NEUTRAL CITATION

2025:GUJHC:27417-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8709 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No

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M/S LOUIS DREYFUS COMPANY INDIA PRIVATE LIMITED
Versus
UNION OF INDIA & ORS.

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Appearance:
MR. KISHORE KUNAL WITH MS. PRIYAL M PARIKH(7593) for the Petitioner(s) No. 1
MR NEEL P LAKHANI(10679) for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 1,3,4

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 02/05/2025

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE D.N.RAY)

1. Heard learned advocate Mr.Kishore Kunal with learned advocate Ms. Priyal M. Parikh for the Petitioner and learned advocate Mr. Neel P.Lakhani for the Respondent No. 2.

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2. Rule returnable forthwith. Learned advocate Mr.Neel P. Lakhani waives service of notice of rule for the Respondent No. 2. With the consent of learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is quite brief.

3. The brief facts of the case are as follows:

3.1 The Petitioner is engaged in the business of refining and packaging oil within the territorial jurisdiction of the State of Gujarat. It is the case of the Petitioner that it procures various inputs for the manufacture of finished goods, which are classifiable under Chapter 15 of the First Schedule to the Customs Tariff Act, 1975. It is further the assertion of the Petitioner that the rate of tax applicable on the said inputs was higher than the rate of tax applicable on the corresponding outward supplies. Consequently, there occurred an accumulation of Input Tax Credit (ITC) in the Petitioner's Electronic Credit Ledger (hereinafter referred to as "**ECRL**"), attributable to what is commonly referred to as an *inverted duty structure*.

3.2 The Petitioner submits that, being eligible under Section 54(3)

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(ii) of the Central Goods and Services Tax Act, 2017 (hereinafter "**CGST Act"),** it preferred a refund claim in respect of the unutilized ITC pertaining to inputs used in the manufacture of goods falling under Chapter 15. Accordingly, an application for refund (hereinafter referred to as "**Refund Application**") was filed on 07.11.2022 in accordance with the procedure prescribed under the CGST Rules.

3.3 A tabulated synopsis reflecting the relevant dates and the corresponding limitation period as prescribed under Section 54 of the CGST Act, read with Notification No. 13/2022–Central Tax, has been placed on record by the Petitioner as under:-

Tax Period	**Relevant Date**	**Limitation as per Section 54 read with Notification No. 13/2022-Central Tax**
July, 2019	22-08-2019	21-08-2023
August, 2019	20-09-2019	19-09-2023
September, 2019	20-10-2019	19-10-2023
October, 2019	20-11-2019	19-11-2023
November, 2019	23-12-2019	22-12-2023

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December, 2019	20-01-2020	20-01-2024
January, 2020	20-02-2020	20-02-2024
February, 2020	24-06-2020	24-06-2024

3.4 It is the contention of the Petitioner that the aforementioned Refund Application dated 07.11.2022 was filed within the period of limitation as contemplated under Section 54(1) of the CGST Act, *read with* the extended timelines notified by Notification No. 13/2022–Central Tax.

3.5 Pursuant to the filing of the Refund Application, an acknowledgment in Form GST RFD-02 was issued to the Petitioner by the Proper Officer after carrying out the initial scrutiny of the application, thereby recording that the application was complete in all material respects.

3.6 The grievance of the Petitioner is that, notwithstanding the fact that the period to which the refund claim pertains, predates the

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effective date of Notification No. 09/2022–Central Tax (hereinafter "Notification No. 9") and that the statutory right to claim refund remained intact, Respondent No. 2 issued a Show Cause Notice dated 07.11.2022 proposing to reject the Refund Application.

3.7 The Petitioner, vide reply dated 29.11.2022, submitted a detailed response to the SCN on 01.12.2022. Thereafter, upon conclusion of the personal hearing conducted on 29.11.2022, Respondent No. 2 proceeded to pass the order impugned herein, whereby the Refund Application was rejected on the ground that the same had been filed subsequent to 18.07.2022, and as such, was not maintainable in light of the Circular in question read with the restriction imposed under Notification No. 9. It is contended by the Petitioner that the Impugned Order has been passed merely on the assumption that if the refund application has been filed on or after 18.07.2022, no refund is allowable in terms of the Impugned Circular which is binding on the Respondent No.2.

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4. Aggrieved thereby, the Petitioner has instituted the present writ petition under Article 226 of the Constitution of India, seeking issuance of an appropriate writ for quashing and setting aside the impugned order dated 05.01.2023, passed by the Respondent No. 2 and the impugned circular dated 10.11.2022, issued by the Respondent No. 3, along with consequential reliefs:

> *"(A) Your lordships may be pleased to issue an appropriate writ, order or direction quashing and setting aside the Impugned Order dated 05.01.2023 passed by Respondent No. 2 rejecting the refund application of the Petitioner;*
>
> *(B) Your lordships may be pleased to issue an appropriate writ, order or direction quashing and setting aside the Impugned Circular dated 10.11.2022 issued by Respondent No. 3;*
>
> *(C) Your lordships may be pleased to grant interim stay on the operation of the Impugned Circular dated 10.11.2022 to the extent it gives retrospective effect to Notification No. 9 in order to deny refund claims filed for the period prior to 18.07.2022;*
>
> *(D) Ex-parte ad-interim relief in terms of para (C) above;*
>
> *(E) Pass any orders as this Hon'ble Court may deem fit in the given facts and circumstances of the present case;"*

5. Learned Counsel Mr.Kishore Kunal appearing for the Petitioner has submitted that the Notification No. 9 became effective

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only from 18.07.2022. The Notification No.9 amended the Principal Notification prospectively and would not apply to refund claims which relates to period prior to the effective date of Notification No. 9;. He has further submitted that the Impugned Circular was issued to clarify the practical aspects of Notification No. 9, but it cannot alter its applicable period giving it a retrospective effect, when Notification No. 9 itself clearly mentions that it is applicable prospectively. The Petitioner was entitled to file its refund claim for the Relevant Period even after 18.07.2022 as the statutory limitation period for filing refund claim was available to the Petitioner; The Impugned Circular giving retrospective effect to Notification No. 9 has travelled beyond the scope of law governing refund of unutilized ITC; Learned Counsel further submitted that the Circulars cannot prevail over the Act. Moreover, the circulars are not binding on the assessee and only bound the revenue and the Impugned Circular cannot bar the tax payer from filing refund of the restricted goods if the relevant period falls prior to 18.07.2022.

5.1 In support of his submission, Mr.Kishore Kunal,learned advocate for the Petitioner relied upon the following decisions :-

1. Patanjali Foods Ltd. Versus Union of India reported in

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(2025) 28 Centax 75 (Guj.)

2. Priyanka Refineries Pvt. Ltd. Vs. Deputy Commissioner ST reported in (2025) 27 Centax 113 (A.P)

6. Mr.Neel P.Lakhani, learned Counsel on behalf of the Respondents is unable to controvert the applicability of the decisions in **Patanjali Foods & Priyanka Refineries** (Supra) to the facts of the present case.

7. **DISCUSSION & FINDINGS** :-

7.1 In the case of **Patanjali Foods** (Supra), this Court while dealing with the Notification No.13/2022–Central Tax dated 05.07.2022 and Circular No.181/13/2022-GST dated 10.11.2022, after relying upon the ratio in the case of **Ascent Meditech Ltd. Vs. Union of India** (**Special Civil Application No. 17298 of 2024**) had struck down paragraph No.2(2) of the Circular No.181/13/2022-GST dated 10.11.2022 by which two classes of the Refund Applications i.e. whether filed before 13.07.2022 or filed after 13.07.2022 was sought to be created by the Respondent-Department. In the present case, the Petitioner had filed his Refund Application on

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07.011.2022 which was well within the period of limitation under Section 54(1) of the Act as will be evident from the Chart at Paragraph No.3.3 hereinabove. In such view of the matter, following the decision of **Patanjali Foods** (Supra) since the Refund Applications in question were filed within the period of limitation, the same could not be rejected, by placing reliance on Circular No.181/13/2022- GST dated 10.11.2022. The relevant portion of the rejection Order dated 05.01.2023 reads as under:-

> *"9. As the applicant has filed refund claim on 07.11.2022 ie after 18.07.2022, the same is not admissible in light of clarification issued vide Circular No. 181/13/2022-9. GST dated 10.11.2022 read with Section 54(3)(ii) of the CGST Act 2017 read with Rule 89 of the CGST Rules 2017*
>
> *10. The Noticee mainly contended that the restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 should be effective prospectively w.e.f. 18.07.2022 and not for the refund claims for the earlier period and it should not be on the basis of date of filing refund application; and the Circular No. 181/13/2022-GST dated 10.11.2022 is illegal and contrary to the provisions of law. However I find that the said contention is not proper and legal, as the circular dated 10.11.2022 clarifies that such refund applications would not be allowed after 18.07.2022 which is in clarification to the Notification dated 13.07.2022 and not contrary to it. There is no mention in the Notification dated 13.07.2022 itself that such applications will be allowed after 18.07.2022. The Circular dated 10.11.2022 has been issued on the basis of Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 and it is binding on the revenue to follow the conditions laid down in the said Circular."*

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8. Following the decision of this Court in case of **Patanjali Foods** (Supra), the aforesaid reasoning of the impugned rejection Order is clearly erroneous and hence, is hereby quashed and set aside. The Respondents are directed to decide the Refund Applications filed by the Petitioner, forming the subject matter of the present petition afresh, within a period of Twelve (12) weeks from the date of receipt of a copy of this judgment and order in accordance with law. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH

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