



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 2932/2023

Shree Arihant Oil and General Mills, E-299, Agro Food Park,
Udyog Vihar, Sri Ganganagar (Raj.) through its Partner Harsh
Kumar Jain S/o Shri Sushil Kumar Jain, Aged About 40 Years.

-----Petitioner

Versus

1. Union Of India, through its Secretary, Department Of
Revenue, Ministry of Finance, North Block, New Delhi.
2. The Joint Commissioner, State Tax Circle C, Sri
Ganganagar, Tulsi Bhawan, UIT Road, Sri Ganganagar
(Raj.).
3. Goods and Service Tax Council, through its Secretary, 5th
Floor, Tower II, Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi - 110001.

-----Respondents

For Petitioner(s)	:	Mr. Sanjeev Johari, Sr. Counsel assisted by Mr. Shubhankar Johari
For Respondent(s)	:	Mr. Mahaveer Bishnoi, AAG Mr. Rajat Arora

**HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MRS. JUSTICE SANGEETA SHARMA**

Order

REPORTABLE

08/09/2025

Per Hon'ble Dinesh Mehta, J. (Oral)

1. By way of the writ petition in hands, the petitioner has
challenged the action of the respondents who have not decided its
application for refund of the tax paid under State Goods and
Service Tax (hereinafter referred to as 'the SGST'), on raw
materials such as Mustard Oil etc, purchased upto 18.07.2022.



2. The petitioner-firm is engaged in manufacture of edible oil purchased mustard oil etc., falling under HSN Code 1514 on payment of applicable GST.

3. A Notification No. 09/2022-Central Tax (Rate) dated 13th July, 2022 was issued providing that accumulated Input Tax Credit shall not be allowed in relation to various items including HSN Entry No. 1514 which was made enforceable from prospective date i.e. 18.07.2022.

4. On the ground that its products fall into the category of inverted duty structure, the petitioner has filed application(s) for refund of the Input Tax Credit as per section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act of 2017') for the period(s) prior to 18.07.2022.

5. Mr. Sanjeev Johari, learned Senior Counsel appearing for the petitioner submitted that since the notification dated 13th July, 2022 was brought into effect from 18.07.2022, all the assesseees including the petitioner were entitled for claiming refund of Input Tax Credit on the goods purchased upto 18.07.2022 and yet, the respondents have not decided petitioner's applications for claim of refund, which were filed on 04.01.2023.

6. He argued that indisputably, the limitation for filing the application for refund is two years and, hence, any application filed after 18.07.2022 subject to outer limit provided in section 54 of the Act of 2017 deserves to be allowed, subject ofcourse on fulfillment of the requisite conditions or verification.

7. Learned Senior Counsel further submitted that the respondents have been sitting tight over the matter and they have neither accepted the petitioner's application for refund nor have





they rejected the same, perhaps in light of the Circular No. 181/13/2022-GST dated 10.11.2022, which Circular itself is illegal, as held by Andhra Pradesh High Court.

8. Mr. Rajat Arora, learned counsel appearing for the Central Goods and Service Tax Department having filed the reply, submitted that by virtue of clarificatory Circular dated 10.11.2022 issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'the CBITC'), the petitioner is not entitled for the refund as claimed.

9. Mr. Mahaveer Bishnoi, learned Additional Advocate General appearing for the State also adopted the argument advanced by Mr. Rajat Arora.

10. Heard learned counsel for the parties.

11. Section 5(3) of the Act of 2017 provides for a situation where the Input Tax Credit available in the electronic cash ledger of a registered person can be refunded, if the rate of tax on the final product is lower than the rate of tax payable on the inputs used for manufacture of such final product. This system is popularly known as "inverted duty structure".

12. It is not in dispute that by way of Notification dated 13.07.2022, the goods purchased by the petitioner were placed in the negative list for claiming Input Tax Credit on account of inverted duty structure and the said notification came into force from 18.07.2022.

13. Since, the notification has been made enforceable on 18.07.2022, the manufacturers including the petitioner cannot be treated disentitled from claiming refund of the Input Tax Credit of the tax, which they have paid up to 18.07.2022.





14. It is only on account of the Circular dated 10.11.2022, the respondents have taken a stance that the petitioner can claim refund only if the application had been filed prior to 18.07.2022. It will not be out of place to reproduce the relevant part of the Circular dated 10.11.2022 issued by the CBITC, which reads as under:-



	Issue	Clarification
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 sub-section (3) of section 54 of the CGST Actx, 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 supplied 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. 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 <u>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.</u>



15. If above clarification issued by the CBITC is taken into consideration, it is apparent that it restricts the right of claiming refund for the applications filed up to 18.07.2022, though the Notification dated 13.07.2022 does not contain such stipulation. That apart, when the limitation for claiming refund under section 54 of the Act of 2017 is 2 years, an assessee can claim refund at least up to such period. Clarification which has the effect that the assessees shall be granted refund only if the application has been filed prior to 18.07.2022 is contrary to the basic Notification dated 13.07.2022 (which does not provide such embargo) so also section 54 of the Act of 2017.

16. If the impugned clarification is tested on the anvil of reasonableness, it falls foul to Article 14 of the Constitution of India, inasmuch as the right to claim refund of Input Tax Credit of the input tax on inverted duty structure has been denied with effect from 18.07.2022 only. No assessee can be expected to file claim of refund of the tax for the period paid upto 18.07.2022 on 18.07.2022 itself, more particularly when he can apply for refund of tax within the permissible time limit of two years. Hence, curtailment of an assessee's right to claim refund upto 18.07.2022 - the date of enforceability of the notification is illegal and contrary to section 54 of the Act of 2017.

17. Furthermore, the restriction of refund claim qua the application filed upto 18.07.2022 creates two classes – one, the application for refund (for period 18.07.2022) filed up to 18.07.2022 and those filed after 18.07.2022. Denial of an assessee's right in relation to the application filed after 18.07.2022 amounts to apparent discrimination. Such



classification is without any rationale and intelligible criteria. According to us, the assessee's right to claim refund cannot be restricted in the manner provided in the Circular impugned, as it would take away substantial statutory right of the assessee.

18. Input Tax Credit is an indefeasible right of an assessee, which accrues to it on the date when the goods were bought. A gainful reference of judgment of Hon'ble the Supreme Court in case of **Collector of Central Excise, Pune & Ors. vs. Dai Ichi Karkaria Ltd. & Ors.**, reported in **1999 (112) ELT 353(S.C.) : (1999) 7 SCC 448** can be made. Said goods have been placed in the negative list with effect from 18.07.2022. As such, the right which has accrued to the petitioner up to the date, when the notification came into force cannot be denied. The respondents' stand and the clarification reproduced in Para No. 14 above impinges upon petitioner's fundamental rights guaranteed under Article 19(1)(g) and 300A of the Constitution of India.

19. Somewhat similar view has been taken by the Gujarat High Court in the case of **Patanjali Foods Ltd. vs. Union of India & Ors. : R/Special Civil Application No. 17298/2024** decided on 12.02.2025 so also by Andhra Pradesh High Court in the cases of **Priyanka Refineries Pvt. Ltd. vs. Deputy Commissioner ST & Ors.** and **Gemini Edibles and Fats India Ltd. vs. Assistant Commissioner of Central Taxes and Ors.** reported in **(2025) 143 GSTR 636 : 2025 SCC OnLine AP 1435**. It may be noted that Special Leave Petition thereagainst has been rejected by Hon'ble the Supreme Court vide judgment dated 09.05.2025 reported in **(2025) 143 GSTR 644 : 2025 SCC OnLine SC 1580**.



20. The writ petition is, therefore, allowed.

21. The Point No. 2 of the Circular No. 181/13/2022-GST dated 10.11.2022 issued by the CBITC is declared illegal and arbitrary being violative of Article 14 of the Constitution of India and also contrary to the purport and import of the Notification dated 13.07.2022. The same is, therefore, quashed to the extent of confining the refund of Input Tax to the application(s) filed upto 18.07.2022.

22. The respondents are directed to consider and decide petitioner's application(s) dated 04.01.2023 (Annexure-P/2 to Annexure-P/4) for refund in accordance with law, however, within a period of three months from today. While deciding the applications, the respondents shall not rely upon the part of the Circular dated 10.11.2022, which has been quashed.

(SANGEETA SHARMA),J

(DINESH MEHTA),J

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