HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2025

BEFORE

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

WRIT PETITION NO. 8409 OF 2025 (T-RES)

BETWEEN:

M/S. MICRO LABS LIMITED
31, RACE COURSE ROAD
BENGALURU, KARNATAKA-560 001
(REPRESENTED BY
MR. BADARINATH K.I.)
VICE PRESIDENT-FINANCE
INCORPORATED UNDER
THE COMPANIES ACT, 1956.

...PETITIONER

(BY SRI. RAVI RAGHAVAN, SRI. MOHD. IBRAHIM AND
SRI. TUSHAR SHARMA, ADVOCATES)

AND:

1. JOINT COMMISSIONER OF CENTRAL GST
   OFFICE OF THE COMMISSIONER
   OF CENTRAL GST
   PUNE-II COMMISSIONERATE, 41-A
   GST BHAVAN, SASSOON ROAD
   OPP. WADIA COLLEGE
   PUNE, MAHARASHTRA-411 001.

2. JOINT/ADDITIONAL COMMISSIONER
   OF CENTRAL TAX
   BENGALURU NORTH COMMISSIONERATE
   HMT BHAVAN, BENGALURU-560 032.

3. JOINT/ADDITIONAL COMMISSIONER OF
   COMMERCIAL TAXES

LGSTO-LTU, 4TH FLOOR, BMTC BUILDING
TTMC, YESHWANTHPUR
BENGALURU-560 022.

...RESPONDENTS

(BY SRI. ARAVIND V. CHAVAN, ADVOCATE FOR R1 AND R2;
SMT. JYOTI M. MARADI, HCGP FOR R3)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING FOR DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SETTING ASIDE AND QUASHING THE IMPUGNED OIO BEARING NO. CGST PULE-11-GST-000-JC-KRP-086-2024-25, DATED 24.01.2025 ISSUED BY THE RESPONDENT NO. 1 ENCLOSED AT ANNEXURE-A AND ETC.

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

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

ORAL ORDER

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

"a) Issue a writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ or order or direction under Article 226 of the Constitution of India setting aside and quashing the impugned OIO bearing No.CGST Pule-II-GST-000-JC-KRP-086-2024-25, dated 24.01.2025 issued by the Respondent No.1 enclosed at Annexure-A;

b) hold that at the relevant time, the Petitioner had the option to choose between the ISD and cross-charging mechanisms to distribute the ITC relating to common input services;

c) hold that the ITC availed by the recipient units in the other States on the strength of the invoices issued by the Petitioner was in accordance with law;

d) hold that the interest under Section 50 of the CGST Act for the period from July 2017 to March 2022, on the alleged improper distribution or availment of ITC and/ or availment of ITC by the recipient units is not payable as demanded;

e) hold that the multiple penalties in terms of Section 74 and Section 122 of CGST Act and Section 20 of IGST Act are not imposable as confirmed;

f) Pass such further order(s) and other reliefs as the nature and circumstances of the case may require."

2. A perusal of the material on record will indicate that the petitioner is engaged in the manufacture and supply of pharmaceutical products, capsules, eye drops

etc., and other active pharmaceutical ingredients. The petitioner is headquartered in Bangalore and for the manufacture and sale of such pharmaceutical products, petitioner procures various services which are utilised by all the State GST registrations of the petitioner, who is registered under the CGST Act, 2017 in 20 states with the Karnataka State Specific GSTIN of the petitioner being 29AABCM2131N1ZE.

3. Petitioner is also registered as an Input Service Distributor (ISD) under Section 20 of the CGST Act in the State of Karnataka for distribution of common input tax credits to units in other States. The ISD registration of the petitioner at Bangalore availed Input Tax Credit (ITC) of the GST paid on receipt of common services in Karnataka and subsequently, the same was transferred to other State GST registrations on the basis of the turn over of each State. The said distribution of ITC by the ISD was in relation to the common services, on which GST was paid under Forward Charge Mechanism (FCM) i.e., GST was

collected and paid to the exchequer by the supplier and the said distribution of ITC through ISD mechanism is not in dispute.

4. The material on record also indicates that the Head office of the petitioner at Bangalore also distributed ITC relating to certain common services on which GST was paid under Reverse Charge Mechanism (RCM) and such common services included both domestic and imported services viz., legal consultancy, GTA services, sponsorship services, Government services, OIDAR services etc., It is contended that that the Invoices relating to common services on which GST was to be paid under RCM could not be reported by ISD and therefore, the ITC relating to such common services was distributed by the regular GST registration of the petitioner in Bangalore by cross-charging the same to different units on issuance of tax invoices as per Section 31 of the CGST Act.

5. The DGGI initiated investigation against the Amritsar Unit of the petitioner and recorded statements of

its office bearers, in pursuance of which, the said investigation was further extended against all units of the petitioner across India. Thereafter, the respondents issued an intimation dated 05.04.2023 under Section 74(5) of the CGST Act to the petitioner for the tax period / financial years July 2017 to March 2022. The petitioners submitted their replies dated 19/20.04.2023 and additional submissions dated 01.05.2023 along with relevant documents. Subsequently, the respondents issued a common show cause notice dated 08.05.2023 to the petitioner and its 19 other units demanding reversal of ITC. The petitioner submitted a reply dated 10.07.2023 and attended personal hearing on 30.12.2024 in the proceedings and filed written submissions. Meanwhile, the Ministry of Finance issued a Circular No.199/11/2023–GST dated 17.07.2023, which clarified that distribution of common credit through ISD is not mandatory and the same can be transferred by raising Tax Invoices as per Section 31 of the CGST Act. By the impugned order dated

24.01.2025, the respondents confirmed the demands raised in the show cause notice against the petitioner, who is before this Court by way of the present petition.

6. Heard learned counsel for the petitioner, learned counsel for respondents 1 and 2 as well as learned HCGP for respondent No.3 and perused the material on record.

7. Before adverting to the rival contentions, it would be necessary to refer to the definition of 'Input Service Distributor (ISD)' under Section 2(61) of the CGST Act, 2017 (prior to amendment), which reads as under;

> ***Definitions.***
>
> ***2.*** *(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under Section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, state tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office".*

8. The said provision was amended through Finance Act, 2024 w.e.f. 01.04.2025 as hereunder:-

> *(61)"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input service, including invoices in respect of services liable to tax under sub-section(3) or sub-section (4) of Section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20:]"*

9. The aforesaid CBIC Circular No. 199/11/2023-GST dated 17.07.2023 is as under:-

"Circular No. 199/11/2023-GST
F. No. CBIC-20001/5/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs GST
Policy Wing
*****

New Delhi, Dated the 17th July, 2023

To,

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

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S. No.	***Issues***	***Clarification***
1.	*Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?*	*It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the*

		same subject to the provisions of section 16 and 17 of CGST Act. *In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act.* *Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.*
2.	*In respect of internally generated services, there may be cases where HO is providing certain services*	*The value of supply of services made by a registered person to a distinct person needs to*

	to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs ***when full input tax credit is available to the concerned BOs.***	*be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit.* *Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has*

		been included or not in the value of the services in the invoice. *Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.*
3.	*In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.*	*In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases* ***where full input tax credit is not available to the concerned BO.***

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

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

(Sanjay Mangal)
Principal Commissioner (GST)"

10. A perusal of the material on record will indicate that as stated supra, the Head Office of the petitioner is in Bangalore and it procures various common input services, which are centrally utilised by the Head Office as well as all the branch offices all over India. The ITC on such input services is retained / transferred to Branch offices by the petitioner as per the proportionate turn over of the branch offices. According to the respondents, the units of the petitioner in other States including the Amritsar Unit were availing ITC on the invoices issued by the Head office i.e., the petitioner without receipt of underlying services and that common credit, if any, has to be necessary transferred through ISD mechanism and the same cannot be crossed / charged by a regular GST registration of the petitioner who ought to have distributed common ITC

through ISD and that there was no underlying supply provided by the petitioner when they raised tax invoices under Section 31 of the CGST Act to distribute common ITC. In this context, it is pertinent to note that GST on such input services is paid either under FCM or RCM and for the purpose of transfer of ITC relating to common input services, the CGST contemplates distribution through ITC mechanism. However, during the aforesaid tax periods / financial years i.e., 2017-18 to 2021-22, the petitioner could not have procure input services on which GST was payable under RCM in view of the specific bar / prohibition in terms of the aforesaid definition of ISD under Section 2(61) of the CGST Act. Further, since the petitioner - ISD could not have procured input services leviable to GST under RCM, the petitioner could not have transferred ITC relating to such common services and accordingly, the ITC relating to common input services, on which, GST was paid under RCM was availed and distributed by the petitioner – company (Head office) by raising tax invoices under Section 31 of the CGST Act.

11. As stated earlier, the said lacunae in the definition of 'ISD' was rectified vide amendment through Finance Act, 2024 w.e.f. 01.04.2025 and the same was clarified by the CBIC which issued the aforesaid Circular No.199/11/2023–GST dated 17.07.2023, which contemplated that the distribution of common credit through ISD was not mandatory and that the same can be transferred by raising tax invoices as per Section 31 of the CGST Act. So also, the common credit relating to input services payable under FCM was distributed by the petitioner through ISD and only common credit pertaining to input services on which tax was paid under RCM was distributed by raising tax invoices under Section 31 of the CGST Act.

12. The material on record also discloses that out of the total common ITC, the amount retained by the petitioner (Head office) was not in dispute and only the

common ITC distributed by the petitioner to its branch offices is being questioned by the respondents. In this regard, it is pertinent to note that out of the total ITC on the common input services procured by the petitioner (Head office), only the eligible ITC was availed and the ineligible credit (as per Section 16/17 of the CGST Act) was not availed in the first instance as can be seen from the table given in the writ petition.

13. As rightly contended by the learned counsel for petitioner, the CBIC Circular dated 17.07.2023 which is binding upon the respondents as held by the Apex Court and this Court in various judgments including the judgment of the Apex Court in the case of ***Commissioner of Central Excise, Bolpur vs. M/s. Ratan Melting & Wire Industries – (2008) 13 SCC 1.*** In the instant case, the respondents failed to consider and appreciate that the Circular clearly clarifies that distribution of common ITC through ISD mechanism was not mandatory and distribution of common credit by way of invoices

raised under Section 31 of the CGST Act was correct, proper and permissible in law. As stated supra, due to the specific bar / prohibition as per the definition of 'ISD' under Section 2(61) of the CGST Act prior to its amendment w.e.f. 01.04.2025, petitioner was unable to avail ITC of common services leviable to GST under RCM and it was for this reason that the ITC was transferred by the petitioner under Section 31 of the CGST Act, since the ITC was eligible as per Section 16/17 of the CGST Act, since the ineligible ITC was not availed in the first instance.

14. As stated earlier, the Circular dated 17.07.2023 clarifies that common ITC can be transferred either by ISD mechanism or by raising tax invoices as per Section 31 of the CGST Act and consequently, the common ITC distributed by the petitioner (Head office) to its branch offices was eligible and in view of the said Circular, the same was rightly distributed by raising tax invoices under Section 31 of the CGST Act, thereby, leading to the

unmistakable conclusion that the impugned order which has been passed in complete / total disregard to the aforesaid Circular is illegal, arbitrary and without jurisdiction or authority of law and contrary to the provisions of the CGST Act as well as the binding Circular, thereby warranting interference by this Court in the present petition by quashing the impugned order .

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

ORDER

(i) Petition is hereby allowed.

(ii) The impugned Order-in-Original at Annexure-A dated 24.01.2025 passed by the 1st respondent is hereby quashed.

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

NBM/SRL
List No.: 2 Sl No.: 2