IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17298 of 2024

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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PATANJALI FOODS LTD.
Versus
UNION OF INDIA & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 2,3
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,4

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

Date : 12/02/2025

ORAL JUDGMENT

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

1. Heard learned Advocate Mr. Uchit N. Sheth for the petitioner and learned advocate Ms. Hetvi H. Sancheti for the respondent Nos. 1 and 4.

2. Rule returnable forthwith. Learned advocate Ms. Hetvi H. Sancheti waives service of notice of rule on behalf of the respondent

Nos.1 and 4. With the consent of learned advocates for the respective parties, the matter is taken up for final hearing, as the issue involved is very short.

3. The petitioner is inter-alia, engaged in the manufacture and sale of edible oil. According to the petitioner, the rate of tax on output supplies made by the petitioner exceeds the rate of tax on input supplies. Therefore, the petitioner qualifies for refund under the inverted duty structure scheme, as per Section 54(3) of the Central/Gujarat Goods and Services Tax Act, 2017 (for short “GST Act”).

4. Notification No.9/2022-Central Tax, dated 13.07.2022, was issued by the Central Government, notifying certain goods, including edible oil, as ineligible for a refund under the inverted duty structure. The said Notification was made effective from 18.07.2022. The petitioner submitted a refund application dated 05.12.2023 for the period from February 2021 to March 2021 under Section 54(3) of the GST Act. According to the petitioner, the said refund

application was within the limitation period as per Section 54(1) of the Act, read with Notification No.13/2022 dated 05.07.2022, which extended the period for filing the refund application.

5. On 27.12.2023, the petitioner received a show cause in Form GST-RFD-08 proposing to reject the refund application on the ground that there was an existing demand against the petitioner on the GST portal. The petitioner replied to the said show cause notice, pointing out that the demands had been withdrawn pursuant to the direction of the NCLT. Thereafter, the respondent accepted the petitioner's explanation and granted the refund after passing a sanction order dated 12.01.2024.

6. Subsequently, on 25.04.2024, the respondent issued a notice under Section 73 of the Act in Form GST-DRC-01, claiming that the earlier refund of Rs.1,70,07,091/- had been erroneously granted and is liable to be recovered along with applicable interest in terms of section 50 of the Act, and applicable penalty under Section 122 of the Act.

7. The petitioner thereafter filed a detailed reply in Form GST-DRC-06 and sought a personal hearing. By way of Order-in-Original dated 10.09.2024, the respondent No.4 confirmed the demand of Rs.1,70,07,091/- towards erroneous refund and interest thereon under Section 50 of the Act, along with a further penalty of Rs.17,00,709/- .

8. Aggrieved by the aforesaid order, the petitioner has filed the present petition seeking the following reliefs :-

> *"A. This Hon'ble Court may be pleased to strike down and declare the impugned para 2(2) of Circular no. 181/13/2022-GST dated 10.11.2022 (annexed at Annexure A) in so far as it provides that the restriction on claim of refund as per Notification No. 9/2022-Central Tax dated 13.7.2022 will apply to all refund applications filed after the date of notification even if they pertain to prior period as being ultra-vires Section 54 of the GST Acts as well as grossly discriminatory, arbitrary and violating Article 14 of the Constitution of India;*
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> *B. This Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 10.9.2024 (annexed at Annexure B) withdrawing refund granted to the Petitioner on the basis of the impugned circular dated 10.11.2022;*
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> *C. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay the operation, execution and*

implementation of the impugned order dated 10.9.2024 (annexed at Annexure A);

D. Ex parte ad interim relief in terms of prayer C may kindly be granted;

E. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your Petitioner shall forever pray."

9. Mr. Uchit N. Sheth, learned Counsel appearing for the petitioner, submitted that the issue raised in the present petition is squarely covered by the decision dated 17.10.2024, passed by this Court in the case of Ascent Meditech Ltd. Vs. Union of India in Special Civil Application No. 17298 of 2024. According to Mr. Sheth, learned Counsel, this Court, in Ascent Meditech Ltd. (Supra), had struck down paragraph No. 2(1) of the same Circular dated 10.11.2022 on the ground that an artificial class cannot be created on the basis of date of filing of the refund application. According to Mr. Sheth, learned Counsel, since the impugned order dated 10.09.2024, withdrawing the refund, was passed solely on the basis of the impugned Circular, the order is illegal and deserves to be struck down. Mr. Sheth, learned Counsel, further submitted that the refund

that was sanctioned to the petitioner has not been reviewed nor appealed against and, hence, has attained finality. Therefore, also the show cause notice issued under Section 73 of the Act for recovery of such refund is wholly without jurisdiction.

10. Mr. Sheth, learned advocate has submitted with great vehemence that the circulars are issued to clarify legal issues, but, where the circular tends to confuse the taxpayer even more by providing two or more understandings or opinions, in such cases, assessees can take the interpretation that is beneficial to them. The said principle has been time and again reiterated by various Courts in a plethora of judgments.

10.1. In this regard, reliance is placed on the judgment by the Hon'ble Supreme Court in the case of **Suchitra Components Ltd. Vs. Commissioner of Central Excise, Guntur 2009** reported in **(208) ELT 321 (SC),** wherein the court considered the grant of benefit of the circular to a taxpayer. In the said decision, following its earlier decision reported in **Commissioner of Central Excise,**

Bangalore v. M/s. Mysore Electrical Industries Ltd. reported in 2006 (204) ELT 517 (SC), the Hon'ble Supreme Court held that a beneficial circular has to be applied retrospectively, while an oppressive circular has to be applied prospectively. This means that when a circular is against the assessees, they have the right to claim enforcement of the same prospectively.

10.2. The same view was taken by the Hon'ble Himachal Pradesh High Court in the decision reported in **2009 (236) ELT 47 (H.P.) (Commissioner of Central Excise v. Himachal Aluminium Pvt. Ltd.),** wherein paragraph No.4, it was held that Notifications that may affect the rights of the parties are treated as prospective in nature unless the notification itself clearly indicates that it will have retrospective effect.

10.3. Again in the case of, **M/s Poulose and Mathen vs Collector of Central Excise 1997 (90) E.L.T. 264 (S.C.),** the Hon'ble Supreme Court held that "Where two opinions are possible, the assessee should be given the benefit of doubt and that opinion which

is in its favour should be given effect to".

10.4. Applying the ratio of the above judgments, it is safe to conclude that the Circular has to be applied prospectively when it goes against the taxpayer, and in the present case, the notification itself is very clear that it would apply prospectively. Hence, the Impugned Order is liable to be quashed and set aside.

10.5 Ms. Sancheti, learned Counsel appearing on behalf of the respondent No.4 submitted that the decision of this Court in **Ascent Meditech (Supra)** does not apply, inasmuch as, the said decision pertains only to the calculation of the refund of unutilized Input Tax Credit and is therefore irrelevant in the present context. She further relied on Section 73(10) of the Act to submit that the refund order is for a separate class and should not be equated with the regular adjudication order. The review mechanism of the refund order is an internal mechanism of the Department for safeguarding revenue loss against erroneous refund. Therefore, the issuance of show cause notices in cases of erroneously granted refunds is perfectly justified

and falls within the purview of Section 73(10) of the Act.

11. **DISCUSSION AND FINDINGS :-**

11.1 Notification No.09/2022 -Central Tax dated 13.07.2022 reads as under:-

> "G.S.R. (E). In exercise of the powers conferred by clause (ii) of the proviso to sub-section of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Departm of Revenue), No. 5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 677(E), dated 28th June, 2017, namely :-
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> In the said notification,
> (i) in the opening paragraph, in the proviso, in clause (i), for the words and figure "serial numbers 1", the words, figure and letters "serial numbers 1AA" shall be substituted;
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> (ii) in the TABLE, S. No. 1 shall be re-numbered as S.No. 1AA, and before S. No. 1AA as re-numbered, the following serial numbers and entries shall be inserted, namely :-

(1)	(2)	(3)
"1A.	1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified
1B.	1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.
1C.	1509	Olive oil and its fractions, whether or not refined,

		but not chemically modified.
1D.	1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509
1E.	1511	Palm oil and its fractions, whether or not refined, but not chemically modified.
1F.	1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.
1G.	1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.
1H.	1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.
1I.	1515	Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified. Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
1J.	1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.

1K.	1517	Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1L.	1518	Vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516
1M.	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
1N.	2702	Lignite, whether or not agglomerated, excluding jet
1O.	2703	Peat (including peat litter), whether or not agglomerated"

Thus, it is clear from the bare perusal of the Notification that "this Notification shall come into force on the 18th day of July, 2022"

11.2 Notification No.13/2022- Central Tax dated 05.07.2022, reads as under:-

> "G.S.R.....(E). In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017)

and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No.35/2020-Central Tax, dated the 3 April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No.14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) 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.

2. This notification shall be deemed to have come into force with effect from the 1 day of March, 2020."

11.3 Circular dated 10.11.2022 issued by the GST Policy Wing reads as under:-

To

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on refund related issues-reg.

Attention is invited to sub-section (3) of section 54 of CGST Act, 2017, which provides for the refund of unutilized input tax credit in cases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No.14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No.09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

2. Representations have been received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022	Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022.
2.	Whether the restriction placed on refund of unutilised 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	Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate

	18.07.2022 also or whether 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?	of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022. The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised 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 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 applications filed before 18.07.2022.

3. It is requested that suitable trade notices may be issued to publicized the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

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 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 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.

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. Further it is undisputed that the respondents had granted refund to the petitioner after passing a sanction order dated 12.01.2024. However, by way of a show cause notice under Section 73 of the CGST Act in Form GST-DRC-01, the respondents had issued a demand notice under Section 73 of the CGST Act which eventually resulted in passing of the impugned Order-in-Original dated 10.09.2024 where, the demand of Rs.1,70,07,091/- was confirmed along with a penalty of Rs.17,00,709/-. Therefore, it will be seen that against the petitioner's refund application dated 05.12.2023, there has been an adjudication of the same by order dated 12.01.2024, by which the petitioner's refund application was accepted and the refund sanction granted. It is further not in dispute that no appeal under Section 107 or Revision under Section 108 of the CGST Act, 2017 has been preferred by the respondents, challenging the

adjudication of the petitioner's refund application and the consequent refund order sanctioned on 12.01.2024. Therefore, in the opinion of this Court, the grant of refund to the petitioner by order dated 12.1.2024 had become final and no show cause notice could be issued by the respondents to take away the benefits of a quasi judicial order in the petitioner's favour. Thus, the Order-in-Original dated 10.9.2024, by which the show cause notice dated 02.05.2024 was adjudicated, is illegal and unsustainable and the same deserves to be quashed and set aside. The Order-in-Original dated 10.09.2024 is therefore, quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)