GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench : Court No I

APPEAL NOS : APL/7/TVP/2026, APL/10/TVP/2026, APL/11/TVP/2026
(hearing in hybrid mode)

[arising out of OIA No. TVM-GST-000-APP-182-184-2022-JC dated 21-11-2022 issued on 24-11-2022 passed by Joint Commissioner (Appeals), Kochi]

OLAM FOODS ……..……Appellant

Vs

THE COMMISSIONER OF CGST & CE,
THIRUVANANTHAPURAM ……Respondent

for Appellant
Medini Agarwal, CA
Sandeep Agarwal, CA

for Respondent
Suresh S, AR

CORAM : Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

……

FINAL ORDER NO : 22/TVP/KERALAM/2026

Date of Hearing: 8-10-2026
Date of Order: 20-11-2026

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Per: Subramanya Rayaprol, Vice-President

1.0 Ms Medini Aggarwal and Mr Sandeep Garg, Ld Chartered Accountants, appeared for the appellant and Mr S Suresh, Ld Assistant Commissioner appeared as AR for the respondent. All the three appeals APL/7/TVP/2026, APL/10/TVP/2026, APL/11/TVP/2026, arise out of common OIA No. TVM-GST-000-APP-182-184-2022-JC dated 21-12-2022 and hence are taken up together for hearing.

2.0 Ld CA appearing for the appellant submits that the appellants had filed three refund claims of unutilized Input Tax Credit on exports of goods made during the months of July 2017, August 2017 and September 2017 under LUT. The refund claims filed by the appellant were rejected by the Assistant Commissioner of CGST, Kollam, on the ground that Appellant had availed higher drawback on all exports during the period July 2017 to September 2017 and as per proviso to Section 54(3)(i) of the CGST Act, 2017, no refund of Input Tax Credit shall be allowed if the supplier of goods or services or both avails drawback in respect of Central Tax. They submit that initially they believed that they had claimed only 0.15% of drawback which pertained solely to Customs, but later they realized that they had claimed higher drawback at the rate of 1%. Therefore, they had paid back the entire amount of excess drawback amount along with applicable interest to the Customs. Hence, they are eligible for refund of unutilised credit on account of zero-rated exports under LUT. They also relied upon various judgements in their support. They also submitted a rejoinder on 12-10-2026. They pray that the appeals may be allowed.

3.0 Ld AR on the other side submits that the appellant had availed higher rate of drawback and also claimed refund of the unutilised credit due to exports under LUT. The conditions of the notification are not satisfied. Even when the higher drawback amount was deposited back with the customs department along with interest, the violation of the condition of the notification for refund, still remains. He further submits that the appellant has relied upon the judgement of Hon'ble Kerala High Court in the case of G.NXT Power Corp Vs Union of India cited in 2019 (29) G.S.T.L. 616 (Ker) wherein it was directed to sanction the refund of IGST after adjusting the higher rate of duty drawback availed by the petitioner. However, the CGST Department has filed

Writ Appeal Nos. 182/2021 and 183/2021 before the Division Bench of the Hon'ble High Court of Kerala against the said judgment and the same are pending as on date. Hence, this appeals may also be kept pending till the decision of the Hon'ble High Court in this matter.

4.0 Heard both sides.

4.1 We find that the issue to be decided is

"whether the appellant is entitled to refund of accumulated credit on account of exports under LUT, when they had initially availed higher rate of drawback @ 1% instead of 0.15%, and subsequently paid back the excess claimed drawback along with interest."

4.2 We find that the appellant had made three applications for refund claims of unutilized Input Tax Credit on exports of goods for the months July 2017, August 2017 and September 2017 under LUT. The refund claims filed by the appellant were rejected by the Assistant Commissioner of CGST, Kollam, on the ground that Appellant had availed higher drawback on all exports during the said period and as per proviso to Section 54(3)(i) of the CGST Act, 2017, no refund of Input Tax Credit shall be allowed if the supplier of goods or services or both avails drawback in respect of Central Tax.

4.3 We find that the appellant had placed reliance on the relied upon the judgement of Hon'ble Kerala High Court in the case of G.NXT Power Corp Vs Union of India cited in 2019 (29) G.S.T.L. 616 (Ker) wherein it was directed to sanction the refund of IGST after adjusting the higher rate of duty drawback availed by the petitioner.

However, as submitted by the Ld AR, the CGST Department has filed Review Petitions against the WA Nos. 182/2021 and 183/2021 before the Division Bench of the Hon'ble High Court of Kerala against the said judgment and the same are pending as on date. In this regard, we find that the Hon'ble High Court of Kerala has disposed of the Review Petition No. 1339 of 2024 in WA No.182 OF 2021 vide order dated 9-6-2025 with neutral citation 2025:KER:40559, wherein it is ordered as below:

"3. In the light of the above proceedings of the Deputy Commissioner of State Tax, we expect the competent jurisdictional authority to pass appropriate orders quantifying the interest and refund at the earliest, at any rate, within a period of two months.

This review petition is closed, with liberty to the petitioners to reopen the same by filing a memo."

4.4 The submission of Ld AR that the review petition is pending is not correct. It is brought to the notice of the concerned officers in the CGST Department, with a word of caution that while making submissions before this Tribunal, they should verify the facts before making any such submissions.

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4.5 The JC (Appeals) in the impugned order-in-appeal, has relied upon a circular no CBIC Circular No.32/2017-Cus dated 27.07.2017, and has observed at para 12 as below:

> *12. I find that for all exports made during the period July 2017 to September 2017 for which higher rate of drawback is claimed, the exporter has to submit a self declaration in the format given in CBIC Circular No.32/2017-Cus dated 27.07.2017 to the proper officer of Customs to the effect that "that no input tax credit of the central goods and services tax or of the integrated goods and services tax has been and shall be availed*

on the export product or on any of the inputs or input services used in the manufacture of the export product" for claiming higher rate of drawback as per Condition 12 A of Notification No.131/2016-Cus (N.T) dated 31.10.2016 as amended vide Notification No.73 l2OI7 -Cus (N.T) dated 26.07 .2OL7. Since Appellant has availed the higher rate of drawback, it is evident that they have submitted a self-declaration as stipulated vide Notification No.131/2016-Cus (N.T.) dated 31.10.2016 as amended that "no input tax credit of the central goods and services tax or of the integrated goods and services tax has been and shall be availed on the export product or on any of the inputs or input services used in the manufacture of the export product".

4.6 We are also aware that the Circular No.37/2018-Customs dated 9-10-2018 specifies the conditions for availing duty drawback, where drawback is not allowed if IGST refunds are claimed and is not vice versa. The relevant portion of the circular reads as,

Sub : Cases where IGST refunds have not been granted due to claiming higher rate of drawback OR where higher rate and lower rate were identical – reg

Sir/Madam,

Numerous representations have been received from exporters/export associations, regarding cases where IGST refunds have not been granted because higher rate of drawback has been claimed or where higher rate and lower rate were identical.

2.0 The issue has been examined extensively in this Ministry. The legal provisions related to Drawback claims are as under :

2.1 Notes and condition (11) of Notification No.131/2016- Cus(NT) dated 31.10.2016 (as amended by Notification No.59/2017-Cus(NT) dated 29.6.2017 and 73/2017-Cus(NT) dated 26.7.2017), prescribed that 'The rates and caps of drawback specified

in columns (4) and (5) of the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is –

....

(d) exported claiming refund of the integrated goods and services tax paid on such exports'.

4.7 We find that it is a declaration to be made on the shipping bill at the time of filing the shipping bill, for claiming drawback, that the exporter shall not claim IGST refund, but it does not stipulate that the IGST refund cannot be granted when drawback is claimed. In the present case, the JC (Appeals) also records that the appellant has paid back the drawback claimed along with interest. Therefore, it is as good as drawback not availed as on date. There is no other reason for not allowing the IGST refund.

4.8 We find support to our finding in the judgement of Hon'ble Gujarat High Court in the case of Amit Cotton Industries vs UOI cited in 2019 (7) TMI 472 - GUJARAT HIGH COURT = 2019 (29) G.S.T.L. 200 (Guj.), wherein it is held that,

23. Section 16 of the IGST Act, 2017, referred to above provides for zero rating of certain supplies, namely exports, and supplies made to the Special Economic Zone Unit or Special Economic Zone Developer and the manner of zero rating.

24. It is not in dispute that the goods in question are one of zero rated supplies. A registered person making zero rated supplies is eligible to claim refund under the options as provided in sub-clauses (a) and (b) to clause (3) of Section 16 referred to above.

25. Section 54 of the CGST 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, shall make

an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined will have to be credited to the Fund referred to in Section 57 of the CGST Act, 2017.

26. Rule 96 of the CGST Rules provides for a deeming fiction. The shipping bill that the exporter of goods may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India. Section 54 referred to above should be read along with Rule 96 of the Rules. Rule 96(4) makes it abundantly clear that the claim for refund can be withheld only in two circumstances as provided in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017.

27. In the aforesaid context, the respondents have fairly conceded that the case of the writ-applicant is not falling within sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017. The stance of the department is that, as the writapplicant had availed higher duty drawback and as there is no provision for accepting the refund of such higher duty drawback, the writ-applicant is not entitled to seek the refund of the IGST paid in connection with the goods exported, i.e. 'zero rated supplies'.

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28. If the claim of the writ-applicant is to be rejected only on the basis of the circular issued by the Government of India dated 9th October 2018 referred to above, then we are afraid the submission canvassed on behalf of the respondents should fail as the same is not sustainable in law.

29. We are not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in

our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above.

30. Rule 96 is relevant for two purposes. The shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies:

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of subsection (10) or sub-section (11) of Section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

31. Mr.Trivedi invited our attention to two decisions of the Supreme Court as regards the binding nature of the circulars and instructions issued by the Central Government.

32. In the case of Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, reported in 2008(12) S.T.R. 416 (S.C.), the Supreme Court observed as under :

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"4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars cannot be given primacy over the decisions.

5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the

revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

7. As noted in the order of reference the correct position vis-a-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-avis the circular. It has to be the revenue authority who has to question that. To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty

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of law declared by this Court and the binding effect in terms of Article 141 of the Constitution. ”

33. In the case of J.K.Lakshmi Cement Limited v. Commercial Tax Officer, Pali, reported in 2018(14) G.S.T.L. 497 (S.C.), the Supreme Court observed as under :

“25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March, 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See : UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal – (1999)4 SCC 599.

26. In Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries – (2008)13 SCC 1, it has been held that circulars and instructions issued by the Board

are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court. In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular.

27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994.

28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary opinion. In case of an ancient statute, doctrine of contemporanea exposition is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See : G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344). It has been held in Rohitash Kumar and others v. Om Prakash Sharma and others – (2013)11 SCC 451 that the said doctrine has to be applied with caution and the Rule must give way when the language of the

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statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and clear, it does not admit of two different interpretations.

29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000."

34. We take notice of two things so far as the circular is concerned. Apart from being merely in the form of instructions or guidance to the concerned department, the circular is dated 9th October 2018, whereas the export took place on 27th July 2017. Over and above the same, the circular explains the provisions of the drawback and it has nothing to do with the IGST refund. Thus, the circular will not save the situation for the respondents. We are of the view that Rule 96 of the Rules, 2017, is very clear.

35. In view of the same, the writ-applicant is entitled to claim the refund of the IGST.

36. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

37. Rule made absolute.

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4.9 We also find that in the case of Precot Meridian Limited vs UOI, cited in 2020 (1) TMI 90 - MADRAS HIGH COURT, Hon'ble Madras High Court has held that,

9. It is not in dispute that the petitioner exported cotton through seven shipping bills and paid a sum of ₹ 4,80,355/- towards IGST. It is also not in dispute that the statute provides for refund of IGST on export of materials. The only condition is that if the export is made after payment of tax, he is entitled to get refund. According to the petitioner, he has complied with the requirements of Sub-Clauses (a) and (b) of Sub-Rule (1) of Rule 96 of CGST Rules, 2017. Accordingly, he is entitled for refund and it cannot be ignored by citing the circular.

10. The Hon'ble Supreme Court, in a similar circumstance, in the case of Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries [2008(12) S.T.R. 416 (S.C.)], has held as follows:

"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

11. It is held that circulars cannot prevail over the statute. Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision. In that circumstance, it is clear that the explanation of provisions of drawback has

nothing to do with the IGST refund. In view of that matter, Circular No.37/18-Customs, dated 09.10.2018 cannot have an application in the present case.

Paragraph 2.5 reads as under:

"By declaring drawback serial number suffixed with A or C and by making above stated declarations, the exporters consciously relinquished their IGST/ITC claims."

12. When the above circular was dealt with by the Hon'ble Division Bench of Gujarat High Court at Ahmedabad in M/s.Amit Cotton Industries Through Partner, Veljibhai Virjibhai Ranipa vs. Principal Commissioner of Customs, in R/Special Civil Application No.20126 of 2018, dated 27.06.2019, the Division Bench has held that it has nothing to do with the IGST refund and it is incumbent on the respondents to refund the IGST as claimed by the petitioner therein. The respondents have already passed a circular when they were facing lot of problems because of the fact that the refunds are completely system managed and they have taken a conscious decision to refund the amount vide Circular No.40/2018-Customs, dated 24.10.2018.

13. In view of the above discussion, the respondents are directed to refund the amount of ₹ 4,80,355/- [Rupees Four Lakhs and Eighty Thousand and Three Hundred and Fifty Five only] of IGST paid by the petitioner for the goods exported from India which are zero rated supplies, within a period of six weeks from the date of receipt of a copy of this order.

14. The Writ Petition is allowed accordingly. No costs.

4.10 In the case of ADF Foods Ltd. Versus Union of India, cited in 2023 (10) TMI 148 - GUJARAT HIGH COURT, Hon'ble High Court of Gujarat has held that,

8. Relying on a decision of the Supreme Court in the case of J.K. Laxmi Cement Limited v. Commercial Tax Officer, Pali reported in 2018 (14) G.S.T.L. 497, the Division Bench

held that the circular cannot run contrary to the statutory rule, more particularly, Rule 96. The Division Bench therefore, held that the circular had nothing to do with IGST refund. The petition was allowed directing the respondents to immediately sanction the refund of IGST.

9. Issue therefore raised in this petition is identical to the one decided by this Court and therefore, the petition on this count alone in light of the decision in the case of Amit Cotton (supra) deserves to be allowed and is accordingly allowed.

10. The respondents are directed to sanction the refund of IGST paid in context of shipping bills referred to in para 24(b) of the petition with simple interest @ of 6% from the date of the shipping bills till the date of actual refund. Rule is made absolutely accordingly with no order as to costs.

5.0 In the present case, the appellant had filed the shipping bills with a declaration that they will not avail IGST refund and availed duty drawback at a higher rate of 1%, instead of lower rate of 0.15%. After realising the mistake, they paid back the differential 0.85% along with interest, which is also confirmed by the JC (Appeals) in the impugned order. The repayment of excess duty drawback along with interest is not disputed. Therefore, the appellant becomes eligible for IGST refund of unutilised ITC, when the export is made under LUT. Our view is also supported by the judgements of various Hon'ble High Courts as discussed above.

6.0 In view of the above, we answer the issue raised at para 4.1 above, that the appellant is entitled to refund of accumulated credit on account of exports under LUT, when they had initially availed higher rate of drawback @ 1% instead of 0.15%, and subsequently paid back the excess claimed drawback along with interest."

ORDER

(1) The OIA No. TVM-GST-000-APP-182-184-2022-JC dated 21-11-2022 is set aside and the appeals nos APL/7/TVP/2026, APL/10/TVP/2026, and APL/11/TVP/2026 are allowed with consequential relief.

(2) The respondent is directed to disburse the refund amount within four weeks from today along with applicable interest.

(order pronounced in open court)

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Date: 20-11-2026

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण
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