

W.P.Nos.6524, 6527, 6531, 6537 and 6541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	15.11.2024
Pronounced On	05.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6524, 6527, 6531, 6537 and 6541 of 2022

and

W.M.P.Nos.6611, 6630 and 6634 of 2022

M/s.Gillette Diversified Operations
Private Limited

... Petitioner in all W.Ps

Vs.

1.The Joint Commissioner of GST and Central Excise
(Appeals-II),
Chennai GST-Outer Commissionerate,
Newry Towers, 2054, I-Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

2.The Assistant Commissioner of GST and Central Excise,
Ponneri Division, GST-Outer Commissionerate,
#37/R-40, A-1, 100 Feet Road,
Mogappair, Chennai – 600 037.

3.The Central Board of Indirect Taxes and Customs,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001.

... Respondents in all W.Ps



W.P.Nos.6524, 6527, 6531, 6537 and 6541 of 2022

Prayer in W.P.No.6524 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order bearing Order-in-Appeal No.237 dated 05.08.2021 passed by the first respondent and direct the first respondent to reconsider the refund claim on its merits.

Prayer in W.P.No.6527 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order bearing Order-in-Appeal No.238 dated 05.08.2021 passed by the first respondent and direct the first respondent to reconsider the refund claim on its merits.

Prayer in W.P.No.6531 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first respondent to extent the benefit of proviso introduced under Rule 90(3) of the CGST Rules, 2017 to exclude the number of days from the date of filing of refund claim to the date of issue of Deficiency Memo for the purpose of computation of limitation and also direct the first respondent to reconsider the refund claim on its merits.

Prayer in W.P.No.6537 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order bearing Order-in-Appeal No.239 dated 05.08.2021 passed by the first respondent and direct the first respondent to reconsider the refund claim on its merits.



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Prayer in W.P.No.6541 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to quash the impugned para 12 of the Circular No.125/44/2019 dated 18.11.2019 issued by the third respondent and direct the first respondent to reconsider the refund claim on its merits.

For Petitioner : Mr.G.Natarajan
(In all W.Ps)

For Respondents : Mr.S.Gurumoorthy
(In all W.Ps)

COMMON ORDER

By this Common Order, all these Writ Petitions are being disposed of.

2. In W.P.No.6531 of 2022, the petitioner seeks for a Mandamus, to direct the first respondent to extend the benefit of proviso introduced under Rule 90(3) of the Central Goods and Services Tax (CGST) Rules, 2017 to exclude the number of days from the date of filing of refund claim to the date of issue of Deficiency Memo for the purpose of computation of limitation and also direct the first respondent to reconsider the refund claim on this merits.



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3. In W.P.No.6541 of 2022, the petitioner has challenged the Circular No.125/44/2019 dated 18.11.2019 issued by the third respondent and for a further direction to the first respondent to reconsider the refund claim on its merits.

4. The Petitioner is aggrieved by Paragraph 12 of the Impugned Circular No.125/44/2019 dated 18.11.2019 issued by the third respondent. Paragraph 12 of Circular No.125/44/2019 dated 18.11.2019 issued by the third respondent impugned in W.P.No.6541 of 2022 reads as under:-

“12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of CGST Act.”

5. In W.P.Nos.6524, 6527 and 6537 of 2022, the petitioner has challenged the following Order-in-Appeal Nos.237-638/2021-JC (GSTA-II) all dated 05.08.2021 passed by the first respondent. The details of the Impugned Orders are as follows:-



Table-1

Sl. No.	W.P.No.	Date	Order-in-Appeal No.	Period
1.	6524 of 2022	05.08.2021	237/2021-JC (GSTA-II)	July 2017
2.	6527 of 2022	05.08.2021	238/2021-JC (GSTA-II)	August 2017
3.	6537 of 2022	05.08.2021	239/2021-JC (GSTA-II)	September 2017

6. Operative portion of the Impugned Common Order-in-Appeal Nos.237, 238 and 239 of 2021-JC (GSTA-II) dated 05.08.2021 is reproduced below:-

“8.0 Coming to the merits, the contention of the appellant is that the claims are for refund of accumulated ITC on account of zero-rated supply (export of goods) and on application of explanation 2(e) to Section 54 of the Act, which was in existence when the refund claims were first submitted, the time limit expires on 31.03.2020, therefore, even the re-submitted claims were well within the period of limitation stipulated by law. The “relevant date” is to be reckoned as per the unamended provisions of explanation 2(3) of Section 54 of the Act. Filing of fresh refund application as envisaged in Rule 90(3) of CGST Rules cannot be construed to mean that the limitation for filing of refund claim will be reckoned from the date of re-submission of claim. Para 3.2 of Circular No.59/33/2018 dated 04.09.2018 merely lays down the manner in which amounts are to be debited from the respective heads at the time of making refund claims.

8.1 In this regard the relevant provisions of Section 54 of the CGST Act, 2017, which deals with refund of tax is extracted below:



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Section 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 made 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 such form and manner as may be prescribed.

Provided that no refund of unutilized 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 or unutilized 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



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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.

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.

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*



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iii. if the goods are exported by post, the date of despatch 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;

(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 unutilised 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;



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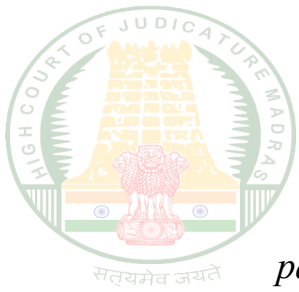
(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(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.

8.2 It is observed that Explanation 2(3) to Section of the Act clearly emphasises that “in the case of refund of unutilized 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. I find that this Explanation is applicable to clause (ii) of the first proviso to sub-section (3) of Section 54 which states that “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:” The appellant's contention that the relevant date for claiming the eligible unutilized ITC is the end of the financial year in which such claim for refund arises and two years from the relevant date should be calculated from the end of the financial year is not tenable as the refund claims in the present appeal is on account of refund of ITC accumulated on Export of goods (without payment of tax).

8.3 On the other hand, I find that Explanation 2(a) to Section 54 of the Act stipulates for relevant date, “(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



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pass the frontier: or (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;”. It is observed that the refund application for the months of July 2017 to September 2017 was filed on 28.03.2019 and Deficiency Memos were issued on 12.04.2019. After rectifying the same the refund claims were filed on 18.10.2019, which is after two years from the relevant date upon export. As per Rule 90(3) of the CGST Rules, 2017 and para 12 of CBIC Circular No.125/44/2019-GST, dated 18.11.2019, refund application submitted after rectification of deficiency memo is treated as fresh refund application and such application shall be filed within 2 years of the relevant date i.e., from the date of Export.”

7. The Impugned Orders are appealable before the GST Appellate Tribunals under Section 112 of CGST Act, 2017, since the Impugned Orders have been passed by the Appellate Commissioner under the provisions of the Central Goods and Services Tax (CGST) Act, 2017.

8. However, these Tribunals were yet to be notified and constituted when these writ petitions were filed in 2022. Even on the date of this order, the Tribunal is yet to be notified.

9. Therefore, these Writ Petitions are taken up for hearing as there are no disputed questions of facts and only pure questions of law are involved. Considering the fact that these Writ petitions are of the year 2022, these Writ Petitions are being disposed on merits along with the other two writ petitions.



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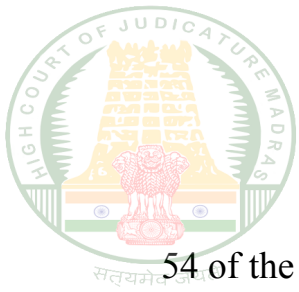
10. The petitioner exported goods during **July 2017, August 2017 and September 2017**. The petitioner therefore filed refund claims on the following dates:-

Table-2

Sl. No.	W.P.No.	Date of filing of refund claim in portal	Date of filing of refund claim manually	Date of refiling of refund claim	Date of issuance of Acknowledgement	Refund claimed (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	6524/2022	21.09.2018	28.03.2019	18.10.2019	01.11.2019	40,80,429
2.	6527/2022	09.10.2018	28.03.2019	18.10.2019	01.11.2019	1,21,98,028
3.	6537/2022	10.10.2018	28.03.2019	18.10.2019	01.11.2019	1,48,15,030
					Total :	3,10,93,487

11. The second respondent as the Lower Adjudicating Authority rejected the refund claims filed by the petitioner on the ground of limitation in the light of the Impugned Circular No.125/44/2019 dated 18.11.2019. The first respondent as the Appellate Authority has affirmed the views of the second respondent vide the Impugned Orders.

12. The point for consideration in these Writ Petitions are whether the refund claims were filed in time or beyond time within the meaning of Section



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54 of the Central Goods and Service Tax Act, 2017?

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13. If W.P.No.6524 of 2022, W.P.No.6527 of 2022 and W.P.No.6537 of 2022 are to be allowed on a plain reading of the provisions, it may be unnecessary to pass any detailed orders in W.P.No.6531 of 2022 and W.P.No.6541 of 2022.

14. These refund claims were filed by the petitioner for refund of unutilized Input Tax Credit on the supplies under Section 16(3)(a) of the Integrated Goods and Services Tax (IGST) Act, 2017 read with Section 54 of the Central Goods and Services Tax (CGST) Act, 2017 and Rules 89 and 90 of the Central Goods and Services Tax (CGST) Rules, 2017 on the dates mentioned in **Column 3** to the **Table-2**.

15. The claims were thereafter filed manually on **23.03.2019** as detailed in **Column 4** to **Table-2**. There were certain defects in the refund claims. Therefore, they were returned and were eventually re-presented on **18.10.2019** as detailed in **Column 5** to **Table-2**. These returned claims were duly



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acknowledged on **01.11.2019** by the 2nd respondent on the dates mentioned in
Column 6 to Table-2.

16. The petitioner was issued with Show Cause Notices dated **09.12.2019**, **16.12.2019** and **17.12.2019** to show cause as to why the refund claims should not be rejected on the ground that they were filed beyond the period of limitation under Section 54 of CGST Act, 2017.

17. It was stated that computation of limitation were to be reckoned from the date of re-presentation of the refund claims on **18.10.2019** and were thus beyond the period of two years from the “**relevant date**” in terms of Explanation 2(a)(i) to Section 54 of the CGST Act, 2017.

18. The petitioner thus suffered adverse orders in the hands of the second respondent vide **Order Nos.72, 73, 73/GST/REF/2019-20** dated **01.01.2020**, which decision stands affirmed by the first respondent Appellate Commissioner vide **Impugned Order-in-Appeal Nos.237, 238 and 239/2021-JC (GSTA-II)** dated **05.08.2021**.



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19. The expression “**relevant date**” has been defined in Explanation 2 to Section 54 of CGST Act, 2017. It is submitted that as per Clause 2(e) to Explanation to Section 54 of CGST Act, 2017, in case of refund of unutilized Input Tax Credit under Clause (ii) to the 1st proviso to Sub-Section 3 to Section 54, the limitation prescribed is 2 years for filing refund claim from the end of the Financial Year.

20. It is, therefore, submitted that the refund claims filed by the petitioner were in time and were before the expiry of 2 years from the end of the financial year.

21. It is submitted that even otherwise admittedly the refund claims were filed on **21.09.2018, 09.10.2018, 10.10.2018**, it was prior to expiry of two years from the “**relevant date**” as is contemplated under Section 54(1) read with Explanation 2(a) to Section 54 of CGST Act, 2017 as it stood at the time of filing of the respective refund claims.



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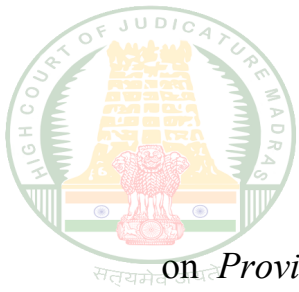
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22. Learned counsel for the petitioner would submit that Explanation 2(e) to Section 54 of CGST Act, 2017 was amended vide CGST Amendment Act, 2018 (31/2018) dated 30.08.2018 only with effect from 01.02.2019 vide **Notification No.02/2019-CT dated 20.01.2019.**

23. It is therefore submitted that the restricted period of limitation prescribed by virtue of the above amendment for refund of unutilized Input Tax Credit arising out of the inverted tax structure will not apply to refund of unutilized Input Tax Credit on the exports made during 2018 since the refund claims filed on **21.09.2018, 09.10.2018, 10.10.2018** long before the above amendment.

24. It is submitted that since the refund claims were not on account of refund of unutilized Input Tax Credit arising out of the inverted tax structure, the refund claims were filed in time. Therefore, there was no justification in rejecting the refund claims of the petitioner as time barred.

25. That apart, the learned counsel for the petitioner has placed reliance



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on *Proviso* to Rule 90(3) of CGST Rules, 2017 inserted vide **Notification No.15/2021-Central Tax (CT)** dated **18.05.2021**. It was therefore submitted that *Proviso* to Rule 90(3) inserted vide **Notification No.15/2021-Central Tax (CT)** dated **18.05.2021** with effect from 18.05.2021 was retrospective in nature.

26. It is therefore submitted that the aforesaid *Proviso* to Sub-Rule 3 to Rule 90 has to be given retrospective effect. It is therefore submitted that the petitioner is entitled to refund. Hence, the petitioner seeks for a Writ of Mandamus in W.P.No.6531 of 2022.

27. By the same token, the petitioner has challenged **Circular No.125/44/2019-GST** dated **18.11.2019** issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, Department of Revenue, Ministry of Finance in W.P.No.6541 of 2022, as contrary to Section 54 of CGST Act, 2017.

28. Learned counsel for the petitioner has placed reliance on the decision of the Bombay High Court in **Universal Drinks Private Limited, Nagpur Vs. Union of India and another**, 1984 (18) E.L.T. 207 (Bom.).

29. Defending the Impugned Order, the learned counsel for the



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respondents submits that the Impugned Orders does not merit any interference.

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30. The learned counsel for the respondents Department has contended that the “**relevant date**” for the purpose of making refund claim was as per the Explanation 2(a)(i) to Section 54 of CGST Act i.e., from the date of export and thus, the refund claims ought to have been filed within two years from the date of export i.e., in 2019. The Department has reckoned the date of refund claim as 18.10.2019 being the date of refiling of the refund claims after the Deficiency Memos were issued on 12.04.2019.

31. Reliance was placed on Paragraph 12 of **Circular No.125/44/2019-GST** dated **18.11.2019** bearing **Ref.No.CBEC-20/16/04/18-GST** which has been challenged in W.P.No.6541 of 2022.

32. It is submitted that Paragraph 12 of **Circular No.125/44/2019-GST** dated **18.11.2019** bearing **Ref.No.CBEC-20/16/04/18-GST** was *intra vires* Section 54 and Section 17 of CGST and IGST Act. A reference was also made to Rule 89 and Rule 90 of CGST Rules, 2017. It is submitted that the above Circular is *intra vires* and therefore cannot be challenged.



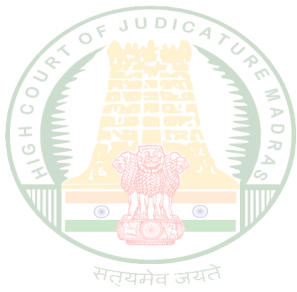
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33. It is submitted that during the period or at the time when the refund claims were filed, GST Portals were not fully operational and therefore it would have been mandatory on the part of the exporter claiming refund of Input Tax Credit on the supplies used for providing export of goods or services to file claims manually.

34. Learned counsel for the respondents further submits that on the date of filing of manual refund claim, Explanation 2(e) to Section 54 of CGST Act had been substituted and was confined only to refund of Input Tax Credit in the context of Zero Rated Sales made without payment of tax and not to exports made without payment of tax to claim refund of Input Tax Credit.

35. It is submitted that the applications were filed in terms of **Circular No.17/17/2017-GST** dated **15.11.2017**. It is submitted that the refund claims which were manually filed only on **28.03.2019** were beyond the period of two years limitation prescribed under Section 54(1) read with Explanation 2(a)(i) to Section 54(14) of CGST Act as they were incomplete. Hence, it is submitted that the Impugned Order of the first respondent affirming the Order of the second respondent does not merit any interference.



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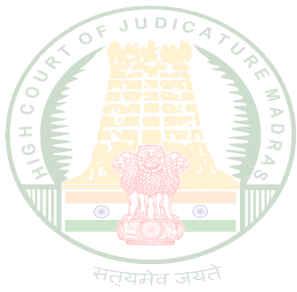
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36. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

37. Admittedly, the exports were made by the petitioner during **July 2017, August 2017 and September 2017**. Refund claims were filed during the months of **September 2018 and October 2018** as detailed in **Table-2** of this order.

38. These refund claims were filed in the portal and were thus *prima facie* in time. This was in accordance with **Circular No.79/53/2018-GST dated 31.12.2018** which was vague. It specified that the refund application in **FORM GST RFD-01A**, along with all supporting documents, shall be submitted electronically.

39. However, various post submission stages of processing of refund applications were to be filed manually. **Circular No.125/44/2019-GST dated 18.11.2019** impugned in W.P.No.6541 of 2022 has explained the position as follows:-



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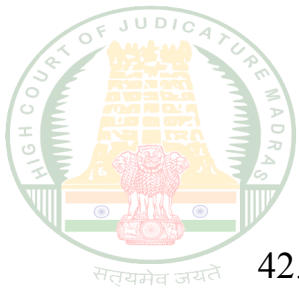


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“After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file refund application in FORM GST RFD-01A on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further, processing of these refund applications, i.e issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc was also being done manually. In order to make the process of submission of the refund application electronic. Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in FORM GST RFD-01A, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of refund applications continued to be manual.”

40. In this case, the petitioner had made export of services without payment of tax. In terms of Section 16(2) of IGST Act, credit of Input Tax may be availed for making Zero Rated Supplies, notwithstanding such supplies may be an exempt supply.

41. Since the petitioner has effected Zero Rated Supplies within the meaning of Section 16(1) of IGST Act, 2017, the “**relevant date**” during the period in dispute would be 2 years from the end of the “**tax period**”.

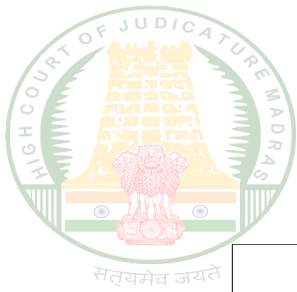


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42. These refund claims filed by the petitioner were for refund of unutilized Input Tax Credit in terms of Section 16(3)(a) of IGST Act, 2017, as it stood during the period in dispute. Section 16(3) of IGST Act, 2017 was amended in the year 2021 vide Finance Act, 2021.

43. During the period in dispute, Section 16(3) of IGST Act, 2017 read differently from how it presently reads. For the sake of clarity, both the amended and un-amended Section 16(3) of IGST Act, 2017 as it stood during the period of dispute are reproduced below:-

Section 16(3) of IGST Act, 2017	
(Un-amended Section 16 of IGST Act, 2017 as it stood during the period in dispute)	((amended) substituted by the Finance Act, 2021 with effect from 01.10.2023)
(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:- (a) He may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised Input Tax Credit. (b) He may supply goods or services or both, subject to	(3) A registered person making zero rated supply shall be eligible to claim refund of unutilized Input Tax Credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the Rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person



Section 16(3) of IGST Act, 2017

such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the Rules made thereunder.	making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this subsection along with the applicable interest under Section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.
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44. Since the refund of Input Tax Credit availed on various supplies used for Zero Rated Supplies under Section 16(3)(a) of IGST Act, 2017 were made, they are refundable, provided that they were filed within 2 years from the “**relevant date**”.

45. As per Sub-Clause 3 to Section 16 of IGST Act, a registered person making Zero Rated Supply shall be eligible to claim refund of unutilized Input Tax Credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of Section 54 of CGST Act or the rules made thereunder, subject to



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such conditions, safeguards and procedures as may be prescribed.

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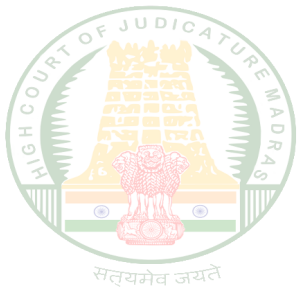
46. Ordinarily refund is to be made within a period of 2 years from the “**relevant date**” as defined in Explanation 2 to Section 54 of CGST Act, 2017. As per Sub-Section 3 to Section 54, a registered person may claim of refund of unutilized Input Tax Credit at the end of the “**tax period**”. **Thus, Input Tax Credit remains unutilized can be subject matter of refund which is remaining unutilized at the end of the “tax period”.**

47. As per Section 54(1) of CGST Act, 2017, 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.

48. For the sake of clarity, Section 54(1) of CGST Act, 2017 is reproduced below:-

Section 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:*



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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 such form and manner as may be prescribed.”

49. Explanation 2 to Section 54 of CGST Act, 2017 defines the expression “relevant date”.

50. For the purpose of resolving the dispute in the present case, it will be useful to refer to Explanation 2(a)(i) and 2(e) to Section 54 of CGST Act, 2017 are relevant.

51. By this time, **Explanation 2(e)** to Section 54 of CGST Act, 2017 had been amended with effect from **01.02.2019**.

52. If the date of refund claim is taken as **21.09.2018, 09.10.2018** and **10.10.2018**, the refund claim was within the period of limitation. On the other hand, if the date of refund claim is taken as **18.10.2019**, or on other dates in **Table-2** of this order, the refund claims would be beyond the period of limitation as per Paragraph 12 of the **Circular No.125/44/2019-GST** dated



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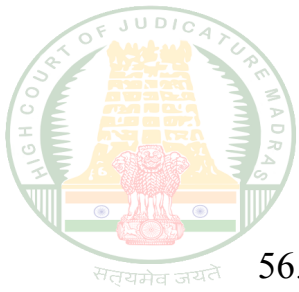
18.11.2019, impugned in W.P.No.6541 of 2022.

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53. Admittedly, in this case, the refunds are all unutilized Input Tax Credit on the Zero Rated Supply (Exports) under Section 16(3)(a) of IGST Act, 2017.

54. The amendment to Explanation 2(e) to Section 54 of CGST Act, 2017 with effect from 01.02.2019 vide **Notification No.02/2019-CT** dated **29.01.2019** pursuant to CGST Amendment Act, 2018 (31/2018) dated 30.08.2018 was intended clarify what was explicit in Clause (ii) to *Proviso* to Section 54(3) of CGST Act, 2017.

55. By the above amendment, the Parliament has clarified that the period of limitation for refund of utilized Input Tax Credit in the case of refund of unutilized 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.



56. Explanation 2(e) to Section 54 of CGST Act, 2017 was substituted with effect from **01.02.2019** by **CGST Amendment Act, 2018 (31/2018) dated 30.08.2018 vide Notification No.02/2019-CT dated 29.01.2019**. Explanation 2(a)(i) and 2(e) to Section 54 of CGST Act, 2017 are reproduced below:-

Table-3

<i>Explanation – For the purpose of Section 54 of the CGST Act, 2017 – Clause (2) - “Relevant date” means:-</i>		
<i>Clause (2) “relevant date”</i>		
<i>Since inception and on the original date of filing of refund claim.</i>	<i>Since inception and on the original date of filing of refund claim.</i>	<i>As amended with effect from 01.12.2019, by CGST Amendment Act, 2018 (31/2018) dated 30.08.2018 vide Notification No.02/2019-CT dated 29.01.2019 with effect from 01.02.2019.</i>
<i>Explanation:- 2(a)</i>	<i>Explanation:- 2(e)</i>	<i>Explanation:- 2(e)</i>
<i>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> <i>i. if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods</i>	<i>in the case of refund of unutilized Input Tax Credit under sub-section (3), the end of the financial year in which such claim for refund arises.</i>	<i>in the case of refund of unutilized 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.</i>



Explanation – For the purpose of Section 54 of the CGST Act, 2017 – Clause (2) - “Relevant date” means:-

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 despatch of goods by the Post Office concerned to a place outside India;		

57. A reading of the limitation under Explanation 2(a) to Section 54 of CGST Act, 2017 and Explanation 2(e) to Section 54 of CGST Act, 2017 till 31.01.2014 indicates that they provide two periods of limitation namely for refund of unutilised Input Tax Credit.

58. As per Clause(ii) to *Proviso* to Section 54(3) of CGST Act, 2017, a registered person may claim refund of any unutilized Input Tax Credit at the end of any tax period. The expression “**Tax Period**” has been defined in Section 2(106) of CGST Act, 2017. For the sake of clarity, Section 54(3) and Section 2(106) of CGST Act, 2017 are reproduced below:-



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Section 54(3) of CGST Act, 2017	Section 2(106) of CGST Act, 2017
(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- - zero rated supplies made without payment of tax; - 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 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.	“tax period” means the period for which the return is required to be furnished.

59. Thus, for the exports made during the month of **July, August** and



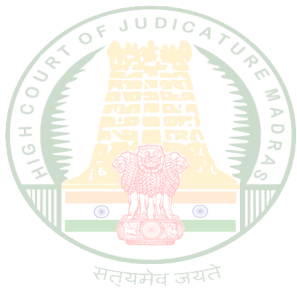
W.P.Nos.6524, 6527, 6531, 6537 and 6541 of 2022

September 2017, the refund claims have to be made within 2 years from the date of end of the “**tax period**” as is contemplated in Section 54(3) of CGST Act, 2017 read with Section 2(106) of CGST Act, 2017.

60. The case of the petitioner is governed by Sub-Clause (i) to the *Proviso* to Section 54(3) of CGST Act, 2017 as refund of unutilized Input Tax Credit is an account of Zero Rated Supplies made without payment of tax, Sub-Clause (3) to Section 54 of CGST Act is subject to Sub-Section 10 to Section 54 of CGST Act, 2017.

61. The above *Proviso* is not applicable to the case of the petitioner as the petitioner is not claiming refund of Input Tax Credit on account of inverted tax rate under Section 54(3) (ii) of CGST Act, 2017.

62. As per Sub-Clause (ii) to first *Proviso* to Section 54(3) of CGST Act, 2017, no refund of unutilized Input Tax Credit shall be allowed in cases other than 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.



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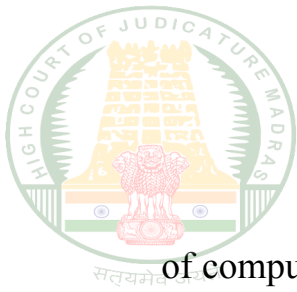
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63. When the refund claims filed in the portal on **21.09.2018, 09.10.2018** and **10.10.2018**, they were within two (2) years from the date of exports made during **July 2017, August 2017** and **September 2017**, in time in terms of **Circular No. 79/53/2018-GST dated 31.12.2018**.

64. As per **Circular No.79/53/2018-GST dated 31.12.2018**, an exporter was required to file refund claim / application FORM GST RFD-01A on the common portal and take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Thus, refund claims were refiled manually along with supporting documents on **28.03.2019**. These refund claims were however returned for defects. Thus, they were thereafter re-presented on **18.10.2019** and were acknowledged on **01.11.2019**.

65. There is no dispute that refund claim was indeed filed within two years from the “**relevant date**” as defined in Explanation 2(a) to Section 54(14) of CGST Act as it stood during the period in dispute.

66. The amendment to Clause 2(e) to Section 54(14) of CGST Act vide **Notification No.02/2019-CT dated 29.01.2019** is not relevant for the purpose



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of computation of limitation.

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67. In this case, the refund claims were filed within a period of 1 year and few months as in **Table-2** of this order. Therefore, the Impugned Order of the Appellate Commissioner affirming the Order of the Lower Appellate Authority rejecting the refund claim are unsustainable.

68. Rule 90(3) of the CGST Rules, 2017 deals with “acknowledgement of refund claim”. It reads as under:-

Rule 90.Acknowledgement:

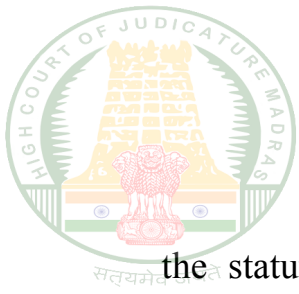
(1)

(2)

(3) *Where any deficiencies are notified, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies:*

Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under Sub-Section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.”

69. The above the *Proviso* to Rule 90(3) was inserted with effect from 18.05.2021 vide **Notification No.15/2021-CT dated 18.05.2021**. It was not in



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the statute where refund claims were originally filed or later represented.

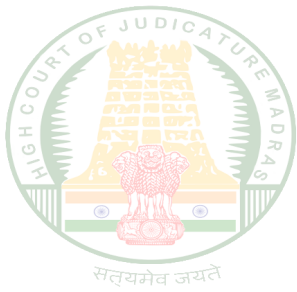
Therefore, it cannot be given retrospective effect.

70. In view of the above discussion, the stand of the Department is not correct. That apart, legitimate export incentives are to be granted as long as there is a substantial compliance to the provision.

71. In the light of the above discussion, I am of the view, W.P.Nos.6524, 6527 and 6537 of 2022, dismissing the appeal filed by the petitioner deserves to be allowed with consequential relief. They are accordingly allowed.

72. Since W.P.Nos.6524, 6527 and 6537 of 2022 are allowed, W.P.No.6541 of 2022 filed by the petitioner to challenge the **Circular No.125/44/2019-GST** dated **18.11.2019** issued by the third respondent and for a further direction to the first respondent to reconsider the refund claim on its merits, is left open to be answered in appropriate case. Therefore, W.P.No.6541 of 2022 is closed.

73. W.P.No.6531 of 2022 is also closed. No costs. Connected Writ Miscellaneous Petitions are also closed.



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Neutral Citation : Yes / No

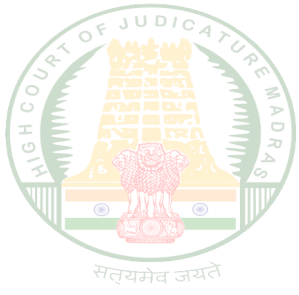
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To:

- 1.The Joint Commissioner of GST and Central Excise
(Appeals-II),
Chennai GST-Outer Commissionerate,
Newry Towers, 2054, I-Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.
- 2.The Assistant Commissioner of GST and Central Excise,
Ponneri Division, GST-Outer Commissionerate,
#37/R-40, A-1, 100 Feet Road,
Mogappair, Chennai – 600 037.
- 3.The Central Board of Indirect Taxes and Customs,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001.

C.SARAVANAN, J.

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Pre-Delivery Common Order in
W.P.Nos.6524, 6527, 6531, 6537 and 6541 of 2022

05.02.2025