



2024:KER:3696

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 11TH DAY OF JANUARY 2024 / 21ST POUSHA, 1945

WP(C) NO. 26112 OF 2023

PETITIONER/S:

M/S. MALABAR FUEL CORPORATION
358, ELEMBERAPARA, ARAMVAYAL ROAD, KOOVERY,
KANNUR, PIN - 670142, REPRESENTED BY ITS MANAGING
PARTNER, SALEEM KUNJIKKANDY,

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER
CENTRAL TAX AND CENTRAL EXCISE, KANNUR DIVISION,
CENTRAL REVENUE BUILDING, KUZHIKUNNU, KANNUR, PIN
- 670001
- 2 THE JOINT COMMISSIONER (APPEALS)
OFFICE OF COMMISSIONER (APPEALS), CENTRAL TAX,
CENTRAL EXCISE AND CUSTOMS, CGST DEPARTMENT, C.R.
BUILDING, IS PRESS ROAD, KOCHI, PIN - 682018
- 3 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001



2024:KER:3696

WP(C) Nos.26112, 20511 & 36699/2023

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5 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
GST POLICY WING, NORTH BLOCK, NEW DELHI, PIN -
110001, REPRESENTED BY PRINCIPAL COMMISSIONER
(GST).

BY ADV THOMAS MATHEW NELLIMOOTTIL, SR. STANDING
COUNSEL FOR CBIC; SRI.S.MANU, DSGI FOR R3

OTHER PRESENT:

SMT.JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11.01.2024, ALONG WITH WP(C).20511/2023 & 36699/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



WP(C) Nos.26112, 20511 & 36699/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 11TH DAY OF JANUARY 2024 / 21ST POUSHA, 1945

WP(C) NO. 20511 OF 2023

PETITIONER/S:

M/S. MALABAR FUEL CORPORATION,
358, ELEMBERAPARA, ARAMVAYAL ROAD, KOOVERY,
KANNUR, PIN - 670142, REPRESENTED BY ITS
MANAGING PARTNER, SALEEM KUNJIKKANDY.

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER OF C ENTRAL TAX &
CENTRAL EXCISE
CENTRAL GOODS & SERVICES TAX DEPARTMENT, KANNUR
DIVISION, KANNUR, PIN - 670014
- 2 THE JOINT COMMISSIONER (APPEALS),
OFFICE OF COMMISSIONER (APPEALS), CENTRAL TAX,
CENTRAL EXCISE AND CUSTOMS, CGST DEPARTMENT,
C.R. BUILDING, IS PRESS ROAD, KOCHI, PIN -
682018
- 3 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 4 STATE OF KERALA,



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REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM, PIN
- 695001

5 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110
001, REPRESENTED BY PRINCIPAL COMMISSIONER
(GST).

BY ADV THOMAS MATHEW NELLIMOOTTIL, SR. STANDING
COUNSEL FOR CBIC; SRI.S.MANU, DSGI;
SMT.JASMINE M.M., GP,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11.01.2024, ALONG WITH WP(C) NOS.26112/2023 AND
36699/2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



WP(C) Nos.26112, 20511 & 36699/2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 11TH DAY OF JANUARY 2024 / 21ST POUSHA, 1945

WP(C) NO. 36699 OF 2023

PETITIONER/S:

M/S. MALABAR FUEL CORPORATION
358, ELEMBERAPARA, ARAMVAYAL ROAD, KOOVERY,
KANNUR, PIN - 670142, REPRESENTED BY ITS
MANAGING PARTNER, SALEEM KUNJIKKANDY.

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER
CENTRAL TAX AND CENTRAL EXCISE, KANNUR DIVISION,
CENTRAL REVENUE BUILDING, KUZHIKUNNU, KANNUR,
PIN - 670001
- 2 THE JOINT COMMISSIONER (APPEALS)
OFFICE OF COMMISSIONER (APPEALS), CENTRAL TAX,
CENTRAL EXCISE AND CUSTOMS, CGST DEPARTMENT,
C.R. BUILDING, IS PRESS ROAD, KOCHI, PIN -
682018
- 3 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 4 STATE OF KERALA



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SECRETARY, TAXES DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

5 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
GST POLICY WING, NORTH BLOCK, NEW DELHI ,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST).,
PIN - 110001

BY ADVS.

THOMAS MATHEW NELLIMOOTTIL, SC FOR R1, R2 & R5
P.R.AJITH KUMAR FOR R3; SMT.JASMINE M.M., GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.01.2024, ALONG WITH WP(C) NOS.26112/2023
AND 20511/2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



WP(C) Nos.26112, 20511 & 36699/2023

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J U D G M E N T

[WP(C) Nos.26112/2023, 20511/2023, 36699/2023]

Heard Sri.Harisankar V.Menon, learned counsel for the petitioner; Sri.Thomas Mathew Nellimoottil, learned Senior Standing Counsel for CBIC; Sri.S.Manu, learned DSGI and Smt.Jasmine M.M., learned Government Pleader.

2. The very same petitioner has filed these writ petitions impugning the orders rejecting the claims of the petitioner for refund of accumulated input tax credit ('ITC' for short) under section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 ('CGST Act', for short) and also Circular No.135/05/2020-GST dated 31.3.2020 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, Ext.P7 in WP(C) No.26112/2023.

3. In WP(C) No.26112/2023, the challenge is against Ext.P13 appellate order dated 8.6.2023 setting aside the refund orders in favour of the petitioner for the period from April to



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September, 2021, while in WP(C) No.20511/2023, the petitioner seeks to quash Ext.P8 appellate order issued by the 2nd respondent and also Exts.P4, P5 and P6 orders issued by the 1st respondent rejecting petitioner's refund applications for accumulated ITC for the months of May, June and March, 2020, respectively. In WP(C) No.36699/2023, the challenge is against Ext.P17 order of the 1st respondent rejecting the aforesaid refund claim of the petitioner for the period from July, 2020 to March, 2021.

4. The petitioner is engaged in bottling of Liquefied Petroleum Gas ('LPG', for short) in cylinders for both domestic and commercial uses. On the bulk supply of LPG received by the petitioner from various refineries, the petitioner is required to pay GST @ 18%. However, after bottling, when the LPG is supplied in cylinders to domestic and commercial customers, GST at the rate of 5% and 18%, respectively, on the value of the cylinder is charged. Thus, there is difference of input tax



being higher than the tax on output in respect of the domestic supplies effected by the petitioner, after bottling the LPG in cylinders.

5. The petitioner moved applications under Section 54 of the CGST Act for refund of the accumulated ITC in respect of the LPG supplies to domestic customers after bottling in cylinders. However, the said applications/claims of the petitioner were rejected on the basis of Circular No.135/05/2020-GST dated 31.3.2020.

6. Learned counsel for the petitioner submits that the aforesaid circular, which negates the claim for refund of accumulated ITC under Section 54(3)(ii) of the CGST Act on the ground that though the tax on the outgoing supplies is less than the tax on the input supplies, both the input and output supplies are one and the same, has come up for consideration before different High Courts, including the High Courts of Gauhati, Calcutta, Rajasthan and Delhi. All the above High Courts have held that the said stipulation in paragraph No.3.2 of the Circular



runs contrary to the statutory prescription under Section 54 of the CGST Act and that the claim for refund of the higher duty paid on the input commodity cannot be denied on the basis of the said Circular.

7. Section 54 of the CGST Act, on reproduction, reads as under:

“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:

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 the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.



(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:

Provided further that no refund of unutilised 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 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.

(4) The application shall be accompanied by

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(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax



and interest had not been passed on to any other person:

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.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.



(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to

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(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilised input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8-A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has



defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this subsection, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(11) where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) where a refund is withheld under subsection (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.



(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

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



- (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;
(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.”

Clause (ii) of sub-section (3) of Section 54 of the CGST Act permits/authorises a dealer to claim refund 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, except where nil rated or fully exempted supplies, or supplies of goods or services or both as may be notified by the Central Government on recommendations of the GST Council.

8. The case of the petitioner does not fall within the exception as provided in clause (ii) of sub-Section (3) of Section 54 of the CGST Act. On a bare reading of Section 54, it is clear that if the supplies are not coming within the exceptional clause and credit had accumulated on



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account of rate of tax on inputs being higher than the rate of tax on output supplies, a dealer shall be entitled for refund of the credit accumulated in such a situation, irrespective of the fact whether the input and output supplies are one and the same or not.

9. Circular No.135/05/2020-GST dated 31.3.2020 issued under Section 168 of the GST Act would read as under:

Circular No.135/05/2020 - GST

CBEC-20/01/06/2019-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 31st March, 2020

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

Madam/Sir,

**Subject: Clarification on refund related
issues - Reg.**



Various representations have been received seeking clarification on some of the issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard 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 detailed hereunder:

2. Bunching of refund claims across Financial Years

2.1 It may be recalled that the restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the Circular No.37/11/2018-GST dated 15.03.2018. The said circular was rescinded being subsumed in the Master Circular on Refunds No.125/44/2019-GST dated 18.11.2019 and the said restriction on the clubbing of tax periods across financial years for claiming refund thus has been continued vide Paragraph 8 of the Circular No.125/44/2019-GST dated 18.11.2019, which is reproduced as under:

"8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered



persons having aggregate turnover of up to Rs.1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle/ limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.”

2.2 Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of M/s Pitambra Books Pvt Ltd., vide para 13 of the said order has stayed the rigour of paragraph 8 of Circular No.125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order. Hon'ble Delhi High Court vide para 12 of the aforesaid Order has observed that the Circulars can supplant but not supplement



the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law.

2.3 Further, same issue has been raised in various other representations also, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the last quarter of a Financial Year and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

2.4 On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No.125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.



3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of



section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

4. Change in manner of refund of tax paid on supplies other than zero rated supplies

4.1 Circular No.125/44/2019-GST dated 18.11.2019, in para 3, categorizes the refund applications to be filed in **FORM GST RFD-01** as under:

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b. Refund of tax paid on export of services with payment of tax;
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f. Refund to supplier of tax paid on deemed export supplies;
- g. Refund to recipient of tax paid on deemed export supplies;
- h. Refund of excess balance in the electronic cash ledger;
- i. Refund of excess payment of tax;
- j. Refund of tax paid on intra-State supply which is subsequently held to be inter State supply and vice versa;



k. Refund on account of assessment/provisional assessment/appeal/any other order;

1. Refund on account of “any other” ground or reason.

4.2 For the refund of tax paid falling in categories specified at S. No.(i) to (l) above i.e. refund claims on supplies other than zero rated supplies, no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC.

4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:

“(4A) where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found



admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.”

4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder:

“(1A) where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.”



4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in **FORM GST RFD-06** for amount refundable in cash and **FORM GST PMT-03** to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No.49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding



admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

6. New Requirement to mention HSN/SAC in Annexure 'B'

6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in **Annexure-B** of the circular No.125/44/2019-GST dated 18.11.2019 so as to easily identify between the supplies of goods and services.

6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital



goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, **Annexure-B** of the circular No.125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

6.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their **FORM GSTR-2A**. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

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

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

(Yogendra Garg)
Principal Commissioner”

10. In almost similar facts and circumstances of these cases, the aforesaid Circular has been considered by the aforesaid four High Courts in the following cases:



1. **BMG Informatics (P.) Ltd. v. Union of India [(2021) 130 Taxmann.com 182]** (High Court of Gauhati).
2. **Shivaco Associates v. Joint Commissioner of State Tax, Directorate of Commercial Taxes [(2022) 137 taxmann.com 213]** (High Court of Calcutta).
3. **Baker Hughes Asia Pacific Ltd. v. Union of India [(2022) 140 Taxmann.com 326]** (High Court of Rajasthan); and
4. **Indian Oil Corporation Ltd. v. Commissioner of Central Goods and Services Tax & Ors. [WP(C) No.10222/2023 & CM No.39561/2023 : 2023:DHC:8649-DB]** (High Court of Delhi)

All the four High Courts have held that the condition laid down in clause 3.2 of the Circular, which denies refund of credit accumulated to a dealer as a result of higher tax on inputs than the output supplies, when the



input and output supplies are one and the same, would have to be ignored.

11. Learned counsel for the Revenue has submitted that the aforesaid judgments have not been challenged before the Hon'ble Supreme Court.

Considering the ratio laid down in the aforesaid four judgments by the four High Courts, the present writ petitions are allowed and the petitioner is held to be entitled for refund of the credit accumulated on account of payment of higher rate of tax, i.e. @ 18%, on input supplies received by him for bottling of LPG for domestic supply, when the rate of tax is only @ 5%. The impugned orders, Ext.P13 appellate order in WP(C) No.26112/2023; Ext.P8 appellate order and Exts.P4, P5 & P6 orders in WP(C) No.20511/2023 and Ext.P17 order in WP(C) No.36699/2023 are hereby set aside. The matter is remanded back to the assessing authority to calculate the refund amount of accumulated ITC admissible to the petitioner for the aforesaid periods on account of higher rate of tax having been paid by the



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WP(C) Nos.26112, 20511 & 36699/2023

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petitioner on input supplies of LPG for bottling and supplying in the domestic market.

Pending interlocutory application, if any, in the present writ petitions stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg



APPENDIX OF WP(C) 20511/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF REFUND APPLICATION ALONG WITH
ARN RECEIPT FOR THE MONTH OF MAY 2020
DTD. 30-04-2022
- Exhibit P2 COPY OF REFUND APPLICATION ALONG WITH
ARN RECEIPT FOR THE MONTH OF JUNE 2020
DTD. 30-04-2022
- Exhibit P3 COPY OF REFUND APPLICATION ALONG WITH
ARN RECEIPT FOR THE MONTH OF MARCH 2020
DTD. 12-05-2022
- Exhibit P4 COPY OF ORDER ISSUED BY THE 1ST
RESPONDENT FOR MAY 2020 DTD. NIL
- Exhibit P5 COPY OF ORDER ISSUED BY THE 1ST
RESPONDENT FOR JUNE 2020 DTD. NIL
- Exhibit P6 COPY OF ORDER ISSUED BY THE 1ST
RESPONDENT FOR MARCH 2020 DTD. NIL
- Exhibit P7 COPY OF CIRCULAR NO.135/05/2020-GST
ISSUED BY MINISTRY OF FINANCE, GOVT. OF
INDIA, NEW DELHI DTD. 31-03-2020
- Exhibit P8 COPY OF APPELLATE ORDER ISSUED BY THE
2ND RESPONDENT DTD. 23-03-2023



WP(C) Nos.26112, 20511 & 36699/2023

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APPENDIX OF WP(C) 36699/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF REFUND APPLICATION FOR PERIOD MARCH 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 12-05-2022
- Exhibit P2 COPY OF REFUND APPLICATION FOR PERIOD MAY 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 30-04-2022
- Exhibit P3 COPY OF REFUND APPLICATION FOR PERIOD JUNE 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 30-04-2022
- Exhibit P4 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD MARCH 2020 DTD. NIL
- Exhibit P5 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD MAY 2020 DTD. NIL
- Exhibit P6 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD JUNE 2020 DTD. NIL
- Exhibit P7 COPY OF CIRCULAR NO. 135/05/2020-GST ISSUED BY GOVERNMENT OF INDIA, NEW DELHI DTD. 31-03-2020
- Exhibit P8 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 23-03-2023
- Exhibit P9 COPY OF ORDER IN WPC NO. 20511/2023 OF THIS HON'BLE COURT DTD. 26-06-2023
- Exhibit P 10 COPY OF REFUND SANCTION ORDER NO. 1/856545/2022 ISSUED BY THE 1ST RESPONDENT DTD. 21-11-2022
- Exhibit P10
(a) COPY OF REFUND SANCTION ORDER NO. 1/856550/2022 ISSUED BY THE 1ST RESPONDENT



WP(C) Nos.26112, 20511 & 36699/2023

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DTD. 21-11-2022

Exhibit P10 (b) COPY OF REFUND SANCTION ORDER NO.
1/856553/2022 ISSUED BY THE 1ST RESPONDENT
DTD. 21-11-2022

Exhibit P10 (c) COPY OF REFUND SANCTION ORDER NO.
1/856561/2022 ISSUED BY THE 1ST RESPONDENT
DTD. 21-11-2022

Exhibit P10 (d) COPY OF REFUND SANCTION ORDER NO.
1/856569/2022 ISSUED BY THE 1ST RESPONDENT
DTD. 21-11-2022

Exhibit P10 (e) COPY OF REFUND SANCTION ORDER NO.
1/856583/2022 ISSUED BY THE 1ST RESPONDENT
DTD. 21-11-2022

Exhibit P11 COPY OF ORDER FOR THE PERIOD APRIL 2021
ISSUED BY THE 1ST RESPONDENT DTD. 22-11-
2022

Exhibit P11 (a) COPY OF ORDER FOR THE PERIOD MAY2021
ISSUED BY THE 1ST RESPONDENT DTD. 22-11-
2022

Exhibit P11 (b) COPY OF ORDER FOR THE PERIOD JUNE 2021
ISSUED BY THE 1ST RESPONDENT DTD. 22-11-
2022

Exhibit P11 (c) COPY OF ORDER FOR THE PERIOD JULY 2021
ISSUED BY THE 1ST RESPONDENT DTD. 22-11-
2022

Exhibit P11 (d) COPY OF ORDER FOR THE PERIOD AUGUST 2021
ISSUED BY THE 1ST RESPONDENT DTD. 22-11-
2022

Exhibit P11 (e) COPY OF ORDER FOR THE PERIOD SEPTEMBER
2021 ISSUED BY THE 1ST RESPONDENT DTD. 22-
11-2022

Exhibit P12 COPY OF INTIMATION IN FORM GST DRC 03

**WP(C) Nos.26112, 20511 & 36699/2023**

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FILED BY THE PETITIONER FOR APRIL 2021 TO
THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P12 (a) COPY OF INTIMATION IN FORM GST DRC 03
FILED BY THE PETITIONER FOR MAY 2021 TO
THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P12 (b) COPY OF INTIMATION IN FORM GST DRC 03
FILED BY THE PETITIONER FOR JUNE 2021 TO
THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P12 (c) COPY OF INTIMATION IN FORM GST DRC 03
FILED BY THE PETITIONER FOR JULY 2021 TO
THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P12 (d) COPY OF INTIMATION IN FORM GST DRC 03
FILED BY THE PETITIONER FOR AUGUST 2021 TO
THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P12 (e) COPY OF INTIMATION IN FORM GST DRC 03
FILED BY THE PETITIONER FOR SEPTEMBER 2021
TO THE 1ST RESPONDENT DTD. 21-02-2023

Exhibit P13 COPY OF COMMON ORDER A NO. 32-
37/GST/CLT/AD-JC/2023 (D) ISSUED BY THE
2ND RESPONDENT DTD. 08-06-2023

Exhibit P14 COPY OF ORDER IN WPC NO, 26112/2023 OF
THIS HON'BLE COURT DTD. 09-08-2023

Exhibit P15 COPY OF NOTICE ISSUED BY THE 1ST
RESPONDENT DTD. 29-05-2023

Exhibit P16 COPY OF REPLY FILED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT DTD. 29-06-2023

Exhibit P17 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DTD. 21-09-2023



WP(C) Nos.26112, 20511 & 36699/2023

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APPENDIX OF WP(C) 26112/2023

PETITIONER EXHIBITS

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- Exhibit P4 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD MARCH 2020 DTD. NIL
- Exhibit P5 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD MAY 2020 DTD. NIL
- Exhibit P6 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT FOR THE PERIOD JUNE2020 DTD. NIL
- Exhibit P7 COPY OF CIRCULAR NO. 135/05/2020-GST ISSUED BY GOVERNMENT OF INDIA, NEW DELHI DTD. 31-03-2020
- Exhibit P8 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT 23-03-2023
- Exhibit P9 COPY OF ORDER IN WPC NO. 20511/2023 OF THIS HON'BLE COURT DTD. 26-06-2023
- Exhibit P10 COPY OF REFUND SANCTION ORDER NO. I/856545/2022 ISSUED BY THE 1ST RESPONDENT DTD. 21-11-2022
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WP(C) Nos.26112, 20511 & 36699/2023

DTD. 21-11-2022

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37/GST/CLT/ADC-JC/2023(D) ISSUED BY THE 2ND
RESPONDENT DTD. 08-06-2023