



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10677 of 2023

FOR APPROVAL AND SIGNATURE:

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

Approved for Reporting	Yes	No

M/S SHREE PROTEINS PRIVATE LIMITED
 Versus
 UNION OF INDIA & ANR.

Appearance:

YUVRAJ G THAKORE(7785) for the Petitioner(s) No. 1

NOTICE SERVED for the Respondent(s) No. 1

MR. PARAM V SHAH(9473) for the Respondent(s) No. 2

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

Date : 27/03/2025

ORAL JUDGMENT

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

1. Heard learned advocate Mr. Yuvraj G.Thakore appearing on behalf of the Petitioner and learned advocate Mr. Param V. Shah for the Respondent No.2.

2. Rule returnable forthwith. Learned advocate Mr.Param V.Shah waives service of notice of rule for the Respondent No.2. With the consent of the 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-Company is engaged in the manufacturing and trading activities of the following products covered under the Harmonized System of Nomenclature (HSN) codes of Chapter 15 of the Central Goods and Service Tax Act, 2017 (“CGST Act, 2017”) :-

HSN	Description
15119091	Palm oil and its fractions.
15079010	Soya-Bean Oil and its fraction.
15122910	Sunflower seed, Cotton seed oil and its fractions.
15089091	Ground-Nut Oil and its fractions.
15141920	Rape, Colza or Mustard Oil and its fractions.

3.2 The case of the Petitioner is that the applicable rate of Goods and Services Tax (GST) on the outward supply of goods falling under the said HSN codes is 5%. However, for the purposes of manufacturing and trading, the Petitioner procures various inputs and input services, including but not limited to packaging materials, oil seeds, and other chemicals, which attract GST at rates of 5%, 12%, 18%, and 28%.



3.3 The Petitioner contends that it is subjected to an inverted duty structure, wherein the rate of tax on inward supplies is higher than the rate applicable to outward supplies. Consequently, there has been an accumulation of unutilized Input Tax Credit (ITC) in the Petitioner's Electronic Credit Ledger (ECL).

3.4 According to the Petitioner, it is entitled to claim a refund of such accumulated ITC in accordance with the provisions of Section 54(3) of the CGST Act. The Petitioner further submits that it is entitled to file such refund claims within a period of two years from the relevant date, as contemplated under Section 54(1) of the CGST Act.

3.5 The Central Board of Indirect Taxes and Customs (CBIC) has, from time to time, issued notifications under Section 54 of the CGST Act, restricting the eligibility of manufacturers and traders dealing in specified classes of goods from claiming refunds of unutilized ITC arising due to an inverted duty structure. It is the case of the Petitioner that its products were not subject to any such restriction under the applicable notifications prior to July 2022, and



that refund claims were routinely made and entertained.

3.6 On 28.06.2017, the CBIC issued Notification No. 5/2017–Central Tax (Rate), which restricted refund of unutilized ITC in respect of certain goods where accumulation was on account of an inverted duty structure. Since the Petitioner’s products were not included in the said notification, it continued to claim refunds under Section 54(3) of the CGST Act.

3.7. Subsequently, on 13.07.2022, the CBIC issued Notification No. 09/2022–Central Tax (Rate), thereby amending Notification No. 5/2017–Central Tax (Rate) and extending its applicability to additional HSN codes, including those under Chapter 15. The Petitioner’s products, as covered under Chapter 15, were brought within the ambit of the restricted category by virtue of the said amendment. As a result, the Petitioner became ineligible to claim refund of accumulated ITC under the inverted duty structure with effect from 18.07.2022.

3.8. Accordingly, the Petitioner submits that while it became



ineligible to claim refund of accumulated ITC from 18.07.2022 onwards, the unutilized ITC accrued until 17.07.2022 remained eligible for refund under Section 54(3) of the CGST Act.

3.9 The Petitioner Company filed the following refund Applications as evident from the chart at paragraph No. 4.10 of the petition:-

Sr No	ARN	Date	Status	Period	Amount
1.	AA2402230973584	24.02.23	Refund Rejected	May' 19	5,39,505
2.	AA240223097550G	24.02.23	Refund Rejected	July' 19	1,96,167
3.	AA240223097868T	24.02.23	Refund Rejected	Sept to Oct' 19	4,20,299
4.	AA2402230983195	24.02.23	Refund Rejected	Nov' 19	7,85,032
5.	AA240223098660C	24.02.23	Refund Rejected	Mar' 20	1,42,881
6.	AA2402230985646	24.02.23	Refund Rejected	Jan' 20	7,43,035
7.	AA240123146520V	30.01.23	Refund Rejected	Jan to Mar' 19	16,11,420
8.	AA240123100752Y	20.01.23	Refund Rejected	Sept to Nov' 18	4,82,761

3.10. The Petitioner's refund applications for the said period were, however, rejected by the authorities on the basis of Circular No. 181/13/2022–GST dated 10.11.2022, issued by Respondent No.



3.11. The said rejections were premised on the ground that the Petitioner was not eligible to file refund applications after the date of Notification No. 09/2022–Central Tax (Rate), i.e., 18.07.2022.

4. The Petitioner Company being aggrieved by the Circular issued by the Respondent No. 1, filed the present Writ Petition under Article 226 of the Constitution of India, seeking the following reliefs:

- A. *“YOUR LORDSHIPS may be pleased to issue a writ of Certiorari/Mandamus or any other appropriate writ, order or direction, against the Respondents, quashing the Impugned Circular No. 181/13/2022-GST dated 10th November 2022 annexed at ANNEXURE - D issued by Respondent No. 1 by declaring that the same is ultra vires to the provisions of Section 54(1) of the Gujarat Goods and Service Tax Act, 2017 and hence Unconstitutional.*
- B. *YOUR LORDSHIPS may be pleased to issue a writ of Certiorari/Mandamus or any other appropriate writ, order or direction, quashing and setting aside the Impugned orders dated 20/01/23, 30/01/23, 24/02/23 annexed at ANNEXURE-A (COLLY.) to the present Petition passed by the Respondent No. 2.*
- C. *YOUR LORDSHIPS may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction, directing the Respondent No. 2 to issue Refund of Rs. 49,21,100 to the Petitioner Company.*
- D. *That pending admission, hearing and final disposal of the Petition, YOUR LORDSHIPS may be pleased to grant ex-parte ad-interim relief in terms of Para (A), (B) and (C)*

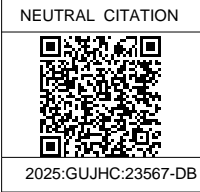


above.

E. That this Hon'ble High Court be pleased to grant such other and further reliefs and/or orders in the interest of justice in favour of the Petitioner as deemed just and proper.”

5. Mr. Yuvraj G.Thakore, learned advocate for the petitioner has submitted that the instant issue i.e. the rejection of otherwise eligible refund application on the basis of Circular No.181/13/2022-GST dated 10.11.2022 is illegal and held to be so by the judgment of this Court in the case of **Patanjali Foods Limited Vs. Union of India and others** reported in **2025:GUJHC:13430-DB**, wherein, Paragraph No. 2(2) of Circular No. 181/13/2022-GST has been struck down.

6. Mr. Param V.Shah, learned advocate appearing on behalf of the Respondent No.2 is unable to contradict the aforesaid submissions. However, Mr. Shah, learned advocate submitted that one of the claims, being Claim No.8 in the aforesaid list is barred by limitation. Mr. Thakore, learned advocate for the petitioner argues to the same.



7. DISCUSSION & FINDINGS :-

7.1 The several rejection orders in FORM GST-RFD-06, dated 24.02.2023, 30.01.2023 and 20.01.2023 are similarly worded after quoting extracts of the Circular No. 181/13/2022-GST (wrongly referred in the rejection orders as 181/33/2022-GST). The rejection order dated 20.01.2023 proceeds to hold as under :-

“9. Reference is made to the following:

a. CBIC issued Notification No. 09/2022-CT (RATE) dated 13th July'2022, whereby it is mentioned that the said notification shall come into force from 18th July 2022. Under this notification refund of unutilized input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 was restricted and not allowed.

b. In continuation to Notification No 09/2022- Central Tax (Rate), clarification in form of Circular No. 181/33/2022-GST was being issued by CBIC on 10-11-2022. Relevant clarificatory para from Circular is reproduced as under:

<p><i>Q. Whether the restriction placed on refund of un-utilized input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether</i></p>	<p><i>A. "The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilized input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the</i></p>
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<p><i>the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?"</i></p>	<p><i>said notification would be applicable in respect of all refund applications filed on or after 18.07.2022 and would not apply to the refund application filed dated 18.07.2022.</i></p>
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9. This office has carefully examined the facts and ground of the refund. Due to refund claim being ineligible SCN (ZE2402230364383) vide dated 24.02.2023 was issued on the grounds that refund of unutilized input tax credit (ITC) on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 is not allowed. This restriction has been brought into force as per the Notification No. 09/2022-CT (RATE) dated 13th July, 2022 and Circular no. 181/13/2022-GST dated 10.11.2022, as discussed supra.

10. Pursuant to this the Assessee submitted the following reply on 10.03.2023:

a. That they are engaged in production of goods under Chapter 15 which attract GST rate of 5% but their inputs attract tax rate from 5% to 28% GST. Thus, this leads to an inverted duty structure. And they have filed refund under Section 54(3) read with Rule 89(5).

b. That the Notification No. 09/2022-CT (RATE) dated 13th July'2022 should come into force prospectively while their refund application pertains to previous period.

c. That a rate notification should always be enforced prospectively.

d. That in Circular no. 181/13/2022-GST dated 10.11.2022 preference has been given to date of filing of refund over



period of refund claim.

e. That in Jenefa India vs. Union of India the Court clarified that any exemption granted is a right and cannot be taken away by a clarificatory circular issued by the Board under Section 168.

f. That in Pitambra Books Pvt. Ltd. Vs Union of India and Ors. The court ruled that claim to refund is a right visible from the mechanism provided under the Act.

g. That circulars are only clarificatory in nature and can never override the Act. And that provisions contained in the Act will prevail.

h. That Circular no. 181/13/2022-GST is impugned and they have the right to claim refund under Section 54(3).

i. That restricting the refund would create a disadvantageous position for the noticee in the industry.

11. This office has carefully examined the facts and ground of the refund. The reply of the noticee has also been vetted.

12. It is to submit that this office is constrained to follow the various relevant Circulars and Notifications issued by the Board from time to time. As per the Circular No. 181/33/2022- GST was being issued by CBIC on 10-11-2022, it is clear that Notification No. 09/2022-CT (RATE) dated 13th July'2022 should apply to refund applications filed after 18.07.22.

*13. Since the present refund application has been filed on 20.01.23 the claimed refund cannot be sanctioned. In view of the foregoing, I reject the refund amount of **Rs. 4,82,761/-**.”*



8. The other rejection orders are very similarly worded. Thus it would be seen that reliance has been placed on the clarificatory paragraphs at Serial No.2 of Circular dated 10.11.2022 being Circular No. 181/13/2022-GST, while rejecting the refund claims.

9. In Patanjali (Supra), this Court has held as under:-

“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. ”

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 assesseees 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 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 assesseees 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.

12. In view of the discussion hereinabove, the present petition succeeds and is accordingly allowed. The impugned para 2(2) of the Circular No. 181/13/2022-GST dated 10.11.2022 is struck down.

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

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH