

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5010 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

**PEE GEE FABRICS PRIVATE LIMITED****Versus****UNION OF INDIA****Appearance:****HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1,2****MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1****MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 3****NOTICE SERVED for the Respondent(s) No. 2****CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 15/09/2023**

**CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. H.J. Trivedi for the petitioners, learned advocate Mr. Harsheel D. Shukla for respondent no.1 and learned advocate Mr. Nikunt Raval for respondent nos.2 and 3.

2. Learned advocate Mr. H.J. Trivedi has tendered a draft amendment. The same is allowed in terms of the draft. To be carried out forthwith.

3. By the draft amendment, learned advocate has sought to replace Annexure-G with order dated 12.09.2019 whereby the refund application of the petitioners is rejected.

4. Rule returnable forthwith. Learned advocate Mr. Harsheel D. Shukla waives service of

notice of rule on behalf of respondent no.1 and learned advocate Mr. Nikunt Raval waives service of notice of rule on behalf of respondent nos.2 and 3.

5.By this petition under Article 226 of the Constitution of India, the petitioners have challenged order dated 29.09.2020 issued on 21.10.2020 passed by the Joint Commissioner, (Appeals), Ahmedabad confirming the order dated 12.09.2019 passed by the Deputy Commissioner, Central GST, rejecting the refund application dated 08.08.2019 filed by the petitioner no.1 in Form GST RFD-01A file bearing ARN No. AA240819017945S.

6.The petitioner no.1-Company is registered as manufacturing services in textile division under the Central Goods and Service Tax Act, 2017 (For short "the GST Act") having Registration No. 24AAACP8774BIZI. The

petitioner Company is engaged in the business of textile manufacturing of fabrics i.e. from raw yarn and trading activity of fabrics.

7.The petitioner company is liable to pay GST at the rate of 5% on the sale of fabrics whereas raw materials used for manufacturing of fabrics i.e. yarn, colour and chemical, stores and consumable, Power and Fuel are chargeable at higher rate ranging from 12% to 28% under the GST Act.

8.Accordingly, the petitioner no.1 Company is eligible to avail refund of Input Tax Credit (hereinafter referred to as 'ITC') due to inverted duty tax structure as per section 54(3)(ii) of the GST Act.

9.As per the Government Notification No 5/2017, the petitioner company was not

entitled to claim refund of unutilised Input Tax Credit on woven fabrics as well as knitted fabrics.

10. It is the case of the petitioners that restriction imposed by Notification No 5/2017 was removed by another Notification 20/2018 dated 26.07.2018. Accordingly, the petitioner company was eligible to claim refund of accumulated ITC under Inverted Refund Structure from August 2018 onwards with condition to comply with the Notification 20/2018 as well as clarification for calculating the lapse of credit as provided in Circular No.56/2018 dated 24.08.2018.

11. The petitioner company filed its return under the GST Act regularly for the Financial Year 2017-2018. The petitioner company came to know about claiming wrong credit on capital goods for the Financial Year 2017 as

it had already claimed depreciation on the GST amount which was charged in the invoice while buying such capital goods. The petitioners therefore, were required to reverse the credit claimed on ITC of such capital goods. The bifurcation of such ITC which requires reversal is as under:

Particulars	IGST	CGST	SGST	Total	Remarks
Credit Reversed in August 18 GSTR-3B	9,94,811/-	8,689/-	8,689/-	10,12,189/-	As mentioned in 3B for August 2018
CAPEX Credit for the month of July 2017	9,37,930/-			9,37,930/-	The said credit was for imported looms which the petitioner no.1-company had opted to capitalise and accordingly reversed in 3B for August 2018.
CAPEX Credit for the month of August 2017	56,880/-			56,880/-	The said credit was for Machine which for which the petitioner no.1-Company opted not to avail the credit

Credit for Service of Telephone bills for the month of August 2018		8,689/-	8,689/-	17,378/-	The petitioner no.1- Company had reversed the credit of Services (not goods) hence does not affect the refund amount as the petitioner no.1- Company have claimed refund for goods only
Total	9,94,810/-	8,689/-	8,689/-	10,12,188/-	

12. It is the case of the petitioners that as per the Rules 42 and 43 of the CGST Rules 2017, Form DRC-03 can be used for reversal of ITC. However, due to non-availability of DRC-03 on GST Portal, the petitioner Company had reversed the ITC in Form GSTR-3B for the month of August 2018. The petitioner Company also claimed credit in respect of supplies of goods of Rs. 56,01,017/- under the inverted duty tax structure and Rs. 1,14,689/-

pertaining to supplies of services, for which the petitioner Company was not entitled to credit under the inverted duty tax structure. The summary of ITC as per GSTR-3B for the month of August 2018 is as under:

Particulars	Amount
ITC available for the month of Aug 2018	57,68,728/-
Less: ITC reversed for FY 2017-18	10,12,188/-
Net ITC available	47,56,539/-
Less: Liability for the month of Aug 2018	(32,02,738/-)
Net ITC available for refund as per portal configuration	15,53,801/-

13. The petitioners have become eligible to claim refund of ITC from August 2018 as per the Notification No. 20/2018 and Circular No. 56/2018 as per the calculation to be made as prescribed under Rule 89 of the CGST Rules, 2017. The petitioner company therefore, was eligible for refund of Rs.22,78,798/- as under:



Sr. No.	Particulars	Amount
1	Turnover for inverted duty tax structure	60,700,548
2	Net ITC (Total ITC Less ITC availed on Input Services) Inverted duty tax structure	5,608,070 (However this figure has been auto captured as Rs.47,56,539/-)
3	Adjusted total turnover	64,061,743
4	Liability on Inverted tax duty tax structure	3,035,027

14. However, in view of reversal of the wrongly claimed credit on capital goods, the amount of the refund claimed by the petitioners was proportionately reduced by Rs. 8,06,852/- in view of the calculation made by the GST Portal.

15. Petitioner no.1 company therefore, by e-mail dated 14.06.2019 raised a query before the CBIC Mitra Helpdesk which was finally resolved by e-mail dated 19.06.2020 wherein the petitioner no.1 Company was asked to file the refund under "any other" category instead of "refund of unutilized ITC on account of

accumulation due to inverted tax structure" in FORM GST RFD-01A. It was also informed to the petitioner company that second application for refund should relate to the same tax period in which such reversal has been made.

16. The petitioner company thereafter filed second refund application in FORM GST RFD-01A seeking refund on account of ITC accumulated due to Inverted Tax Structure and acknowledgment was generated on 21.06.2019. However due to the fact that the petitioner no.1 Company had reversed the credit on capital goods, which they had wrongly claimed earlier, the amount of refund got reduced in GSTR-3B and in FORM GST RFD-01A, as FORM GST RFD-01A is automated and captures figures directly from other Forms filed by the petitioners on GST portal. Accordingly, the petitioner Company was allowed to file refund

amounting to Rs.14,71,946/-. Therefore, petitioner company relying on clarification provided by circular no. 94/2019 dated 28.03.2019 claimed the balance amount of refund of Rs. 8,06,852/-i.e. [Rs. 22,78,798/- (-) Rs. 14,71,946/-) under the head "any other Specify" and second refund application for the Month of August 2018 was filed on 08.08.2019.

17. The petitioner company received refund of Rs. 14,71,946/- as per the refund application filed on 21.06.2019 but however while processing refund application filed on 08.08.2019 under the head " Any Other head (Please Specify)", the respondent authority issued a show cause notice dated 03.09.2019 proposing to disallow the refund of Rs. 8,06,852/- the on following grounds:

"(i) As per circular no. 94/13/2019-GST dated 28.03.2019, there is no provision

that second refund application can be filled for the same particular month Le. August 2018 under which appellant filed refund claim under the category "Any Other Specify" in inverted rate of structure;

(ii) For the refund application filled, calculation should be as per Rule 89(5):

(iii) The department has never asked to reverse the ITC on capital goods. The appellant had reversed the same on his own."

18. It is the case of the petitioner company that respondent no.3 Deputy Commissioner disregarded all the submissions made by the petitioner Company and rejected the refund application vide impugned order dated 12.09.2019 on the ground that it is impermissible under the law to split the refund claim for a particular month in two parts and further on the ground that refund of reversed ITC on capital goods cannot be claimed as refund.

19. Being aggrieved, the petitioners

preferred an appeal before the Joint Commissioner (Appeals) under section 107 of the GST Act who by impugned order dated 29.09.2020 rejected the appeal. The petitioners therefore, being aggrieved by the impugned orders passed by respondent nos.2 and 3 has preferred this petition.

20. Learned advocate Mr. Hiren J. Trivedi submitted that it is not in dispute that the petitioners are entitled to refund of ITC as per Notification No.20/2018 read with Circular No. 56/2018 under Rule 89 read with Rule 54(3)(ii) of the CGST Rules, 2017. It was submitted that the petitioners are entitled to get refund of ITC as per the inverted duty tax structure amounting to Rs.22,78,798/-. However same got proportionally reduced due to reversal of input tax credit on the capital goods which was wrongly claimed by the assessee for the

year 2017-2018 in the month of August 2018. It was therefore, submitted that the respondent authorities could not have rejected the refund application filed by the petitioners on 08.08.2019 on the ground that refund could not have been claimed by filing second application under the head "Any other" category as per Circular No.94/2019 dated 28.03.2019. It was submitted that the findings given by respondent nos. 2 and 3 that reversal of the ITC of Capex Goods in Form GSTR-3B is binding on the petitioners and, therefore, the same cannot be claimed as refund, is contrary to the facts by misreading Circular No.94/2019 dated 28.03.2019 read with Notification No.20/2018 and Circular No. 56/2018.

21. On the other hand, learned advocates for the respondents submitted that the petitioners cannot file second refund

application for the same month i.e. August, 2018 as the refund application filed by the petitioners on 21.06.2019 for Rs.14,71,946/- has already been sanctioned and refund is paid. It was submitted that the second refund application filed by the petitioners amounting to Rs.8,06,852/- dated 08.08.2019 for the month of August, 2018 in "any other" category was without any calculation and not as per Rule 89(5) of the CGST Rules, 2017 and therefore, the respondent authorities have rightly rejected the same.

22. It was submitted that the petitioner company had itself reversed ITC of capital goods in August 2018 amounting to Rs.10,12,189/- in GSTR-3B which was not reversed earlier and the same is binding upon the petitioner company and therefore, the refund for reversal of ITC on capital goods cannot now be claimed as refund again due to

inverted duty tax structure as per section 54 of the GST Act.

23. Having heard learned advocates for the respective parties, the facts are not in dispute as narrated hereinabove. Notification No.5/2017 dated 28.06.2017 provided that no refund of unutilised 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 goods which included woven fabrics manufactured by the petitioner company. However, by Notification No.20/2018 dated 26.07.2018 it was provided that Notification No.5/2017 would not be applicable to the items stated therein as under:

"In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) 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 of India in the Ministry of Finance (Department 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 (1), vide number G.S.R.677(E), dated the 28th June, 2017, namely:-

In the said notification, in the opening paragraph the following proviso shall be inserted, namely:-

"Provided that,

(i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and

(ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

24. Circular No. 56/2018 dated 24.08.2018 clarified that Notification No.20/2018 would be effective from first day of August 2018 to keep the accounting simple and refund of ITC

for the month of July i.e. on purchases made on or before 31.07.2018 would lapse. Hence, as per the working of Rule 89(5) of the CGST Rules, 2017 the petitioners were entitled to refund of Rs.22,78,798/- as per Notification No.20/2018.

25. However, the petitioners also reversed ITC of Rs.10,12,188/- with regard to wrongly claimed credit on capital goods in the month of August, 2018 in Form GSTR-3B. Accordingly, the refund claim of the petitioners was automatically reduced by Rs. 8,06,852/-. Accordingly, the petitioners were allowed to file refund application for Rs.14,71,946/- by GST Portal on 21.06.2019.

26. The respondent authorities thereafter issued the clarification by Circular No.94/2019 dated 28.03.2019, relevant extract of the circular is as under:

Sr. No.	Issues	Clarification
1	<p><i>Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No.20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No.56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible.</i></p> <p><i>What is the solution to this problem?</i></p>	<p><i>a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</i></p> <p><i>b) The application shall be accompanied by all statements, declarations, undertakings and other documents which statutorily are required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No.59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall</i></p>

		<p><i>request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GSTRFD-06 and the payment advice in FORM GST RFD-05.</i></p> <p><i>c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".</i></p>
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27. Relying upon the clarification as per the aforesaid circular, the petitioners filed second refund application dated 08.08.2019 claiming refund of Rs. 8,06,852/- which could not be applied by the petitioners on account of reversal of the wrongly claimed credit on capital goods in the month of August, 2018.

28. The respondent authorities however, failed to consider that the petitioners were

entitled to ITC as per inverted duty tax structure amounting to Rs.22,78,798/- as calculated under Rule 89 of the GST Rules. GST Portal did not allow the petitioners to submit the refund application for the said amount and restricted the same to Rs.14,71,946/ in view of reversal of the credit of Rs.10,12,188/- on account of wrongly claimed credit on capital goods.

29. The petitioners therefore, had no other option but to file second application for claiming balance amount of refund of Rs. 8,06,852/-. The respondent authorities have failed to consider that the petitioners have not filed second refund application for the same month but it has filed application for claiming the balance amount of refund which was not granted though the petitioners were eligible for the same. The petitioners had therefore, no other option but to file

refund application in view of Circular No.94/2019 dated 28.03.2019 under the head "any other".

30. The reasons given by the respondent authorities that refund application filed is not as per the calculation made in Rule 89(5) of the CGST Rules is also not correct since as per the calculation made under Rule 89(5) which provides for maximum refund amount, the petitioners are entitled to refund of Rs.22,78,798/- on the total turnover of inverted duty tax structure which is not in dispute and accordingly, the petitioners were entitled to refund of Rs. 8,06,852/- which the petitioners could not claim in view of the fact that GST Portal did not permit the petitioners to file refund application in view of the reversal of the wrongly claimed credit on capital goods.

31. The respondent authorities have therefore, adopted a pedantic approach by rejecting the refund application filed by the petitioners for balance amount of refund of Rs. 8,06,852/-.

32. It is also pertinent to note that the respondent authorities cannot dispute the claim of the petitioner's eligibility of refund of Rs.22,78,798/- for the month of August 2018 calculated as per Notification No.20/2018 read with Rule 89 of the CGST Rules, 2017. It is also not in dispute that the said claim of the petitioners was restricted to Rs.14,71,946/- by GST Portal in view of reversal of wrongly claimed credit of Rs.10,12,188/- on capital goods by the petitioner company. Therefore, respondent authorities ought to have taken into consideration that the petitioners were eligible for balance amount of refund of

Rs. 8,06,852/- which could not have been denied on hyper-technical ground as stated in the impugned orders. Reasoning given by respondent no.3 for rejecting the legitimate claim of the petitioner company that reversal of ITC on capital goods in Form GSTR-3B amounting to Rs.10,12,189/- is binding on the petitioner company and therefore, the petitioner company is not eligible for claim of refund as per Circular No.94/2019 dated 28.03.2019 cannot be accepted. Circular No.94/2019 permitted a one time measure for availing refund of ITC on account of inverted duty tax structure as per Notification No.20/2018 read with Circular No.56/2018 as the assesseees were not able to claim refund of the accumulated ITC to the extent to which they were eligible. Therefore, it was clarified by Circular No. 94/2019 that when the assessee was not eligible to claim the refund then ITC is required to be claimed



under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A for the same tax period in which said reversal has been made. The petitioners taking benefit of such circular preferred Second refund application dated 08.08.2019 for balance amount of ITC on account of accumulated inverted duty tax structure amounting to Rs. 8,06,852/-. Thus the respondent authorities have by adopting such a pedantic approach could not have rejected the legitimate claim of the petitioner company for balance amount of refund claim.

33. In view of the forgoing reasons, the petition succeeds and is accordingly allowed. The impugned order dated 12.09.2019 passed by respondent no.3 and confirmed by respondent no.2 vide order dated 29.09.2020 are hereby

quashed and set aside. The respondent authorities are directed to sanction the refund of Rs. 8,06,852/- as per the refund application filed by the petitioners on 08.08.2019 within a period of six weeks from the date of receipt of a copy of this order along with applicable rate of interest in accordance with law.

34. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

**(BIREN VAISHNAV, J)**

**(BHARGAV D. KARIA, J)**

RAGHUNATH R NAIR