IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

W.P.No.13624 of 2021

Sri Cheran Synthetics India Private Limited,
(Represented by its Director),
24, Sanskari Main Road,
Pallipalayam,
Namakkal,
Tamil Nadu – 638 006. ...Petitioner

Vs.

1. The Union of India,
(Through the Secretary)
Government of India,
Ministry of Finance,
(Department of Revenue) No.137,
North Block, New Delhi.

2. The Central Board of Indirect Taxes and Customs,
North Block, New Delhi – 110 001.

3.Additional Commisioner (Appeals),
GST and Central Excise (Appeals),
Coimbatore,
Salem Circuit Office,
No.1, Foulkes Compound, Anaimedu, Salem.

4. Assistant Commisioner,
   CGST & Central Excise,
   Erode II Division,
   81, Bharathi Nagar,
   Soolai, Erode – 638 004. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to quash the impugned order dated 20.08.2020 passed by the respondent No.3 and consequently directing the respondent No.4 to pass a fresh order for sanction of refund and strike down clarification issued in paragraph 3 thereto of Circular No.94/13/2019-GST dated 28.03.2019 issued by respondent No.2 as ultra vires of the GST Acts as well as the rules issued thereunder.

For Petitioner : Dr.Avinash Poddar

For Respondents : Mr.AP.Srinivas
Sr. Standing Counsel

O R D E R

In this writ petition, the petitioner has challenged the impugned order dated **20.08.2020** passed by the 3rd respondent namely the Additional Commissioner (Appeals) under **Section 109** of the **Central Goods and Services Tax, 2017** (in short **CGST Act, 2017)** and Para No.3 of Circular **No.94/13/2019-GST** dated **28.03.2019** as ultravires, the provisions of the GST Act as well as Rules made thereunder.

2. Operative portion of the impugned order of the 3rd respondent reads as under:-

> *"The Appeal in A.No.14/2019-GST filed by M/s.Sri Cheran Synthetic India Private Ltd. is rejected and the impugned RFD-06 order dated 25.05.2020 passed by the Assistant Commissioner of GST & Central Excise, Erode-II Division is upheld."*

3. The petitioner is engaged in the manufacture of textile products under Chapters 52, 53, 54, 55 and 60 of the **Customs Tariff Act, 1945** which is applicable for the purpose of classification and for determination of tax for payment of tax under the provisions of respective GSTN enactments of the year 2017.

4. The petitioner is under the inverted duty structure as the rate of duty on input tax is higher as compared to the tax liability on the final products under the provisions of the respective GST enactments, as a result of which there is an accumulation of Input Tax Credit.

5. By virtue of **Notification No.5/2017-Central Tax (Rate)** dated **28.06.2017**, the Central Government on the recommendation of GST Council notified several products including the products manufactured by the petitioner

at Serial Nos.3,4,5,6 and 7 to the above notification holding that no refund of input tax credit shall be allowed, where the credit was accumulated on account of inverted rate of tax where the rate of tax on inputs was higher than rate of tax of output supplies of such goods.

6. Thus, an exception was made for the purpose of refund under **Section 54 (3)** of the **CGST Act, 2017** by denying refund of the accumulated input tax credit on account of inverted rate of duty structure. The Industry appears to have persuaded the GST Council to reverse this decision as is reflected in the amendment to **Notification No.5/2017-Central Tax (Rate)** dated **28.06.2017**.

7. Considering the same, the GST Council also appears to recommend for dilution of the restrictions in the above mentioned notification, pursuant to which **Notification No.20/2018-Central Tax Rate** dated **26.07.2018** was issued. Thus, the following *provisio* was added to **Notification No.5/2017-Central Tax (Rate)** dated **28.03.2019:-**

"Provided that,-

(i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1,2,3,4,5,6,6A,6B,6C and 7 of the Table below; and

(ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

7A. Relevant portion of the **Circular No.94/13/2019-GST** dated the **28th March, 2019**, which is extracted below:-

Circular No.94/13/2019-GST
F.No.CBEC-20/16/04/2018-GST
Government of India
Ministry of Finace
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
***
New Delhi, Dated the 28th March, 2019

To,
The Principal Chief Commisioners/Chief Commisioners/Principal Commisioners/Commissioners of Central Tax (All)
The Principal Director Generals/Director Generals (All)

Madam/Sir,

Subject:Clarifications on refund related issues under GST-Reg.

Various representations have been received seeking clarifications on certain issues relating to refund. In order to clarify these 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 detailed hereunder:*

Sl.No.	**Issue**	**Clarification**
1.	*Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No.20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No.56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01Afrom being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?*	*a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "**any other**" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.* *b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he*

Sl.No.	Issue	Clarification
		shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05. *c)* ***All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".***
2..............		
3.	*What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in* ***FORM GSTR-3B*** *for any month subsequent to August, 2018 or through* ***FORM GST DRC-03*** *subsequent to the due date of filing of the return in* ***FORM GSTR-3B*** *for the month of August, 2018?*	*a) As the registered person has reversed the amount of credit to be lapsed in the return in* ***FORM GSTR-3B*** *for a month subsequent to the month of August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, he shall be liable to pay interest under sub-Section (1) of Section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR-3B for the month of August, 2018 till the date of reversal of said amount through FORM GSTR-3B or through FORM GST DRC-03,as the case may be.* *b) The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of*

Sl.No.	Issue	Clarification
		unutilized ITC on account of accumulation due to inverted tax structure w.e.f., 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.

8. Thus, the Input Tax Credit accumulated on supplies received on or after **1st April 2018** in respect of goods mentioned at Serial Nos.1,2,3,4,5,6,6A,6B,6C and 7 were allowed to be claimed by way of refund under **Section 4** of the **CGST Act, 2017**. However, in respect of accumulated Input Tax Credit lying in its credit for the past period for a sum of Rs.6,86,66,289/- as on **31.07.2018** was to lapse. However, if there was delay in reversal of such credit availed in the past, the revenue was to be calculated starting from the due date of filing of return in FORM GSTR-3B for the month of August, 2018 till the date of reversal of said amount through FORM GSTR-3B or through FORM GST DRC-03,as the case may be. The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B

for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f., **01.08.2018**. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest, as applicable.

9. A refund claim that was filed by the petitioner on **19.06.2019** was also sanctioned by the 5th respondent herein in FORM-GST-RFD-06 dated **13.08.2019**. While sanctioning the refund for a sum of **Rs.65,05,730/-**, a sum of **Rs.59,35,528/-** was however deducted towards interest on the belated reversal of accumulated Input Tax Credit of **Rs.6,68,66,289/-** on **19.03.2019**.

10. In this background, the petitioner challenged the aforesaid order in FORM-GST-RFD-06 dated **13.08.2019** passed by the 5th respondent before the 3rd respondent/Appellate Authority *vide* **Order-in-Appeal No.21/2020** dated **20.08.2020**, the 3rd respondent as an Appellate Authority, confirmed the order dated **13.08.2019** in FORM-GST-RFD-06. Thus, the petitioner is before this Court.

11. Ideally, the petitioner would have been required to file a statutory appeal before GST Council under **Section 112** of the **CGST Act, 2017**.

However, at the time of filing of this writ petition, the GST Appellate Tribunal had neither been notified nor constituted. Even though the GST Appellate Tribunal has been on date constituted, it has not yet been notified.

12. Since, the petitioner is also challenging the *vires* of the impugned Circular No.94/13/2019-GST in this writ petition before this Court, the petitioner need not be asked to await for constitution of the GST Appellate Tribunal, as the GST Appellate Tribunal will not be in a position to go into *vires* of the impugned Circular No.94/13/2019-GST dated **28.03.2019**. Hence, this writ petition is taken up for final hearing and disposed of herein.

13. When the case was listed today, learned counsel for the petitioner who appeared through video conferencing demonstrated that the petitioner had surplus of accumulated Input Tax Credit and had not utilized the Input Tax Credit, all though the period in-dispute. In this connection, the learned counsel for the petitioner has drawn attention to the extract of the electronic credit ledger for the period between **01.10.2018** to **31.03.2019**.

14. It is submitted that all through the periods there was excess credit and there was no occasion for the petitioner to utilize the accumulated credit of **Rs.6,86,66,289/-** so as to deprive the department of tax on account of its failure

to reverse the accumulated credit of **Rs.6,68,66,289/-** till **31.07.2018**. That apart, learned counsel for the petitioner would submit that the case of the petitioner is neither hit by **Section 50 (1)** or by **Section 50 (3)** of the **CGST Act, 2017**.

15. It is therefore, submitted that the impugned order of 3rd respondent in impugned Order-in-Original of the 3rd respondent confirming the order of the 3rd respondent in FORM-GST-RFD-06 dated **13.08.2019** is liable to be set aside.

16. Learned counsel for the respondent on the other hand submits that the impugned **Circular No.94/13/2019-GST** dated **28.03.2019** does not call for any interference as it has been issued in accordance with the powers vested with the Central Board of Indirect Taxes and Customs under **Section 168(1)** of the **GST Act, 2017**. It is submitted that the said circular is perfectly in sync with the requirements of **Section 50 (3)** of the **CGST Act, 2017**.

17. Learned counsel for the respondent further submitted that since the petitioner submitted that the petitioner was having excess of accumulated Input Tax Credit all through the period, the prayer for quashing para No.3 in **Circular No. 94/13/2019-GST** dated **28.03.2019** not be entertained.

18. I have considered the submissions advanced by the learned counsel

for the petitioner and learned counsel for the respondents and having perused the records before this Court and the provisions of **CGST Act, 2017**.

19. I am of the view that the necessity for quashing the circular at the behest of the petitioner in the given facts and circumstances, may not be necessary, as the petitioner claims that the petitioner had excess Input Tax Credit all along and there was no occasion to wrongly utilize the Input Tax Credit, which was to lapse on **31.03.2017**. The law on the Input Tax Credit has long settled by the Hon'ble Supreme Court in **The Collector of Central Excise, Pune & Others Vs. Daichi Karkaria Ltd. & Ors. [(1999) 7 SCC 448]** wherein it has been held as follows:-

> *"There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible."*

20. The credit that was validly availed by the petitioner was accumulated by the petitioner. However, it remained unutilized.

21. Notification No.5/2017-Central Tax (Rate) dated **28.06.2017** which

was in operation with effect from **01.07.2017** issued under **Section 54 (3)** of the **CGST Act, 2017** inhibited the petitioner from claiming refund of the accumulated Input Tax Credit on account of credit of tax, on inputs being higher thus the tax on the outward supplies. It is only after **Notification No.20/2018-Central Tax Rate** dated **26.07.2018**. The Government deemed it fit to allow refund of accumulated Input Tax Credit on the supply received on or after 1st Day of April, 2018, in respect of goods mentioned at **Serial Nos.1,2,3,4,5,6,6A,6B,6C** and **7** to **Table 2** in **Notification No.5/2017-Central Tax (Rate)** dated **28.06.2017**.

22. Perforce, the petitioner as was required to reverse Input Tax Credit lying unutilized Input Tax Credit for payment of tax for the period after the Month of July 2018. As such, credit was to lapse with effect from **01.08.2018**. The petitioner reversed Input Tax Credit on **19.03.2019** for a sum of **Rs.6,68,66,289/-** on **19.03.2019** which is not in dispute. There is also no dispute the aforesaid credit amount was also not utilized by the petitioner after **01.08.2018**.

23. Therefore, levy of interest of Rs.59,35,528/- purportedly in exercise of power under **Sub-Section 3** of **Section 50** of the **CGST Act, 2017** is

unjustified. The question of levy of interest under the impugned circular would apply to the petitioner only if there was a wrong utilization of the Input Tax Credit accumulated prior to the cut off date in the **Notification No.20/2018-Central Tax Rate** dated **26.07.2018**.

24. Since, the petitioner had no occasion to utilize the accumulated credit after the cut off date towards the tax liability incurred, the question of imposing interest under **Section 50 (3)** in terms of above said circular cannot be justified.

25. However, it would require a detailed consideration by the authorities. Under these circumstances the impugned Order-in-Appeal No.21/2020 dated **20.08.2020** confirming the powers of the 3rd respondent dated **13.08.2019** in FORM-GST-RFD-06 insofar as it seeks to disallow the refund of **Rs.59,35,528/-** by adjusting the same towards interest for a period between upto **19.03.2018** is set aside and the case is remitted back to the 3rd respondent to re-do the exercise within a period of three (3) months from the date of receipt of copy of this order.

26. In the light of the above, this writ petition stands allowed. No costs.

24.10.2024

Index: Yes/No

Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
nst

To:

1. The Union of India,
   (Through the Secretary)
   Government of India,
   Ministry of Finance,
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C.SARAVANAN, J.

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