

APHC010551662025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3529]

WEDNESDAY, THE TWENTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NOS: 28622, 28632 & 28708 of 2025

W.P.No.28622 of 2025

Between:

1.M/S. AWL AGRI BUSINESS LIMITED,, (FORMERLY KNOWN AS ADANI WILMAR LIMITED) REPRESENTED BY TALLABHATTU KRISHNA BHUPALA VARMA HAVING OFFICE AT TUNGABHADRA POST, MANTRALAYAM MANDAL, TUNGABHADRA, KURNOOL, ANDHRA PRADESH - 518397.

...PETITIONER

AND

- 1.THE JOINT COMMISSIONER, (GST APPEALS) COMMISSIONER OF CENTRAL TAX AND CUSTOMS (APPEALS) D.NO. 3-30-15, RING ROAD, GUNTUR - 522 006, ANDHRA PRADESH.
- 2.THE ASSISTANT COMMISSIONER OF CENTRAL TAX, KURNOOL CGST DIVISION, NEAR CHILDRENS PARK, N R PETA, KURNOOL - 518 001, ANDHRA PRADESH.
- 3.THE COMMISSIONER OF CENTRAL TAX, TIRUPATI CGST COMMISSIONERATE 9/86A, AMARAVATHI NAGAR, WEST CHURCH COMPOUND, TIRUPATI - 517 502, ANDHRA PRADESH.
- 4.THE STATE OF ANDHRA PRADESH, THROUGH SECRETARY TO GOVERNMENT, COMMERCIAL TAXES (FAC), SECRETARIAT BUILDINGS VELAGAPUDI, AMARAVATI, GUNTUR-522238 ANDHRA

PRADESH.

5. UNION OF INDIA, MINISTRY OF FINANCE, REPRESENTED BY ITS SECRETARY, NORTH BLOCK. NEW DELHI - 110 001

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS or any other appropriate writ (i) declaring Order-in-Appeal No. TTD-GST-OOO-APP-32-21-22 dated 25.02.2022 bearing DIN No. 20220255AS0000318793 issued by the Respondent No. 1 as being erroneous, illegal, arbitrary and liable to be set aside and be remanded back for reconsideration of issues (ii) directing Respondents to refund INR 48,29,179/- for the period April 2019 under Section 54 of the CGST Act along with applicable interest @ 6percent for delay in issuance of refund under Section 56 of the CGST Act as per amended Rule 89(5) of the CGST Rules in the interest of justice and equity, and in accordance with the scheme of the GST Acts and pass such

Counsel for the Petitioner:

1. KARAN TALWAR

Counsel for the Respondent(S):

1. SANTHI CHANDRA

2. GP FOR COMMERCIAL TAX

The Court made the following common Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner imports edible oil and supplies the same in the domestic market after refining and packing the said oil. The petitioner, sought refund of accumulated input tax credit on account of inverted duty structures for the periods November, 2018, March, 2019 and April, 2019, by way of three separate applications. These applications were rejected by the adjudicating authority on the ground that Rule 89(5) of the CGST Rules precludes grant of such refund. Aggrieved by the same, the petitioner approached the appellate authority, by way of three separate appeals, which also came to be dismissed, on 25.02.2022. Aggrieved by the said order of dismissal, the petitioner has now approached this Court, by way of the present writ petitions.

2. As all these writ petitions have been filed by the same writ petitioner and raise the same issues are being disposed of, by way of this common order.

3. Heard Sri Karan Talwar, learned counsel appearing for the petitioner and Smt. N. Santhi Chandra, the learned Standing Counsel appearing for the respondents.

4. The learned counsel for the petitioner would draw the attention of this Court to paragraph No.12 of the order in appeal. The appellate authority, in this paragraph, recorded the submissions of the petitioner that Rule 89(5) was being reconsidered and that the appeals be kept pending till the GST council decides on the matter. It appears that the GST council, in its meeting

held on 28/29.06.2022 pursuant to the observations of the Hon'ble Supreme Court in its order, dated 13.09.2021, in **Union of India vs. VKC Footsteps India Pvt. Ltd.**,¹ took cognizance of the anomalies in the formula prescribed under Rule 89(5) and accepted the recommendation of the Law Committee which had suggested an amendment in the formula. The learned counsel for the petitioner would contend that in view of this change, which is clarificatory in nature, it would only be appropriate to remand the matters back, to the original authority, for applying the modified formula.

5. Smt. N. Santhi Chandra, the learned Standing Counsel would contend that the modification of the formula is not retrospective and the same cannot be relied upon, by the petitioner, inasmuch as both the original orders of rejection and the appellate orders had been passed even before the amendment to the formula. The learned Standing Counsel would also rely upon the Circular No.181/13/2022-GST, dated 10.11.2022 wherein a clarification was issued by the Principal Commissioner (GST) that the amendment to the formula would only be prospective w.e.f.05.07.2022.

6. Learned counsel for the petitioner has now drawn our attention to the judgment of the Hon'ble High Court of Gujarat in the case of **Tirth Agro Technology Pvt. Ltd. Vs. Union of India.**² In this judgment, the Hon'ble High Court of Gujarat had set aside the said circular to the extent that it clarifies that the amendment to Rule 89(5) is not clarificatory in nature. It is

¹ (2022) 2 SCC 603

² 2025 (1) TMI 719:2024:GUJHC:71361-DB

settled law that once a circular is set aside by one High Court, the same would stand set aside for the entire country.

7. In view of the aforesaid facts and submissions, it is clear that the amendment to the formula in Rule 89(5) has to be treated to be clarifactory in nature and consequently would be retrospective. In the present case, though the orders of rejection as well as the appellate order were passed prior to the amendment, the fact remains that the petitioner had continued to agitate his claims in regard to the refund sought by the petitioner.

8. In view of the above, these Writ Petitions are allowed setting aside the orders of rejection dated 09.06.2021, 13.01.2021 and 24.03.2021 passed by the primary authority as well as the appellate orders, dated 25.02.2022 and the applications of the petitioner, for refund, shall be considered by the primary authority afresh and by applying the modified formula in Rule 89(5) of the GST Rules.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.
There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NOS: 28622, 28632 & 28708 of 2025

(per Hon'ble Sri Justice R.Raghunandan Rao)



21.01.2026

RJS