IN THE HIGH COURT OF ANDHRA PRADESH

***

+ WRIT PETITION Nos:17220, 17224, 17226, 17229 & 17232 of 2024

W.P.No.17220/2024

Between:

M/s Louis Dreyfus Company Private Limited
Through its Authorised Representative
Swanand Venkatesh Ahankari S/o. Venkates Ahankari
Office at Shop No.3-29-60/2, Opp. Swami Theatre Line,
Beside NCC Building, 2nd Line, Guntur-522006.

… Petitioner
(in all W.Ps)

$ **AND**

$ 1. Union of India, Through the Revenue Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001.

2. The State of Andhra Pradesh Through its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.

3. The Commissioner of Central Tax & Customs (Appeals), D.No.3-30-15, Ring Road, Guntur – 522006.

4. The Additional Commissioner (GST Appeals), O/o. The Commissioner of Central Tax & Customs (Appeals) D.No.3-30-15, Ring Road, Guntur – 522006.

5. The Deputy Commissioner of Central Tax, Guntur CGST Division, D.No.3-1-197/5, BVSR Plaza, Opp. To IOCL Petrol Bunk, Pattabhipuram Main Road, Guntur-522006.

6. The Assistant Commissioner of Central Tax, Guntur CGST Division, D.No.3-1-197/5, BVSR Plaza, Opposite to IOCL Petrol Bunk Pattabhipuram Main Road, Guntur-522006.

…. Respondents

(In all W.Ps)

Date of Judgment pronounced on : ____.08.2025

THE HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

THE HON'BLE SMT JUSTICE SUMATHI JAGADAM

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** THE HON'BLE SRI JUSTICE R RAGHUNANDAN RAO**

***THE HON'BLE SMT JUSTICE SUMATHI JAGADAM**

+ WRIT PETITION Nos:17220, 17224, 17226, 17229 & 17232 of 2024

% Dated: ____.08.2025

W.P.No.17220/2024

Between:

M/s Louis Dreyfus Company Private Limited
Through its Authorised Representative
Swanand Venkatesh Ahankari S/o. Venkates Ahankari
Office at Shop No.3-29-60/2, Opp. Swami Theatre Line,
Beside NCC Building, 2nd Line, Guntur-522006.

… Petitioner

(in all W.Ps)

$ **AND**

$ 1. Union of India, Through the Revenue Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001.

2. The State of Andhra Pradesh Through its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.

3. The Commissioner of Central Tax & Customs (Appeals), D.No.3-30- 15, Ring Road, Guntur – 522006.

4. The Additional Commissioner (GST Appeals), O/o. The Commissioner of Central Tax & Customs (Appeals) D.No.3-30-15, Ring Road, Guntur – 522006.

5. The Deputy Commissioner of Central Tax, Guntur CGST Division, D.No.3-1-197/5, BVSR Plaza, Opp. To IOCL Petrol Bunk, Pattabhipuram Main Road, Guntur-522006.

6. The Assistant Commissioner of Central Tax, Guntur CGST Division, D.No.3-1-197/5, BVSR Plaza, Opposite to IOCL Petrol Bunk Pattabhipuram Main Road, Guntur-522006.

…. Respondents

(In all W.Ps)

! Counsel for Petitioner (in all the writ petitions) : Sri Sai Sandeep Manchikalapudi

^Counsel for Respondent No.1 : Sri Narasimha Rao Gudiseva SC For Central Government

^Counsel for Respondent No.2 : G.P. for Revenue

^Counsel for respondent Nos.3 to 6 : Sri P.S.P. Suresh Kumar

<GIST :

>HEAD NOTE:

? Cases referred:

1. 2020 SCC OnLine Guj 736
2. 61 GSTL 257
3. 2020 SCC Online Guj 3601 = (2021) 55 GSTL 390
4. (2024) 121 GSTR 268 = 2023 SCC OnLine Mad 7810
5. 61 GSTL 257
6. (1999) 3 SCC 362
7. 61 GSTL 257
8. (1999) 3 SCC 362
9. AIR 1964 SC 1006
10. 61 GSTL 257

APHC010321912024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3541]**
(Special Original Jurisdiction)

THURSDAY, THE FOURTHEENTH DAY OF AUGUST TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION Nos:17220, 17224, 17226, 17229 & 17232 of 2024

W.P.No.17220/2024

Between:

Louis Dreyfus Company Private Limited **...PETITIONER**
(In all writ petitions)

AND

The Union Of India and Others **...RESPONDENT(S)**
(in all writ petitions)

Counsel for the Petitioner:

1. SAI SUNDEEP MANCHIKALAPUDI

Counsel for the Respondent(S):

1. GP FOR REVENUE
2. P S P SURESH KUMAR
3. NARASIMHARAO GUDISEVA (CENTRAL GOVT COUNSEL)

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

As identical issues are involved in the present set of cases and as the writ petitioner and the respondents are same, they are being disposed of by way of this common order.

2. Heard Sri M. Sai Sundeep, learned counsel appearing for the petitioner, Sri Narasimha Rao Gudiseva learned Central Government Standing Counsel appearing for the 1st respondent, learned G.P. for Revenue appearing for the 2nd respondent and Sri P.S.P. Suresh Kumar, learned counsel appearing for respondents 3 to 6.

3. The petitioner is a registered person and is in the business of import of agricultural products for onward use and sale within India. The petitioner had imported certain agricultural products on CIF basis

and paid GST on ocean freight charges, on reverse charge mechanism basis, for various months in 2017. The petitioner had paid GST, on the ocean freight charges, on account of the notification No.8/2017-GST and Notification No.10/2017-GST. These notifications were challenged before the Hon'ble High Court of Gujarat in **Mohit Minerals Pvt. Ltd., vs Union of India**[1] and came to be struck down, by judgment dated 23.01.2020. Aggrieved by the said judgment, the central Government had approached the Hon'ble Supreme Court, which, by judgment, dated 19.05.2022, in **Union of India and Anr. vs M/s. Mohit Minerals**[2], had affirmed the view of the Hon'ble High Court of Gujarat and set aside these notifications.

[1] 2020 SCC OnLine Guj 736

4. The petitioner, after the judgment of the Hon'ble Supreme Court, filed applications, dated 30.03.2023, for refund of GST, paid on ocean freight charges, in 2017. These applications came to be dismissed by separate orders, dated 25.05.2023. Aggrieved by these orders of rejection, the petitioner approached the appellate authority, by appeal Nos. 63 to 67 of 2023 (G) GST. All the 5 appeals were dismissed, by way of a common order, dated 27.02.2024. Aggrieved by these orders, the present set of writ petitions have been filed.

5. The details of the writ petitions and dates of applications are given below.

W.P.No.	Period for which W.P. is filed	Date of return for that period	Last date on which application U/S 54 should be filed	Date of application for refund
WP No.17220/2024	September 2017	18.10.2017	17.10.2019	30.03.2023
WP No.17224/2024	November, 2017	23.12.2017	22.12.2019	30.03.2023
WP No.17226/2024	August, 2017	20.09.2017	19.09.2019	30.03.2023
WP No.17229/2024	July, 2017	23.08.2017	22.08.2019	30.03.2023
WP No.17232/2024	December, 2017	20.01.2018	19.01.2020	30.03.2023

[2] 61 GSTL 257

6. The contention of the petitioner was that no GST could be levied on ocean freight charges paid, on CIF basis, for goods imported into India, by virtue of striking down of Notification Nos.8 & 10/2017 by the Hon'ble Supreme Court of India. Consequently, GST, on ocean freight charges, paid by the petitioner, would have to be refunded to the petitioner. Both the original authority and the appellate authority took the view that an application for refund could be made, within a period of two years from the date of filing of the return, under which the GST which is sought to be refunded, was paid and that the said period of limitation has expired and no refund application was maintainable. There is no dispute that the applications for refund have been filed beyond the time stipulated under section 54 of the G.S.T. Act.

7. The learned counsel for the petitioner relying upon the judgment of the Hon'ble High Court of Gujarat in **Comsol Energy Private Limited vs. State of Gujarat**[3]and the judgment of the Hon'ble High Court of Madras in **Lenovo (India) Pvt. Ltd., vs. Joint Commissioner of GST (Appeals-1), Chennai and Ors.**, [4] , would contend that the refund application was maintainable, on the ground that Section 54 of the GST Act, would not be applicable as this was payment of amounts under a mistake of law and in relation to a tax which was not permissible. Consequently, refund of tax cannot be denied on the ground of limitation under Section 54 of the GST Act.

[3] 2020 SCC Online Guj 3601 = (2021) 55 GSTL 390 [4] (2024) 121 GSTR 268 = 2023 SCC OnLine Mad 7810

8. Sri P.S.P. Suresh Kumar, learned Standing Counsel appearing for respondents 3 to 6 would contend that the refund application was not maintainable on the ground that Section 54 of the GST Act has stipulated a period of limitation within which such an application has to be made and no further application can be made after the period of limitation. Apart from this, the learned Standing Counsel would also contend that the judgment of the Hon'ble Supreme Court in **Union of India and Anr. vs. M/s. Mohit Minerals**[5], which was delivered on 19.05.2022, would operate prospectively, and the payment of tax prior to this date, by the petitioner, would not be affected by the subsequent judgment of the Hon'ble Supreme Court of India. He relies upon the

judgment of the Hon'ble Supreme Court of India in the case of **Baburam vs. C.C. Jacob and Ors.,**[6].

9. There is no dispute that, by virtue of the judgment of the Hon'ble Supreme Court, GST cannot be levied, on ocean freight charges, in CIF contracts, in the course of import of goods into India. The only controversy left before us is whether an application for refund, on 30.03.2023 is permissible.

10. Sri P.S.P. Suresh Kumar, learned Standing Counsel for the respondents would contend that the judgment of the Hon'ble Supreme Court in **Union of India and Anr. vs. M/s. Mohit Minerals**, would operate

[5] 61 GSTL 257 [6] (1999) 3 SCC 362

prospectively from 19.05.2022, and relied upon the judgment of the Hon'ble Supreme Court in **Baburam vs. C.C. Jacob and Ors.**

11. It is settled law that any judgment, declaring the law, would operate both retrospectively and prospectively as the Hon'ble Supreme Court is only declaring the law and is not creating any fresh law which would operate prospectively. In fact, the Hon'ble Supreme Court, with an intention to avoid unnecessary dislocation of the state of affairs, had innovated the concept of prospective overruling, whereby the Hon'ble Supreme Court, in a given case, could declare that the said judgment would operate prospectively and not retrospectively. However, this situation would arise only when the Hon'ble

Supreme Court itself declares that the said judgment would be prospective in operation. There is no such declaration in the judgment of the Hon'ble Supreme Court in **Union of India and Anr. vs. M/s. Mohit Minerals**[7]**.**

12. In fact, our understanding of the law, as stated above, is fortified by paragraph 5 of the judgment, of the Hon'ble Supreme Court, in **Baburam vs. C.C. Jacob and Ors.,**[8] relied upon by the learned Standing counsel, Paragraph -5 is set out below:

> **"5.** The prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable

[7] 61 GSTL 257 [8] (1999) 3 SCC 362

> litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in *Sabharwal case* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] we are of the opinion that

the Tribunal was in error in applying this decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995.‖

13. The second ground, raised by Sri P.S.P. Suresh Kumar, is that Section 54 of the CGST Act, which is extracted below, stipulates a limitation of 2 years and as such applications filed beyond this period are not maintainable.

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 specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 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 unutilized input tax credit at the end of any tax period:

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 of 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 shall be allowed, if the supplier of goods or services or both avails of draw back in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

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 subsection (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—

(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 unutilized 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.

[(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]76 (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 there under 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 sub-section, 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 sub-section (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 unutilized 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 dispatch 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 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;

(f) in the case where tax is paid provisionally under this Act or the rules made there under, 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.

14. The Hon'ble High Court of Gujarat had an occasion to consider a similar question, of whether an application for refund could be made, beyond the period specified under Section 54 of the CGST Act, in **Comsol Energy Private Limited vs. State of Gujarat.** Another similarity between the case before the Hon'ble High Court of Gujarat and the present case is that both arise out of the invalidation of Notification Nos.8 and 10/2017, dated

28.06.2017. In the case before the Hon'ble High Court of Gujarat, applications for refund of tax, paid on ocean freight, after the Hon'ble High Court of Gujarat had struck down Notification Nos.8 & 10/2017. In this regard, the applicability of the period of limitation, set out under Section 54, came to be considered.

The Hon'ble High Court of Gujarat, after considering the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh and Anr., vs. Bhailal Bhai and Ors.**,[1] had held in the following manner.

> **7.** Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law, which is as under:
>
> *"Section 17(1) of the Limitation Act, 1963*
>
> *(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,- (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
>
> *(b) ****
>
> *(c) the suit or application is for relief from the consequences of a mistake; or*
>
> *(d) ***"*

[1] AIR 1964 SC 1006

8. This Court, in the case of *Binani Cement Ltd.* v. *Union of India*, (2013) 288 ELT 193 (Guj), held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally. The period of limitation prescribed under the Limitation Act would apply. The relevant abstract of the decision at paragraphs nos.
23 and 25 are as under:

—xxxxxx…….‖

11. The issue is squarely covered by the decision of this Court in the case of *Gokul Agro Resources Ltd.* v. *Union of India* (Special Civil Application No. 1758 of 2020, decided on 26.02.2020), wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks. The relevant paragraph of the finding of this Hon'ble Court is as under: *"6 We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of* Mohit Minerals *(supra).*

The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order."

15. In **State of Madhya Pradesh and Anr., vs. Bhailal Bhai and Ors.,** the Hon'ble Supreme Court was considering whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could direct the refund of amounts, which had been paid towards a tax, which has subsequently been declared invalid. The Hon'ble Supreme Court held that the High Courts could, in exercise of such jurisdiction, and for enforcement of fundamental rights and statutory rights, give directions for repayment of money realized by the Government without authority of law.

16. The view of the Hon'ble High Court of Gujarat appears to be that any collection of tax would have to meet the requirements of Article 265 of the Constitution of India, which stipulates that no tax can be collected without authority of law. Where the levy of tax itself is found to be invalid or based upon an enactment or charging provision, which is subsequently found to be invalid or violative of the Constitution of India, any payment made in discharge of such a liability, cannot be treated as an exaction of a tax at all. In such circumstances, payment of such an invalid tax would not be collection of tax and can be treated only as payment made by the dealer or a registered person, under a mistake of law. Once the payment of money is not treated as payment of tax, the question

of applying any period of limitation, set out in any provision of the Act, for refund of money cannot be applied. We are in respectful agreement with this proposition of law.

17. The Hon'ble High Court of Madras, in **Lenovo (India) Pvt. Ltd., vs. Joint Commissioner of GST (Appeals-1), Chennai and Ors.**, considered another aspect of this issue in terms of the language of Section 54 (1) of the CGST Act. The Hon'ble High Court of Madras, after considering the language in Section 54(1) of the CGST Act had observed as follows:

> 15.7 Thus, a reading of the section 54(1) of the CGST Act would make it clear that the assessee can make the application within two years. The terms used in said section —may make application before two years from the relevant date in such form and manner as may be prescribed‖, which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time-limit fixed under section 54(1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

18. We would, with respect, leave this view open, for consideration, in a more appropriate case.

19. In the circumstances, the application for refund, cannot be treated to be beyond time and would have to be considered in the light of the judgment of the Hon'ble Supreme Court in the case of **Union of India and Anr. vs. M/s. Mohit Minerals**[10]**.**

20. Accordingly, these writ petitions are allowed setting aside the orders of rejection as well as the common appeal order of the appellate authority, confirming the order of rejection by the original authority with a further direction to the original authority, viz., the 6th respondent-Assistant Commissioner of Tax, to reconsider the application of the petitioner, dated 30.03.2023, for refund of tax without going into the question of whether the said application is within time or not. The 6th respondent shall consider and pass orders, on the application of the petitioner, dated 30.03.2023, within a period of four weeks from the date of receipt of this order. There shall be no order as to costs.

[10] 61 GSTL 257

As a sequel, pending miscellaneous applications, if any shall stand closed.

_____

R. RAGHUNANDAN RAO, J

_____

SUMATHI JAGADAM, J

Js.

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO
AND

THE HON'BLE SMT. JUSTICE SUMATHI JAGADAM

W.P.No: 17220, 17224, 17226, 17229 & 17232 of 2024

(per Hon'ble Sri Justice R Raghunandan Rao)

_____ August, 2025

Js