NEUTRAL CITATION
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5747 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and HONOURABLE MR. JUSTICE PRANAV TRIVEDI

==========

Approved for Reporting	Yes	No
		✓

========== M/S. KUSH PROTEINS PVT. LTD. & ANR.
Versus
UNION OF INDIA & ORS.
========== Appearance:
MR NAITIK N SHAH(11495) for the Petitioner(s) No. 1,2
MR NIRAV P SHAH(6475) for the Petitioner(s) No. 1,2
MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,3
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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA** and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 18/07/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Nirav Shah for the petitioners and learned advocate Mr. Ankit Shah for the respondents.

2. Rule, returnable forthwith. Learned advocate Mr. Ankit Shah waives service of

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notice of rule for and on behalf of the respondents.

3. Having regard to the controversy involvedin this petition, with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing.

4. Present petition preferred under Article 226 of the Constitution of India assails the correctness and validity of order dated 29.2.2024 as well as order dated 31.3.2023 passed by the Assistant Commissioner, Central Goods & Service Tax and Excise, Division-VIII (Anand), Vadodara-1 (hereinafter referred to as 'the respondent' for short) wherein the respondent was pleased to reject the refund application preferred by the petitioners under Section 54 of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as 'the CGST' for short.

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5. The facts leading to the filing of the present petition are as under:

5.1 The petitioners are in business of manufacturing and trading of edible oil, cattle feed, palmolein oil, mustard oil, etc. The products of the petitioners are classified under Chapter-15 of the Customs Tariff Act, 1975 (hereinafter referred to as 'the Tariff Act' for short). As per the Tariff Act, the products of the petitioners attract 5% rate of GST. It is the case of the petitioners that the raw materials for manufacturing aforesaid products are received attracting higher rate of tax under the provisions of the Act. Therefore, the petitioners have always availed accumulation of Input Tax Credit (for short 'ITC') due to inverted tariff structure. It is the case of the petitioners that as per Section-

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54(3) of the CGST Act, the petitioners can avail refund of the aforesaid accumulated credit.

5.2 It is the case of the petitioners that theDepartment had issued Notification No. 5/2017 dated 28.06.2017 under Section 54(3)(ii) restricting refund of unutilized input tax credit in case of goods mentioned in the notification. The products belonging to the petitioners were not mentioned in Table of Notification dated 28.6.2017. Therefore, the petitioners were entitled to get refund of accumulated ITC under Section 54(3)(ii). Subsequently, another Notification being Notification No. 9/2022 dated 13.07.2022 came to be issued by the Department wherein the products belonging to the petitioners were notified as not being eligible for refund of accumulated ITC. It is the case of the petitioners that Notification No. 9/2022 was

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made effective from 18.07.2022 and, therefore, the petitioners had filed various refund applications for the period prior to 18/07/2022. The refund applications were made on 23/01/2023. Pursuant to the Refund Applications preferred by the petitioners, the respondent had issued show-cause notice for rejection of the refund applications. The petitioners could not represent their case before the adjudication authority. Therefore, by way of order dated 31.3.2023 the refund application was rejected ex-parte.

5.3 Being aggrieved by order dated 31.3.2023, the petitioner preferred an appeal before the appellate authority. By way of impugned order dated 29.2.2024, the appeal preferred by the petitioners was dismissed on merits. Being aggrieved by the impugned orders dated

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31.3.2023 and 29.2.2024, the petitioners have preferred the present writ petition.

6. Heard learned advocate Mr. Nirav Shah for the petitioners and learned advocate Mr. Ankit Shah for the respondent.

7. It was submitted by learned advocate Mr. Nirav Shah for the petitioners that the petitioners had filed refund applications u/s. 54 of the CGST Act. As per section-54(1), an application for refund can be filed before the expiry of 2 years from the relevant date. The petitioners had filed all applications for refund within 2 years as per time limit prescribed u/s. 54(1). In such facts, the refund claims could not have been rejected.

Hence, the orders are passed in gross violation of provisions of section-54(1) of the CGST Act and hence the same are not

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sustainable and requires to be quashed and set aside.

8. It was further submitted that NotificationNo. 9/2022 dated 13.07.2022 has amended Notification No. 5/2017 restricting the refund of accumulated credit on products manufactured by the present Petitioners. As per the Notification itself, the notification was made effective from 18.07.2022. In such facts, it was submitted that the petitioners were eligible for refund of accumulated ITC for period up to 17.07.2022 and rejection of refund claims for the period prior to 18.07.2022 is bad in law and requires to be quashed and set aside.

9. It was further submitted that therespondent Authorities had relied upon Circular No. 181/13/2022 dated 10.11.2022 to hold that

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application filed after 18.07.2022 could not be eligible for refund. It was submitted that in the clarification itself,

the department had stated that the Notification had come into force with effect from 18.07.2022. The restriction imposed vide Notification No. 9/2022 on refund of unutilized ITC on account of inverted tax structure would apply prospectively only. This would mean that for the period prior to 18.07.2022, any person manufacturing specified goods is eligible for refund of unutilized ITC. Hence, the clarification stating that all refund applications filed on or after 18.07.2022, would not be eligible for refund was ultra vires the plain language of the notification and provisions of Section 54(1) of the CGST Act and hence the same is illegal and without jurisdiction and requires to be struck down.

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10. Further, it was submitted by learned advocate Mr. Nirav Shah for the petitioners that the issue is no more res integra pursuant to order of this Court in the case of Patanjali Foods Ltd. v. Union of India & Ors, rendered in Special Civil Application No. 17298 of 2024.

11. Per contra, learned advocate Mr. Ankit Shah for the respondents acceded to the fact and could not controvert the issue as the whole issue is covered by the decision rendered by this Court in case of Patanjali Foods Ltd. v. Union of India & Ors (Supra).

12. Having heard learned advocates for the parties and perused the material on record, the sole issue for consideration is that the application for refund preferred by the petitioners was within statutory period of

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limitation and the same was pertaining to period prior to issuance of Circular No. 9 of 2022. Therefore, the mere fact that the refund application filed after 30.7.2022 can be construed as reason for denial of ITC. The issue is now squarely covered in case of Patanjali Foods Ltd. v. Union of India & Ors (Supra), wherein it is observed in paras-11 and 12 as under:

> "11. DISCUSSION AND FINDINGS :-
>
> 11.1 Notification No.09/2022 -Central Tax dated 13.07.2022 reads as under:"G.S.R. (E). In exercise of the powers conferred by clause (ii) of the proviso to sub-section of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government

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of India in the Ministry of Finance (Departm of Revenue), No. 5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 677(E), dated 28th June, 2017, namely :-

In the said notification,

(i) in the opening paragraph, in theproviso, in clause (i), for the words and figure "serial numbers 1", the words, figure and letters "serial numbers 1AA" shall be substituted;

(ii) in the TABLE, S. No. 1 shall bere-numbered as S.No. 1AA, and before S. No. 1AA as re-numbered, the following serial numbers and entries shall be inserted, namely :-

(1)	(2)	(3)
"1A.	1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified

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1B.	1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.
1C.	1509	Olive oil and its fractions, whether or not refined, but not chemically modified.
1D.	1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509
1E.	1511	Palm oil and its fractions, whether or not refined, but not chemically modified.
1F.	1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.
1G.	1513	Coconut (copra), palm kernel or
		babassu oil and fractions thereof, whether or not refined, but not chemically modified.

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1H.	1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.
1I.	1515	Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified. Vegetable fats and oils and their fractions, partly or wholly hydrogenated, interesterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
1J.	1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
1K.	1517	Edible mixtures or preparations of vegetable fats or vegetable

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		oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1L.	1518	Vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516
1M.	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
1N.	2702	Lignite, whether or not agglomerated, excluding jet
1O.	2703	Peat (including peat litter), whether or not agglomerated"

Thus, it is clear from the bare perusal of the Notification that "this Notification shall come into force on the 18th day of July, 2022"

11.2 Notification No.13/2022- Central Tax dated 05.07.2022, reads as under:-

> "G.S.R.....(E). In exercise of the powers conferred by section 168A of the

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Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No.35/2020-Central Tax, dated the 3 April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No.14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specifiedunder sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;

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(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1 day of March, 2020."

11.3 Circular dated 10.11.2022 issued by the GST Policy Wing reads as under:-

To
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on refund related issues-reg.

Attention is invited to sub-section (3) of section 54 of CGST Act, 2017, which provides for the refund of unutilized input tax credit in cases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of

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inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No.14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No.09/2022Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

2. Representations have been receivedfrom the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law 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 as under:

S. No.	Issue	Clarification

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1.	Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022	Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the

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		amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022.

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2.	Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?	Vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to subsection (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022. The restriction imposed vide Notification No.

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		09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund applications filed before 18.07.2022.

3. It is requested that suitable trade notices may be issued to publicized the contents of this Circular.

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

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11.4 This Court in the case of Ascent Meditech (Supra) has held as under :-

> "48. In view of the foregoing reasons, the impugned order dated 24.08.2023 is hereby quashed and set aside. The Circular No. 181/22 dated 10.11.2022 so far as it clarifies that the amendment is not clarificatory in nature is quashed and set aside and it is held that the Notification No. 14/2022 is applicable retrospectively as the amendment brought in Rule 89(5) of the Rules is curative and clarificatory in nature and the same would be applicable retrospectively to the refund or rectification applications filed within two years as per the time period prescribed under section 54(1) of the Act. Rule is made absolute to the aforesaid extent. "

11.5 Thus, it is seen that this Court in Ascent Meditech(Supra) has struck down para 2(1) of the same Circular dated 10.11.2022 on the ground that an artificial class of assessees cannot be created on the basis of date of filing of refund application.

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11.6 By that exact logic, Para 2(2) of the impugned circular dated 10.11.2022 in so far as it provides that the restriction contained in notification no. 13.7.2022 will apply to all the refund applications filed after 13.7.2022, even though they are pertaining to a period prior to the date of notification, is wholly arbitrary, discriminatory and ultra-vires Section 54 of the GST Act as well as violating Article 14 of the Constitution of India. The circular itself states that the notification dated 13.7.2022 has prospective effect. Even otherwise, the restriction contained in notification dated 13.7.2022 was introduced for the first time on such date and by expressly stating that it would apply prospectively and that too from 18.7.2022. If that be so, then refund pertaining to period prior to 13.7.2022 cannot be affected by such notification. Section 54(1) of the GST Act clearly gives a time limit of 2 years for filing of the refund application and such time limit was extended by notification no. 13/2022 because of the Covid-19

pandemic. The application filed by the Petitioner was within the statutory period of limitation and the same was pertaining to period prior to 13.7.2022. Mere fact that the refund application was filed after 13.7.2022 cannot result in denial of refund to the Petitioner even though the refund application was filed within the statutory period of limitation. The circular creates an artificial class amongst assessees based on the date of filing of refund application even though the refund application is filed within the statutory period of limitation and the refund is pertaining to the same period. Para 2 of the impugned circular is therefore grossly discriminatory and violative of Article 14 of the Constitution of India as well as ultravires Section 54 of the GST Act.

12.In view of the discussion hereinabove, the present petition succeeds and is accordingly allowed. The impugned para 2(2) of the Circular No. 181/13/2022-GST dated 10.11.2022 is struck down. Further

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it is undisputed that the respondents had granted refund to the petitioner after passing a sanction order dated 12.01.2024. However, by way of a show cause notice under Section 73 of the CGST Act in Form GSTDRC-01, the respondents had issued a demand notice under Section 73 of the CGST Act which eventually resulted in passing of the impugned Order-in-Original dated 10.09.2024 where, the demand of Rs.1,70,07,091/- was confirmed along with a penalty of Rs.17,00,709/-. Therefore, it will be seen that against the petitioner's refund application dated 05.12.2023, there has been an adjudication of the same by order dated 12.01.2024, by which the petitioner's refund application was accepted and the refund sanction granted. It is further not in dispute that no appeal under Section 107 or Revision under Section 108 of the CGST Act, 2017 has been preferred by the respondents, challenging the adjudication of the petitioner's refund application and the consequent refund order sanctioned on 12.01.2024. Therefore, in the opinion of

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this Court, the grant of refund to the petitioner by order dated 12.1.2024 had become final and no show cause notice could be issued by the respondents to take away the benefits of a quasi judicial order in the petitioner's favour. Thus, the Order-inOriginal dated 10.9.2024, by which the show cause notice dated 02.05.2024 was adjudicated, is illegal and unsustainable and the same deserves to be quashed and set aside. The Order-inOriginal dated 10.09.2024 is therefore, quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."

13. In view of the above settled proposition of law, the impugned order dated 31.3.2023 in Refund Application as well as the impugned order dated 29.2.2024 in Order in Appeal are illegal and unsustainable and the same deserve

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to be quashed and set-aside and are accordingly quashed and set-aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

SAJ GEORGE