



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4164/2024

Lupin Limited Nagpur .Vs. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. Shah, Senior Advocate assisted by Mr. M. Raval and Mr. A. Potnis, Advocates for petitioner.
Mr. M. I. Dhatrak, Advocate for respondent Nos. 1 to 7.
Mr. P. V. Navlani, Advocate for respondent No.8.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATE OF RESERVING THE ORDER : NOVEMBER 14, 2025.

DATE OF PRONOUNCING THE ORDER: NOVEMBER 21, 2025.

The petitioner – Company has approached this Court with following substantive prayer:

“i. that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the three impugned Refund Rejection Orders dated 17.01.2022 passed by the Respondent No. 6, the impugned Refund Rejection Order dated 04.08.2023 passed by the Respondent No.5, the impugned Refund Rejection Order 07.05.2024 passed by the Respondent No. 4 (Annexure A1 to A5), and impugned orders-in-appeal both dated 21.06.2024 passed by the Respondent No. 3 (Annexures A6 and A7) and the impugned order-in-appeal dated 20.06.2024 passed by the Respondent No. 3 (Annexure A8)”

2. Heard Mr. P. Shah, learned Senior Counsel for petitioner, Mr. M. I. Dhatrak, learned counsel for respondent Nos. 1 to 7 and Mr.P. V. Navlani, learned counsel for respondent No.8. Perused the impugned orders passed by respondent Nos. 3 to 6.

3. The refund applications filed by petitioner were rejected on the ground that in terms of provisions of the Maharashtra Goods

and Service Tax Act, 2017 (“MGST Act”) and the Central Goods and Services Tax Act, 2017 (“CGST Act”) read with Rules of CGST Act and Section 16(3) of the Integrated Goods and Service Tax Act, 2017 (“IGST Act”), the supplier of services to the Special Economic Zones (“SEZ”) Unit can only file the refund application.

4. In the present case, the refund applications were filed by the petitioner which, admittedly, is a SEZ Unit. The appellate authority observed that under the aforesaid provision, there is no bar or restriction either on availing ISD credit by a SEZ Unit or on claiming refund of such ISD credit availed. However, the refund was rejected for following reasons :

“Proviso to Rule 89(1) restricts the claim of refund to the extent of supplier to the Special economic zone and stipulates that only the supplier of goods or services can file the refund claim after due endorsement by the Specified Officer of the SEZ for receipt of goods in full/receipt of services with evidence, for authorized operations.

Further regarding the judgment referred by appellant in case of M/s Britannia Industries Ltd versus Union of India, it is observed that, as there is a law point, above matter has been appealed before Hon'ble Apex Court and Special leave petition has been filed, which is admitted by the Hon'ble Apex Court and litigation are going on and the matter is pending in the form of SLP No.13431 of 2021 before the Hon'ble Apex Court. In view of this, this office has earlier kept this matter sine die till the pronouncement of judgment by the Hon'ble Apex court, against which appellant has requested for early disposal of the matter.

Therefore, in view of facts discussed above, Officers view point is confirmed at this stage, Appellant is not entitled for refund of the ITC as the appellant is a SEZ unit and in view of the provision of section 54 of the CGST Act read with Rule 89 of the Central Goods and Service Tax Rules, 2017 (for short 'CGST Rules') only a supplier of goods or services can file an application for refund and not recipient of the services. As in the facts of the case, the appellant is a recipient of service; the appellant is not entitled to apply for the refund under the provisions of the CGST Act read with the CGST Rules.

Furthermore, there is no circular, notification or guidelines issued by the Government or Central Board of Indirect Taxes and Customs to process the input tax credit refund claims of the units located in the SEZ and therefore, the competent authority has rightly rejected the claim of the refund made by the appellant by passing the impugned order.”

5. Thus the appellate authority refused to follow the law laid down by the Gujarat High Court in the case of **Britannia Industries Ltd. Vs. Union of India; [2020 (42) GSTL 3 (Guj.)]** only because the judgment was challenged before the Apex Court and the petition was pending.

6. Mr. Shah, learned Senior Counsel for the petitioner, submits that the Supreme Court has disposed of the petition as not pressed for orders on the ground of low tax effect. Mr. Shah has then invited our attention to another order of Hon'ble Supreme Court passed in Special Leave Petition between **Union of India and Ors. .Vs. Messers Meghmani Organochem Ltd. and anr. [S.L.P. (C) No.1239/2025, decided on 22.09.2025]**, wherein another judgment of Gujarat High Court was challenged. The judgment, that was challenged was rendered in terms of law laid down in *Britannia's* case supra. The Hon'ble Supreme Court on 22.09.2025, disposed of the petition in following terms:

“1. The High Court relying on its decision rendered in the case of "Britannia Industries Limited vs. Union of India" reported in 2020 G.S.T.L. 3 (Guj) accepted the arguments canvassed on behalf of the respondent herein-original petitioner that an SEZ Unit is entitled in law to claim the refund of unutilised ITC accumulated under Rule 89 of CGST Rules on the ground that exports are made without payment of tax under LUT.

2. Mr. Chandrashekhara Bharathi, the learned counsel appearing for the revenue submitted that Britannia Industries Limited (supra) was challenged before this Court, however, the challenge failed on the ground of low tax effect. He would submit that it is only the supplier who

could have preferred the application claiming a refund of the unutilised IT accumulated under Rule 89 of the CGST Rules and not the SEZ Unit.

3. *In the peculiar facts and circumstances of the case and having regard to the amount which has been ordered to be refunded, we are not inclined to interfere with the impugned order. However, the question of law is kept open.*

4. *The Special Leave Petition is, accordingly, dismissed.*

5. *Pending application(s), if any, stands disposed of.”*

7. As could be seen, the Supreme Court has disposed of the petition by keeping the question of law open.

8. Considering the above, the status as of now is that the law laid down by the Gujarat High Court in *Britannia's* case holds the field. The Bombay High Court in the case of **Commissioner of Income Tax Vidarbha & Marathwada, Nagpur Vs. Smt. Godavaridevi Saraf [1978 (2) ELT (J 624) (Bom)]**, held that the law declared by a High Court, though of another State, is a binding law of the land and all authorities like a Tax Tribunal acting anywhere in the country are bound by it, until a contrary decision is given by any other High Court.

9. Accordingly, Mr. Shah argued, and rightly so, that respondent Nos.3 to 6 are bound by the law laid down in *Britannia's* case. Having failed to consider the refund applications filed by the petitioner in terms of the *Britannia's* case, the impugned orders are liable to be set aside.

10. At this stage, learned A.G.P. submits that in terms of Section 16 of the IGST Act read with Rule 89 of CGST Rules, refund of tax can be claimed by SEZ Unit if the services were for authorized operations as endorsed by a specified officer of the zone. In the present case, there is no such finding given by the authorities below.

11. As against, learned Senior Counsel for petitioner submits that this point was never raised before the authorities below and, therefore, the petitioner had no opportunity to deal with the same.

12. That being so, we are of the considered view that this matter will have to be remanded back to respondent No.6 - Assistant Commissioner of the State Tax, to pass orders afresh, in the light of the law laid down in *Britannia's* case and after examining whether the services under question were for authorized operations as endorsed by the specified officer of the zone.

13. The petition is accordingly partly allowed. Impugned orders dated 17.01.2022, 04.08.2023 and 07.05.2024 passed by respondent Nos. 6, 5 and 4 respectively as also orders in appeal dated 21.06.2024 and 20.06.2024 passed by respondent No.3, are quashed and set aside. The matter is remanded back to respondent No.6 for consideration afresh, in accordance with law and in terms of what has been stated above.

The parties shall appear before respondent No.6 on 08.12.2025.

(JUDGE)

(JUDGE)