HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 22068 OF 2024 (T-RES)

BETWEEN:

1. SOUTH INDIAN OIL CORPORATION
REPRESENTED BY SHRI. K.A. RAKSHITH (PARTNER)
NO.26, SRRI SAI BRUNDA
4TH MAIN ROAD
NT PET, BENGALURU URBAN - 560 025
KARNATAKA

...PETITIONER

(BY SRI. VENKATANARAYANA G.M., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER CENTRAL TAX
DIVISION-1
GST EAST COMMISSIONERATE
B WING, 6TH FLOOR
TTMC BMTC BUS STAND
OLD AIRPORT ROAD
DOMMALURU
BENGALURU - 560 071

2. THE ADDITIONAL COMMISSIONER OF CENTRAL TAX
GST COMMISSIONERATE
APPEALS-I, 4TH FLOOR
TTMC BMTC BUS STAND, OLD AIRPORT ROAD
DOMMALURU
BENGALURU - 560 071

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

…RESPONDENTS

(BY SRI. AKASH B. SHETTY, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE APPEAL NO.34-37/2022 AND 232-233/2022 GST AC AI DIN .20230557000000056F ORDER-IN-ORIGINAL NO. 247-252/ADC-AI/GSTS/2023 DTD. 23.05.2023 (ANNX-A) ISSUED BY THE R2 PASSED BY RESPONDENT AS BEING VOID, ARBITRARY, ILLEGAL, WITHOUT JURISDICTION, APART FROM BEING VIOLATIVE OF ARTICLES 265 OF THE CONSTITUTION OF INDIA, AND TO CONSEQUENTLY SET ASIDE THE SAME AND / OR PASS SUCH FURTHER OR OTHER ORDERS AS THIS HONBLE COURT MAY DEEM FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition petitioner seeks the following reliefs:

a) Issue a writ in the nature of mandamus or any other Appeal NO.34-37/2022 and 232-233/2022 GST AC AI DIN .20230557000000056F ORDER-IN-ORIGINAL No. 247-252/ADC-AI/GSTS/2023 dated 23.05.2023 (Annx-A) passed by Respondent as being void, arbitrary, illegal, without jurisdiction, apart from being violative of Articles 265 of the Constitution of India, and to consequently set aside the same and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

b) Grant such other consequential relief as this Hon'ble High Court may think fit."

2. A perusal of the material on record will indicate that the petitioner submitted refund applications for various tax periods pursuant to which show cause notices were issued by the respondent proposing to reject the refund request of the petitioner who submitted replies and the proceedings culminated in the impugned orders rejecting the refund claim of the petitioner whose appeals were also dismissed by the appellate authority. It is an undisputed fact as borne out from the material on record that the petitioner is engaged in the business of procuring various edible oils such as Sunflower oil, Rice bran oil, Cottonseed oil, Palm oil etc., falling under HSN Code 15 on payment of tax at 5%. It is also to be stated that the said edible oils are purchased in bulk in tankers and then packed into various containers bearing the net weight of 250 ml, 500 ml, 1 litre or 5 litre at their premises for selling by way of both business to business and also business to customers at the tax rate of 5% under the same HSN Code 15. Under these circumstances, the petitioner accumulated ITC and sought for refund of the accumulated and unutilised ITC on account of rate of tax on certain inputs being higher than the rate of tax charged on packed edible oil which is the output supply and sought

for refund in this regard as per the refund applications filed by the petitioner. The issue as to whether the petitioner would be entitled to refund under identical circumstances came up for consideration before this Court in the case of ***Mrs. Indian Oil Corporation Ltd., vs. The Assistant Commissioner of Central Tax in W.P. No. 14414 of 2024 dated 20.08.2024***, wherein it was held as under.

In this petition, petitioner seeks for the following reliefs:-

> *" (A) Issue a writ of certiorari or any other writ or direction or order to quash impugned Order in Appeal bearing No.100-101/2024/ADC-A1/GST issued by Additional Commissioner of GST, Appeals-I, Bengaluru dated: 28.02.2024, enclosed as Annexure-A for the reasons state in the grounds.*
>
> *AND*
>
> *(B) Grant such other consequential reliefs as this Honourable High Court may think fit including refund of amounts paid, if any and the cost of this writ petition."*

2. Briefly stated, the facts giving rise to the present petition are as under:

The petitioner - M/s Indian Oil Corporation Ltd., is a Public Sector Undertaking engaged in storage and supply of various petroleum products like petrol, diesel, LPG-Domestic and LPG (Non-Domestic), Furnace Oil, Lubes, Superior Kerosene Oil (SKO) - PDS and petrochemicals. Petitioner maintains terminals/depots for SKO, Bunker fuel and bottling plants for LPG products from where it is stored and then supplied to respective customers. It is stated that LPG consists of various hydrocarbons such as Butane and Propane, which are imported. LPG is transported

in bulk through road and pipelines to the petitioner's bottling plant. It is unloaded and bottled in cylinders. The cylinders are thereafter sealed and safety valves are fixed. The said cylinders are then distributed to customers.

2.1 It is contended that the goods supplied by the petitioner attract multiple rates of GST. It supplies LPG-Domestic, Bunker Fuel (Furnace Oil), Superior Kerosene Oil (SKO)-PDS which attract GST @ 5% and LPG Non-Domestic, Auto LPG, Lubricants, Petrochemicals etc. which are chargeable to GST @ 18%. In supplying the products that attract GST @ 5%, certain inputs are used which attract GST @ 5% or more, as tabulated below:

Outward Supplies	**Major Inputs**
Furnace Oil/Bunker Fuel – 5%, (HSN: 271019)	Furnace Oil/Bunker Fuel (271019) – 18%, R&M Materials - 18%/28%, Printing and Stationery Items- 18% etc.,
PDS Superior Kerosene – 5% (HSN: 271019)	Superior Kerosene - (PDS) (271019)– 5%/18%, Blue Dye – 18%, R&M Materials -18%/28%, Printing and Stationery Items- 18% etc.,
LPG-Domestic – 5%, (HSN: 271119)	LPG Domestic Propane (2711)– 5% LPG Domestic Butane (2711) – 5% SC Valve (8481)– 18%, Safety Cap for SC Valve (3920) – 18%, O-rings (401699) – 18%, Tamper Evident Seal for Cylinder (4016 93)– 18%, Repair and Maintenance Material – 18%/28%, Printing and Stationery Items – 18% etc.,

2.2 It is contended that as per the aforesaid table, the outward supplies of goods are taxable at 5%, whereas inputs are chargeable to GST @ 5%, 18% and 28% and therefore, resulting in accumulated credit on account of inverted duty structure and accordingly, in terms of Section 54(3)(ii) of CGST Act, 2017,

petitioner was entitled for refund of accumulated ITC on account of inverted duty structure on supply of LPG-Domestic, Bunker Fuel, Superior Kerosene Oil (SKO)-PDS from the respondent.

2.3 The petitioner filed applications dated 26.11.2021 and 14.02.2022 for the periods April 2021 and February-September 2018 respectively in Forms GST RFD-01 for refund of accumulated ITC on account of inverted duty structure on supply of LPG-Domestic, Bunker Fuel, Superior Kerosene Oil (SKO)-PDS. In pursuance of the said refund applications, 1st respondent issued show cause notices dated 08.01.2022 and 23.03.2022, to which the petitioner submitted replies dated 22.01.2022 and 06.04.2022 respectively which ultimately culminated in Orders dated 25.01.2022 and 13.04.2022 rejecting the refund applications on the ground that in respect of PDS kerosene and LPG domestic, refunds could not be granted as GST rates on at least one item on the inputs and output /outward supplies was the same by placing reliance upon the Circular No. 135/05/2020-GST dated 31.03.2022 issued by the respondent.

2.4 Aggrieved by the said orders dated 25.01.2022 and 13.04.2022, petitioner filed 2 appeals which were disposed by the impugned order dated 28.02.2024, under which the appeal filed by the petitioner challenging the order dated 25.01.2022 was dismissed, while the appeal challenging the order dated 13.04.2022 was allowed only to an extent of Rs.72,06,385/-. Aggrieved by the impugned order passed by the respondent-appellate authority, petitioner is before this Court by way of the present petitions.

3. Heard learned Senior counsel for the petitioner and learned counsel for the respondent-revenue and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner would elaborate his submissions as under;

- Section 54(3)(ii) of the CGST Act does not proscribe/forbid the grant of refund where the input and the output are the same. It is submitted that clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act does not contemplate comparing rate of tax on the principal input with the rate of tax chargeable on the principal output supply. There is neither any reason nor any scope to further confine the refund of unutilised ITC only to the cases where the rate on main input is higher than the rate of tax on the principal output as held by the Delhi High Court in the petitioner's own case in ***Indian Oil Corporation Ltd., vs. Commissioner of CGST - 2023(13) Centax 228 (Del)***.

- It is submitted that where there are multiple inputs attracting different rates of tax as per the formula provided in Rule 89(5) of the CGST Rules, the expression/term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax and in this regard, learned Senior counsel placed reliance upon paragraph-54 of the Circular bearing No.125/44/2019-GST dated 18.11.2019 issued by the respondent.

- It is submitted that the respondent has erroneously placed reliance upon Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 though the same has no application in the present case as the said Circular applies only to scenarios/situations where the ITC is accumulated on account of different rates being applicable at different points of time and merely seeks to address an issue where the ITC is accumulated on account of different rates being applicable at different points of time as held

by the Delhi High Court in the petitioner's own case in ***Indian Oil Corporation's case*** supra and the impugned orders deserve to be quashed on this ground alone.

- It is submitted that Para 3.2 of the aforesaid Circular dated 31.03.2020 was substituted by subsequent Circular No.173/05/2022-GST dated 06.07.2022, by virtue of which the restriction that refund of accumulated credit on account of inverted duty structure, in case where input and output supplies are the same has been deleted and consequently, the petitioner is eligible to claim refund of inverted duty structure, even when input and output are same.

- It is submitted that substitution of Para 3.2 of the aforesaid Circular dated 31.03.2020 by subsequent Circular No.173/05/2022-GST dated 06.07.2022 being beneficial in nature, the same has to be applied retrospectively and the Circular dated 06.07.2022 is clarificatory in nature and is binding on the Department as held by the Apex Court in the case of ***Suchitra Components Ltd vs CCE, Guntur - 2006(12) SCC 452*** and ***K.P. Varghese Vs Income Tax Officers - (1981) 131 ITR 597 (SC).***

- It is submitted that Section 54(3)(ii) of the CGST Act is absolutely unambiguous and does not carve out any exception that Input Tax Credit under the Inverted Tax Structure would not be applicable where the input and the output goods are the same and the impugned orders deserve to quashed and the respondent be directed to grant refund in favour of the petitioner on this ground also.

- It is submitted that the petitioner would be entitled to consequential interest on refund in terms of Section 56 of CGST Act, 2017 in that payment of interest under Section 56 of the CGST Act being

statutory in nature is automatically payable in favour of the petitioner in case refund is not made within 60 days from the date of receipt of application.

4.1 In support of his submissions, learned Senior counsel placed reliance upon the following decisions:

i) Indian Oil Corporation Ltd vs Commissioner of CGST - 2023(13) Centax 228 (Del);

ii) Suchitra Components Ltd vs CCE, Guntur 2006(12) SCC 452;

iii) K.P. Varghese Vs Income Tax Officers (1981) 131 ITR 597 (SC);

iv) Baker Hughes Asia Pacific Ltd vs UOI 2022 (140) Taxmann.com 326 (Raj);

v) Shivaco Associates vs Joint Commissioner of State Tax, Directorate of Commercial Taxes 2022 (59) GSTL 389 (Cal)(Para 16,17,26);

vi) BMG Informatics (P) Ltd vs UOI 2021 (130) Taxmann.com 182 (Gau);

vii) Malabar Fuel Corporation vs ACCT & CE 2024 (15) Centax 153 (Ker);

viii) MO Industries vs UOI 2024-TIOL 1245 HC RAJ GST ;

ix) Eveready Spinning Mills P Ltd vs ACCT 2024 TIOL 1207 HC MAD GST;

x) Ranbaxy Laboratories Ltd vs UOI 2012 (27) STR 193 (SC);

xi) Raghav Ventures vs Commissioner of Delhi GST 2024 (16) Cen 69 (Del);

xii) Panaji Engineering P Ltd vs UOI 2023 (9) Cen 419 (Guj).

5. Per contra, learned counsel for the respondent would submit that there is no merit in the petition and that the same is liable to be dismissed.

6. Before adverting to the rival contentions, it would be necessary to reproduce Section 54 of the CGST Act, which reads as under;

*"**54. Refund of tax.***

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

***Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [1][such form and] manner as may be prescribed.*

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of [1][two years] from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

***Provided** that no refund of unutilised input tax credit shall be allowed in cases other than—*

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt

supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

***Provided** further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:*

***Provided** also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.*

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

***Provided** that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.*

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, in such manner

and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on exports of goods or services or both or on inputs or input services used in making such [1] "exports";

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

***(8A)** The Government may disburse the refund of the State tax in such manner as may be prescribed.]*

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

***Explanation.**—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.*

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

***Explanation.**—For the purposes of this section,––*

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods

regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of des patch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange "or in Indian rupees wherever permitted by the Reserve Bank of India", where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

"(e) in the case of refund of un utilized input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;"

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

7. Para 3.2 of Circular No.135/05/2020-GST dated 31.03.2020 is reproduced as under:

***3.2** lit may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. [**It is hereby clarified that refund of accumulated ITC under clause (ii)of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."] –* deleted vide Circular No. 173/05/2022-GST dated 06-07-2022.

8. Para 3.2 stands substituted vide Circular No.173/05/2022-GST dated 06.07.2022 as under:

3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of

*clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.**[…….deleted….]***

> *3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause(ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause."*

9. As rightly contended by the learned Senior counsel for petitioner, the Circular No.135/05/2020-GST dated 31.03.2020 was issued with two restrictions viz., the input and output being the same in such cases, though attracting different tax rates at different points in time, would not be covered under 54(3)(ii) of CGST Act, 2017 and accumulated ITC under Section 54(3)(ii) of the CGST Act would not be applicable in cases where the input and the output supplies are the same. However, by way of substitution vide Circular No. 173/05/2022-GST dated 06-07-2022, the restriction that refund of accumulated credit on account of inverted duty structure, in case where input and output supplies are the same has been deleted. It is therefore clear that the petitioner is eligible to claim refund of inverted duty structure, even when input and output are same and consequently, the impugned orders passed by the respondent refusing to grant refund in favour of the petitioner deserves to be set aside and directions are to be issued to the respondent to grant refund in favour of the petitioner.

10. It is also significant to note that substitution of Para 3.2 of the aforesaid Circular dated 31.03.2020 by subsequent Circular No.173/05/2022-GST dated 06.07.2022 being beneficial in nature, the same has to be applied retrospectively and the Circular dated 06.07.2022 is clarificatory in nature and is binding on the Department as held by the Apex Court in the cases of ***Suchitra Components Ltd vs CCE, Guntur - 2006(12) SCC 452*** and ***K.P. Varghese Vs Income Tax Officers - (1981) 131 ITR 597 (SC)*** and consequently, the petitioner would be entitled to refund on this ground also.

11. Learned Senior counsel is also correct in his submission that Section 54(3)(ii) of the CGST Act is absolutely unambiguous and does not carve out any exception that Input Tax Credit under the Inverted Tax Structure would not be applicable where the input and the output goods are the same and the impugned orders deserve to quashed and the respondent is to be directed to grant refund in favour of the petitioner on this ground also.

12. It is also seen that where there are multiple inputs attracting different rates of tax, as per the formula provided in Rule 89(5) of the CGST Rules, the expression/term “Net ITC” covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax as per paragraph-54 of the Circular bearing No.125/44/2019-GST dated 18.11.2019 issued by the respondent and the claim of the petitioner deserves to be upheld on this ground also.

13. Under identical circumstances in relation to the petitioner’s own case, the Delhi High Court in the case of ***Indian Oil Corporation Ltd vs Commissioner of CGST - 2023(13) Centax 228 (Del),*** held as under:-

“ 1. The petitioner (hereafter 'IOCL') has filed the present petition being aggrieved by denial of claims for the refund of accumulated Input Tax Credit (hereafter 'ITC'). The

same was denied to the petitioner on the ground that the rate of tax on input supply and output supply are the same. According to the Revenue, the refund is not permissible in view of Clause (ii) of the proviso to Section 54(3) of the Central Goods & Service Tax Act, 2017 (hereafter 'the CGST Act').

2. The petitioner states that it accumulates unutilized ITC on account of rate of tax on certain inputs being higher than the rate of tax, chargeable on bottled Liquid Petroleum Gas (hereafter 'LPG') - the petitioner's output supply. Thus, according to the petitioner, refund of unutilized ITC is not proscribed in terms of the proviso to Section 54(3) of the CGST Act.

QUESTION TO BE ADDRESSED

3. The principal question that arises for consideration is whether in the given facts refund of accumulated ITC is proscribed by virtue of Clause (ii) of the proviso to Section 54(3) of the CGST Act.

BRIEF FACTS

4. The petitioner, is a public sector undertaking and is, inter alia, engaged in the business of bottling and distributing LPG for domestic as well as industrial use.

5. The principal source of LPG is oil refineries processing crude oil. LPG vapour is produced in the oil refineries during the refining process. It is stated that LPG consists of various hydrocarbons such as propylene, butane and butylene. The said hydrocarbons are liquefied on compression. LPG is transported in bulk through road and rail to the petitioner's bottling plant. It is unloaded and compressed into liquid form and the same is refilled and bottled in cylinders. The cylinders are thereafter sealed and safety valves are fixed. The said cylinders are then distributed to customers.

6. Once the seals of the cylinder are opened, the LPG returns to the gaseous state, which is used by the end consumers. The Supreme Court had considered the said process in Commissioner of Income Tax-I, Mumbai v. Hindustan Petroleum Corporation Ltd.1 in the context of whether the same amounts to manufacture or production for the purpose of Section 80-HH, 80-I and 80-IA of the Income Tax Act, 1961. The Court concluded that the LPG produced at the oil refineries is not in a state which can be supplied directly to the consumers for domestic use. LPG bottling is a highly technical and complex activity, which requires precise functions of machines operated by technical experts. And, bottling LPG in cylinders effectively renders the product

marketable for domestic use. In view of the aforesaid findings, the Supreme Court held that the same amounts to production.

7. The petitioner has two bottling plants in Delhi for supply of LPG. One is located at Tikri Kalan and the other at Madanpur Khadar.

8. The bulk LPG used as the principal input, as well as bottled LPG supplied by the petitioner, are chargeable to Goods and Service Tax (hereafter 'GST') at the rate of 5% in terms of Entry No.165 and 165A of Schedule I appended to CGST Notification Ref. No.1/2017 - CT (Rate) dated 28.06.2017. However, the petitioner also uses various other items in the production of bottled LPG, which includes (2017) 15 SCC 254 accessories required for the purpose of safety. The said items are chargeable to varying rates of GST.

9. The petitioner applied for refund of accumulated ITC for various tax periods. A summary of the applications filed in Form GST RFD-01 and the period for which the said applications were filed are set out below:

Sl No	*Date of filing*	*Period*	*Amount (in Rs.)*
1	*4-3-2022*	*October, 2018 to December, 2019*	*8,63,48,590*
2.	*4-3-2022*	*January, 2020*	*2,03,31,108*
3.	*11-3-2022*	*February, 2020*	*2,21,91,912*
4.	*22-6-2022*	*July, 2020*	*58,46,517*
5.	*24-6-2022*	*August, 2020*	*1,22,98,882*

10. The said applications were acknowledged but the same were not processed. The concerned officer issued show cause notices (in Form GST RFD-08) pursuant to the respective refund applications filed by the petitioner. The petitioner responded to the said show causes notices. However, the petitioner's claims were not accepted. The Adjudicating Authority rejected the applications filed by the petitioner for various tax periods by respective Orders-in-Original. A tabular statement indicating the details of the Orders-in-Original (five in number) denying refund for the respective tax-periods is set out below:

Sl. No.	*Date of Order-in-Original*	*Tax Period*	*Refund Amount (in. Rs.)*
1.	*11-8-2022*	*October, 2018 to December, 2019*	*8,63,48,590.00*

2.	*11-8-2022*	*January, 2020*	*2,03,31,308.00*
3.	*11-8-2022*	*February, 2020*	*2,21,91,912.00*
4.	*24-8-2022*	*July, 2020*	*58,46,517.00*
5.	*24-8-2022*	*August, 2020*	*1,22,98,882.00*

11. The petitioner filed separate appeals against the respective Orders-in-Original passed by the Adjudicating Authority before the Appellate Authority. However, the said appeals were rejected by a common Order-in-Appeal No.19-23/2023-24 dated 21.04.2023 (hereafter the 'impugned order') which is assailed in the present petition.

REASONS AND CONCLUSION

12. At the outset, it is material to note that in terms of Section 112 of the CGST Act, the petitioner has a remedy of appealing the impugned order before the Appellate Tribunal. However, the petitioner is unable to avail of the said remedy as the Tribunal is not constituted. Thus, we consider it apposite to entertain the present petition.

13. A perusal of the Orders-in-Original indicates that the petitioner's claim for refund was denied on the ground that the bulk LPG as well as bottled LPG is the same product chargeable to GST at the rate of 5%. The Adjudicating Authority held that in the circumstances, the petitioner's case is not one of inverted duty structure and therefore, the refund is proscribed in terms of Clause (ii) to Section 54(3) of the CGST Act. The Adjudicating Authority referred to the Circular No.135/5/2020-GST dated 31.03.2020 (hereafter also referred to as 'Circular No.135/5/2020') and noted that in terms of Clause (ii) of the proviso to Section 54(3) of the CGST Act, the refund of ITC is impermissible in cases where input and output supplies are the same.

14. The Appellate Authority found no fault with the orders passed by the Adjudicating Authority and accordingly upheld the denial of refund of accumulated ITC to the petitioner. The relevant extract of the impugned order is set out below:

> *"6. I find that the adjudicating authority has rejected the appellant's all five refund claims on identical ground i.e. by relying on para 3.2 of Circular No.135/5/2020-GST dated 31.03.2020 that the input and the output both are taxable @5% GST and the inverted duty structure is not applicable in the appellant's case and the other inputs which are taxable*

@18% GST formed a very minor part of total input utilized / availed by them. In this context, the adjudicating authority has mentioned para 3.2. of Circular No.135/05/2020-GST dated 31.03.2020 in the impugned order, which is reproduced hereunder:

"3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rate at different points in time, do not get covered under the provisions of clause (ii) of sub- section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause

(ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

6.1 In this context, the appellant submitted that the above clarification is not applicable in their case as it is applicable only in the cases where there is accumulation of ITC due to reduction in tax rate by the Government i.e. same goods were procured at different tax rates at two different points of time which resulted in accumulation of ITC to the recipient of such goods.

6.2 On going through the relevant portion of Circular No.135/05/2020-GST dated 31.03.2020, I find that though, there is force in the submission made by the appellant that the clarification is applicable in those cases where accumulation of ITC was due to reduction in tax rate by the Government yet these clarifications applicable upon them which is evident from the last sentence of para 3.2 of the above Circular which clearly clarifies that refund of accumulated ITC under clause (ii) of sub- section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same. In the appellant's case, the adjudicating authority observed that the major input used by the appellant in LPG (HSN 2711) which was procured in bulk quantity from refiners and taxable @5% GST. The said LPG is repacked in domestic cylinder and supplied / marketed also @5% GST. Hence, the observations of the adjudicating authority, in this context, are sustainable and the appellant's submissions are not acceptable."

15. It is apparent from the above that the Appellate Authority had accepted that Circular No.135/05/2020 was

applicable in cases where accumulation of ITC was due to reduction in tax. Nonetheless, the Appellate Authority was of the view that the petitioner was not entitled to refund by virtue of the last sentence of paragraph 3.2 of the Circular 135/5/2020, which provided that provisions of Clause (ii) of Sub- section (3) of Section 54 was inapplicable, where input and output supplies are the same.

16. Before proceedings to examine the import of Circular No.135/05/2020 issued by the Central Board of Indirect Taxes and Customs (CBIC), it is important to note that the said Circular was in exercise of powers under Section 168(1) of the CGST Act. This is expressly stated in the opening paragraph of the said Circular. It is thus relevant to refer to Sub-section (1) of Section 168 of the CGST Act, which reads as under:

"168(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."

17. It is apparent from the plain reading of Sub-section (1) of Section 168 of the GST Act that CBIC can issue such orders, instructions, or directions only if it considers it necessary and expedient to do for the purpose of uniformity in implementation of the CGST Act. Plainly, CBIC has no power to issue circulars in derogation of the provisions of the CGST Act. CBIC can neither add to the provisions of the CGST Act nor curtail the import of any part of the enactment. Section 168(1) of the CGST Act confines the powers of CBIC to issue circulars for uniformly implementing the provisions of the CGST Act. It can do nothing further. Plainly, if the IOCL is entitled to refund in terms of Section 54(1) of the CGST Act, the same cannot be denied by virtue of any circular issued under Section 168(1) of the CGST Act.

18. The question whether IOCL's claim for refund for accumulated unutilised ITC is admissible, has to be determined with reference to the express provisions of Section 54 of the CGST Act. In terms of Section 54(1) of the CGST Act, any person claiming refund of tax and interest paid on such tax or any amount paid by him, is entitled to make an application for refund before expiry of two years from the relevant date, which is defined under Explanation (2) to Section 54 of the CGST Act. Sub-section (3) of Section 54 of the CGST Act provides that subject to provisions

of Sub-section (10) of Section 54 of the CGST Act, a person may claim refund of unutilised ITC at the end of any tax period. However, the proviso to Sub-section (3) to Section 54 of the CGST Act restricts the entitlement to refund of unutilised ITC. It expressly provides that no refund of unutilised ITC would be allowed except in cases covered under Clauses (i) and (ii) of the proviso to Section 54(3) of the CGST Act. Under Clause (i) of the proviso to Section 54(3) of the CGST Act, refund of ITC is available in cases of zero rated supplies made without payment of tax. In terms of Clause (ii) of the proviso to Section 54(3) of the CGST Act, refund is admissible, where the credit is accumulated on account of rate of tax on inputs being higher than the rate of tax of output supplies. Sub-section (3) of Section 54 of the CGST Act is set out below:

> *"Section 54. Refund of tax.-*
>
> *(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*
>
> *Provided that no refund of unutilised input tax credit shall be allowed in cases other than-*
>
> *(i) zero rated supplies made without payment of tax;*
>
> *(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*
>
> *Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:*
>
> *Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."*

19. The Supreme Court had considered the proviso to sub-section (3) to Section 54 in Union of India and Ors. v. VKC Footsteps India Pvt. Ltd.2 and had authoritatively held that the refund of unutilised ITC was confined to two categories as spelt out in Clauses (i) and (ii) of the proviso to Sub-section (3) of Section 54 of the CGST Act. The relevant extract of the said decision is set out below:

"98. Sub-Section (3) of Section 54 begins, in its main part, with the stipulation that a registered person may claim refund of any 'unutilised ITC at the end of any tax period'. Whether we construe the first proviso as an exception or in the nature of a fresh enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso. That clauses (i) and (ii) are the only two situations in which a refund can be granted is evident from the opening words of the first proviso which stipulates that "no refund of unutilised input tax credit shall be allowed in cases other than". What follows is clauses (i) and (ii). The (2022) 2 SCC 603 intent of Parliament is evident by the use of a double - negative format by employing the expression "no refund" as well as the expression "in cases other than." In other words, a refund is contemplated in the situations provided in clauses (i) and (ii) and no other. To put it differently, the first proviso can be recast, without altering its meaning to read that a refund of unutilised ITC shall be allowed only in the cases governed by clauses (i) and (ii). ..."

20. The petitioner's claim for refund is founded on Clause (ii) of the proviso to Section 54(3) of the CGST Act. According to the petitioner, the rate of tax on certain inputs is higher than the tax paid on outputs (bottled LPG). Resultantly, the petitioner has been unable to fully utilise the ITC on its inputs.

21. There is no controversy or dispute that the petitioner uses various items in production of bottled LPG, which include accessories required for the purposes of safety. Undisputedly, the items and accessories as specified are essential for production of the bottled LPG and making it suitable for retailing. The said items are chargeable to varying rates of GST. A tabular statement setting out the input supplies, their classification, and the rate of tax chargeable on such supplies as set out in petition, is reproduced below

Name of Input	*HSN*	*Tax Rate(%)*
LPG bulk sourced from refineries (owned or third-party	*2711*	*5*
SC Valves	*8481*	*18*
Safety Caps	*3603*	*18*

Nylon thread	*8459*	*18*
Stainless Steel clips	*8305*	*18*
Plastic seals	*3926*	*18*
Lubricants	*8413*	*18*
Dry Chemical for DCP Extinguisher	*3813*	*18*
Nuts and Blots	*7318*	*18*
Gasket, Water Pump, Fuel Filter, Oil, Clamp, etc.,	*3804*	*18*

22. It is material to note that Clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act is applicable only where ITC has accumulated on account of "rate of tax on inputs being higher than the rate of tax on output supplies". The use of the word 'inputs' in plural clearly indicates that the refund of accumulated ITC is not confined to ITC accumulated on a singular input. Thus, there may be multiple inputs that may be used or consumed for effecting the output supplies. The use of the words 'output supplies' also indicates that the taxpayer's output supply may not be singular. In such circumstances, it would be necessary to determine whether the accumulation of any unutilised ITC is on account of the rate of tax on inputs exceeding the rate of tax on the output or for any other reason. In case where the accumulation of ITC is attributable solely to the rate of tax on inputs exceeding the rate of tax on output supplies, the taxpayer's claim for refund on accumulated unutilised ITC will squarely fall under Clause (ii) of proviso to sub- section (3) of Section 54 of the CGST Act.

23. It is important to note that Clause (ii) of Section 54(3) of the CGST Act does not proscribe the grant of refund where the input and the output are the same. Clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act merely restricts the refund of unutilised ITC to cases where there is accumulation of unutilised ITC on account of rate of tax on inputs being higher than the rate of tax on the output supplies.

24. Clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act does not contemplate comparing rate of tax on the principal input with the rate of tax chargeable on the principal output supply. There is neither any reason nor any scope to further confine the refund of unutilised ITC only to cases where the rate on main input is higher than the rate of tax on the principal output.

25. It is necessary to bear in mind that one of the principal objects of enacting the CGST Act was to address the cascading effect of taxes as the taxes levied by the Central Government and State Governments were not available for being set off for payment of other taxes. It is clear that the legislative intent behind grant of refund of unutilised ITC that has accumulated on account of inverted tax structure is to confine the tax to the tax on the output supplies at the rate so fixed. In view of the plain language of proviso to Sub-section (3) of Section 54 of the CGST Act, the Revenue's contention that the petitioner is not entitled to refund of unutilised ITC as the rate of bulk LPG and bottled LPG is the same, is unsustainable. It is impermissible to disregard the rate of tax on other inputs.

26. As stated at the outset, a taxpayer's claim for refund, which is admissible under Section 54 of the CGST Act, cannot be denied on account of a Circular issued by CBIC under Section 168(1) of the CGST Act. Plainly, if the Circular No.135/05/2020 is read in the manner as contended by the Revenue, it would be in conflict with the provisions of Section 54(3) of the CGST Act and thus, would be liable to be set aside and disregarded. However, plain reading of the Circular 135/5/2020 indicates that it does not proscribe grant of refund in cases where the principal input and the output supply are similar. It is apparent from Article 3 of the said Circular that it relates to a clarification regarding refund of ITC, which has accumulated on account of reduction in the GST rate. It would be relevant to refer to Article 3 of the Circular 135/5/2020. The same is set out below:

> *"3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate 3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.*
>
> *3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated*

on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

27. It is clear from a plain reading of paragraph 3.2 of the Circular 135/5/2020 that it seeks to clarify that in cases where input and output is the same but the tax has accumulated on account of the different tax rates at different points of time, refund under Section 54 of the CGST Act is not admissible. It is not necessary for this Court to examine whether such clarification falls foul of Section 54(3) of the CGST Act as it is apparent that the same is inapplicable in the facts of the present case. The clarification seeks to address an issue where the ITC is accumulated on account of different rates being applicable at different points of time. It does not seek to address any issue where the principal input and output is the same. In terms of the Circular 135/5/2020, if the rate of tax on input and output is the same and ITC is accumulated on account of different rates being applicable at different points of time, the case would not fall under Clause (ii) of the proviso to Sub-section (3) of Section 54 of the CGST Act. The use of the words, the input and output being the same, is essentially in the context of the rate on input and output being the same.

28. Circular No.135/05/2020 has no application where ITC, refund of which is sought, has accumulated on account of rate of taxes on certain inputs being higher than tax chargeable on the output supply, notwithstanding that the one of the main input and output is chargeable at the same rate of tax.

29. There may be myriad of circumstances where the ITC accumulates notwithstanding that the rate of tax on input and output supplies is the same. Mr Ganesh, learned senior counsel appearing for petitioner had referred to the decision of the Supreme Court in Union of India and Ors. v. VKC Footsteps India Pvt. Ltd. (supra) and mentioned the following illustrative cases, where claim for refund may arises on account of factors other than the duty structure

(i) High discount pricing

(ii) Predatory pricing

(iii) Shut down of business or industry

(iv) Business loss

(v) Economic compulsion to sell at below cost prices

(vi) Stoppage of work.

30. Clearly, in such cases, refund of unutilised ITC would not be admissible by virtue of proviso to Sub-section (3) of Section 54 of the CGST Act.

31. In Shivaco Associates and Anr. v. Joint Commissioner of State Tax, Directorate of Commercial Taxes and Ors.3 the taxpayer was engaged in supplying LPG in containers. The tax on bulk LPG (input supply) was chargeable at 18% but the tax on output supply being LPG containers for domestic consumers was 5%. The Revenue had denied the refund of ITC accumulated for the aforesaid reason on the ground 2022 SCC OnLine Cal 459 that the input and the output supply was the same. The Calcutta High Court accepted the petitioner's claim and rejected the Revenue's contention that refund was not admissible by virtue of the Circular 135/05/2020. The Court held that any circular issued under Section 168(1) of the CGST Act "cannot supplant or implant any provision which is not available in the Act". The Circular could not restrict release of benefits as provided under the CGST Act. The Court held as under:

> *"26. In the present case, the Act does not mention about non-granting of the benefit of accumulated input tax credit where the input and output supplies are the same. The circular is trying to restrict the refund to a particular set of supplies. The circular is trying to create a class inside the class, which is impermissible. According to the Act, refund is permissible in respect of all classes where the input tax is higher than the output tax. By way of the circular, the Board is curtailing the said benefit and making refund permissible only if the input and output supplies are different. The same amounts to overreaching the provisions as laid down in the Act.*
>
> *27. It cannot be said that the legislature was unmindful of the fact that there may be instances where the input and output supplies are the same. On the contrary, it can be said that the legislature consciously did not create any distinction for allowing refund in all cases where the input tax is more*

than the output tax. The said benefit is applicable to all similar cases."

32. In Baker Hughes Asia Pacific Limited v. Union of India4, the Hon'ble Rajasthan High Court held that in cases where the refund of accumulated ITC arises on account of the inverted duty structure, the 2022 SCC OnLine Raj 1061 same could not be denied on the ground that the input and output supplies were the same.

33. In BMG Informatics (P.) Ltd. v. The Union of India and Ors.5, the Hon'ble Gauhati High Court held that Circular No. 135/05/2020 is unsustainable and is liable to be ignored.

34. Mr Tripathi, learned counsel appearing for Revenue had sought to distinguish the aforesaid decision on the ground that in the said cases, there was a difference in the rate of tax chargeable on input and output even though the input and output supplies were the same. He contended that therefore, in such circumstances, refund would be admissible under Clause (ii) to proviso to Sub-section (3) of Section 54 of the CGST Act. He argued that no refund would be admissible in the present case as the rate of tax on bulk LPG and bottled LPG was the same.

35. We do not find merit in the said contention. This is because it ignores the rate of tax chargeable on inputs other than LPG, which are admittedly higher than the rate of GST chargeable on the bottled LPG. More importantly, it disregards the fact that the ITC has accumulated on account of the rate on tax on such inputs being higher than the output supply - bottled LPG.

36. It is also relevant to note that the Appellate Authority had, inter alia, found that the petitioner's claim for refund would not be admissible by virtue of the Circular No.135/05/2020 as in terms of the 2021 SCC OnLine Gau 2570 paragraph 3.2 of the said Circular refund of accumulated ITC was not available, where the input and output supplies were the same. It is implicit in the contentions advanced on behalf of the Revenue before us that, this ground stands virtually abandoned. This is because the decisions referred on behalf of the petitioner are sought be distinguished on the basis that though the input supply and output supply is the same, the rate chargeable on input and output are different. In any view, we find no merit in the Revenue's contention.

37. In view of the above, the present petition is allowed.

38. The concerned authority is directed to process the petitioner's applications for refund along with applicable interest in accordance with law as expeditiously as possible and in any event, within a period of six weeks from date.

39. The pending application is also disposed of."

14. A similar view has been taken by other High Courts in the following judgments:-

(i) Baker Hughes Asia Pacific Ltd vs UOI 2022 (140) taxmann.com 326 (Raj)(Para 14);

(ii) Hon'ble Calcutta High Court Shivaco Associates vs Joint Commissioner of State Tax, Directorate of Commercial Taxes 2022 (59) GSTL 389 (Cal)(Para 16,17,26);

(iii) BMG Informatics (P) Ltd vs UOI 2021 (130) taxmann.com 182 (Gau)(Para 28);

(iv) Malabar Fuel Corporation vs ACCT & CE 2024 (15) Centax 153 (Ker)(Para 10-11);

(v) MO Industries vs UOI 2024-TIOL 1245 HC RAJ GST (Para 7);

(vi) Eveready Spinning Mills P Ltd vs ACCT 2024 TIOL 1207 HC MAD GST (Para 6,7)

15. As held in the aforesaid judgments by the Delhi High Court and other High Courts, Section 54(3)(ii) of the CGST Act does not proscribe/forbid the grant of refund where the input and the output are the same and that clause (ii) of proviso to sub-section (3) of Section 54 of the CGST Act does not contemplate comparing rate of tax on the principal input with the rate of tax chargeable on the principal output supply; further, there is neither any reason nor any scope to further confine the refund of unutilised ITC

only to cases where the rate on main input is higher than the rate of tax on the principal output.

16. A perusal of the impugned orders will indicate that respondent has erroneously placed reliance upon Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 though the same has no application in the present case as the said Circular applies only to scenarios/situations where the ITC is accumulated on account of different rates being applicable at different points of time and merely seeks to address an issue where the ITC is accumulated on account of different rates being applicable at different points of time as held in the aforesaid judgments and the impugned orders deserve to be quashed and directions are to be issued to the respondent to refund the amount back to the petitioner.

17. Insofar as the claim for interest on refund is concerned, in the light of the provisions contained in Section 56 of CGST Act, the respondent would be liable to pay interest for the period commencing from 60 days of the filing of the refund claims by the petitioner which were rejected by the respondent by passing the impugned orders. However, having regard to my finding hereinbefore that the impugned orders deserve to be set aside and that the petitioner would be entitled to refund as sought for by them, interest would also become payable from the end of 60 days from date of receipt of application being filed under Section 56 of the CGST Act and payment of interest is automatic, the same would have to be paid by the

respondent to the petitioner as held in the following judgments;

(i) Ranbaxy Laboratories Ltd vs UOI - 2012 (27) STR 193 (SC);
(ii) Raghav Ventures vs Commissioner of Delhi - GST 2024 (16) Cen 69 (Del);
(iii) Panaji Engineering P Ltd vs UOI - 2023 (9) Cen 419 (Guj).

18. A perusal of the memorandum of petition will indicate that though the petitioner has not challenged the original orders dated 25.01.2022 and 13.04.2022 rejecting the refund claim of the petitioner in the present petition, in view of the findings recorded by me hereinbefore that the said orders are illegal, arbitrary and contrary to law and facts, I deem it just and appropriate to set aside the said orders as well as the impugned order at Annexure-A dated 28.02.2024 passed by the respondent – appellate authority and direct the respondent to grant refund in favour of the petitioner as sought for in their refund applications together with applicable interest within a stipulated timeframe.

19. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure – A dated 28.02.2024 insofar as it relates to rejection of the appeal filed by the petitioner at Sl.No.1 of the impugned order is hereby set aside.

(iii) So also, the order at Annexure – F dated 25.01.2022 insofar as it relates to rejection of refund claim

of the petitioner to an extent of Rs.16,86,68,133/- is hereby set aside.

(iv) So also, the order at Annexure – L rejecting refund claim of the petitioner to an extent of Rs.39,70,00,392/- is also hereby set aside.

(v) Respondents are directed to refund the amount due to the petitioner together with applicable interest in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

3. In view of the aforesaid facts and circumstances and the judgment of this Court in ***Mrs. Indian Oil Corporation's case*** *supra,* the impugned orders deserve to be set aside and the refund claim of the petitioner deserves to be allowed.

4. In the result, I pass the following:

ORDER

(i) The petition is here ***allowed.***

(ii) Impugned orders/ notices at Annexures - A, B1, B2, B3, B4, B5, B6 are hereby quashed.

(iii) Respondents are directed to refund the amounts claimed by the petitioner in the refund applications together with applicable interest within a

period of three months from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

YKL
List No.: 2 Sl No.: 28