ii).

6.2 With respect to the grounds raised in paras 5.2 and 5.3 above, the respondent submits that the first Appellate Authority also noted that the Circular No. 135/5/2020 GST on which the Revenue has relied their entire basis of the contentions is not applicable to the instant case. The first Appellate Authority has also found that paras of the said circular do not cover the issue in hand. In instant issue, credit has not got accumulated because tax rates were different on same input and output in different time frames. In the given case, the said circular cannot be applied and hence, the appeal filed by the Revenue is liable to be set aside. Further, with respect to Circular No. 173/05/2022 GST, the respondent

submits that the provisions contained there under have been incorrectly interpreted and applied as per the whims and fancies of the Revenue. The aforesaid circulars cannot be read in isolation and must be interpreted in harmony with the provisions of Section 54(3) of the CGST Act.

6.3 With respect to the grounds raised by the Revenue vide paras 5.5 and 5.6 above, the respondent submits that the Hon'ble Calcutta High Court has held that 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. The Hon'ble High Court has also held that 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. The same principle is applicable in the case of the respondent also.

6.4 In support of the argument, the respondent also placed their reliance in the case of M/s. Malabar Fuel Corporation Vs The Assistant Commissioner Central Tax And Central Excise, Kannur, The Joint Commissioner (Appeals) Kochi, Union Of India, State Of Kerala, Central

Board Of Indirect Taxes & Customs, [2024 (1) TMI 1203 - KERALA HIGH COURT] [WP(C) Nos. 26112/2023, 20511/2023, 36699/2023, wherein the Hon'ble Kerala High Court has examined the validity of Section 54(3)(ii) of the CGST Act, 2017 and held that the statute authorises refund where credit has accumulated because the rate of tax on inputs is higher than the rate on output supplies. A plain reading of Section 54 shows that such entitlement is not negated by the fact that the input and output are the same. Circular No. 135/05/2020 GST para 3.2, which excludes cases where input and output supplies are the same, operates contrary to the statutory prescription and cannot deny the refund contemplated by Section 54(3)(ii). The court explicitly held that Circular No. 135/05/2020 GST para 3.2 cannot be applied to deny refund under Section 54(3)(ii); petitioner entitled to refund of accumulated ITC for the stated periods.

6.5 In support of the argument, the respondent has also placed their reliance in the case of M/s. Indian Oil Corporation Limited Versus Commissioner of Central Goods and Services Tax & Ors [2023 (12) TMI 361 - DELHI HIGH COURT] No.- W. P. (C) 10222/2023 & CM No. 39561/2023 wherein the Hon'ble Delhi High Court held that Circular No. 135/5/2020 was issued under

Section 168(1) for uniformity of implementation. That power does not permit the Board to issue directions that would curtail or override express provisions of the CGST Act. Paragraph 3.2 of the said circular addresses situations where ITC accumulation arose because the same goods attracted different tax rates at different points in time, and clarifies that such cases would not fall under Clause (ii) of sub-section (3) of Section 54.

7. 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.

8. 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 since both the input and output are same i.e., stone

(boulders/ stone chips). For brevity, relevant portion of provision contained 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.”

9. 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. There is no such intention of the legislature in restricting the refund on such comparison. Further, we also find that the primary input and output may appear similar but are distinct on various grounds even though they are falling under the same HSN and we also find that the respondent utilizes various inputs in the course of their outward supplies. Accordingly, the respondent is eligible for refund under inverted tax structure since principal input cannot be compared with

principal output only as there are other inputs which are utilized in the course or furtherance of their business. Accordingly, we are of the view that the Revenue's argument regarding input and output being same is without any basis and have no force. During the course of argument our attention was drawn 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 High 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."*

*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.”

10. Further, the term ‘input’ has been defined in Section 2(59) of the CGST Act, 2017. For brevity, relevant provision (portion) contained is 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;**”*

11. Thus, on plain reading of Section 2(59) of the CGST Act, 2017, 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. Further, we find that the primary input which is RBM and Boulders and output i.e. natural aggregates & stone Chips in the manufacturing process may appear similar, but the inputs used and output the respondent produces are fundamentally different in nature. The final product bears no direct resemblance to the raw materials at the outset, as it undergoes a highly complex transformation involving several stages, processes, and resources. The other inputs used for the complex manufacturing process include screening spare parts (18%), crusher plant spare parts (18%), conveyer belt spare parts (18%), vehicle parts and maintenance (18%), vehicle tyres (28%), grease mobile (18%), etc. Hence, in light of the above, we are of the view that the respondent utilizes various inputs other than the principal input which

attract GST @ 18% and 28% whereas as their output attracts GST@ 5%. Hence, we are of the view that even though their principal input and output are falling under same HSN, they are also utilizing various inputs which attract GST @ 18% and 28% and accordingly they are very much eligible for refund under inverted rate structure as per Section 54(3)(ii) of the CGST Act.

12 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, we are of the view that the provisions of the said circular are applicable for the cases where there is a reduction of GST rate 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 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.”

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 boulders/ RBM purchased by the respondent and after processing sold as stone chips attract the same rate of GST i.e., 5%. Hence, the Revenue’s reliance on this ground is incorrect.

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.

15. Further, with respect to the Revenue’s reliance on Circular No. 173/05/2022 GST, we find that the said circular has amended the provisions of para 3.2 of the Circular No. 135/5/2020 GST. Since, the refund claim is not governed by the provisions of Circular No. 135/5/2020 GST and accordingly same cannot be covered under the provisions of Circular No. 173/05/2022 as it is clarificatory in nature. Once the principal circular is not applicable then the clarificatory circular shall also

not be applicable in the said circumstances. Further, Circular No.173/05/2022 GST is applicable to cases where the supply of goods is made under some concessional notification. Hence, the Revenue's reliance on the said circular has no force.

16. For the facts and reasons discussed above, we are not inclined to interfere in the order passed by the first Appellate Authority. The appeal bearing No. APL/33/KLK/2026 filed by the Revenue has 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: