

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 27066 of 2024

M/s. Adani Wilmer Limited & Anr.

v.

Assistant Commissioner of State Tax & Ors.

For the Petitioners	: Mr. Abhratosh Majumdar, Adv. Mr. Rahul Dhanuka, Adv. Mr. Niraj Baheti, Adv.
For the State	: Ms. Sumita Shaw, Adv. Mr. Saptak Sanyal, Adv.
For the CGST Authority	: Mr. Bhaskar Prosad Banerjee, Adv. Mr. K.K. Maiti, Adv.
For the UOI	: Mr. Vipul Kundalia, Sr. Adv. Mr. Soumen Bhattacharjee, Adv. Mr. Raunak Seal, Adv. Mr. Dhirodatto Chaudhuri, Adv.
Hearing Concluded on	: 25.02.2026
Judgment on	: 25.02.2026

Om Narayan Rai, J.:-

1. This writ petition assails an order in appeal dated May 11, 2024 passed by the appellate authority under Section 107 of the West Bengal Goods and Services Tax, 2017/Central Goods and Services Tax, 2017 (hereafter “the said Act of 2017”).
2. The petitioner no.1 (hereafter “the petitioner”) is a supplier of certain goods including edible oil.

3. The petitioner had applied for refund of accumulated unutilised Input Tax Credit (ITC) for the month of May 2021 arising from inverted duty structure. To wit, the rate of tax on inputs used by the petitioner was higher than the rate of tax on the outward supplies of the manufactured foods of the petitioner. Such application for refund of unutilised ITC as aforesaid was filed before the relevant GST authority on June 16, 2023.
4. The said application was rejected by the proper officer by an order dated June 5, 2024. The main reason for rejection of the petitioner's claim for refund was a clarificatory circular bearing no.181/13/2022-GST dated November 10, 2022 issued by the Central Government and the corresponding State circular bearing no.13/2022 dated November 14, 2022 whereby it had been clarified, (while referring to the restrictions imposed by notification no.1397-FT dated August 23, 2022) that - *"restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022."*
5. Feeling aggrieved by the said order of rejection, the petitioner approached the appellate authority.
6. The appellate authority also dismissed the petitioner's appeal by the order impugned, thereby agreeing with the reasons cited by the original authority. Being thus aggrieved, the petitioner is now before this Court by way of the present writ petition.
7. Mr. Majumdar, learned senior advocate appearing for the petitioner submits that the Central Circular dated November 10, 2022 and the State Trade Circular dated November 14, 2022 cannot be applied retrospectively so as to

curtail the petitioner's right to claim refund that had accrued to the petitioner in terms of the provisions of Section 54(1) of the said Act of 2017.

8. It is submitted by Mr. Majumdar that upon filing the petitioner's return under Section 39 of the said Act of 2017, the cause of action to claim refund arose. It is submitted that once such cause of action has accrued, and the legislature has granted a time within which claim of benefit of refund can be made, such time could not have been subsequently curtailed by an executive circular with retrospective effect.
9. In support of his contention that the retrospectivity attributed to the said circulars has been found to be inconsistent with the legislative mandate of Section 54(1) of the said Act of 2017 by several High Courts across the country, Mr. Majumdar has relied on the following judgments: -

1. Patanjali Foods Ltd. v. Union of India, reported at (2025) 28 Centax 75 (Guj),

2. Vaibhav Edibles Pvt. Ltd. v. State of U.P. reported at (2025) 37 Centax 199 (All.),

3. Shree Arihant Oil and General Mills v. Union of India, the Joint Commissioner, State Tax Circle Ganganagar, Goods & Service Tax Council reported at 2025 (9) TMI-968 and

4. M/s Priyanka Refineries Pvt. Ltd. v. Deputy Commissioner ST and Ors. decided by the Hon'ble High Court at Andhra Pradesh on January 29, 2025.

10. He also relies on an order dated May 9, 2025 passed by the Hon'ble Supreme Court on a batch of petitions, the lead case whereof was **Assistant Commissioner of Central Taxes & Ors. v. Gemini Edibles and Fats India Limited & Another**, reported at **(2025) 143 GSTR 644 (SC)** to demonstrate that the order passed by the Hon'ble Andhra Pradesh High

Court in the case of ***M/s Priyanka Refineries Pvt. Ltd.*** (supra) had not been interfered with by the Hon'ble Supreme Court.

11. He further relied on an order dated November 27, 2025 passed by the appellate authority under Section 107 of the said Act of 2017 in the petitioner's own case where in a similar situation, claim of refund of the petitioner had been allowed relying on the judgments of the Hon'ble Andhra Pradesh in the case of ***M/s Priyanka Refineries Pvt. Ltd.*** (supra) (SLP where against had been dismissed by the Hon'ble Supreme Court) and the Division bench of Hon'ble High Court at Rajasthan in the case of ***Shree Arihant Oil and General Mills*** (supra).
12. It is submitted by Mr. Majumdar, learned senior advocate that in view of the judgment of the Hon'ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. v. Union of India***, reported at ***2004 (168) E.L.T. 3 (S.C.)*** once a High Court has interpreted a Central Circular in a certain way, the same should be followed by the concerned authorities throughout the territory of India.
13. Mr. Banerjee, learned advocate appearing for the respondent CGST authorities, Mr. Sanyal, learned advocate appearing for the respondent SGST authority and Mr. Kundalia, learned senior advocate appearing for the Union of India do not have much resistance to offer to the submissions made by Mr. Majumdar.
14. Heard learned advocates appearing for the respective parties and considered the material on record.
15. Sections 54(1) and 54(3) of the said Act of 2017 which are relevant for the present case provide as follows: -

“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.”

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

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

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

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

9[****]

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.

16. The Explanation to Section 54 of the said Act of 2017 defines “relevant date”.

For the purpose of the present case, Explanation 2(e) is relevant. The same reads thus: -

2. “relevant date means”

(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;”

17. In terms of the aforesaid provisions, due date for the petitioner to file its returns under Section 39 of the said Act of 2017 would be June 20, 2021. Therefore June 20, 2021 would be the relevant date in terms of the aforesaid Explanation to Section 54(1) of the said Act of 2017 and that being so the petitioner’s application for refund made on June 16, 2023 was well within the two years’ timeframe mentioned in Section 54(1) of the said Act of 2017.

18. Thus the petitioner had applied within the period prescribed under Section 54(1) of the said Act of 2017 upon right to claim refund having accrued to the petitioner.
19. It is settled law that although, ordinarily, law of limitation applies retrospectively, yet there are certain exceptions to the rule. One such exception is that a provision that curtails the existing period of limitation would be inapplicable to accrued causes of action. (see: **Harshit Harish Jain and Another v. State of Maharashtra and Others** reported at **(2025) 3 SCC 365**). In the present case, the cause of action (i.e. cause of action to apply for refund) accrued to the petitioner on the date the petitioner filed its return. Such right to claim refund would continue till the expiry of the period mentioned in Section 54(1) of the said Act of 2017. The same could, therefore, not have been curtailed by an executive circular by giving it retrospective effect.
20. The judgment rendered by the Hon'ble Andhra Pradesh High Court in the case of **M/s Priyanka Refineries Pvt. Ltd. (supra)**, the Hon'ble Allahabad High Court in the case of **Vaibhav Edibles Pvt. Ltd. (supra)**, the Hon'ble Rajasthan High Court in the case of **Shree Arihant Oil & General Mills (supra)** and the Hon'ble Gujarat High Court in the case of **Patanjali Goods Ltd. (supra)** in unison state that merely because an application for refund had been made subsequent to the circular but within the time prescribed under Section 54(1) of the said Act of 2017, the same would not disentitle the registered tax payer from claiming refund, if such person was otherwise eligible to return and his right to claim refund had arisen/accrued prior to

the said circulars. There is no good reason for this Court to take a divergent view.

- 21.** In view of the aforesaid, the orders impugned dated July 27, 2023 passed by the adjudicating authority and May 11, 2024 passed by appellate authority stand set aside. The proper officer shall now consider the petitioner's application for refund on merits and shall deal with the same, in accordance with law, without being inhibited by the aforesaid clarificatory circulars dated November 10, 2022 and November 14, 2022 as expeditiously as possible and preferably within a period of six weeks from the date of communication of this order.
- 22.** WPA 27066 of 2024 stands disposed of with the above observations. No costs.
- 23.** Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)

(Samir)