IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2583 OF 2025

CHEC-TPL Line 4 Joint Venture
C/o TATA Projects Limited,
3rd floor, Transocean House,
Lake Boulevard Road, Hiranandani
Business Park, Powai, Mumbai-400076. Petitioner

versus

1. Union of India through
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110001.

2. The Joint Commissioner,
Central Tax (Raigad Appeals),
5th floor, CGO Complex, CBD Belapur,
Navi Mumbai-400614.

3. The Assistant Commissioner of
CGT & C.Ex., 16th floor, Satra Plaza,
Palm Beach Road, Sector-19D, Vashi,
Navi Mumbai-400 073.

4. The Commissioner of CGST & C.Ex,
16th floor, Satra Plaza,
Palm Beach Road, Sector-19D, Vashi,
Navi Mumbai-400 073. Respondent

Mr.Prasad Paranjape with Mr.Kevin Gogri, Mrs.Dhruvi Shah i/by Lumiere Law Partners for Petitioner.

Mrs.Shehnaz V.Bharucha and Ms.Niyati Mankad with Ms.Priyanka Singh for Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 23rd April 2026

ORAL JUDGMENT – (Per : G.S.Kulkarni, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The Petitioner in this petition under Article 226 of the Constitution of India is aggrieved by the rejection of refund claims for the accumulated tax credit due to inverted tax structure concurrently by the Original Authority as also in appeal by the Appellate Authority. The substantive prayers as made in the petition are required to be noted, which read thus :

> "(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and quash and set aside the Order-in-Appeal No.SG/JC/GST/189-195/RGD/APP/ 23-24, dated 31.10.2023 (viz.Impugned Order 1) issued by the Respondent no.2;
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> (b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and quash and set aside the Order-in-Originals (i) ZK2703230279662 dated 16.0.2023, (ii) ZL2703230279895 dated 16.03.2023, (iii) ZK2703230280751 dated 16.03.2023, (iv) ZI2703230280517 dated 16.03.2023, (v) ZM2703230280028 dated 16.03.2023, (vi) ZG2703230280417 dated 16.03.2023 and (vii) ZM2703230280973 dated 16.03.2023, all issued by the Respondent no.3;
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> (c) this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondents to forthwith grant the refund of Rs.12,16,09,178/- as claimed by the Petitioner vide seven (7) separate applications for the period viz. (i) August 2018 to November 2018 (ii) December 2018 to February 2019 (iii) April 2019 to September 2019 (iv) November 2019 (v) December 2019 to March 2020 (vi) May 2020 and (vii) August 2020 to March 2021 along with interest."

3. Briefly the case of the Petitioner is to the following effect.

The Petitioner is an unincorporated joint venture between China Harbour Engineering Company (CHEC) and Tata Projects Limited (TPL). It is engaged in providing works contract primarily to its customer Mumbai

Metropolitan Region Development Authority (MMRDA) in relation to construction of metro rail works. It is not in dispute that the Petitioner had obtained Goods and Service Tax (GST) registration in the State of Maharashtra being Registration No.27AADAC6040JIZU. The Petitioner has contended that it discharges GST @ 12% on the services provided as per the rate prescribed in Notification No.11/2017-Central Tax (Rate) dated 28th June 2017. The Petitioner has contended that the Petitioner procures various inputs and input services that are taxed at higher GST rates primarily @ 18% and 28% and since the rates of services are higher than the GST rate applicable to the outward supply of works contract services, provided by the Petitioner, there is an accumulation of Input Tax Credit (ITC). Accordingly this made the Petitioner entitled for refund of accumulated ITC as per provisions of Section 54(3)(ii) of the Central Goods and Service Tax Act, 2017 (`CGST Act' for short). The Petitioner in such circumstances filed periodical refund claims in accordance with the requirements of Rules. We do not advert to the details of such refund claims, suffice to observe that the seven refund claims are, as set out in paragraph no.1 of the Order in Appeal, which are from the period from 1st November 2018 to 31st March 2021 and for different amounts.

4. The Petitioner has contended that earlier the Gujarat High Court in the case of **VKS Footsteps India (P) Ltd. Vs. Union of India**[1], had held that input service must also be considered under the structure of "net ITC for the purpose of

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1 2021(52)-GSTL-513 (SC)

computation of refund claim under Rule 89(5) of the Central Goods and Service Tax Rules (`CGST Rules' for short).

5. It needs to be noted that, according to the Petitioner, as permissible in law, such refund claims were filed under which the Petitioner claimed refund of Rs.12,47,92,403/- as per the details set out in the different refund applications. On such refund applications, the Petitioner was issued show cause notices dated 29th Jun3 2021 and 15th July 2021 in Form GST RFD-08 proposing to reject the refund applications dated 5th June 2021 and 8th June 2021. The show cause notices were responded by the Petitioner, *inter alia*, setting out the Petitioner was become entitled for refund, are set out under the law and rules applicable. Personal hearing was granted to the Petitioner, which ultimately culminated into rejection of the refund claims of the Petitioner by orders dated 30th July 2021 and 6th August 2021 in form GST RFD-06. However, the decision dated 24th July 2020 rendered by the Gujarat High Court in **VKC Footsteps India Pvt.Ltd Vs. Union of India (supra)**, which was assailed by the Union of India before the Supreme Court, resulted in the reversal of the decision of the Gujarat High Court in **Union of India Vs. VKC Footsteps India Pvt.Ltd**[2] wherein the Supreme Court held that Rule 89(5) is neither ultra vires and the scope of "net ITC" cannot be enlarged to include service in it.

6. On such backdrop, the Petitioner had resubmitted seven refund claims in form GST RFD-01 on the GST portal for the period from May-2018 to March-2021 as per the revised formula. On such resubmitted refund claims, the Petitioner

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2 2021(52)-GSTL-512 (SC)

was again issued seven show cause notices dated 28th February 2023 in form GST RFD-08 proposing to reject the refund claims. The show cause notices were responded by the Petitioner, *inter alia*, contending that the Petitioner is entitled to receive the refund. The Original Authority by an order dated 16th March 2023 issued seven refund rejection orders rejecting the Petitioner' refund claims in Form GST RFD-06. The Petitioner being aggrieved by the orders passed by the Original Authority dated 16th March 2023 rejecting the refund claim, on 2nd June 2023 filed appeals in form APL-01 before the Appellate Authority namely the Commissioner (Appeals). The Petitioner was heard on such appeals. It is the Petitioner's case that at the hearing of the appeals, the Petitioner placed reliance on the Notification No.14/2022 dated 5th July 2022 read with Circular No.181/13/2022-GST dated 10th November 2022 whereby clarification was issued to Notification No.14/2022 that the amended formula under sub-rule (5) of Rule 89 of CGST Rules 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 5th July 2022. The Petitioner contends that, however, without considering the implications of the notification and the clarification issued by Circular No.181/13/2022-GST, dated 10th November 2022, the Appellate Authority/Joint Commissioner (Appeals) passed the impugned order dated 31st October 2023 whereby all appeals filed by the Petitioner came to be rejected. It is in these circumstances that the present petition has been filed praying for the aforesaid reliefs as noted by us hereinabove.

7. We have heard Mr.Paranjape, learned counsel for the Petitioner and Mrs.Bharucha, learned counsel for the Respondents. On behalf of the Respondents, reply affidavit has already been filed.

8. Mr.Paranjape has two fold submissions. His first submission is that the impugned order passed by the Appellate Authority would be required to be set aside and the proceedings, inasmuch as the Appellate Authority has not taken into consideration the Notification No.14/2022 dated, dated 5th July 2022 read with Circular No.181/13/2022-GST, dated 10th November 2023 and more importantly nature of clarification which has been issued, which is directly relevant insofar as the Petitioner's claim for refund is concerned, which itself was filed on 5th June 2021 and 8th June 2021. He submitted that in fact the Appellate Authority was required to consider that the issue was no more *res integra* in view of the decision as rendered by the Gujarat High Court in **Ascent Meditech Limited Vs. Union of India**[3] whereby in similar circumstances the Court had set aside the orders passed by the authority while holding that Notification No.14/2022 was applicable retrospectively, considering that the amendment brought in to Rule 89(5) of the GST Rules was curative in nature and the same would be applicable retrospectively to the refund claims on the rectification applications filed within two years as per time prescribed under Section 54 of the GST Act. In reaching of such conclusion, Their Lordships had taken into consideration the observations made by the Supreme Court in Union of India Vs. VKC Footsteps India Pvt.Ltd (supra)

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3 2024(24)-Centax-405 (Guj)

wherein while upholding the validity of Rule 89(5) of the CGST Rules has held as follows :

> "142. The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down of interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilized ITC It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr.Natarajan and Mr.Sridharan by prescribing an order of utilization would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assessee, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same."

9. In pursuance of the aforesaid observations as made by the Supreme Court, the GST Council in its meeting held on 28th /29th June 2022 considered the agenda item 3(ii) with regard to amendment in formula prescribed in Rule 89(5) of the CGST Rules for calculation of the refund of unutilized input tax credit on account of inverted duty structure, which was to the following effect :

> "7.2 The Principal Commissioner, GST Policy Wing informed that the Hon'ble Supreme Court of India in case of UOI Vs. M/s.VKC Footsteps vide its order dated 13.09.2021 had upheld the vires of Rule 89(5) of the Central Good and Service Tax Rules, 2017 but had taken cognizance of the anomalies in the formula prescribed under Rule 89(5) of the CGST Rules, 2017. The Hon'ble Supreme Court hd upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court had noted that the formula prescribed in Rule 89(5) assumed that the tax payable on inverted rated supply of goods and services had been paid by utilizing input tax credit on inputs only and that there had been no utilization of the ITC on input services, such as assumption skewed the formula in favour of the revenue. The Apex Court had, therefore urged the GST Council to reconsider the formula.
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> 7.3 The issue was deliberated by the Law Committee and in the absence of any empirical data, Law Committee had recommended to consider utilization of ITC on account of inputs and input services for payment of output tax in the same ratio in which the ITC has been availed on inputs and input services during the said tax period and to use this deduction to revise the formula prescribed in Rule 89(5) as suggested by the Hon'ble Supreme Court. Accordingly, Law Committee recommended the following amendment in formula prescribed in Rule 89(5) :
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> Maximum Refund Amount = (Turnover of inverted rated supply of goods and services) x Net ITC + Adjusted total Turnover) − (tax payable on such

inverted rated supply of goods and services x (Net ITC+ITC availed on inputs and input services).

The Council agreed with the recommendation of the Law Committee."

10. In pursuance of the decision of the GST Council, the CBIC issued Notification (Notification No.14/2022, dated 5th July 2022) notifying CGST Tax (Amendment) Rules, 2022 whereby the following amendment was incorporated by Rule 8 to Rule 89 of the GST Rules, which is to the following effect :

"8. In the said rules, in rule 89,-
(a) …… …
(b) …… …
(c) …… …
(d) In sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets, words and letters "(tax payable on such inverted rated supply of goods and services x (Net ITC ~ ITC availed on inputs and input services). "shall be substituted;"

11. It appears that representations were received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the Notification No.14/2022, dated 5th July 2022 (supra) in the context of formula prescribed in sub-rule (5) of Rule 89 of CGST Rules. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the CBIC issued Circular No. 181/13/2022-GST, dated 10th November 2023 (supra) in exercise of powers conferred under Section 168(1) of the CGST Act thereby issuing following clarifications :

"S. No.	Issue	Clarification
1.	Whether the formula precribed 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 5-7-2022, will apply only to the refund applications filed	Vide Notification No.14/2022-Central Tax, dated 5-7-2022, amendment has been made(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 5-7-2022. Accoringly, it is clarified that the said amended

	on or after 5-7-2022, or whether the same will also apply in respect of the refund applications filed before 5-7-2022 and pending with the proper officer as on 5-7-2022 ?	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 5-7-2022. The refund applications filed before 5-7-022 will be dealt as per the formula as it existed before the amendment made vide Notification No.14/2022-Central Tax, dated 5-7-2022.
2.	Whether the retriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under Chapters 15 and 27 vide Notification No.9/2022-Central Tax (Rate), dated 13-7-2022, which has been made effective from 18-7-2022, would apply to the refund applications pending as on 18-7-2022 also or whether the same will apply only to the refund applications filed on or after 18-7-2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods ?	Vide Notification No.9/2022-Central Tax (Rate), dated 13-7-2022, under the power conferred by clause (ii) of the firt proviso to sub-section (3) of Section 54 of the CGST Act, 2017, certain good falling under Chaptrs 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accuulated 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 18-7-2022. The retriction imposed vide Notification No.9/2022-Central Tax (Rate), dated 13-7-2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under Chapters 15 and 27 woud apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund appliations filed on or after 18-7-2022, and would not apply to the refund applications filed before 18-7-2022.

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

12. The aforesaid position as brought about by the said Notification and said Circular was considered by the Gujarat High Court in **Ascent Meditech Limited Vs. Union of India** (supra) when the Court held that considering the facts of the case and comparing the amendment with the unamended Rule 89(5), it was clear that for the inverted rated supply of goods and service instead of "the adjusted total turn over" the words "ITC availed on inputs and input services" has been substituted. The effect of which was that the "adjusted total turn over" which is defined in sub clause (b) as per the sub-rule (4) has been given a go-by. Therefore,

numerator and denominator are made in harmony which was not the position prior to the amendment which had resulted anomaly in the formula. It was held that the amendment made by Notification No.14/2022 was clarificatory, as per the decision of GST Council issued pursuant to the direction issued by the Supreme Court in in **Union of India Vs. VKC Footsteps India Pvt.Ltd** (supra). It was, therefore, held that Circular No.181/2022, dated 10th November 2022 (supra) which provided clarification, was contrary to the purport of the amendment brought to the statute pursuant to the recommendation of GST Council as per the direction issued by the Supreme Court to remove the anomaly in the formula in Rule 89(5). Referring to the decision of Supreme Court in **Allied Motors (P) Ltd. Vs. CIT**[4], as also the decision of Supreme Court in **Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd**[5], whereby the Supreme Court had held that clarificatory notification would take effect retrospectively as such notifications merely clarify the position, and such notifications are issued to end disputes between the parties. It is in such context it was held that Notification No.14/2022, dated 5th July 2022 cannot be applied prospectively for the refund claim which were made within two years as prescribed under Section 54(1) of the CGST Act. The following observations as made by the Court in that regard are required to be noted, which read thus :

> "41. Having heard learned advocates for the respective parties and having considered the facts of the case and comparing the amendment with the unamended Rule 89(5), it is clear that for the inverted rated supply of goods and service instead of "the adjusted total turn over" the words "ITC availed on inputs and input services" has been substituted. Thus, the "adjusted total turn over" which is defined in subclause (b) as per the sub-rule (4) has been given a go-by.

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4 (1997)3-SCC-472

5 (1995)3-SCC-454

Therefore, numerator and denominator are made in harmony which was not there prior to the amendment which had resulted anomaly in the formula.

42. Thus, it is apparent that the amendment made by the Notification No. 14/2022 is clarificatory only as per the decision of the GST Council pursuant to the direction issued by the Hon'ble Apex Court.

43. Therefore, impugned Circular No. 181/2022 dated 10.01.2022 which provides the clarification is contrary to the purport of the amendment brought on statute pursuant to the recommendation of the GST Council as per the direction issued by the Hon'ble Apex Court to remove the anomaly in the formula in Rule 89(5).

44. Reliance placed by the petitioner on the decision in case of Allied Motors (P.) Ltd (supra) would be squarely applicable in the facts of the case wherein the Hon'ble Apex Court has held as under:

> "9. Looking to the curative nature of the amendment made by the Finance Act of 1987 it has been submitted before us that the proviso which is inserted by the amending Finance Act of 1987 should be given retrospective effect and be read as forming a part of Section 43B from its inception. This submission has taken support from decisions of a number of High Courts before whom this question came up for consideration. The High Courts of Calcutta, Gujarat, Karnataka, Orissa, Gauhati, Rajasthan, Andhara Pradesh, Patna and Kerala appear to have taken the view that the proviso must be given retrospective effect. Some of these High courts have held that "sum payable" under Section 43B(a) refers only to the sum payable in the same accounting year thus excluding sales tax payable in the next accounting year from the ambit of Section 43B(a). The Delhi High Court has taken a contrary view holding that the first proviso to Section 43B operates only prospectively. We will refer only to some of these judgments.
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> Xxxxx
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> 13. Therefore, in the well known words of Judge learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of R.B. Jodha Mal Kuthiala v. Commissioner of Income-tax, Punjab, jammu & Kashmir and Himachal Pradesh (82 ITR 570), this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to made the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.
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> 14. This view has been accepted by a number of High Court. In the case of Commissioner of Income-Tax v. Chandulal Venichand ([1994] 73 Taxman 349/209 ITR 7 (Gujarat)), the Gujarat High Court has held that he first proviso to section 43B is retrospective and sales-tax for the last quarter paid before the filing of the return for the assessment year is deductable. This decision deals with assessment year

> 1984-85. The Calcutta High Court in the case of Commissioner of Income-tax v. Sri Jagannath Steel Corporation ([1991] 191 ITR 676 (Calcutta)), has taken a similar view holding that the statutory liability for sales-tax actually discharge after the expiry of accounting year in compliance with the relevant stature is entitled to deduction under Section 43B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High Court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores v. union of India and Ors. ([1991] 54 Taxman 521/189 ITR 70 (Patna).), It was held that amendment inserting first proviso to be retrospective. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to section 43B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of statutory Interpretation, 4th Edn. Page 291, "It is well settled that if a statute curative or merely declaratory of the previous law retrospective operation is generally intended." In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

45. In case of Collector of Central Excise, Shillong v. Wood Craft Products Ltd. 1995 taxmann.com 361/77 ELT 23 (SC)/(1995) 3 SCC 454 , the Hon'ble Apex Court has held that a clarificatory notification would take effect retrospectively and such a notification merely clarifies the position. Clarificatory notifications have been issued to end the disputes between the parties. Therefore, Notification No. 14/2022 dated 05.07.2022 cannot be applied prospectively for the refund claim which were made within two years as prescribed under section 54(1) of the GST Act. It is not in dispute that the petitioner has filed refund claims within two years as stipulated in section 54(1) of the Act.

46. It is also not disputed by the respondent that the petitioner is entitled to the refund as per sub-section 3(ii) of section 54 of the Act being difference in the GST rates due to inverted rated structure and accordingly, the petitioner was granted refund though petitioner has filed refund applications pursuant to the deficiency memo issued repeatedly.

47. Considering the above provisions of the GST Act, the same would be applicable in the facts of the case irrespective of the notification issued by the CBIC pursuant to the decision taken by the GST council as per the direction issued by the Hon'ble Supreme Court. The petitioner cannot be denied the refund as per the provision of 54(3) of the Act only because the petitioner has been granted the refund prior to 05.07.2022 as it would create a discrimination resulting into inequality between the assesses who have been granted refund prior to 05.07.2022 and the assesses who have applied for refund after 05.07.2022. The impugned circular is therefore contrary to the provisions of the Act as it cannot be said that the refund applications filed after 05.07.2022 would only be entitled to the benefit of the amended Rule 89(5) of the Act. As per the provisions of section 54(1) read with section 54(3) of the Act if the assessee has made refund application within the prescribed period of two years, then the assessee would be entitled to the refund as per the amended formula which has been notified w.e.f. 05.07.2022. In the facts of the case the

> petitioner has made rectification applications for refund as per new amended formula within two years. Moreover, as held by this Court in the decisions in case of Shree Renuka Sugars Ltd (supra) and in case of Pee Gee Fabrics Ltd (supra), there is no embargo on preferring second refund application if the petitioner is entitled to the same within the period of two years.
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> 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.

13. Learned counsel for the Petitioner has also placed on record the order of the Supreme Court on the Special Leave Petition preferred by Union of India challenging the decision of Gujarat High Court in Ascent Meditech Limited (supra), which was dismissed by the Supreme Court by order dated 28th March 2025[6]. The Union of India thereafter preferred a Review Petition being Review Petition (C) D No.38626/2025 (Union of India and others Vs. Ascent Meditech Ltd and others) which also came to be dismissed by order dated 2nd December 2025[7].

14. Our attention is also drawn to the subsequent decision of Gujarat High Court in **Tirth Agro Technology Pvt.Ltd. Vs. Union of India**[8], where in following the decision in the case of Ascent Meditech Ltd. (supra), the Court allowed the said petition in similar terms by declaring the Petitioner to be entitled to the refund on similar grounds as held by the Court in Ascent Meditech Ltd. (supra). The decision in Tirth Agro Technology Pvt.Ltd. (supra) was assailed by the Union of

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6 2025(98)-GSTL-4 (SC)

7 2025(12)-TMI-642-SC

8 2025(27)-Centax-295 (Guj)

India before Supreme Court in **Union of India Vs. Tirth Agro Technology Pvt.Ltd**[9] which came to be dismissed in by an order dated 18th July 2025 in terms of the following order :

> "1. Delay condoned.
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> 2. It is not in dispute that the earlier judgment of the High Court in Special Civil Application No.18317 of 2023 decided on 18.10.2024 in the case of Ascent Meditech Ltd Vs Union of India and others, which has been relied upon by the High Court to grant relief to the respondents, was subjected to challenge before this Court in SLP(C) No.8134 of 2025 and the same was dismissed on 28.03.2025. The present petition was filed in June, 2025, yet factum of dismissal of the petition against the order relied upon by the High Court has not been mentioned.
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> 3. Considering the aforesaid factual matrix, we do not find it to be a fit case for interference. The Special Leave Petition is accordingly dismissed.
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> 4. Pending application(s), if any, stands disposed of."

15. Similar view was taken by Gujarat High Court in **Filatex India Ltd and another Vs. Union of India and others**[10].

16. In our opinion, certainly the clear position of law which was brought about by Notification No.14/2022, dated 5th July 2022 and as held by the decision of Gujarat High Court in Ascent Meditech Ltd Vs. Union of India (supra), which has attained finality, would certainly hold the field. We are in complete agreement with the contentions as urged by Mr.Paranjape that the findings which are recorded by the Appellate Authority, cannot be held to be valid in view of the clear interpretation as made to Notification No.14/2022 by which an amendment made by Rule 8 of the Amended Rules, 2022 to Rule 89(5) of CGST Rules, 2017, as noted hereinabove, necessarily was required to be applied even in the context of such applications which were made prior to 5th July 2022. The present refund

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9 2025(7)-TMI-1824 (SC)

10 2025(5)-TMI-256 (Guj)

applications were filed on 5th June 2022 and 8th June 2022. The impugned appellate order clearly shows that there was no application of mind to such legal issues including to the contentions which were raised on behalf of the Petitioner and more particularly when the impugned order was passed on 31st October 2023, when the legal position as laid down in Ascent Meditech Ltd. Vs.Union of India (supra) certainly was prevailing at the relevant point of time when the impugned order came to be passed. The said decision has subsequently has attained finality in view of the order of Supreme Court dismissing the Special Leave Petition assailing the decision of Gujarat High Court in Ascent Meditech Ltd. Vs.Union of India (supra). The following observations as made in the appellate order clearly indicate that such observations are clearly opposed to the view taken by the Supreme Court in Ascent Meditech Ltd. Vs.Union of India (supra) and Filatex India Ltd and another Vs. Union of India (supra), and more particularly as confirmed by the Supreme Court as noted hereinabove :

"DISCUSSION AND FINDINGS

6. Personal hearing in the matter was held on 25.10.2023; and Shri Pramod Kumar, AGM (Taxation) appeared on behalf of the appellant and reiterated the contents of their submissions made in their appeal. Further, during the time of hearing they have made the additional submissions of Boards circular, and has requested to set aside the impugned order.

DISCUSSIONS AND FINDINGS

7. I find that the refund denied was by the RSA on the pretext that the earlier refund claim by the appellant was governed by the previous rules which were in effect prior to the subject amendment Notification 14/2022 dated 05/07/2022. The RSA has held that the impugned Refund O-i-O was an appealable order and hence the same could have been appealed. However, subsequent to the Notification 14/2022 dated 05/07/2022, the appellant was seeking consequential relief, under different head ("any other category") of refund for the same period for which the impugned appealable Refund OIO has been already passed, the same cannot be considered again and hence liable for rejection. The details of the Orders are as follows :

Sl. No.	Order No and dt.	Period	Amount (Rs)	Already filed refund claim for/period
1.	ZK2703230279662 dt. 16.03. 2023	01.11.2018 to 30.11.2018	1,82,22,616/-	4,68,608/- 01.05.2018 – 30.06.2019
2.	ZL2703230279895 dt. 16.03. 2023	01.02.2019 to 28.02.2019	1,16,37,726/-	4,68,69,608/- 01.05.2018 – 30.06.2019
3.	ZK2703230280751 dt. 16.03. 2023	01.09.2019 to 30.09.2019	2,11,63,690/-	12,47,92,403/- 01.07.2019 – 31.3.2021
4.	ZM2703230280028 dt. 16.03. 2023	01.03.2020 to 31.03.2020	2,50,19,118/-	
5.	ZI2703230280517 dt. 16.03. 2023	1.11.2019 to 30.11.2019	75,37,722/-	12,47,92,403/- 01.07.2019 – 31.3.2021
6.	ZG2703230280417 dt. 16.03. 2023	01.05.2020 to 31.05.2020	46,91,282/-	12,47,92,403/- 01.07.2019 – 31.3.2021
7.	ZM2703230280973 dt. 16.03. 2023	01.03.2021 to 31.03.2021	3,33,37,024/-	12,47,92,403/- 01.07.2019 – 31.3.2021

8. In view of the above facts, I find the crux of the issue to be decided by me is, whether or not to allow the appeal filed by the appellant by considering retrospective effect to the clarification given to the Notification 14/2022 dated 05/07/2022."

17. In light of the above discussion, we are certain that for the reasons as set out in the appellate order, the refund applications could not have been rejected. In light of the above discussion and considering the effect which is brought about by Notification No.14/2022, dated 5th July 2022 and as indicated by the Gujarat High Court in Ascent Meditech Ltd. Vs. Union of India (supra), we are of the clear view that the Petitioner will be entitled to the refund as per Section 54(3) of the CGST Act being the difference in the GST rates, due to inverted rate structure. Accordingly the Petitioner would be required to be granted refund on the refund applications in question, and moreso considering the view taken by Gujarat High Court in Ascent Meditech Ltd Vs. Union of India (supra), which has been accepted by the Supreme Court. We are hence inclined to allow the petition in the following terms :

ORDER

(i) The impugned Orders-in-Original dated 16th March 2023 as also the impugned Appellate Order dated 31st October 2023 are quashed and set aside;

(ii) It is held that the Petitioner is entitled to refund as per provisions of sub-section 3(2) of Section 54 of CGST Act being the difference in the GST rates due to inverted rate structure;

(iii) Rule is made absolute in the aforesaid terms. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)