IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16011 of 2024

With
R/SPECIAL CIVIL APPLICATION NO. 972 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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ADM AGRO INDUSTRIES INDIA PVT. LTD.
Versus
UNION OF INDIA & ORS.

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Appearance:
MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
ADVOCATE NOTICE SERVED for the Respondent(s) No. 3
PARAM V SHAH(9473) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 24/09/2026
COMMON ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

1. Rule returnable forthwith. Mr.Param V. Shah, learned Senior Standing Counsel waives service of notice of rule for and on behalf of the respondents.

2. Since a common issue is involved in the captioned writ petitions, the same are heard and decided analogously by this common judgment and order. The writ petition being Special Civil Application No.16011 of 2024 is taken up as a lead

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matter.

3. Heard Mr.Anand Nainawati, learned advocate appearing for the petitioner and Mr.Param V. Shah, learned Senior Standing Counsel appearing for the respondents.

4. By way of the present petition, the petitioner has challenged the impugned order dated 21.06.2024 passed by the respondent No.3 vide FORM GST RFD-06 rejecting the refund claim for the period from December, 2020 to March, 2021 (for short 'the year under consideration') being time barred under Section 54 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act'). The petitioner has also challenged the Circular No.181/13/2022-GST, dated 10.11.2022.

5. Mr.Anand Nainawati, learned advocate appearing for the petitioner, at the outset, submitted that the issue involved in the present petition is squarely covered by the decision rendered by the Co-ordinate Bench of this Court in *Special Civil Application No.17298 of 2024* in the case of *Patanjali Foods Ltd. Vs. Union of India & Ors.*, dated 12.02.2025 and the decision rendered by the Co-ordinate Bench of this Court in the case of *M/s. Akash Agro Industries Limited Vs. State of Gujarat & Ors.*, *2025 (12) TMI 1058.*

5.1 It is submitted that the petitioner herein has challenged the Circular No.181/13/2022-GST, dated 10.11.2022, to the extent that the same is ultra vires to the provision of Section 54 of the CGST Act read with Notification No.9/2022-Central

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Tax (Rate), dated 13.07.2022. It is submitted that the Notification No.9/2022-Central Tax (Rate), dated 13.07.2022, was subject matter of challenge in Special Civil Application No.17298 of 2024 wherein, the paragraph No.2(2) of the impugned Circular No.181/13/2022-GST, dated 10.11.2022, was struck down. It is submitted that the petitioner filed refund application in FORM GST RFD-01 for refund of unutilized Input Tax Credit (ITC) accumulated on account of Inverted Tax Structure for the tax period from December, 2020 to March, 2021, is required to be allowed.

5.2 It is submitted that this is the second round of litigation. The petitioner was also constrained to prefer writ petitions in the earlier round and in view of that, the GSTN Portal did not allow the petitioner to file the refund claims for the subsequent periods. The High Court vide order dated 27.03.2024 directed the respondents to consider the date of filing of manual refund application as the relevant date of filing for the purpose of considering the limitation under section 54 of the CGST Act. It is submitted that in due compliance of the said order, the petitioner filed online refund applications for the previous period, which were pending before the High Court as well as for the current period i.e. December 2020 to March, 2021 vide Application Reference No.AA240424082441I, dated 21.04.2024, claiming refund to the tune of Rs.67,47,186/- with respect to unutilized ITC accumulated on account of Inverted Tax Structure. In view of the aforesaid, it is submitted that the prayers as prayed for in the present petition be allowed.

6. Mr. Param V. Shah, learned Senior Standing Counsel

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appearing for the respondents relied on the affidavit in reply filed by the respondents and submitted that the respondent No.3 has discussed in the findings of the RFD-06, dated 21.06.2024 that the refund claim had been rejected as the petitioner has not filed refund claim within a period of two years from the relevant date for the period April-2021 to June – 2022. It is submitted that as per section 168(1) of the CGST Act, the respondent No.2 -Board is empowered to issue instructions or directions if it considers necessary or expedient so to do for the purpose of uniformity in the implementation of this Act and therefore, the Circular No.181/13/2022-GST, dated 10.11.2022, cannot be said to be ultra vires to the provision of section 54 of the CGST Act. It is submitted that the Notification No.9/2022-CT (Rate), dated 13.07.2022, has been issued with a prospective effect. The refund application of the petitioner was filed on a much later date and the respondent authority is bound by the laid down stipulations. It is thus, submitted that the impugned order passed by the respondent No.3 is just and proper, however, he is not in a position to dispute the aforesaid settled legal position as relied upon by the learned advocate appearing for the petitioner.

7. Heard the learned advocates appearing for the respective parties. It is not in dispute that for the following period, the petitioner preferred refund applications, however, the revenue by erroneously considering the filing date of the refund application, rejected the refund claim on the ground of limitation.

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SCA No.	**Period involved**	**Date of filing manual refund application**	**Date of filing online refund application**	**Last date of filing refund application**	**Last date of filing refund application as per Notification 13/2022-CT**
SCA No.16011 of 2022	December 2020 to March 2021	20th December 2022	21st April 2024	December 2022 to March 2023	February 2024
SCA No.972 of 2025	April 2021 to June 2022	12th February 2024	21st April 2024	April 2023 to June 2024	June 2024

8. As submitted by Mr.Anand Nainawati, learned advocate appearing for the petitioner, the issue involved in the present writ petition is no longer *res-integra* in light of the decision rendered in the case of ***M/s. Akash Agro Industries Limited (Supra)***. Relevant paragraphs of the said decision reads thus:

> *"7. The Coordinate Bench in the Judgment dated 12.02.2025 while examining similarly worded circular dated 10.11.2022 has held thus :*
>
> *"11.4 This Court in the case of Ascent Meditech (Supra) has held as under :-*
>
> *"48. In view of the foregoing reasons, the impugned order dated 24.08.2023 is hereby quashed and set aside. The Circular No. 181/22 dated 10.11.2022 so far as it clarifies that the amendment is not clarificatory in nature is quashed and set aside and it is held that the Notification No. 14/2022 is applicable retrospectively as the amendment brought in Rule 89(5) of the Rules is curative and clarificatory in nature and the same would be applicable retrospectively to the refund or rectification applications filed within two years as per the time period prescribed under section 54(1) of the Act. Rule is made absolute to the aforesaid extent. "*
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> *11.5 Thus, it is seen that this Court in Ascent Meditech(Supra) has struck down para 2(1) of the same Circular dated 10.11.2022 on the ground that an artificial class of assessees cannot be created on the basis of date of filing of refund application.*
>
> *11.6 By that exact logic, Para 2(2) of the impugned circular dated 10.11.2022 in so far as it provides that the restriction contained in notification no. 13.7.2022 will apply to all the refund applications*

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filed after 13.7.2022, even though they are pertaining to a period prior to the date of notification, is wholly arbitrary, discriminatory and ultra-vires Section 54 of the GST Act as well as violating Article 14 of the Constitution of India. The circular itself states that the notification dated 13.7.2022 has prospective effect. Even otherwise, the restriction contained in notification dated 13.7.2022 was introduced for the first time on such date and by expressly stating that it would apply prospectively and that too from 18.7.2022. If that be so, then refund pertaining to period prior to 13.7.2022 cannot be affected by such notification. Section 54(1) of the GST Act clearly gives a time limit of 2 years for filing of the refund application and such time limit was extended by notification no. 13/2022 because of the Covid-19 pandemic. The application filed by the Petitioner was within the statutory period of limitation and the same was pertaining to period prior to 13.7.2022. Mere fact that the refund application was filed after 13.7.2022 cannot result in denial of refund to the Petitioner even though the refund application was filed within the statutory period of limitation. The circular creates an artificial class amongst assessees based on the date of filing of refund application even though the refund application is filed within the statutory period of limitation and the refund is pertaining to the same period. Para 2 of the impugned circular is therefore grossly discriminatory and violative of Article 14 of the Constitution of India as well as ultra-vires Section 54 of the GST Act."

8. In the sister concerns of the present petitioner, the coordinate bench of this Court vide Judgment and Order dated 27.03.2025 passed in Special Civil Application No.10677 of 2023 while placing reliance on the Judgment dated 12.02.2025 has also held as under.

"*10. In such view of the matter, it is seen that the petitioner's case is squarely covered in the petitioner's favour by this Court's decision in Patanjali (Supra), which considered the exact same Circular. Therefore, the rejection orders impugned herein dated 24.02.2023 and 30.01.2023 are hereby quashed and set aside. The Respondent is directed to process the applications at Serial Nos. 1 to 7 in the chart provided at paragraph No. 4.10 of the petition in accordance with law within a period of Twelve (12) weeks from the date of receipt of a copy of this judgment and order. As far as Serial No. 8 of the Table is concerned, namely the application dated 20.01.2023 for the period starting from September, 2018 to November, 2018, the same is otherwise barred by limitation, inasmuch as, the last date for filing the refund claim would have been 25.10.2022. Therefore, irrespective of the application of the impugned Circular No.181/13/2022-GST, the said refund application would have been rejected on the ground of limitation. Hence, the order dated 20.01.2023 is upheld and maintained. The petition therefore succeeds and is accordingly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.*"

9. Thus, the present writ petition succeeds in terms of the aforesaid decisions of this Court. The Coordinate Bench in the aforesaid

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decision in the case of Patanjali (supra) has declared paragraph 2(2) of Circular dated 12 th November, 2022 issued by the Central authority as ultra vires to Section 54 of the GST Act, and the same is struck down, hence, paragraph 2(2) of the impugned Circular No.181/13/2022-GST dated 12th November, 2022 issued by the Respondent no.1- State authority is struck down and the matter is remanded to the Adjudicating Authority. The impugned order dated 30.11.2024 and order of rejection of refund dated 23.11.2022 are quashed and set aside. The concerned officer is directed to process the refund application in accordance with law within a period of 12 weeks from the date of receipt of the copy of this order. It is clarified that refund application shall not be rejected on the ground of limitation. It is further clarified that the present order is confined only to the present petitioner as it had filed the appeal within the prescribed period of limitation.

10. Rule is made absolute to the aforesaid extent."

9. In the aforesaid decision, reliance is placed on the decision in the case of *Ascent Meditech Ltd. Vs. Union of India & Ors.* in Special Civil Application No.18317 of 2023, dated 17.10.2024 wherein, Circular No.181/13/2022-GST, dated 10.11.2022, is held to be ultra vires to section 54 of the CGST Act. It is further held that the Notification No.14/2022 is applicable retrospectively as the amendment brought in Rule 89(5) of the Central Goods and Services Tax Rules, 2017 is curative and clarificatory in nature and the same would be applicable retrospectively to the refund or rectification applications filed within two years as per the time period prescribed under section 54(1) of the CGST Act.

10. Thus, the both the captioned writ petitions ***succeed*** in terms of the aforesaid decision. The impugned order dated 21.06.2024 is hereby quashed and set aside. The matter is remanded to the Adjudicating Authority and the concerned officer is directed to process the refund application in accordance with law, within a period of twelve (12) weeks from

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the date of receipt of this order. Rule is made absolute to the aforesaid extent.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

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