GSTAT

State Bench Delhi

Division Bench Court No. Court I

APL/72/DEL/2026

LALDEO RAJAK **.....Appellant**

Versus

KANEKA INDIA PRIVATE LIMITED, DIRECTOR, D-1 DISTRICT CENTRE NEW DELHI SAKET DLSOD 110017 **.....Respondent**

Quorum

Hon'ble Sh. Sanjay Kumar Aggarwal, Vice President
Hon'ble Sh. Rajiv Kapoor, Member (Technical)

Authorized Representative for Appellant	**Authorized Representative for Respondent**
Sh. Deepak Suneja Ld. CA along with Ms. Lovey Singhal and Ms. Sapna Singhal Ld. CAs	Ms. Prerna Singh, Ld. AC

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. : ZN510071026000269H **Date of order :** 29/10/2026

1.	GSTIN/Temporary ID/UIN - 07AADCK9100F1ZU	
2.	Appeal Case Reference no. - APL/72/DEL/2026	Date - 10/02/2026
3.	Name of the appellant - Laldeo Rajak , laldeor.g189201@gov.in , 9430299487	
4.	Name of the respondant - 1. KANEKA INDIA PRIVATE LIMITED , etsuo.yoshiike@kaneka.co.jp , 9910588992	

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5.	Order appealed against - AD0710240090002	
	(5.1) Order Type - Refund Order	
	(5.2) Ref Number - ZD070625009752D	Date - 10/06/2025
6.	Personal Hearing - 29/10/2026 08/10/2026 05/10/2026 29/09/2026 25/09/2026 10/09/2026 02/09/2026 03/08/2026 30/07/2026 10/07/2026 26/05/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - (a) The appeal filed by the appellant/ department is dismissed. (b) The finding recorded in the impugned Order-in-Appeal No. 107/JC/Central Tax/Appeal-II/Delhi/2025-26 dated 30.04.2025, annulling the OIO dated 22.07.2024 is upheld, for the comprehensive reasons recorded in this judgment, in substitution of the reasons recorded in the impugned OIA. (c) It is accordingly held that refund application 1 dated 29.02.2024 was filed within the period of limitation prescribed under Section 54(1) of the Act 2017, as extended by Notification No. 13/2022-Central Tax dated 05.07.2022. (d) No order as to costs.	
	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	As per Order in Appeal Attached	

Place :NEW DELHI

Date : 29.10.2026

Sanjay Kumar Aggarwal

Vice- President/ Judicial Member

GSTAT, Delhi State Bench, New Delhi.

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FINAL ORDER

1. This appeal has been filed by the Department under Section 112(3) of the Central Goods and Services Tax Act, 2017 (Here in after called “the Act 2017"), pursuant to Review Order No. 443/Pr. Commr./GST-Delhi South/2024-25 dated 30.10.2025 passed by the Principal Commissioner, CGST, Delhi South, directing the Deputy/Assistant Commissioner to file an appeal before this Tribunal against Order-in-Appeal No. 107/JC/Central Tax/Appeal-II/Delhi/2025-26 dated 30.04.2025 (Here in after called " the impugned OIA") passed by the Joint Commissioner (Appeals-II), CGST Delhi (Here in after called " the appellate authority"), to the extent it annulled the finding of the adjudicating authority that the respondent's refund claim was time-barred.
2. The impugned OIA had annulled Order-in-Original ("Here in after called “the OIO dated 22/07/2024") passed by the Assistant Commissioner, CGST Malviya Nagar Division, whereby a refund claim of Rs. 39,88,388/- filed by the respondent had been rejected solely on the ground of limitation.
3. The respondent, M/s Kaneka India Private Limited, 4th Floor, Unit No. 3, Worldmark 4, Assset Area No. LP-1B-04, New Delhi – 110037, a registered person under GST (GSTIN 07AADCK9100F1ZU), had received an advance of Rs. 7,11,67,068/- in April 2020, on which it discharged GST of Rs.

1,28,10,072/- while filing FORM GSTR-3B for April 2020 on 19.05.2020. A part of the advance, to the extent of taxable value of Rs. 4,90,09,353/- (involving Rs. 44,10,841/- under CGST and SGST each, was adjusted against actual supplies in June 2020. This left an alleged excess payment of Rs. 3,98,8,388/- (CGST Rs. 19,94,194/- and SGST Rs. 19,94,194/-), for which the respondent sought a refund under Section 54 of the Act 2017.

4. The chronology of the refund applications, as borne out by the record, is as follows:

(a) 29.02.2024-original refund application filed (ARN AA070224107176L);

(b) 12.03.2024 - deficiency memo issued in FORM GST RFD-03.

(c) 31.03.2024 - fresh application filed after purported rectification;

(d) 10.04.2024 - second deficiency memo issued for the same reasons;

(e) 25.05.2024 - third application filed (ARN AA070524080895T), acknowledged in FORM GST RFD-02 on 10.06.2024;

(f) 01.07.2024 - show cause notice in FORM GST RFD-08(Here in after called " the SCN") issued, proposing rejection on the ground that the claim was time-barred;

(g) 17.07.2024 -respondent filed a detailed reply to the SCN; and

5. The SCN dated 01.07.2024 raised two grounds:

firstly, that the refund application dated 25.05.2024 annexed details pertaining to a period prior to 24.05.2022, said to render the claim time-barred (expiry of two years) having regard to the "relevant date" under Section 54 of the Act 2017; and secondly, that complete supporting documents i.e., advance payment receipt, invoices, bank statement and GST reconciliation sheet for the relevant period had not been uploaded.

6. A personal hearing was fixed for 09.07.2024, at which the respondent did not appear; however, a written reply to the Show Cause Notice was furnished on 17.07.2024.
7. The adjudicating authority, recorded in the OIO dated 22/07/2024 that the taxpayer's reply dated 17.07.2024 to the SCN is not admissible; that he had carefully gone through the facts of the case, and that all documents had been submitted electronically by the party; that the refund application was filed by the party under Section 54 of the CGST Act, 2017, and pertains to refund of excess payment of tax for the period of April 2020. He recorded that the instant refund claim essentially involves consideration of two issues:

(a) whether the refund claim has been filed in time and with the correct jurisdictional authority, and

(b) whether the party has filed its GSTR-1 (Table-6A) and GSTR-3B.

8. On the first issue, the adjudicating authority mentioned that the party filed the said application for refund claim on 25.05.2024, for the period April 2020, for an amount of Rs. 39,88,388/-. To analyse whether the claim was filed within time, the adjudicating authority considered it appropriate to discuss the relevant legal aspects. It found that Section 54(1) of the Act 2017 provides that any person claiming refund of any tax and interest, if any paid on such tax, or any other amount paid by him, may make an application before the expiry of two years from the relevant date, in such form and manner as may be prescribed. It then referred to CBIC notification No. 13/2022-Central Tax dated 05 July 2022, clause (iii) of which excludes the period from the 1st day of March 2020 to the 28th day of February 2022 for computation of the period of limitation for filing a refund application under Section 54 or Section 55 of the Act 2017.

9. The adjudicating authority further recorded that the taxpayer filed a refund claim on 29.02.2024 but did not enclose the documents required as per circular No. 125/44/2019-GST dated 18.11.2019 and Circular No. 135/05/2020-GST dated 31.03.2020, and accordingly deficiency Memo ZJ0703240187674 dated 12.03.2024 was issued; that the taxpayer had to file a fresh refund

application on 13.03.2024, but failed to do so. It was recorded that the taxpayer filed a refund again on 31.03.2024, which is also time barred and was not accompanied by the documents required under the said circulars; that the refund application filed by the taxpayer on 25.05.2024 is also time barred as per Section 54 of the CGST Act, 2017, which requires every claim for refund to be filed within two years from the relevant date; that from a plain reading of the tables, the said refund claim is not filed within time.

10. On the second issue, the adjudicating authority observed that the party has filed both its returns, GSTR-3B and GSTR-1, for the period April 2020.

11. It was also recorded that in view of para 8 (of the OIO dated 22/07/2024), the refund amount of Rs. 39,88,388/- is liable to be rejected, and that the party is not eligible for refund of excess payment of tax of Rs. 39,88,388/-. In the tabulation, the amount of refund claimed was shown as Rs. 19,94,194/- under CGST, Rs. 19,94,194/- under SGST and Nil under IGST; refund sanctioned on provisional basis as Nil; refund amount inadmissible as Rs. 19,94,194/- under CGST, Rs. 19,94,194/- under SGST and Nil under IGST; and the gross amount to be paid, the amount adjusted against outstanding demand, and the net amount to be paid as nil.

12. The adjudicating authority disposed of the refund claim as follows, in brief:

(a) It was recorded that the refund claim dated 29.02.2024, the tax payer did not enclose documents as per the two circulars (para 8.5

of the OIO dated 22/07/2024) referred to in the deficiency memo dated 12.03.2024, and that the applications dated 31.03.2024 and 25.05.2024 were "also time barred";

(b) it was found, in the respondent's favour, that GSTR-1 and GSTR-3B for the period had in fact been filed; and

(c) The claimed refund of Rs. 39,88,388/- was held liable to be rejected and was rejected on the grounds of limitation in entirety under sub-section (5) of Section 54 of the Act 2017.

13. It is apparent on the face of the OIO dated 22/07/2024 that, although the adjudicating authority extracted the text of notification No. 13/2022-Central Tax in the body of the order (at the paragraph dealing with the applicable law), no computation was thereafter undertaken applying that notification to the facts, and no finding, one way or the other was recorded on the specific submission made by the respondent in its reply.

14. Aggrieved, the respondent preferred an appeal before the appellate authority. The appellate authority found the claim of refund to be within the limitation prescribed under Section 107(1) of the Act 2017. In its grounds of appeal, the respondent reiterated the computation set out in its reply to the Show Cause Notice and relied upon several judgments of higher courts, including as recorded in the impugned OIA, a judgment of the Hon'ble Kerala High Court to the effect that the relevant date for eligibility under Section 54 is the date on which the original refund application

was filed, and not the date of refiling after issuance of a deficiency memo.

15. By the impugned OIA dated 30.04.2025, the appellate authority held, in substance, that although the appellant had relied upon notification No. 13/2022-Central Tax, the adjudicating authority had not recorded any finding on the respondent's detailed written submission invoking that very notification, and had rejected the claim "without considering the reply submitted by the appellant", which the appellate authority held to amount to a "violation of principles of natural justice". On this basis, the appellate authority held the observations of the adjudicating authority "not sustainable", found the OIO dated 22/07/2024 arbitrary to the extent of non-consideration of the respondent's submissions against allegations relating to issue of time barred refund claims, and further noted that the adjudicating authority had, in any event, "not examined all other aspects to quantify maximum eligible refund". The appellate authority accordingly annulled the OIO dated 22/07/2024 and disposed of the appeal in terms of sub-section (12) of Section 107 of the Act 2017.

16. The impugned OIA was examined in review under sub-section (3) of Section 112 of the Act 2017 by the Principal Commissioner, CGST, Delhi South, who, by Review Order No. 443/Pr.Commr./GST-Delhi South/2024-25 dated 30.10.2025, directed the Deputy/Assistant Commissioner, Division, Malviya Nagar, to file the present appeal.

17. Accordingly, the appellant has preferred this appeal on following grounds.

a). That the Order-in-Appeal is erroneous in law and facts in so far as it holds that the refund claims filed by the appellant were not time-barred under Section 54 of the CGST Act, 2017 read with notification No. 13/2022-Central Tax dated 05.07.2022. The appellate authority has failed to correctly interpret the statutory provisions governing the computation of the limitation period for filing refund claims.

b). That the appellant's refund application was originally filed on 29.02.2024, which is beyond the extended time limit prescribed under Notification No. 13/2022-CentralTax dated 05.07.2022. The relevant date for computing limitation under Section 54(1) of the CGST Act, read with Explanation (b) to Section 54(1) of the Act 2017, is the date of filing of the relevant return i.e., GSTR-3B.

c). That the appellant, in its submission has deliberately and misleadingly computed the extended due date for filing refund as '24.03.2024' by taking 675 days as extended in the terms of the said notification. Whereas, the taxpayer has not provided any basis for arriving at the count of days considered as extended and added in the original due date (19.05.2022). By applying the taxpayer's own formula for arriving at the extended last date, the days extended by the virtue of the notification is 650 days

(subtracting date of filing of GSTR-3B (i.e., 19/05/2020) from the cut-off date of exclusion (28.02.2022) as per notification No. 13/2022). Thus, using the correct relevant date (19/05/2020), the original refund claim filed on 29.02.2024 itself was filed with a delay of one day, rendering the refund applications time-barred.

d). That the appellate authority, while allowing the appeal on the ground of limitation, has erred in ignoring this fundamental legal error in the appellant's calculation and has accepted the appellant's flawed methodology without scrutiny. The principle of limitation under GST law is strictly construed, and any relaxation must be within the four corners of the law. The appellant's attempt to re-characterize the "due date" is a clear circumvention of statutory timelines and must be rejected to protect public revenue.

18. The appellant prayed for

(i) Setting aside Order-in-Appeal No.: 107/JC/Central Tax/Appeal-II/Delhi/2025-26 dated 30.04.2025 passed by the Joint Commissioner (Appeals-II) of Central Tax, Delhi to the extent of the grounds of appeal, as discussed above.

(ii) For passing any other order, as the GST Appellate Tribunal, Delhi, may deem fit and appropriate in the matter.

19. In its reply to the appeal, the respondent has raised, the following sets of submissions:

(i) that the appeal is not maintainable, as it travels beyond the scope of SCN and the OIO which is against settled principles; that SCN alleged only that refund application 3, filed on 25.05.2024, was time-barred because the supporting documents uploaded therewith pertained to a period prior to 24.05.2022, and that the OIO dated 22/07/2024 proceeded on the footing that refund applications 2 and 3 were re-filings made beyond the dates by which the respective deficiency memos required re-filing; neither, disputed the computation underlying refund application The appeal, by contrast, for the first time alleges that the respondent's addition of 675 days to the original due date was without basis, that only 650 days stood extended under notification No. 13/2022, and that refund application was consequently itself filed a day late. Relying on Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd., 2006 (201) E.L.T. 513 (S.C.); Collector of Central Excise, Ahmedabad v. Cellulose Products of India, 2000 (124) E.L.T. 1133 (CEGAT), affirmed in Kalpana Chemicals (P) Ltd. v. Collector, 2001 (127) E.L.T. A165 (S.C.); T.D. Kumar & Bros. v. CIT, Calcutta, [1967] 63 ITR 67 (S.C.); and Dalip Singh v. Union of India, 1987 (31) E.L.T. 352 (Del.), together with Rule 112 of the CGST Rules, 2017 and Rule 45 of the GSTAT (Procedure) Rules, 2025, the respondent submits that the department cannot be permitted to build, for the first time before this Tribunal, a case never put to the respondent at the show cause or adjudication stage, and that

the appeal, and the review order authorising it, are on this ground alone not maintainable.

(ii) that original refund application was, in any event, filed within time under Section 54 read with Notification No. 13/2022-Central Tax;

(iii) that the re-filing dates of Refund Applications 2 and 3 cannot be reckoned for computing limitation, the undisputed original filing date of Refund Application 1 alone being relevant;

(iv) that the two-year period under Section 54(1) of the Act 2017 is directory and not mandatory, since the sub-section employs the word "may", and relies on Lenovo (India) Pvt. Ltd. v. Joint Commissioner of GST (Appeals-1), (2023) 12 Centax 230 (Mad.), and ARS Energy Pvt. Ltd. v. Additional Commissioner (Appeals), Chennai, (2023) 13 Centax 300 (Mad.).

(v) that the amount claimed was not "tax" but a deposit paid under a mistake of law, since no taxable supply of service ultimately materialised against the unadjusted portion of the advance, and that the limitation under Section 54 does not apply to such a deposit. Reliance is placed on Rites Ltd. v. Assistant Commissioner, CGST, W.P.(C) 13543/2023 (Del., decided 28.01.2025); Delhi Metro Rail Corporation Ltd. v. Additional Commissioner, CGST (Appeals-II), (2023) 10 Centax 355 (Del.); Messrs Aalidhra Texcraft Engineers v. Union of India, 2025 (1) TMI 50 (Guj.); CCE (Appeals) v. KVR Construction, 2012 (26)

S.T.R. 195 (Kar.); and Parijat Construction v. Commissioner of Central Excise, Nashik, 2018 (359) E.L.T. 113 (CESTAT).

(vi) that the appellant has erred in denying substantive benefits due to procedural infractions.

ISSUES FOR DETERMINATION

20. On a conspectus of the grounds of appeal and the respondent's case as recorded in the orders below, the following issues arose for determination:

I). Whether the Revenue Appeal's challenge to the computation of the extended due date under Notification No. 13/2022 amounts to travelling beyond SCN and the OIO dated 22/07/2024, so as to render the appeal not maintainable."

II). Whether the impugned OIA is sustainable in annulling the OIO dated 22/07/2024 solely on the ground of violation of the principles of natural justice, without itself recording any finding on the question of limitation, and without giving reasons as to why the computation of the period of limitation by either side is correct or incorrect?

(III) Whether the refund application(s) filed by the respondent were within the period of limitation prescribed under Section 54(1) of the Act 2017 read with Notification No. 13/2022-

Central Tax dated 05.07.2022, and, in particular, whether the respondent's computation of the extended due date as 29.02.2024 is sustainable?

(IV) What is the effect, if any, of the deficiency memos dated 12.03.2024 and 10.04.2024 on the date from which limitation is to be reckoned?

(V) Whether the amount of Rs. 7,11,67,068/-, paid as GST on the advance received in April 2020, can be treated as a "deposit" paid under a mistake of law to fall outside the limitation under Section 54(1) of the Act 2017.

(VI) Whether the two-year period under Section 54(1) of the Act is a procedural requirement capable of relaxation, or a substantive statutory condition for refund that Circular No. 37/11/2018-GST dated 15.03.2018 cannot override?

21. We have heard the parties at length. Ms. Prerna Singh, Ld. Assistant Commissioner, appeared for and argued the matter on behalf of the appellant, and Sh. Deepak Suneja Ld. CA along with Ms. Lovey Singhal and Ms. Sapna Singhal Ld. CAs, appeared for and argued the matter on behalf of the respondent. We have also perused the record. Their respective submissions, may be summarised as follows:

22. On behalf of the appellant, it was strenuously argued by the Ld. AC that the impugned OIA is erroneous ; that the respondent's own computation of the extended due date as 24.03.2024, by

adding 675 days to the due date of 19.05.2022 before the authorities , is without basis, since the days extended under the Notification No. 13/2022, correctly reckoned from the relevant date of 19.05.2020, comes out to be only 650 days; that applying this figure, the original refund application dated 29.02.2024 was itself filed a day beyond the extended due date and was, therefore, time-barred from its very inception; that the appellate authority erred in accepting the respondent's methodology without independent scrutiny, in disregard of the principle that limitation under a fiscal statute is strictly construed, and any relaxation must be within the four corners of the law.

23. On behalf of the respondent, it was vehemently argued by the Ld. Counsel, at the outset, that the appeal is not maintainable, being founded on a ground that the computation of the extended due date that formed no part of SCN or the OIO dated 22.07.2024, both of which had proceeded only on the footing that the re-filed applications were belated. Without prejudice to this objection, it was further argued that the original refund application dated 29.02.2024 was in any event filed within limitation, since notification No. 13/2022 excludes the entire period from 01.03.2020 to 28.02.2022 and that the relevant date of 19.05.2020 falling within that exclusion window the two-year period could only commence running from 01.03.2022, expiring on 01.03.2024; that this computation stood corroborated by OIO 2 dated 23.09.2025, in which the appellant's own adjudicating authority had itself arrived at 01.03.2024 as the extended due

date; that the re-filing dates of refund applications 2 and 3, made pursuant to deficiency memos, could not in any case be reckoned for limitation, the undisputed date of the original refund application alone being relevant; that the two-year period under Section 54(1) of the Act 2017 in any case is directory and not mandatory; that the amount claimed being unadjusted advance on which no corresponding supply materialised, is in the nature of a deposit and not "tax", to which the limitation under Section 54 of the Act 2017 does not apply; and that procedural infractions cannot, in any event, be permitted to defeat a substantive entitlement to refund.

24. These rival submissions are considered, issue-wise, in the discussion that follows.

25. **Issue No I**

Whether the Revenue Appeal's challenge to the computation of the extended due date under Notification No. 13/2022 amounts to travelling beyond SCN and the OIO, *so as to render the appeal and the review order not maintainable."*

26. At the outset , we shall deal with the submissions of the respondent to the effect that SCN alleged only that refund application filed on 25.05.2024, was time-barred because the supporting documents uploaded therewith pertained to a period prior to 24.05.2022, and that the OIO dated 22/07/2024 proceeded

on the footing that refund Applications 2 and 3 were re-filings made beyond the dates by which the respective deficiency memos required re-filing; neither, disputed the computation underlying refund application itself; that the appeal, by contrast, for the first time alleges that the respondent's addition of 675 days to the original due date was without basis, that only 650 days stood extended under notification No. 13/2022, and that refund application was consequently itself filed a day late; that the appellant cannot be permitted to build, for the first time before this tribunal, a case never put to the respondent at the show cause or adjudication stage, and that the appeal, and the review order authorising it, are on this ground alone not maintainable.

27. After hearing the parties and going through record, this tribunal is unable to accept this contention. It is well settled, as the very authorities relied upon by the respondent establish, and as reaffirmed in Commissioner of C. Ex., Bangalore v. Brindavan Beverages, (2007) 5 SCC 388, that a show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. That principle restrains the introduction of a new charge, classification, or basis of demand never put to the assessee. It does

not, however, preclude the appellant from correcting, in a subsequent appeal, the arithmetic underlying a ground of rejection that was, in substance, in issue throughout.

28. In the present case, the ground of rejection in both SCN and the OIO dated 22/07/2024 was, always, that the refund claim was barred by limitation under Section 54 of the Act 2017. The computation of the extended due date under Notification No. 13/2022 was squarely before the adjudicating and appellate authorities from the outset indeed, it was the respondent's own reply to SCN that first placed the 675-day computation and the resulting due date of 24.03.2024 on record. The department appeal does not introduce a new species of allegation unconnected with the SCN or the OIO dated 22/07/2024; it disputes the correctness of the very notification-based computation that the respondent itself placed on record, and upon which the appellate authority proceeded without independent scrutiny.

29. This is qualitatively different from the fact patterns in Toyo Engineering, Cellulose Products, and T.D. Kumar & Bros (Relied by respondent), where an entirely new classification, characterisation, or basis of demand, never put to the assessee at any prior stage, was sought to be introduced. Nor does Rule 112 of the CGST Procedure Rules (Here in after called Rules 2017) or Rule 45 of the GSTAT Rules assist the respondent: those provisions restrict the production of additional evidence, not legal

argument upon facts already on record and undisputed between the parties; namely, the dates of filing, the relevant date of 19.05.2020, and the terms of Notification No. 13/2022. The maintainability objection is accordingly rejected.

30. **Issue No (II)**

Whether the impugned OIA is sustainable in annulling the OIO dated 22/07/2024 solely on the ground of violation of the principles of natural justice, without itself recording any finding on the question of limitation, and without giving reasons as to why the computation of the period of limitation by either side is correct or incorrect?

31. Before proceeding to examine the aforesaid issue, it is apposite to first analyse the distinction between setting aside an order on the ground of violation of natural justice and adjudicating the substantive issues arising from the proceedings. The consequence of a finding of breach of natural justice cannot be considered in isolation from the nature of the defect found, the stage at which such defect occurred and statutory powers available to the appellate authority. More particularly, where the order under challenge is annulled solely on the ground of violation of natural justice, the question whether such annulment can stand without a finding on an independent issue of limitation requires examination in the light of the settled principles

governing the effect of proceedings conducted in breach of natural justice.

32. In a Constitution Bench decision of Hon'ble Supreme Court in Shri Swamiji of Shri Admar Mutt etc. etc. vs. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors., AIR 1980 SC 1, while giving the majority judgment Hon'ble Chief Justice Y.V. Chandrachud referred to Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as follows:

"Ces-sante Ratione Legis Cessat Ipsa Lex"

The English version of the said principle given by the Chief Justice is that:

> *"Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself."*

33. In England there was no common law duty of recording of reasons. In Marta Stefan vs. General Medical Council, (1999) 1 WLR 1293, it has been held, "the established position of the common law is that there is no general duty imposed on our decision makers to record reasons". It has been acknowledged in

the Justice Report, Administration Under Law (1971) at page 23 that "No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions".

34. Even then in the case of R vs. Civil Service Appeal Board, ex-parte Cunningham reported in (1991) 4 All ER 310, Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said:

> *". It is a corollary of the discretion conferred upon the board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane CJ's observations (in* R vs. Immigration Appeal Tribunal, *ex p Khan (Mahmud) [1983] 2 All ER 420 at 423, (1983) QB 790 at 794-795), the reasons for the lower amount is not obvious. Mr. Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the board were addressing their mind in arriving at their conclusion. It must be obvious to the board that Mr. Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he*

has been deprived of his just desserts (as he sees them)".

35. The learned Master of Rolls further clarified by saying:

". thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this board to give succinct reasons, if only to put the mind of Mr. Cunningham at rest. I would therefore allow this application."

36. But, the present trend of the law has been towards an increasing recognition of the duty of Court to give reasons (See North Range Shipping Limited vs. Seatrans Shipping Corporation, (2002) 1 WLR 2397). It has been acknowledged that this trend is consistent with the development towards openness in Government and judicial administration. In English vs. Emery Reimbold and Strick Limited, (2002) 1 WLR 2409, it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in Cullen vs. Chief Constable of the Royal Ulster Constabulary, (2003) 1 WLR 1763, Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held, "First, they impose a discipline ... which may contribute to such decisions being considered with care. Secondly, reasons encourage transparency.

37. The position in the United States has been indicated by Our Hon'ble Apex Court in S.N. Mukherjee Vs Union of India AIR 1990 SC 1984 in paragraph 11 at page 1988 of the judgment. The Hon'ble Apex Court held that in the United States the Courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review".

38. It is well settled law that a quasi-judicial authority disposing of a claim is required to pass a reasoned, speaking order dealing with the submissions made before it; the recording of reasons is itself a requirement of the principles of natural justice.

39. The recording of reasons is the means by which a decision-maker demonstrates that the submissions made were heard and weighed, and it is for that reason that the requirement has been treated as an aspect of natural justice and not as a mere formality.

40. In Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, the Hon'ble Supreme Court, after a survey of the authorities, held that reasons serve to guard against arbitrariness, to promote fairness and transparency, to show that the authority has applied its mind, to inform the aggrieved party why he has lost, and to enable the superior forum to exercise its supervisory or appellate jurisdiction; and that the obligation extends to quasi-judicial authorities and not only to courts.

41. In Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India, (1976) 2 SCC 981, the Hon'ble Apex Court similarly held that an order of a quasi-judicial authority must itself disclose the reasons on which it rests. An order that annuls the decision of a lower authority for breach of the doctrine of audi alteram partem, but which does not itself reveal why the appellate authority considered the hearing deficient or how the dispute is to be decided, fails the very test that the rule is meant to secure.

42. The necessity of giving reason by a body or authority in support of its decision came up for consideration before Hon'ble Supreme Court in several cases. Initially Hon'ble Supreme Court recognized a sort of demarcation between administrative orders and quasi- judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and others vs. Union of India and others reported in AIR 1970 SC 150.

43. The expression `speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a non-speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

44. The Hon'ble Supreme Court always opined that the face of an order passed by a quasi-judicial authority or even an

administrative authority affecting the rights of parties, must speak. It must not be like the `inscrutable face of a Sphinx'.

45. In M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and Others, [1962] 2 SCR 339, a Constitution Bench of the Hon'ble Apex Court dealt with an order passed by the Central Government in exercise of its appellate powers under Section 111(3) of the Companies Act, 1956. The Hon'ble Court held that there had been no proper trial of the appeals, since no reasons were given in support of the order which reversed the decision appealed against, and observed:

> *"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order." (P. 357)*

46. The principle applies with greater force to the impugned OIA in the present case. The appellate authority under the Act 2017 is a statutory quasi-judicial forum whose orders are amenable to a further appeal before this Tribunal under Section 112 of the act 2017. This Tribunal can exercise that jurisdiction effectively only if the appellate authority discloses why, it has reached the conclusion it has reached.

47. In Madhya Pradesh Industries Ltd. v. Union of India and Others, [1966] 1 SCR 466, the Hon'ble Apex Court declined to quash an order of affirmance merely for want of reasons, but distinguished Harinagar Sugar Mills (supra) on the footing that there the decision appealed against had been reversed without reasons, there being a vital difference between an order of reversal and an order of affirmance. Subba Rao J., as he then was, in his concurring opinion, held the order to be vitiated for want of reasons and observed:

> *"In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a Welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal." (P. 472)*

> *"If tribunals can make orders without giving reasons, the said power in the hands of an*

unscrupulous or dishonest officer may turn out to be a potent weapon for abuse of power. But if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard." (P. 472)

"There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate courts, invariably reasons are given, except when they dismiss an appeal or revision in limine — and that is because the appellate or revisional court agrees with the

reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons." (Pp. 472–73)

48. The Hon'ble Lord ship added that where the original tribunal has given reasons, the appellate or revisional tribunal may affirm the decision by agreeing with those reasons; what is essential is that reasons be given by the appellate tribunal, expressly or by reference to those of the original tribunal.

49. Adverting to case in hand, the impugned OIA is not an order of affirmance. It sets aside and annuls the OIO dated 22/07/2024. It neither gives reasons of its own nor adopts any reasoning of the original authority. It therefore falls on the Harinagar (Supra) side of the line drawn in Madhya Pradesh Industries (supra).

50. The same question was considered by a Constitution Bench of Hon'ble Apex Courtin Bhagat Raja v. Union of India [AIR 1967 SC 1606], where the Central Government had exercised revisional powers under the Mines and Minerals (Regulation and Development) Act, 1957. Referring to Madhya Pradesh Industries (supra) with approval, the Hon'ble Court held:

"The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Art.

227 of the Constitution and of the appellate powers of this Court under Art. 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word 'rejected', or 'dismissed'. In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and, after giving a hearing, come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal." (P. 309)

"After all a tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way, and where important rights of parties of far-reaching consequences to them are adjudicated upon in a summary fashion without giving a personal hearing when proposals and counter-proposals are made and examined the least that can be expected is that the tribunals shall tell the party why the decision is going against him in all cases where the law gives a further right of appeal."

51. The nature of a reason was explained by the Hon'ble Supreme Court in Union of India v. Mohan Lal Capoor (1973) 2 SCC 836, in the following terms:

> *"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions."*

52. Under guidance of these citations, we have examined the impugned OIA. The appellate authority recorded that (a) the respondent discharged the impugned excess tax on 19.05.2020 and was therefore required to file the refund claim on or before 18.05.2022 in terms of Section 54 of the Act 2017; (b) the claim was originally filed on 29.02.2024, again on 31.03.2024 after a deficiency memo dated 12.03.2024, and finally on 25.05.2024 after a deficiency memo dated 10.04.2024, and "appeared to be delayed by around two years"; (c) the respondent had relied on Notification No. 13/2022-Central Tax dated 05.07.2022 and the adjudicating authority gave no finding on that submission; (d) the issue of time bar was conveyed by RFD-08 dated 01.07.2024 and the respondent's written reply was not dealt with, which "amounts to violation of principles of natural justice"; and (e) the adjudicating authority, apart from the limitation issue, had not examined the other aspects needed to quantify the maximum eligible refund. On this basis the OIO dated 22/07/2024 was annulled and the appeal "disposed of in terms of Section 107(12)".

53. What the impugned OIA does not contain is equally telling. Although limitation was the sole ground of rejection in the OIO dated 22/07/2024 and the only real dispute between the parties, the impugned OIA:

(i) does not record whether notification No. 13/2022-Central Tax applies to the respondent's refund claim, or how it applies;

(ii) does not compute the period of limitation, the period excluded by the notification, or the resulting last date for filing, and does not say whether that date is 24.03.2024 as claimed by the respondent, or any other date;

(iii) does not state why the respondent's computation (675 days, reckoned from 24.04.2020) is correct or incorrect.

(iv) does not decide whether the relevant date for Section 54 of the Act 2017 is the date of the original application of 29.02.2024 or of the re-filed applications, and does not identify the judgment of the Hon'ble High Court of Kerala which was said to support the respondent, nor examine its applicability; and

(v) does not frame any point for determination, and does not record any conclusion on whether the refund claim is within time or barred.

54. The impugned OIA is thus an order in which the appellate authority has given no verdict on the only question in controversy. It has annulled the OIO dated 22/07/2024 on the sole ground of violation of the principles of natural justice.

55. It cannot be ascertained whether the appellate authority accepted the respondent's reading of the notification, rejected it, or left it open. An order from which neither party nor this tribunal can discern the mind of the deciding authority, is, in the words of Hon'ble Justice Subba Rao, one which fails the basic duty to "disclose its mind", and the "compulsion of disclosure guarantees consideration".

56. The finding of violation of natural justice recorded in the impugned order does not rest on any discussion of the record. We have noted that the impugned OIA does not refer to the show cause notice or to the manner in which the OIO dated 22/07/2024 dealt with the reply. The record shows that a show cause notice dated 01.07.2024 was issued on the ground of time bar, a personal hearing was fixed for 09.07.2024, and the respondent filed a reply on 17.07.2024. The OIO dated 22/07/2024 extracts the text of notification No. 13/2022-Central Tax, but does not apply it to the facts, and disposes of the respondent's reply in a single sentence, "not admissible", without reasons and without recording any finding on the computation of limitation placed before it. Tested on the touchstone of the principles mentioned here in above, the OIO dated 22/07/2024 is vitiated by non-consideration of the respondent's reply, and the tribunal agrees with the appellate authority, to that extent, that the OIO dated 22/07/2024 could not be sustained as it stood.

57. The appellate authority, however did not identify what opportunity was denied to the respondent; the grievance recorded in the impugned OIA is in substance that the reply was not considered. That is a complaint about want of reasons in the OIO dated 22/07/2024 and is ordinarily to be cured in appeal by the appellate authority itself examining the reply and deciding the point, not by annulling the order and leaving the point undecided. The doctrine of audi alteram partem guarantees a fair opportunity of being heard; it does not by itself require that every submission be answered at length, nor does it dispense with the need to consider whether the alleged infraction has caused prejudice. We are mindful of the recent decisions of the Hon'ble Apex court and Hon'ble High Court of Delhi noted in pre -paras, which insist that a reply on record must be considered and must not be passed over in silence. That principle is not in doubt, and the tribunal has applied it both to the OIO dated 22/07/2024 and to the impugned order. Where, as here, limitation depends on undisputed dates and a notification, the question is one of computation and interpretation that the appellate authority was fully competent to decide on the material before it, and was bound to decide under sub-sections (11) and (12) of Section 107 of the act 2017.

58. We have further noted that as recorded under the heading "Personal Hearing" in the impugned OIA, the appellate authority afforded personal hearing to both parties on 16.12.2024 and 08.01.2025. On 08.01.2025, the respondent herein appeared through its Chartered Accountant, reiterated the grounds of

appeal and specifically pleaded that the refund claim was not time-barred, relying on the judgment of the Hon'ble High Court of Kerala on the relevant date for the purposes of Section 54 of the Act 2017.

59. No one appeared on behalf of the appellant herein (the respondent before the appellate authority) on either date before the appellate authority. We are of the considered view that this non-appearance, though a default on the part of the Department, did not relieve the appellate authority of its own obligation. The law on this point is well settled. In Commissioner of Income Tax, Madras v. S. Chenniappa Mudaliar, Madurai, 1969 AIR 1068, 1969 SCR (3) 818, the Hon'ble Supreme Court, dealing with the scheme of the Income-tax Act, 1922, held that an appellate body must dispose of an appeal by making such orders as it thinks fit on the merits. It must go into the correctness or otherwise of the points decided by the departmental authorities, and this can be done only by a decision on questions of fact and law, and not by merely disposing of the appeal on account of the default of a party.

60. The Hon'ble Supreme Court further held that the appellate forum is bound to give a proper decision on questions of fact as well as law, which is possible only if the appeal is disposed of on merits. Our own Hon'ble Delhi High Court, in Golden Times Services Pvt. Ltd. v. DCIT, W.P.(C) 402-year 2020 decided on 13.01.2020, noted that this principle has been reiterated time and again by several High Courts. It was held that, in the absence of

a party, the appellate forum must proceed to decide the matter on merits, and cannot defeat the rights of the parties by procedural wrangles and uncertainties. Although Chenniappa Mudaliar (supra) and Golden Times (supra) arose in the context of the Income-tax Act, the principle they lay down applies with equal force to an appellate authority exercising quasi-judicial powers under Section 107 of the Act 2017. Such an authority is not a mere umpire between two contesting parties.

61. The examination and determination of a question of law, more so a question of limitation going to the root of the claim, is the duty of the authority itself, and it must be discharged irrespective of the presence or absence of a party. The absence of a party may excuse the authority from considering the arguments that such party might have advanced, but it cannot excuse it from applying the law to the facts on record. Limitation was the sole ground on which the OIO dated 22.07.2024 rejected the refund claim, and the respondent's plea in that regard was specifically placed before the appellate authority. It was therefore incumbent upon the appellate authority to analyse Section 54 of the Act 2017, notification No. 13/2022-Central Tax dated 05.07.2022 and the rival computations, and to record a reasoned finding thereon, even in the absence of the department.

62. Sub-section (11) of Section 107 of the Act 2017 provides that the appellate authority shall, after making such further inquiry as may be necessary, pass such order as it thinks just and proper, confirming, modifying or annulling the decision or order

appealed against. The said provision, however, expressly prohibits the Appellate Authority from referring the case back to the adjudicating authority that passed the decision or order. Further, sub-section (12) of Section 107 mandates that the order of the appellate authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

63. The impugned OIA does not do so. It observes that the adjudicating authority did not examine the other aspects needed to quantify the refund, but it neither carried out that inquiry itself under sub-section (11) of section 107 of Act 2017 nor gives any direction. An annulment made for the reason that the original authority must look at the matter again is a remand in substance, which the statute forbids. The observation about the "other aspects" is in any case beside the point, since a claim held to be time-barred does not call for quantification, and the OIO dated 22/07/2024 rejected the claim on limitation alone. The impugned OIA also states that it is disposing of the appeal "in terms of Section 107(12)", which prescribes the contents of the order, and not the power under which the appeal is decided.

64. The consequence is that the OIO dated 22/07/2024 no longer exists, the impugned OIA decides nothing, and neither the respondent nor the appellant knows whether the claim is in time. This is the very situation that the Constitution Bench in Bhagat Raja (supra) sought to prevent by requiring that a tribunal "tell the party

why the decision is going against him". It is also a situation in which this Tribunal, in the words of Bhagat Raja, is "placed under a great disadvantage" in the exercise of its appellate jurisdiction.

65. The question that remains before us is whether the matter should be remanded back to the appellate authority to pass a speaking order on the issue of limitation or we should ourselves decide the matter on merits. Section 113(1) of the Act 2017 empowers this tribunal, after hearing both parties, to pass such orders as it thinks fit, confirming, modifying or annulling the decision or order appealed against, and also to refer the case back with directions. The power to refer back is discretionary. We are of the view that a remit is neither necessary nor appropriate in the present case, for the following reasons:

(i) the only question in controversy is that of limitation under Section 54(1) of the Act 2017, on which alone the OIO dated 22/07/2024 rejected the claim;

(ii) that question turns on a statutory computation on admitted facts, namely the relevant date of 19.05.2020, the dates on which the refund applications were filed, and the text of notification No. 13/2022-Central Tax dated 05.07.2022, none of which is in dispute between the parties;

(iii) the rival computations of the respondent and of the appellant for are required to be appreciated or additional evidence is required to decide;

(iv) sub-section (11) of Section 107 of the Act 2017 itself forbids the appellate authority from referring the case back to the adjudicating authority, so that a remit to the appellate authority would merely direct it to perform, after further delay, the very duty that it was bound to perform in the first instance; and

(v) a remit would leave a refund claim undetermined for a further period, to the prejudice of both sides, without serving any useful purpose.

We accordingly decline to remit the matter and proceeds to decide the question of limitation itself, on the material on record, in the discussion on Issues (iii) and (iv) below.

66. In view of the above, this tribunal holds that the impugned OIA, in annulling the OIO dated 22/07/2024 solely on the ground of violation of the principles of natural justice without itself recording any finding on the question of limitation, and without giving reasons as to why the computation of the period of limitation by either side is correct or incorrect, is not a reasoned or speaking order, does not conform to standards prescribed under sub-sections (11) and (12) of Section 107 of the Act 2017. The finding of the appellate authority that the OIO dated 22/07/2024 is vitiated for non-consideration of the respondent's reply is upheld, but in view of afore discussions, it is apt clear that the appellate authority erred in annulling the OIO dated 22/07/2024 in its entirety instead of itself examining and deciding the question of limitation, which was capable of being determined on admitted facts.

67. A bare annulment, without more, leaves the substantive rights of both the appellant and the respondent hanging in the air and, in the circumstances of this case, does not sub-serve the object of Section 107(12) of the Act 2017. We accordingly hold that while the annulment was justified in principle, but the manner of disposal requires improvements.

68. **ISSUE No III and IV**

(III) Whether the refund application(s) filed by the respondent were within the period of limitation prescribed under Section 54(1) of the Act 2017 read with Notification No. 13/2022-Central Tax dated 05.07.2022, and, in particular, whether the respondent's computation of the extended due date as 29.02.2024 is sustainable?

(IV) What is the effect, if any, of the deficiency memos dated 12.03.2024 and 10.04.2024 on the date from which limitation is to be reckoned?

These two issues are interconnected and hence taken up together.

69. Sub-section (1) of Section 54 of the Act 2017 requires an application for refund to be made "before the expiry of two years from the relevant date". Clause (h) of Explanation 2 to this Section 54 of the Act 2017 defines the relevant date, in a residuary case such as this, as "the date of payment of tax". It is not in dispute the respondent's own reply having proceeded on this footing that the relevant date in the present case is 19.05.2020,

being the date on which GSTR-3B for April 2020 was filed and the tax in question was paid. The ordinary period of two years would, on this footing have expired in May 2022; it may be noted that even at this stage the record itself is not free of a one-day discrepancy, the impugned OIA computing the ordinary due date as 18.05.2022 while the respondent's own reply computes it as 19.05.2022 a discrepancy of no great moment in itself, but illustrative of the closeness of the dates involved in this matter.

70. Central importance to this appeal is notification No. 13/2022-Central Tax dated 05.07.2022, issued under Section 168A of the Act 2017, clause (iii) whereof "excludes the period from the 1st day of March, 2020 to the 28th day of February 2022 for computation of period of limitation for filing refund application under Section 54 or Section 55 of the said Act." This notification extended to refund claims under GST law, the benefit of the Hon'ble Supreme Court's orders in In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3 of 2020, by which the Hon'ble Supreme Court, taking Suo-motu cognizance of difficulties caused by the COVID-19 pandemic, extended limitation prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings for the period 15.03.2020 to 28.02.2022 (orders dated 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022).

71. It must be emphasised that notification No. 13/2022 does not permit the limitation clock to run through the specified window; at the very least, no part of the period from 01.03.2020

to 28.02.2022 can be reckoned against the applicant. Where, as here, the relevant date itself falls within the excluded window (19.05.2020 lies between 01.03.2020 and 28.02.2022), two methods of giving effect to the exclusion are conceivable: first, to exclude only the days that would otherwise have run between the relevant date and the end of the excluded window, and to add that number of days to the normal due date; or, second, since no part of the two-year period had even commenced running before the exclusion came to an end, to treat the full period of two years as commencing only from the day following the end of the excluded window, namely 01.03.2022. Which of these two methods correctly gives effect to the notification, on the facts of this case is examined further below after considering the parties' respective submissions and the manner in which the appellant’s own subsequent order has dealt with the point?

72. The respondent's own tabulation in its reply to SCN dated 17.07.2024 (reproduced in tabular form at paragraph below, computes the period of extension not from the relevant date of 19.05.2020, but from 24.04.2020, i.e., the date on which the advance itself was stated to have been received, arriving at a figure of 675 days and consequently, an extended due date of 24.03.2024. This is a departure from the respondent's own identification, a few lines earlier in the very same reply, of 19.05.2020 as the relevant date under clause (h) of Explanation 2 to Section 54 of the Act 2017. As will appear more fully at paragraphs below, the respondent before this tribunal has

abandoned this computation and advanced a materially different case on the point; the correctness of the resulting figure, and the effect of this change in stance, are accordingly examined together.

73. Before examining the rival computations placed before the lower authorities, it is necessary to set out the statutory provisions that govern the limitation for filing a refund claim under the Act, since the entire controversy turns on their correct application.

74. Rule 89 of the Rules 2017 prescribes FORM GST RFD-01 and the documents required to accompany a refund application. Rule 90 of the Rules 2017 governs scrutiny: sub-rule (2) requires an acknowledgment in FORM GST RFD-02 within 15 days where the application is complete; sub-rule (3) requires communication of deficiencies in FORM GST RFD-03, upon which the applicant is required to file a fresh application after rectification. By notification No. 15/2021-Central Tax dated 18.05.2021, a third proviso was inserted in Rule 90(3) of the Rules 2017 which is as under:

> *"Provided also that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."*

75. This read with paragraph 12 of circular No. 125/44/2019-GST dated 18.11.2019 which clarifies that a refiled application is to be treated as a fresh application but must nonetheless be filed within two years of the relevant date constitutes the statutory machinery for computing limitation where a deficiency memo intervenes.

76. Before the appellate authority, and again before us, the respondent has relied upon decisions of various Hon'ble Superior Courts for the proposition that, where a refund application is followed by a deficiency memo, the date of the original application and not the date of the refiled application is to be treated as the relevant reference point for computing limitation. This line of authority is well established.

77. In M/S Durgambika Traders vs The Union of India on 14 November 2025, The Hon'ble Karnataka High Court in W.P. 5131/2024, held that;

> *"ii) The petitioner is reserved liberty to file a fresh/new refund application along with relevant documents within a period of 6 weeks from the date of receipt of a copy of this order.*
>
> *iii) It is further directed that pursuant to the petitioner filing fresh/new refund application along with relevant documents before the respondents, the respondents shall construe/consider/treat the fresh/new refund application to be filed by the*

petitioner as if the same was filed on 03.05.2023 on which date the first refund application was filed by the petitioner and by excluding the entire period from 03.05.2023 till the date of filing the fresh/new refund application for the purpose of limitation under Section 54 of the CGST Act.

iv) Along with fresh/new refund application, the liberty is reserved in favour of the petitioner to file pleadings/documents etc., in support of his claim.

v) Pursuant to the petitioner filing the fresh/new refund application, the concerned respondent shall consider the refund claim of the petitioner and pass appropriate orders together with the claim of interest put forth by the petitioner in accordance with the provisions contained in Section 54 of the CGST Act read with Rule 89 of the CGST Rules as expeditiously as possible within a period of three months from the date of petitioner filing fresh/new refund application."

78. The Hon'ble Jammu & Kashmir High Court in a case M/S Hallmark vs Jammu and Kashmir Goods and Services on 25 September 2024, W.P(C) 2025/2020) has held that;

"18. What is held by a Division Bench of the High Court of New Delhi in paragraph-25 of WP(C) 871/2022, decided on

09.08.2023, in case, titled as, National Internet Exchange of India vs Union of India & ors., is relevant to reproduce hereunder:

> *"25. As noted above, in terms of Section 54(1) of the CGST Act, an application is required to be made in the prescribed form and manner before two years from the relevant date. It is clear that the petitioner had complied with the said requirement inasmuch as it had filed an application for refund on 31.10.2019 in the "form and manner" as prescribed in the CGST Act and the CGST Rules. Thus, in terms of Section 54(1) of the CGST Act, the period of limitation would stop running notwithstanding that the proper officer required further documents or material to satisfy himself that the refund claimed was due to the petitioner."*

19. *Similarly, what is held by a Division Bench of the High Court of New Delhi in paragraphs-27, 28 & 29 of WP(C) 3550/2023, decided on 06.04.2023, in case, titled as, Bharat Sanchar Nigam Limited vs Union of India & ors., is also relevant to reproduce hereunder:*

"27. It is pointed out that the Adjudicating Authority had proceeded on the basis that it had communicated the deficiencies in Form GST RFD 03 on 31.01.2020

electronically and the said deficiency was resolved after the expiry of two years as stipulated in Section 54 of the CGST Act. The Adjudicating Authority had referred to Rule 90(3) of the Rules and had proceeded on the basis that the said Rule provides for filing of a fresh refund application after rectification of deficiencies. And, the date for filing the fresh application was required to be considered for the purpose of limitation.

28. We are of the view that Rule 90(3) cannot be applied in the manner as sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application by a taxpayer as non est. 10 WP(C) 2025/2020

29. If the application filed is not deficient in material particulars, it cannot be treated as non est. If it is accompanied by the "documentary evidences" as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation. The limitation would necessarily stop on filing the said application. This is not to say that the information disclosed may not warrant further clarification, however, that by itself cannot lead to the conclusion that the

application is required to be treated as non est for the purposes of Section 54 of the CGST Act. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued."

79. The Hon'ble high court of Karnataka recently in a case titled Homag India private limited vs joint commissioner. (Writ petition 27378 /2025) has held as under;

"5. In the instant case, the undisputed material on record will indicate that the petitioner initially filed a refund application on 04.07.2024 which was well within the prescribed period as contemplated under Section 54(3) of the CGST Act and it was that date on which the petitioner filed the refund application has to be considered for the purpose of computing period of limitation and not subsequent revised refund application filed by the petitioner pursuant to the deficiency memo issued by the respondents, which is clearly incorrect and consequently, the said finding recorded by the respondents is erroneous and matter deserves to be quashed."

Therefore, it is clear that a rectified application filed thereafter is a continuation of, and not a substitute for, the original claim.

80. We respectfully agree with and adopts the principle underlying this line of authority. A genuine, bona fide rectification of deficiencies carried out pursuant to a deficiency memo does not give rise to a fresh cause of action or a fresh limitation period; it relates back to and is treated as a continuation of, the original application.

81. However, the doctrine of relation-back recognised in this line of authority operates only where the original application was itself filed within the period of limitation prescribed under Section 54(1) of the act 2017, as extended by notification No. 13/2022. In each of the decisions referred to above, the assessee's original application was admittedly within time, and it was only the subsequent, deficiency-memo-driven application that the department sought, erroneously, to treat as the relevant date for limitation. The doctrine of relation-back cures the effect of an intervening deficiency memo upon an otherwise claim not barred by limitation; it cannot cure an antecedent infirmity in the limitation of the original claim itself.

82. This distinction is reinforced by the settled position of the Hon'ble Supreme Court that limitation periods under special fiscal statutes are to be strictly construed and are not ordinarily susceptible to relaxation on equitable grounds, however marginal the delay. In Mafatlal Industries Ltd. v. Union of India, (1997) 5

SCC 536, a Constitution Bench of the Hon'ble Supreme Court held that a claim for refund of duty under a fiscal statute must be made, and can only be made within the four corners of that statute and cannot be pursued outside the statute on general principles of equity or under the ordinary law of limitation.

83. In another matter Assistant Commissioner (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681, the Hon'ble Supreme Court held that where a special statute prescribes its own limitation without expressly conferring a power to condone delay beyond it, neither the authorities under that statute nor even a High Court in writ jurisdiction can extend that period, as doing so would render the specific statutory limit otiose. This principle is reflected also in the Constitution Bench decision of the Hon'ble Supreme Court in Commissioner of Customs & Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791, and in Singh Enterprises v. Commissioner of Central Excise, (2008) 3 SCC 70 both holding that where a taxing statute is a complete code prescribing a specific period, with at best a limited power of condonation, the authorities constituted under it cannot travel beyond that period by resort to Section 5 of the Limitation Act, 1963. The Hon’ble Supreme Court has further held, in VKC Footsteps India (P) Ltd. v. Union of India, (2021) 4 SCC 705, that a refund under GST law is in the nature of a statutory concession, to be claimed strictly in accordance with the conditions, form and procedure prescribed by the statute itself.

84. Section 54(1) of the Act 2017 is precisely such a provision, a complete code prescribing a specific two-year period for filing a refund application, without conferring on any authority, including this tribunal, a power to condone delay beyond that period. It follows that if on a correct computation the very first application in a given case was filed even a day beyond the prescribed period (as extended by notification No. 13/2022), that delay is not curable by this tribunal, and no doctrine of relation-back or continuation doctrine can be invoked to treat that first, time-barred application as if it were within time.

85. Applying the above framework both sides agreed that the relevant date under Explanation 2(h) to Section 54 is 19.05.2020, being the date on which the respondent discharged the impugned excess tax while filing FORM GSTR-3B for April 2020. The dispute is confined entirely to the correct computation of the extended due date after applying the exclusion under notification No. 13/2022.

86. The respondent's computation, as placed before the adjudicating authority in its reply dated 17.07.2024 to SCN, and reproduced by the respondent itself at paragraph 17(e) of its reply to the appeal filed before this tribunal, was as follows:

S. No.	Particulars	Date
1	Period of refund	April 2020
2	Advance received on	24.04.2020

S. No.	Particulars	Date
3	Date of payment of tax (relevant date under Section 54)	19.05.2020
4	Original due date (2 years from relevant date)	19.05.2022
5	Period excluded by Notification No. 13/2022-CT	01.03.2020 to 28.02.2022
6	Days extended (computed by respondent from 24.04.2020 to 28.02.2022)	675 days
7	Extended due date (4 + 6) as per respondent	24.03.2024
8	Date of filing of original refund application	29.02.2024

87. On this computation, the original application dated 29.02.2024 was sought to be shown as within time, on the footing that 675 days stood added to the normal due date of 19.05.2022 by virtue of notification No. 13/2022. The flaw in this computation, as pointed out in the grounds of the appeal itself, is that the count of "675 days" at serial no. 6 is reckoned not from the relevant date of 19.05.2020, which the respondent itself records at serial no. 3 of the very same table, but from 24.04.2020 i.e., the date of receipt of the advance, a date that has no statutory relevance to the computation of limitation under Section 54 of the Act 2017. Reckoned consistently from the relevant date, the appellant computes the exclusion at 650 days, yielding an

extended due date at or about the end of February 2024, dangerously close to, rather than comfortably beyond, the date on which the original application was in fact filed.

88. Confronted with this challenge, the respondent has not, before this tribunal, defended the computation extracted as mentioned here in above. Instead, in the same reply to the appeal, it has advanced an altogether different computation, which may be summarised as follows:

89. It was agitated by the respondent that without prejudice to its objection as to maintainability, the original refund application was even on merits, filed well within the period prescribed under Section 54 of the Act 2017 read with Notification No. 13/2022 ; that the relevant date under clause (h) of Explanation (2) to Section 54 is the date of payment of tax, namely 19.05.2020, and the ordinary two-year period would accordingly have expired on 19.05.2022 ; that notification No. 13/2022 excludes in its entirety the period from 01.03.2020 to 28.02.2022 for computing the limitation period, so that no part of that window can be reckoned against the applicant ; that since the relevant date of 19.05.2020 itself falls within this exclusion window, the statutory clock could commence running only from 01.03.2022, the day following the end of the exclusion, and the respondent thereby became entitled to a full fresh period of two years computed from that date ; that, applying the settled rule of computation that the first day is excluded and the last day included, a period of two years commencing on 01.03.2022 expires on 01.03.2024, so that the

original application filed on 29.02.2024 was filed before, and within, the extended period , relying on Tarun Prasad Chatterjee v. Dinanath Sharma, MANU/SC/0635/2000, and Larsen & Toubro Ltd. v. Commissioner of CGST & CX, 2022-VIL-553-CESTAT-KOL-ST ; that the appellant's contrary computation of "650 days", arrived at by counting only the overlap between the relevant date and the end of the excluded window and adding that figure to the normal due date, proceeds on an artificial and truncated reading of the notification No. 13/2022 , which does not permit a part-exclusion of the specified window but mandates that it be excluded in its entirety; and that, on a correct application of the notification No. 13/2022, the original refund application dated 29.02.2024 was filed within time, and the contrary computation in the appellant is liable to be rejected.

90. This change of stance does not, by itself, either advance or defeat the respondent's case. It is well settled principal that there can be no estoppel against a statute and that a concession or for that matter a shifting position, on a question of law binds neither the party who has taken it nor the tribunal before whom it is taken [Thakur Amar Singhji v. State of Rajasthan, (1955) 2 SCR 303 (Constitution Bench)], and the line of authority following it. Limitation under a taxing statute goes to the jurisdiction of the authority to entertain the claim at all, and it is the bounden duty of this tribunal to reckon it correctly in terms of law, uninfluenced by the manner in which either side has, at different stages of the proceedings, chosen to compute it.

91. The Hon'ble Supreme Court, in R. Nagaraj (Dead) Through LRs v. Rajmani, 2025 INSC 478, has reiterated that it is the duty of every court to ascertain whether a lis has been initiated within the time prescribed by law, this being a question that may be raised, and must be answered, at any stage, even where the parties themselves have not raised it. These principles apply with equal force to the converse situation presented here where an applicant's own change of stance cannot be permitted either to defeat, or by itself to establish, an entitlement that depends purely on the correct application of Section 54(1) of the Act 2017 and notification No. 13/2022 to admitted facts.

92. We accordingly proceed to determine for itself which of the two methods of applying Notification No. 13/2022, discussed hereinabove, is correct on the particular facts of this case. For this purpose, the last date for filing the refund application is first computed on the earlier stand of the respondent before the authorities below.

(a) The relevant date being 19.05.2020, the original due date, two years therefrom, is 19.05.2022. The respondent counted the period of exclusion from 24.04.2020, the date of receipt of advance, till 28.02.2022, and arrived at 675 days. Adding 675 days to 19.05.2022 gives 24.03.2024 as the last date for filing the refund application.

(b) The appellant counted the days not from the date of advance, which has no relevance for the purposes of Section 54 of the

Act 2017, but from the date of payment of tax, i.e., 19.05.2020, till 28.02.2022, which comes to 650 days. Adding 650 days to 19.05.2022 gives 28.02.2024 as the last date for filing the refund application.

(c) Thus, on the earlier stand of the appellant, the last date, i.e. 28.02.2024, falls short of the date of filing of the original application, i.e. 29.02.2024, by one day, whereas on the earlier stand of the respondent the application is within time by 24 days.

93. The Ld. counsel for the respondent has now taken the plea that, in terms of the judgment of the Hon'ble Supreme Court of India in *In Re: Cognizance for Extension of Limitation*, Suo Motu Writ Petition (C) No. 3 of 2020, decided on 10.01.2022 (2022-VIL-03-SC; (2022) 3 SCC 117), the refund application of the respondent is within limitation. In this regard, he has submitted as under:

(a) Our attention is drawn to paragraph 5(I) of the said judgment, wherein it has been held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. He submits that; besides notification No. 13/2022-Central Tax, the said judgment of the Hon'ble Supreme Court

is also applicable to the facts of the present case, the Act 2017 being a special law.

(b) Attention is further drawn to paragraph 5(IV) of the said judgment, wherein it has been mentioned that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015 and the Negotiable Instruments Act, 1881, and any other laws which prescribe period(s) of limitation for instituting proceedings. He submits that the Act 2017 comes under the category of "any other laws".

(c) It was submitted since the relevant date in the present case is 19.05.2020, which falls within the exclusion window, the balance period of limitation, in terms of paragraph 5(II) of the said judgment, shall become available with effect from 01.03.2022, and the period of limitation shall accordingly start reckoning from 01.03.2022.

94. For ready reference, paragraph 5 of the said judgment *In Re: Cognizance for Extension of Limitation (*Supra), containing the directions relied upon by the respondent, is reproduced in full hereunder:

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we

deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation

Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

95. The computation of the respondent, on this footing, is as follows:

S. No.	Particulars	Date / Figure
1	Relevant date (date of payment of tax, GSTR-3B for April 2020)	19.05.2020
2	Normal due date (2 years from relevant date) under Section 54(1)	19.05.2022
3	Period excluded under Notification No. 13/2022-CT	01.03.2020 to 28.02.2022
4	Whether the relevant date falls within the excluded window	Yes (19.05.2020 falls within 01.03.2020-28.02.2022)
5	Date from which a fresh, full period of two years is to be reckoned, since no part of the period could run before expiry of the exclusion	01.03.2022 (day following end of exclusion)
6	Extended due date (2 years from 01.03.2022; first day excluded, last day included)	01.03.2024

S. No.	Particulars	Date / Figure
7	Date of filing of original refund application (Refund Application 1)	29.02.2024
8	Position	Within limitation (one day before the extended due date)

96. Per contra, the learned AC appearing on behalf of the appellant has submitted that the appellant stands by its stand that 650 days are to be computed from the date of payment of tax, i.e., from 19.05.2020, and that the last date for filing the refund application fell on 28.02.2024, so that the application of the respondent, filed on 29.02.2024, is barred by limitation. She has further submitted that, since the respondent has now changed the algorithm, in response to even changed formula, the application of refund moved by the respondent is time barred. Ld. AC for the appellant in support of her claim has relied upon the judgment of the Hon'ble High Court of Andhra Pradesh at Amaravati in *M/s MC Wane India Private Limited v. State of Andhra Pradesh & Others*, Writ Petition No. 26816 of 2024, decided on 11.03.2026 (2026:APHC:13141) In order to rebut the claim of the respondent even on his changed stand she argued that even if the respondent has changed his stand, the application of the respondent for refund is still barred by limitation, as the period of limitation, in terms of the said judgment, expires on 27.02.2024. The relevant part of the

judgment of the Hon'ble Andhra Pradesh High Court is reproduced hereunder:

> *"7. It is the admitted case of both sides that the relevant date, under Section 54, for the present case, is 29.08.2021. In the normal course, the application would have to be filed on or before 28.08.2023, inasmuch as the period of limitation, under Section 54, is two years from the relevant date.*
>
> 8. *The Judgment of the Hon'ble Supreme Court as well as the notification, mentioned above, clearly stipulate that the period from 01.03.2020 to 28.02.2022 should be excluded while including the period of two years mentioned in Section 54. In the present case, the period of limitation would commence only from 29.08.2021. However, this would mean that the period from 29.08.2021 to 28.02.2022 would have to be excluded. Once this period is excluded, the limitation would commence only from 28.02.2022. In such circumstances, the last date for filing the application would be 27.02.2024."*

97. We have heard the parties at length and have also taken care of the judgments relied upon by the rival parties. At the outset, it is clear that the respondent has changed the mechanism of

quantification visa vis his earlier stand. During the arguments the respondent has relied upon the judgment of the Hon'ble Supreme Court and has computed the period afresh from 01.03.2022, expiring after two years on 29.02.2024. The appellant has taken the stand of 650 days before this bench and has relied upon the judgment of the Hon'ble Andhra Pradesh High Court only to rebut the changed stand of the respondent.

98. We have taken care of the submissions taken by rival parties on the earlier as well as on the later stand, w.r.t. the modalities of assessment. This Tribunal is here for justice, and for the implementation of the exclusion period in terms of the desired intent of the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation* as well as the desired intent of Notification No. 13/2022-Central Tax in its letter and spirit.

99. In such matters, the principle of estoppel does not apply. Estoppel operates against a party and not against the court or tribunal, and it cannot stand in the way of the correct determination of a pure question of law. In *Satyendra Kumar v. Raj Nath Dubey*, 2016 SCC OnLine SC 478 (decided on 06.05.2016), the Hon'ble Supreme Court, relying upon *Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, (1970) 1 SCC 613 has held that the principle of estoppel operates against the parties and not against the court, and that nothing comes in the way of a competent court deciding a pure question of law correctly. In *National Thermal Power Co. Ltd. v. Commissioner of Income Tax*, (1998) 229 ITR 383 (SC) the Hon'ble Apex Court

has further held that a question of law arising on the facts already on record may be entertained by the appellate authority although it was not raised before the authorities below, the object being the determination of the correct liability in accordance with law. The principle that there is no estoppel against a statute has already been noticed at pre paras.

100. The controversy whether the entire window of exclusion is to be excluded and the period of two years reckoned afresh after it, or only a part of the days is to be added to the original due date, is a pure question of law on admitted facts.

101. After hearing the parties at length, we find substance in the arguments of the learned counsel for the respondent. The Hon'ble Apex Court has categorically mentioned in paragraph 5(III) of its judgment *In Re: Cognizance for Extension of Limitation (S*upra) that where the limitation would have expired during the period between 15.03.2020 and 28.02.2022, all persons shall have a limitation period of 90 days from 01.03.2022, or the longer balance period, if any. Meaning thereby, this period of 90 days is applicable only where the period of limitation had expired within the exclusion window.

102. In the present matter, this is not the case as the period of limitation as per section 54 of the Act 2017 commenced only from the date of payment of tax, i.e., 19.05.2020, and the normal period of two years was not to expire within the exclusion window. Accordingly, paragraph 5(I) of the judgment In *Re: Cognizance for Extension of Limitation (S*upra)is applicable, and the entire

period till 28.02.2022 stands excluded. The same result follows from notification No. 13/2022-Central Tax dated 05.07.2022, which excludes the period from 01.03.2020 to 28.02.2022 in computing the period of limitation under Section 54 of the Act 2017, the relevant date of 19.05.2020 falling within that window as well. The last date for filing the refund application is arrived at as here in after discussed.

103. Section 54(1) of the Act 2017 provides for an application for refund to be made before the expiry of two years "from the relevant date". Section 9 of the General Clauses Act, 1897 which applies to the Act 2017, provides that for the purpose of excluding the first in a series of days or any period of time, the word "from" is to be used, and, for the purpose of including the last, the word "to". Thus, the day, which is the relevant date, i.e. 19.05.2020, from which the period is to be reckoned, is to be excluded, and the period must be reckoned from the next day, i.e. 20.05.2020. Section 12(1) of the Limitation Act, 1963 embodies the same principle.

104. The entire period from 20.05.2020 till 28.02.2022 being excluded as no part of the two years had run and the balance period of limitation which, in terms of the judgment in Re Cognizance (Supra), became available with effect from 01.03.2022. The period of two years is, therefore, to be reckoned with 01.03.2020 (In terms of notification 13/22) as its first day and 28.02.2022 being the last day of the exclusion.

105. Under Section 3(66) of the General Clauses Act, 1897, a year means a year reckoned according to the British calendar. The two years beginning on 01.03.2022 thus comprise the period from 01.03.2022 to 29.02.2024, both days inclusive (365 days and 366 days, i.e. 731 days in all), the next day, i.e. 01.03.2024, being the corresponding date on which the period of two years stands completed. The last date for filing the refund application is, accordingly, 29.02.2024, in terms of notification No. 13/2022-Central Tax as well as paragraphs 5(I) and 5(II) of the judgment of the Hon'ble Apex Court In *Re: Cognizance for Extension of Limitation (S*upra)and thus the application filed by the respondent on that date is within time.

106. With due respect, the judgment of the Hon'ble Andhra Pradesh High Court in *M/s MC Wane India Private Limited* (supra) is not applicable to the case in hand, and the contention of the appellant based thereon cannot be accepted. The Hon'ble Andhra Pradesh High Court judgement is not applicable in view of paragraphs 5(II) and 5(III) of the judgment of the Hon'ble Supreme Court *in Re: Cognizance for Extension of Limitation (S*upra), under which the balance period becomes available only with effect from 01.03.2022.

107. The method of fresh reckoning is also corroborated by the record. While passing OIO 2 dated 23.09.2025 (rejecting refund application 4, Annexure U to the respondent's reply before this tribunal), the Ld. adjudicating authority itself tabulated its own computation, reproduced by the respondent in its reply, as under:

Sr. No.	Particulars	Date
1	Period of Refund	April 2020
2	Advance received on	24 April 2020
3	Date of payment of tax	19 May 2022
4	Period excluded by Notification No. 13/2022 - Central Tax dated 05 July 2022	1 March 2020 to 28 February 2022
5	Extended due date Considering the Notification No. 13/2022 - Central Tax dated 05 July 2022	01 March 2024
6	Date of filing of original refund application filed by the applicant, as treated by the Adjudicating Authority	25 May 2024

This computation, made by the adjudicating authority independently of the stand later taken by the respondent in its reply, treats the window as excluded in its entirety and places the extended due date at the beginning of March 2024.

108. In view of the above, we hold as under:

(a) The refund application 1, filed on 29.02.2024, being the last day of the period of limitation, was filed within the period prescribed under Section 54(1) of the Act 2017 as extended in terms of the judgment of the Hon'ble Supreme Court and notification No. 13/2022-Central Tax. Issue (III) is answered accordingly, in favour of the respondent.

(b) Once the refund Application No. 1 is held to have been filed within the prescribed period of limitation, the question of limitation in respect of refund Applications Nos. 2 and 3, filed pursuant to the deficiency memos dated 12.03.2024 and 10.04.2024, respectively, would no longer survive as a matter of practical consequence, the original application having been held to be within time.

109. **Issue no V**

Whether the amount of Rs. 7,11,67,068/-, paid as GST on the advance received in April 2020, can be treated as a "deposit" paid under a mistake of law to fall outside the limitation under Section 54(1) of the Act 2017?

AND

Issue no VI

Whether the two-year period under Section 54(1) of the Act is a procedural requirement capable of relaxation, or a substantive

statutory condition for refund that Circular No. 37/11/2018-GST dated 15.03.2018 cannot override?

These two issues are taken up together.

110. We shall now advert to the contentions of the respondent to the effect that the amount claimed was not “tax” but a “deposit” paid under a mistake of law, since no taxable supply of service ultimately materialised against the unadjusted portion of the advance, and that the limitation under Section 54 of the Act 2017 does not apply to such a deposit. Reliance is placed on Rites Ltd. v. Assistant Commissioner, CGST, W.P.(C) 13543/2023 (Del., decided 28.01.2025); Delhi Metro Rail Corporation Ltd. v. Additional Commissioner, CGST (Appeals-II), (2023) 10 Centax 355 (Del.); Messrs Aalidhra Texcraft Engineers v. Union of India, 2025 (1) TMI 50 (Guj.); CCE (Appeals) v. KVR Construction, 2012 (26) S.T.R. 195 (Kar.); and Parijat Construction v. Commissioner of Central Excise, Nashik, 2018 (359) E.L.T. 113 (CESTAT).and that the appellant has erred in denying substantive benefits due to procedural infractions.

111. We have taken care of the submissions and citations relied upon by the respondent.

112. Unfortunately, this contention of the respondent cannot be accepted for two-fold reasons. Firstly, on the respondent's own pleaded facts, GST on the advance of Rs. 7,11,67,068/- was discharged at the time the advance was received in April 2020 in

the manner the Act 2017 required of a person receiving an advance for services. That payment was, at the moment it was made, a valid discharge of tax properly leviable and collected under the provisions of the Act 2017. A part of the advance, to the extent of taxable value of Rs. 4,90,09,353/- (involving Rs. 44,10,841/- under CGST and SGST each) was adjusted against actual supplies in June 2020. It was not, unlike in Rites Ltd. and the authorities cited alongside it, a payment made in respect of a transaction never eligible to tax, or made under a mistaken belief as to the existence of any liability whatsoever. It became refundable only later, and only to the extent that no corresponding supply eventuated against part of the advance.

113. That is precisely the contingency Section 54(1) of the Act 2017 itself addresses in referring to "any tax… paid by him" and "any other amount paid by him": the sub-section is not confined to payments made outside the taxing provisions, but extends, on its own language, to tax validly paid in the first instance and refundable upon a subsequent event. Secondly, and in any case, characterising the amount as a "deposit" does not assist the respondent, since Section 54(1) is itself the exclusive statutory gateway through which "any other amount paid" must be claimed, within the very same two-year period; the provision does not carve out a separate, unlimited period for amounts falling outside the strict definition of "tax".

114. To hold otherwise would permit an applicant to escape the limitation the Hon'ble Parliament has prescribed for the generality of refund claims merely by re-characterising the claim, a result the statutory language does not support and which would render the words "or any other amount" in Section 54(1) of the Act 2017 itself otiose.

115. The respondent has relied upon certain judgments for the proposition that the limitation prescribed under Section 54(1) of the Act 2017 does not apply to an amount deposited under a mistake. We have perused each of them. We find that, in every one of them, the amount retained by the department was either not leviable to tax at all or was not paid as tax, interest or penalty under the statute. The facts of those relied upon judgements are materially different from the facts of the present case, as discussed hereinafter.

116. In Delhi Metro Rail Corporation Ltd. v. Additional Commissioner, CGST (Appeals-II), (2023) 10 Centax 355 (Del.), W.P.(C) 6793/2023, decided on 18.09.2023, the petitioner had been engaged by the Surat Municipal Corporation to prepare a Detailed Project Report for a Metro Rail Project. It raised an invoice dated 11.08.2017 for Rs. 19,04,520/-, inclusive of GST of Rs. 2,90,520/- at 18%. The recipient paid Rs. 16,14,000/- but did not pay the GST. The petitioner deposited Rs. 2,90,520/- with the GST authorities through FORM GSTR-3B for August 2017. It was thereafter informed that, under notification No. 12/2017-

Central Tax (Rate) dated 28.06.2017, the services were "not chargeable to GST". Its refund application in FORM GST RFD-01 filed on 02.05.2022 was rejected as beyond two years.

117. The Hon'ble High Court in Delhi Metro Rail Corporation Ltd (Supra) recorded that there was no dispute that the refund was payable and held that GST had been deposited on an erroneous belief that the services were chargeable to tax. The relevant extract is contained in following paras;

> *"12.* Article 265 *of the Constitution of India proscribes any levy or collection of tax except by authority of law. Concededly, GST is not payable by the DMRC in respect of the service of preparation of Detailed Project Report for respondent no.3. Thus, the amount of ₹2,90,520/- deposited by the DMRC on an erroneous belief that payment for services rendered by it were chargeable to tax, cannot be retained by the respondents.*
>
> 13. *It is well settled that GST is an indirect tax. The burden of such tax is inevitably borne by the final recipient. In the present case, respondent no.3 would be liable to reimburse the GST chargeable on services availed by it. But since GST is not payable in*

respect of such services, respondent no.3 has not paid the said amount.

14. *The period of limitation for applying for a refund as prescribed under* Section 54 *of the CGST Act, would not apply where GST is not chargeable and it is established an amount has been deposited under a mistake of law.*

15. *In view of the above, we set aside the impugned order dated 24.02.2023 as well as the refund rejection order dated 04.07.2022 and direct the respondents to process the DMRC's claim for refund of ₹2,90,520/-."*

118. In substance, the Hon'ble High Court of Delhi held in Delhi Metro Rail Corporation Ltd (Supra) that GST being an indirect tax whose burden is borne by the final recipient and the services being outside the levy, the amount deposited under a mistake of law could not be retained by the Revenue, and the limitation in Section 54 did not stand in the way.

119. In the cited case the services were not chargeable to GST at all by virtue of a notification, so that GST was not payable in law and its retention offended Article 265 of the Constitution. The ratio of the judgment is expressly tied to the condition that GST "is not chargeable". In the case in hand, the services of the respondent are taxable, GST on the advance was payable on its receipt and was duly paid as tax through the statutory return, and

the amount became refundable only upon a subsequent event, namely, non-materialisation of supply against a part of the advance.

120. In Aalidhra Texcraft Engineers v. Union of India, 2025 (1) TMI 50 (Guj.), R/Special Civil Application No. 14554 of 2024, decided on 12.12.2024, the petitioner, a manufacturer of textile machinery, had imported inputs and capital goods on 33 Bills of Entry during May 2019 to March 2020 and availed ITC of integrated tax of Rs. 2,48,28,300/-. Under a wrong impression, arising from a mismatch between GSTR-2A and GSTR-3B, that excess credit of Rs. 40,00,000/- had been availed, it deposited that sum on 13.11.2020 in FORM DRC-03 [Paras 4 and 5]. On verification of its records in January–February 2024, it was found that there was no corresponding tax liability for 2019-20; the petitioner filed FORM GST RFD-01 on 30.03.2024 and the Department closed the matter in FORM GST ASMT-12 on 24.04.2024. The refund was thereafter rejected as time-barred on 14.06.2024. The respondents themselves averred that the payment was not recovered as tax but was a voluntary payment.

121. The Hon'ble High Court in Aalidhra (Supra) recorded that it was not in dispute that the amount was deposited by mistake, voluntarily, and was "neither towards any tax, interest or penalty. The relevant paragraphs are reproduced as under;

> *"15. Having considered the rival submissions made by both the learned advocates, it is not in dispute that*

the petitioner deposited amount of Rs.40,00,000/- by mistake on 20.11.2020 voluntarily which was neither towards any tax, interest or penalty. ……"

"16. In view of above analysis made in the aforesaid judgment which is squarely applicable to the facts of the case, more particularly when the petitioner has deposited voluntarily the amount of Rs. 40,00,000/-, the same would not be covered by the provisions of Section 54 of the GST Act and the same is required to be refunded by the respondent authorities as the same could not have been rejected on the ground of limitation under Section 54(1) of the GST Act.

However, the petitioner will not be entitled to any interest on such amount as the same was deposited voluntarily by mistake and therefore, the respondents to refund the amount of Rs.40,00,000/- deposited by the petitioner.

17. *In view of the foregoing reasons impugned order dated 14.6.2024 passed by the respondent No.2 rejecting the refund application of the petitioner is hereby quashed and set aside and the respondent shall refund the amount of Rs.40,00,000/- which was deposited by the petitioner by mistake on 20.11.2022 within a*

period of twelve weeks from the date of receipt of copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs."

122. In substance, the Hon'ble High Court, relying on its earlier decisions held that a voluntary deposit made by mistake, not paid towards tax, interest or penalty, is outside Section 54 of the Act 2017, that the refund could not be rejected on the ground of limitation under Section 54(1), and that no interest was payable. This judgment, too, is distinguishable on facts in hand. In cited case, the amount there was a voluntary DRC-03 deposit made on a mistaken belief that ITC had been wrongly availed; there was in truth no liability, and the sum was not deposited towards tax, interest or penalty, as the authorities themselves averred whereas in the present case, the amount is GST on a taxable advance, discharged as tax through FORM GSTR-3B, and the respondent's own case is that it is "tax" refundable under Section 54. There was no mistaken belief as to the existence of liability when the tax was paid; the liability on the advance was real at that time.

123. In Commissioner of Central Excise (Appeals) v. KVR Construction, 2012 (26) S.T.R. 195 (Kar.), the assessee had paid Rs. 1,23,96,948/- as service tax under a mistaken notion. It was not denied by the Department that the construction services were exempt from service tax by virtue of a circular dated 17.09.2004, on account of the nature of the institution for which the construction was made, so that the Department could not have

demanded the payment. The assessee used Form-R to claim refund, and the Revenue invoked the limitation in Section 11B of the Central Excise Act, 1944.

124. The Hon'ble High Court in KVR Construction (Supra) laid down that, once there was no compulsion or duty to pay, the amount paid under a mistaken notion "would not be a duty or 'service tax' payable in law", and that "there was no authority for the department to retain such amount". Para 23 is reproduced below;

> *"23. Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act."*

125. In substance, the Hon'ble High Court in KVR Construction (Supra) held that the amount of Rs. 1,23,96,948/- was not duty or service tax payable in law, that the Department had no authority to retain it, that it could not be treated as duty of excise so as to attract Section 11B, and that the claim was outside the purview of that section. The said decision does not assist the respondent. In the present case, GST on the advance was leviable and would have been recoverable by the Department had the respondent not paid it. Further, that decision turned on the scope of Section 11B of the Central Excise Act, 1944, whereas the present claim lies under Section 54(1) of the Act 2017, which expressly covers "any tax" and "any other amount paid by him".

126. In Parijat Construction v. Commissioner of Central Excise, Nashik, 2018 (359) E.L.T. 113 (Bom.), Central Excise Appeal No. 306 of 2016 with C.E.A. No. 16 of 2017, decided on 13.10.2017, the appellant had provided "Commercial or Industrial Construction" service to the Mumbai Educational Trust during May 2006 to November 2007 for construction of an administration and Core Course building. The Hon'ble High Court recorded that the appellant, "under the bona fide belief that the transaction attracts Service Tax", paid the tax "without collecting the same from the customer" and deposited it to the credit of the Central Government. On 11.03.2008, it claimed refund of Rs. 12,62,900/- on the ground that the services were for

institutions established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and were exempt under C.B.E. & C. Circular No. 80/10/2004-S.T. dated 17.09.2004. The claim was rejected as time-barred by the Commissioner (Appeals) and the Appellate Tribunal.

The Hon'ble High Court held as under;

> *"5. We are of the view that the issue as to whether limitation prescribed under Section 11B of the said Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer res integra. The two decisions of the Division Bench of this Court in Hindustan Cocoa (supra) and Commissioner of Central Excise, Nagpur v. M/s. SGR Infratech Ltd. (supra) are squarely applicable to the facts of the present case.*
>
> 6. *Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of Collector of C.E., Chandigarh v. Doaba Co-operative Sugar Mills (supra) relied upon by the Appellate Tribunal has in application Section 11B, limitation made an exception in case of refund claims where the*

payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under Section 11B of the Act to the present case where admittedly the appellant had paid a Service Tax on Commercial or Industrial Construction Service even though such service is not leviable to service tax. We are of the view that the decisions relied upon by the Appellate Tribunal do not support the case of the respondent in rejecting the refund claim on the ground that it was barred by limitation. We are, therefore, of the view that the impugned order is unsustainable.

7. *We accordingly allow the present appeals and quash and set aside the impugned order, insofar as it is against the appellant in both appeals. We fully allow refund of Rs. 8,99,962/- preferred by the appellant. We direct that the respondent shall refund the amount of Rs. 8,99,962/- to the appellant within a period of three months. There shall be no order as to costs."*

127. This judgment in Parijat Construction case (Supra) is also distinguishable on facts and on law. There, the services stood exempt under a departmental circular, so that no service tax was

payable at all; the appellant paid on a mistaken view of law and never collected the amount from its customer. Here, the services are taxable, the respondent collected and paid GST in accordance with the Act, and the refund arises only on a post-payment event.

128. On a comparison, in every aforementioned judgment relied upon by the respondent, the Department was holding an amount which was either (i) not leviable to tax at all, by reason of a notification, exemption or circular, or (ii) not paid as tax, interest or penalty under the Act, so that its retention was without authority of law within Article 265 of the Constitution of India. In the present case, GST was leviable on the advance and was discharged as tax through the statutory return; the amount became refundable only on partial non-supply; and the respondent itself claimed refund under Section 54 of the Act 2017. The principle that limitation does not bar the refund of an amount collected without authority of law therefore has no application.

129. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, already noticed above , a Constitution Bench of nine Judges of the Hon'ble Supreme Court considered claims for refund of duty founded on an illegal levy or on payment under a mistake of law, and held that the refund provisions of the Central Excise Act, 1944 and the Customs Act, 1962 (Section 11B and Section 27 respectively) constitute a complete and self-contained scheme; that such claims must be made in the manner and within the period prescribed by the statute; and that they cannot be pursued

by way of a suit or a writ petition on the principles of Section 72 of the Indian Contract Act, 1872 or the general law of limitation, the only exception being a claim founded on the unconstitutionality of the very provision under which the levy was made. Section 54 of the Act 2017 is the corresponding provision for refund under the GST law, and the claim of the respondent is not founded on the unconstitutionality of any provision of the Act 2017.

130. The respondent's submission, grounded in circular No. 37/11/2018-GST dated 15.03.2018, and in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, 1991 Supp (1) SCC 439, Formica India Division v. Collector of Central Excise, 1995 Supp (3) SCC 552, and Sambaji v. Gangabai, (2008) 17 SCC 117, that procedural lapses cannot be permitted to defeat a substantive right, is well-founded as a general proposition , and this Tribunal has itself applied a kindred principle in holding that the adjudicating authority's failure to deal with the respondent's reply to SCN violated natural justice. But the principal cuts no further than that.

131. The two-year period in Section 54(1) of the Act 2017 is not a “procedural” prescription of the kind addressed in the authorities relied upon a rule of practice or form governing the manner of exercising an otherwise available right, but a

substantive statutory condition of eligibility for refund, enacted by Parliament and repeatedly held to be such by the Hon'ble Supreme Court, as discussed above. Circular No. 37/11/2018-GST speaks to non-withholding of refunds for "minor procedural lapses or non-substantive errors"; It does not talk of substantiative compliance like limitation for claiming refund. This submission, therefore, does not assist the respondent on the question of limitation.

CONCLUSION

132. For the reasons recorded above:

(i) the impugned OIA, in annulling the OIO dated 22/07/2024 solely on the ground of violation of the principles of natural justice, without itself recording any finding on the question of limitation, was not a reasoned or speaking order and did not conform to the standards prescribed under sub-sections (11) and (12) of Section 107 of the Act 2017;

(ii) the relevant date for the respondent's refund claim is 19.05.2020;

(iii) the correct extended due date, after applying the exclusion under notification No. 13/2022-Central Tax dated 05.07.2022 fell within the excluded window i.e.,29.02.2024;

(iv) the respondent's original refund application (refund Application 1) dated 29.02.2024 was filed on the last day of the extended period of limitation, and was not barred by limitation;

(v) refund Applications 2 and 3 relate back to, and are a continuation of, the original, timely refund application 1, and the deficiency memos dated 12.03.2024 and 10.04.2024 have no independent bearing on limitation (Issue IV); and

(vi) the amount claimed does not fall outside Section 54 of the Act 2017 merely because it is described as a deposit, and the two-year period under Section 54(1) of the Act 2017 is a substantive condition of eligibility and not a mere procedural requirement. (Issues V and VI); this finding does not, however, affect the outcome, since the claim is, in any event, within the statutory period.

ORDER

133. In view of the foregoing:

(a) The appeal filed by the appellant/ department is dismissed.

(b) The finding recorded in the impugned Order-in-Appeal No. 107/JC/Central Tax/Appeal-II/Delhi/2025-26 dated 30.04.2025, annulling the OIO dated 22.07.2024 is upheld, for the comprehensive reasons recorded in this judgment, in substitution of the reasons recorded in the impugned OIA.

(c) It is accordingly held that refund application 1 dated 29.02.2024 was filed within the period of limitation prescribed under Section 54(1) of the Act 2017, as extended by Notification No. 13/2022-Central Tax dated 05.07.2022.

(d) No order as to costs.

Announced in the open court.

(Sanjay Kumar Aggarwal)
Vice President/Judicial Member

(Rajiv Kapoor)
Technical Member Centre

GST Appellate Tribunal, Delhi State Bench, New Delhi.

Place: New Delhi

Dated: 29.10.2026