$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20th December, 2025
Pronounced on: 18th April, 2026
Uploaded on: 18th April, 2026

\+ **W.P.(C) 12512/2021**

M/S KANIKA EXPORTS .....Petitioner

Through: Mr. N.K. Sharma & Mr. Deepak Gautam, Advs.
Mr. Rakesh Kumar, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Aditya Singla SSC CBIC with Ms. Arya Suresh Nair, Adv.
Mr. Virender Pratap Singh Charak, Ms. Shubhra Parashar & Ms. Priya Shukla, Advs.

\+ **W.P.(C) 17538/2022**

M/S MALIK SEASONING AND SPICES PRIVATE LIMITED .....Petitioner

Through: Mr. Tarun Gulati, Sr. Adv. with Mr. Dinesh Parashar, Advs.
Mr. Rakesh Kumar, Adv.

versus

COMMISSIONER OF GOODS AND SERVICE TAX.....Respondent

Through: Mr. Aditya Singla SSC CBIC with Ms. Arya Suresh Nair, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode

2. The question that has arisen in these petitions is whether the Petitioners' refund applications were filed within the prescribed period of limitation or not. Although at first glance, the issue appears to be quite simple, it has been

rendered complex due to various interlinked and interconnected provisions, in the GST regime, including amendments introduced in the statute. Before examining the legal framework, it is necessary to set out the relevant facts.

Factual Background

Facts in W.P.(C) 12512/2021

3. The Petitioner is a partnership firm engaged in the business of readymade garments and holds a GST registration bearing GSTIN No. ***07AAKFK6680N1ZL***.

4. At the time of export of goods, it did not pay any tax and hence, the supplies were zero-rated supplies of goods, exported out of India. After the exports were effected, the Petitioner filed a refund application dated 29th March, 2020, claiming refund of Input Tax Credit *(hereinafter, 'ITC')* accumulated as on 31st March, 2018 amounting to Rs.21,88,802/-, for the period July, 2017 to March, 2018.

5. Pursuant thereto, a Show Cause Notice dated 22nd April, 2020 was issued by the Deputy Commissioner, Central Goods and Services Tax *(hereinafter, 'CGST')* to the Petitioner in respect of the refund application dated 29th March, 2020. *Vide* the said Show Cause Notice, the Petitioner was called upon to show cause as to why the refund claim should not be rejected. In response, the Petitioner filed a reply dated 30th April, 2020 and contested on various grounds.

6. The Deputy Commissioner, CGST, Delhi *vide* the Order-in-Original dated 14th May, 2020 *(hereinafter, 'OIO-1')*, rejected the refund claim of the Petitioner. Aggrieved by the said order, an appeal was preferred by the Petitioner before the Appellate Authority. *Vide* the Order-in-Appeal dated 14th

July, 2021 *(hereinafter, 'OIA-1')*, the Additional Commissioner CGST Appeals-II, Delhi rejected the appeal of the Petitioner and upheld OIO-1.

7. The grievance of the Petitioner is that both the Adjudicating Authority as also the Appellate Authority have not applied Section 54(3) of the Central Goods and Services Tax Act, 2017 *(hereinafter, 'CGST Act')*, which specifically deals with unutilised ITC, while considering the refund claim of the Petitioner. Hence, the present petition has been filed by the Petitioner assailing OIO-1 and OIA-1, as also seeking a direction to the GST Department to process Petitioner's refund claim of the accumulated ITC.

Reasoning by the Adjudicating Authority and the Appellate Authority

8. The Adjudicating Authority framed the following two issues in OIO-1:

(i) whether the refund claim was filed by the Petitioner before the appropriate jurisdictional authority or not;

(ii) whether the refund claim was filed by the Petitioner within time or not;

9. On the first issue, the Adjudicating Authority held that since the principal place of business of the Petitioner was at M-36, Greater Kailash-II, South Delhi-110048, it had filed the refund claim before the correct jurisdictional authority *i.e.,* Central Goods and Service Tax, Delhi South Commissionerate, Okhla Division. Accordingly, no infirmity was found on the issue of jurisdiction.

10. On the issue of limitation, the Adjudicating Authority took into consideration *Explanation (2)(a)* to Section 54 of the CGST Act, wherein the *relevant date* in case of goods exported out of India, is the *date of exports*. The Adjudicating Authority considered that in the present case, the exports

were effected under shipping bill bearing No. 9062122 dated 4th October, 2017, exported *vide* Export General Manifest *(hereinafter, 'E.G.M.')* dated 6th October, 2017 and shipping bill bearing No. 3533626 dated 16th March, 2018 exported *vide* E.G.M. dated 20th March, 2018. Proceeding on this basis, the Adjudicating Authority computed the limitation period of two years from the *relevant date* of 6th October, 2017 and 20th March, 2018 *i.e., date of exports* and rejected the refund claim of the Petitioner dated 29th March, 2020, to the tune of Rs.21,88,802/- , as being time-barred. The operative portion of the OIO-1 is set out below:

"***ORDER***

I hereby reject an amount of INR Rs. 21,88,802/- (Rs.21,88,802/-SGST) ***(Rs. Twenty One Lakh Eighty Eight Thousand Eight Hundred and Two only)*** *to* ***M/s Kanika Exports, M-36, Greater Kailash-II, South Delhi-110048****, having GSTIN:* ***07AAKFK6680N1ZL****, ARN No.* ***AA07073200412031*** *dated 29-03-2020 as refund of ITC on export of goods without payment of IGST under Section 16(3)(a) of the IGST Act, 2017 & Section 54(1) & (3) of the CGST Act, 2017 and rules made there under."*

11. *Vide* the OIA-1, the Appellate Authority concurred with the reasoning of the Adjudicating Authority and upheld the rejection of the refund claim of the Petitioner on the same ground of it being time-barred. The operative portion of OIA-1 reads as under:

"***ORDER***

In view of above discussions, analysis and statutory provisions cited in para 6, the appeal filed by the appellant does not hold merit and deserve to be rejected. *Hence, the appeal is hereby disposed off, in terms of Section 107(12) of CGST Act,2017 ."*

Facts in W.P.(C) 17538/2022

12. The Petitioner is engaged in the manufacturing and trading of spices and seasonings. It was granted a GST registration bearing GSTIN No. ***07AAECM6090R1ZR***, w.e.f. 1st July, 2017.

13. It filed an application for refund dated 28th March, 2021, for the period from July 2017 to March 2018, claiming a refund of Rs. 6,61,234/- under the category of ITC accumulated due to inverted duty structure. In addition, the Petitioner also filed another refund application dated 30th March, 2021, for the period from April, 2018 to March, 2019, claiming a refund of Rs. 17,46,013/- under the same category *i.e.,* ITC accumulated due to inverted duty structure. For ease of reference, the details of the refund applications are tabulated herein below:

Year	Refund Amount	Date of filing of Refund Application
July 2017-March 2018	6,61,234/-	28th March, 2021
April 2018-March 2019	17,46,013/-	30th March, 2021

14. Pursuant thereto, Show Cause Notices dated 17th May, 2021 and 20th May, 2021 were issued by the Adjudicating Authority in respect of the refund applications dated 28th March, 2021 and 30th March, 2021, respectively, calling upon the Petitioner to show cause as to why the said refund claims should not be rejected. However, no reply was filed by the Petitioner to the said notices.

15. Thereafter, the Adjudicating Authority *vide* Refund orders dated 30th

June, 2021 *(hereinafter, 'refund orders')* had rejected both the refund applications of the Petitioner. Aggrieved thereby, the Petitioner preferred two appeals before the Appellate Authority. Both the appeals were dismissed by a common Order-in-Appeal dated 26th August, 2022 passed by the Joint Commissioner, CGST Appeals-I, Delhi *(hereinafter, 'OIA-2')*

16. Aggrieved by the refund orders as also the OIA-2, the Petitioner has filed the present petition seeking, *inter alia*, setting aside of the said orders.

Reasoning by the Adjudicating Authority and the Appellate Authority

17. The Adjudicating Authority, *vide* the refund orders considered that the due date for claiming refund of *unutilised ITC* under clause (ii) of the *first proviso* to Section 54(3) of the CGST Act, would be the due date for furnishing of returns under Section 39 of the CGST Act, for the period in which such claim for refund arises. Notably, this is the *relevant date* as per the amended *Explanation 2(e)* to Section 54 of the CGST Act. Accordingly, it was observed that the restriction of two years for filing of the refund application applies from the *relevant date.*

18. Based on the said reasoning, it was also observed that the Petitioner failed to furnish a proper bifurcation of the refund claim to demonstrate whether any portion fell within the prescribed limitation period. Accordingly, the entire refund claim was treated as time-barred.

19. Further, the Adjudicating Authority also noted that pursuant to *Notification No. 35/2020-CT* dated 3rd April, 2020 and *Notification No.* 55/2020-CT dated 27th June, 2020, the time limit for compliances stood extended only up to 30th August, 2020. Since the refund applications were filed on 28th March, 2021 for the period July 2017 to March 2018, and on 30th

March, 2021 for the period April 2018 to March 2019, it remained beyond the extended limitation period and was therefore not admissible. The operative portion of the refund orders is set out below:

For the refund application dated 28th March, 2021:

> *"8. In view of the above, I find that the refund amount Rs. 6,61,234/- (Rupees Six Lakh Sixty One Thousand Two Hundred Thirty Four Only) [IGST Rs. 2,19,780/-, CGST Rs. 4,41,454/- and SGST Rs. 0/-] is eligible for rejection.* ***I hereby reject an amount of Rs. 6,61,234/- (Rupees Six Lakh Sixty One Thousand Two Hundred Thirty Four Only) [IGST Rs. 2,19,780/-, CGST Rs. 4,41,454/- and SGST Rs. 0/-] to M/s Malik Seasoning and Spices Private Limited (Legal Name: Malik Seasoning and Spices Private Limited), having GSTIN No. 07AAECM6090R1ZR, dated 01-07-2017, under sub-section (8) of Section 54 of the CGST Act, 2017****."*

For the refund application dated 30th March, 2021:

> *"8. In view of above, I find that refund amount Rs. 17,46,013/- (Rupees Seventeen Lakh Forty Six Thousand and Thirteen Only) (IGST Rs. 0/-, CGST Rs. 8,73,007/- and SGST Rs. 8,73,006/-) is eligible for rejection.* ***I hereby reject an amount of Rs. 17,46,013/- (Rupees Seventeen Lakh Forty Six Thousand and Thirteen Only) (IGST Rs. 0/-, CGST Rs. 8,73,007/-and SGST Rs. 8,73,006/-) to M/s Malik Seasoning and Spices Private Limited (Legal Name: Malik Seasoning and Spices Private Limited), having GSTIN No. 07AAECM6090RIZR Dt.01.07.2017 under sub-section (8) of Section 54 of the CGST Act, 2017****."*

20. The Appellate Authority, *vide* OIA-2 affirmed the findings of the Adjudicating Authority and upheld the rejection of the refund claims of the Petitioner on the ground that the same were time-barred. The relevant portion

of the OIA-2 is set out below:

> "*[...]**8.2.1** I find that relevant date for filing refund claim of accumulated ITC on account of inverted tax structure is defined in clause (e) to explanation (2) to Section 54[l4] of CGST Act, 2017 which reads as "(e) in the case of refund of unutilised input tax credit under subsection (3), the end of the financial year in which such claim for refund arises". The clause (e) to explanation (2) to Section 54(14) of CGST Act 2017 was amended by section 23 of CGST (Amendment) Act 2018 with effect from 1st February 2019 which now reads as "(e) in the case of refund of unutilised 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;*
>
> ***8.2.1.1 The amended section 54 of CGST Act 2017 does not take away or impairs vested rights under existing laws but only shortens the time period for filing refund claim. A registered person still had sufficient time period in respect of refund claim pertaining to period July 17. Every refund claim filed on or after 1 Feb 2019 will be governed by amended section 54 of CGST Act 2017 even if the refund claim pertains to period prior to 1 Feb 2019.***
>
> ***8.2.1.2 The refund claim for the period July 2017 to March 2018 filed on 28.03.2021 is time barred. Similarly the refund claim filed by the Appellant for the period April 2018 to March 2019 on 30.03.2021 is also time barred and further the Appellant did not non-submitted bifurcation of relevant details for the period if any, which is within prescribed time**.*
>
> ***XXX***
>
> ***9.** In view of the above, I pass the following order:*
>
> ***ORDER***

> ***The Appeals filed by the Appellant are rejected.*** *The refund rejection orders ZX0707210010520 dated 01.07.2021 amounting to Rs. 6,61,234/- for the period July 2017 to March 2018 and ZU0707210004731 dated 01.07.2021 for Rs. 17,46,013/- for the period April 2018 to March 2019 passed by the Adjudicating Authority are upheld."*

Submissions on behalf of the parties

Submissions on behalf of the Petitioner in W.P.(C) 12512/2021

21. The contention of the ld. counsel for the Petitioner is that, the refund claim of the Petitioner is not time-barred, as the case of the Petitioner would be covered under the *first proviso* to Section 54 (3) of the CGST Act. The further contention is that the *relevant date*, in the case of refund of unutilised ITC would be in terms of the unamended *Explanation 2(e)* to Section 54 of the CGST Act. The said provision construes the *relevant date* to be the end of the financial year in which such claim for refund arises.

22. In view thereof, the case of the Petitioner is that it was entitled to file for refund at the end of the financial year in which the claim for refund arises. The financial year in question is 2017-2018. In the present case, the end of the financial year would be on 31st March, 2018, and, therefore, the limitation for filing the same ended only on 31st March, 2020.

23. It is submitted that the refund application had been filed two days prior to the said date *i.e.,* on 29th March, 2020. However, OIO-1 as also OIA-1 have held that the refund application is belated and have rejected the same.

24. The submission of Mr. N.K. Sharma, ld. Counsel for the Petitioner is that the authorities have incorrectly taken into consideration *Explanation 2(a)* to Section 54 of the CGST Act. It is submitted that the period of limitation

ought to be calculated from the end of the financial year, in terms of Section 54(3) read with unamended *Explanation 2(e).*

25. It is further submitted by Mr. N.K. Sharma that the amendment to *Explanation 2(e)* to Section 54 of the CGST Act, which came into effect from 1st February, 2019, would not be applicable in the present case, as the refund application was filed for the financial year 2017-2018. It is contended that the said amendment did not have retrospective effect, therefore, the said clause cannot be applied retrospectively.

26. It is also submitted that the case of the Petitioner is not only covered under the category of *'refund arising out of exports'*, however, it is also covered under the category of *'refund of unutilised ITC arising out of zero-rated supplies i.e., exports'*.

27. Therefore, it is his submission that the appropriate provision would be Section 54(3) read with unamended *Explanation 2(e)* of the CGST Act.

28. Ld. Counsel for the Petitioner places reliance upon the decision of the Supreme Court in '***Government of India vs. Indian Tobacco Association'*, 2005 (7) SCC 396**. The relevant portion of the said decision is set out below:

> *"15. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing" or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".*

16. ***By reason of the aforementioned amendment no substantive right has been taken away nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby.***

17. ***There cannot furthermore be any doubt whatsoever that when a person is held to be eligible to obtain the benefits of an exemption notification, the same should be liberally construed.***

XXX XXX XXX

24. In Ramkanali Colliery of BCCL vs. Workmen by Secy., Rashtriva Colliery Mazdoor Sangh and Another [(2001) 4 SCC 236], a Division Bench of this Court observed:

"What we are concerned with in the present case is the effect of the expression "substituted" used in the context of deletion of sub-sections of Section 14, as was originally enacted. In Bhagat Ram Sharma vs. Union of India, this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. ***Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision if there is a vested right and that right is to be taken away necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such****."*

25. In Zile Singh vs. State of Haryana & Ors. [(2004) 8 SCC 1] wherein the effect of an amendment in the Haryana Municipal Act, 1973 by Act No.15 of 1994 whereby the word "after" was substituted by the word "upto" fell for consideration; wherein Lahoti, C.J. speaking for a three-Judge Bench held the said amendment to have a retrospective effect being declaratory in nature as thereby obvious absurdity occurring in the first amendment and bring the same in conformity with what the legislature really intended to provide was removed, stating:

> *"23. The text of Section 2 of the Second Amendment Act provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"?.*
>
> *27. The doctrine of fairness also is now considered to be a relevant factor for construing a statute.* ***In a case of this nature where the effect of a beneficent statute was sought to be extended keeping in view the fact that the benefit was already availed of by the agriculturalists of tobacco in Guntur, it would be highly unfair if the benefit granted to them is taken away, although the same was meant to be extended to them also. For such purposes the statute need not be given retrospective effect by express words but the intent and object of the legislature in relation thereto can be culled out from the background facts****."*

29. Relying on the said decision, the contention of the Petitioner is that the substitution made in *Explanation 2(e)* to Section 54 of the CGST Act, w.e.f. 1st February, 2019, takes away the right of the Petitioner to claim the refund of unutilized ITC, which is an incentive for the Petitioner. Hence, it is stated that the substitution cannot be used to deny the substantive export benefit to

the Petitioner.

30. Further, Mr. Dinesh Parashar, ld. Counsel for the Petitioner places reliance upon the judgment of the Bombay High Court in ***W.P. (C) 5600/2021*** titled ***'M/s Babasaheb Keda Shetkari Sahakari Soot Girni limited vs. The State of Maharashtra through its Principal Secretary Finance & Ors.'*** to contend that the said decision is squarely applicable to the present case. It is submitted that in the said decision, the Court was considering the nature of the amendment to *Explanation 2(e)* to Section 54 of the CGST Act and it has been held that the amendment is prospective in nature.

31. Additionally, reliance is also placed upon the decision of the Supreme Court in '***HCL Ltd. vs. Collector of Customs'*** **2001 (130) E.L.T. 405 (SC)**, to submit that the benefit of unamended *Explanation 2(e)*, ought to be extended to the Petitioner. It is stated that in case of two beneficial provisions, the tax payer has the discretion to opt for a more beneficial provision.

32. Finally, Mr. Parashar, ld. Counsel for the Petitioner, argues that the accrued right to an assessee cannot be taken away by bringing an amendment, in this manner, and curtailing the period of limitation.

Submissions on behalf of the Department in W.P.(C) 12512/2021

33. At the outset, the case of the Department is that the refund claim of the Petitioner is time-barred as the *relevant date* in case of the Petitioner is covered in terms of Section 54(1) read with *Explanation 2(a)* of the CGST Act.

34. Mr. Aditya Singla, ld. SSC for the GST Department has vehemently urged that the period of limitation ought to be calculated from the *relevant date*, which is the *date of exports i.e.,* the date on which the ship/aircraft, in

which the goods are loaded leaves India.

35. He also places reliance upon the definition of 'Input Tax' and 'Input Tax credit' under Section 2(62) and 2(63) of the CGST Act.

36. According to him, *Explanation 2(e)* to Section 54 of the CGST Act has no application in the present case, due to the following reasons:

(i) It is stated that in case of zero-rated supplies made without payment of tax, where exports are involved, *Explanation 2(a)* to Section 54 of the CGST Act would be applicable. Reliance is also placed upon the meaning of zero-rated supply, as contained in Section 16 of the Integrated Goods and Services Tax Act, 2017 *(hereinafter, 'IGST Act')*, which states that zero-rated supplies relate to export of goods or services from India or to a Special Economic Zone *(hereinafter, 'SEZ')* or SEZ unit.

(ii) In the present case, goods have been exported out of India, thereby, the relevant provision would be *Explanation 2(a)* to Section 54 of the CGST Act and the *relevant date* would be the date on which the export took place.

(iii) Section 54(1) read with *Explanation 2(a)* of the CGST Act specifically deals with exports, whereas Section 54(3) read with unamended *Explanation 2(e)* was a generic provision dealing commonly with both zero-rated supplies and inverted tax structure. In case of ambiguity, the specific provision shall prevail over the generic provision. Further, non-application of Section 54(1) read with *Explanation 2(a)* of the CGST Act, when exports are involved, will make the said clause redundant.

(iv) It is also stated that *Explanation 2(e)* to Section 54 of the CGST Act was amended *vide* Central Goods and Services Tax (Amendment) Act,

2018 dated 30th August, 2018 and came into effect on 1st February, 2019. The amended provision specifically restricted the application of the provision to cases of refund of unutilised ITC under clause (ii) of the *first proviso* to Section 54(3) of the CGST Act viz., transactions of inverted duty structure. Since the refund application was filed on 29th March, 2020 *i.e.,* after the amendment came into effect, the unamended *Explanation 2(e)* to Section 54 of the CGST Act would not be applicable.

(v) The amendment to *Explanation 2(e)* to Section 54 of the CGST Act is clarificatory in nature, which can be seen from the fact the amendment is being '*substituted*' in place of the older provision and not merely superseded. Therefore, the amendment shall be applicable retrospectively. In this context, reliance is placed upon the decision of the High Court of Madras in '***Doosan Infracore India Pvt. Ltd. vs. Assistant Commissioner of GST & C. Ex. Chennai'*** **2020 (374) ELT 374 (Mad)** to argue that whenever there is substitution of a provision, the old provision ceases to exist, and the provision which would be applicable on the date of the filing of the application, would be the relevant provision. The limitation would have to be construed on the said basis.

(vi) Furthermore, it is also contended that insofar as limitation is concerned, it being a rule of procedure, the applicable rule would be the one that would be in operation on the date when the refund application is filed. In this context, reliance is placed upon the following judgments:

- ***Baijnath vs. Dulari Hajjam*** **(1913) ILR 35 ALL 227**
- ***Thirumalai Chemicals Limited vs. Union of India and*** **others**

(2011) 6 SCC 739

- ***Subodh Chandra Mitra vs. Kanai Lal Mukherjee*** **(1966) SCC Online Cal 89**
- ***Union Of India & Ors. vs. Uttam Steel Limited*** **(2015) 13 SCC 209**

37. Therefore, it is submitted that the limitation would have to be construed from the *relevant date of exports*, when the goods under the relevant shipping bill are loaded and leave India. By that standard, insofar as the *shipping bill* bearing No**.** 3533626 dated 16th March, 2018 exported *vide* E.G.M. dated 20th March, 2018 is concerned, the application would be within time. However, insofar as the *shipping bill* bearing No. 9062122 dated 4th October, 2017, exported *vide* E.G.M. dated 6th October, 2017 is concerned, the application would be beyond the prescribed period of limitation.

38. In the former case, the submission of Mr. Singla, ld. Counsel is that, due to the orders passed by the Supreme Court in ***SMW (c) No. 3/2020*** titled ***In Re: Cognizance for extension of Limitation,*** read with *Notification No.35/2020 dated 3rd April, 2020*, *Notification 55/2020* dated 27th June, 2020 and *Notification No 13/2022* dated 5th July, 2022, the period from 20th March, 2020 to 31st August, 2020 was directed to be excluded while computing the period of limitation. Since the limitation in the present case would have expired on 20th March, 2020, falling within the excluded period, the benefit of such exclusion would be applicable, thereby rendering the claim within time. However, in the latter case, the exclusion shall not come to the aid of the Petitioner, as the two year period came to an end in October, 2019 itself.

39. Additionally, Mr. Aditya Singla, ld. SSC submits that the manner in which *Explanation 2(e)* to Section 54 of the CGST Act is to be read, is no

longer *res integra*. The same has been decided by the ld. Single Judge of the Madras High Court in '***Gillette Diversified Operations pvt. Ltd. v. The Joint Commissioner of GST and Central Excise (Appeals-II)'*****(2025) 28 Centax 263 (Mad.)**. In the said decision, ld. Single Judge was considering the same very provision and it was held that the amendment is clarificatory in nature and *Explanation 2(e)* to Section 54 of the CGST was not relevant as the limitation had to be counted from the *date of exports.*

40. It is further submitted that a similar view was also taken by the Gujarat High Court in '***Nitrex Chemicals India Ltd v. Assistant Commissioner Goods And Service Tax***' **(2025) 27 Centax 381** and ld. Single Judge of Madras High Court in '***M/s Tulip Nilgiris Export Pvt. Ltd. v. Additional Commissioner of Central Taxes and Central Excise'*** **(2024) 14 Centax 285 (Mad.)**. Thus, it is submitted that since beginning, all exports have to be governed only by *Explanation 2(a)* to Section 54 of the CGST Act and not by *Explanation 2(e)* to Section 54 of the CGST Act.

41. Furthermore, the decision by the High Court of Bombay in ***M/s Babasaheb Keda Shetkari Sahakari Soot Girni limited (Supra)*** has been refuted by Mr. Aditya Singla, ld. SSC. He relies upon a copy of the said writ petition filed before the Bombay High Court. In this regard, he relies upon paragraph 6 to 8, from where it becomes clear that the Petitioner was trying to upload the refund form within time and got a ticket and it was in that context that the said decision was rendered. Therefore, it is urged that the facts are clearly distinguishable from the present case.

Submissions on behalf of the Petitioner in W.P.(C) 17538/2022

42. The case of the Petitioner is that, in so far as the inter-state supplies are concerned, the Petitioner is entitled to refund of unutilised ITC in terms of clause (ii) of *first proviso* to Section 54(3) read with *Explanation 2(e)* of the CGST Act.

43. The contention is that the refund claim of the Petitioner is within the limitation period of two years, in terms of Section 54(1) read with unamended *Explanation 2(e)* of the CGST Act.

44. The further case of the Petitioner is that the amendment to *Explanation 2(e)* to Section 54 of the CGST Act, which was introduced w.e.f. 1st February, 2019, would not be applicable to the Petitioner, as the refund claims pertain to period 2017-2018 and 2018-2019 *i.e.,* prior to the enactment of the amended provision.

45. It is also stated that, as per the *relevant date* in terms of the unamended *Explanation 2(e)* of the CGST Act, in case of refund of unutilised ITC, the *relevant date* would be the end of the financial year.

46. In view thereof, the *relevant date* for the refund claim for the period of July, 2017 to March, 2018 starts from 31st March, 2018, and for the period April, 2018 to March, 2019, the same would be 31st March, 2019. In the former case, the two years from the *relevant date* would be 31st March, 2020. It is further stated that, in the interregnum, the limitation period was extended by the Supreme Court by ***In Re: Cognizance for extension of Limitation (Supra)*** *vide* order dated 8th March, 2021, wherein period from 15th March, 2020 to 14th March, 2021 was to be excluded and a grace period of 90 days was also to be provided. Accordingly, in the former case, the refund claim filed on 28th March, 2021 was within the period of limitation.

47. In the latter case, two years from the *relevant date* would be 31st March, 2021 and the refund claim was filed on 30th March, 2021. Hence, the same was also filed within the period of limitation.

48. Thus, it is contended that the Department has erroneously applied the amendment to *Explanation 2(e)* to Section 54 of the CGST Act retrospectively, and on that basis, rejected Petitioner's refund claims as being time-barred, *vide* the refund orders and OIA-2.

Submission on behalf of the Department in W.P.(C) 17538/2022

49. The case of the Department is that, since the refund applications were filed by the Petitioner in 2021, the *relevant date* would be as per the amended *Explanation 2(e)* of the CGST Act.

50. In that context, the *relevant date* would be the due date for furnishing the return under Section 39 of the CGST Act, for the period in which such claim arises.

51. It is also the case of the Department that the 'amended' *Explanation 2(e)* to Section 54 of the CGST Act would be applicable in the present case, thus, the refund claims of the Petitioner are barred by limitation.

52. Further, it is also stated that 'substitution' of a provision results in repeal of the earlier provision, and its replacement with a new provision. In this regard, reliance is placed upon the following judgements:

- ***Doosan Infracore India Pvt. Ltd. vs. Assistant Commissioner of GST & C. Ex. Chennai 2020*** **(374) ELT 374 (Mad)**
- ***State of Rajasthan v. Mangilal Pindwal*** **(1996) 5 SCC 60**
- ***Zile Singh v. State of Haryana*** **(2004) 8 SCC 1**
- ***Gottumukkala Venkata Krishamraju v. Union of India & Ors.***

(2019) 17 SCC 590

53. Furthermore, it is also contended that the Petitioner did not file the refund applications in a bifurcated manner for each month, due to which also the refund applications of the Petitioner were rejected.

54. During subsequent hearings, Mr. Tarun Gulati, ld. Sr. Counsel and Mr. Rakesh Kumar, ld. Counsel had appeared to assist the Court.

55. Mr. Rakesh Kumar, ld. Counsel had placed reliance upon a decision of the Co-ordinate Bench of this Court in ***W.P.(C) 2763/2013*** titled '***M/s Bajaj Overseas Impex v. The Special Commissioner-I & Anr. & M/s Aarco Electronics (Delhi) v. The Addl. Commissioner VAT & Anr.*** to argue that the benefit of the provision, which had exempted payment of pre-deposit, in the said cases, was extended to the assessee on the basis of the date of the filing of the return, prior to the introduction of the third proviso to Section 74(1) of the Act. Based on the said case, he submits that if a benefit is provided *vide* a Notification/Circular, it ought to be read in favour of the beneficiary/assessee.

56. On 8th August, 2025 a short note of the submissions on behalf of Mr. Tarun Gulati, ld. Sr. Counsel appearing to assist the Court, was placed on record. As per the said note, the following submissions are taken into consideration:

(i) That *Explanation 2(a)* to Section 54 of the CGST Act would be inapplicable in the present case as the case pertains to 'refunds of unutlised ITC' and *Explanation 2(a)* does not use the term unutilised ITC.

(ii) That *Explanation 2(a)* to Section 54 of the CGST Act would be inapplicable also because the limitation period cannot commence

before the right to claim the refund of unutilised ITC accrues in favour of the registered person.

(iii) Further, as per the language used in unamended *Explanation 2(e)*, the said provision applies to all cases where a refund of unutilised ITC is claimed.

(iv) In addition, it is also contended that the limitation for claiming refund of unutilised ITC under *Explanation 2(e)* cannot commence before the lapse of limitation for claiming ITC. Reliance is place upon the decision in ***New India Insurance Co. Ltd. v. Shanti Misra*** **(1975) 2 SCC 840** and ***T. Kaliamurthi v. Five Gori Thaikkal wakf and Ors.*** **(2008) 9 SCC 306** to contend that when a law of limitation is in operation on the commencement of an action, a new law of limitation cannot extinguish a right of action, by providing a shorter period of limitation.

(v) Finally, it is his submission that where a statutory remedy is conferred, the Court ought to adopt a liberal and expansive interpretation, whereas any provision curtailing such remedy must be construed strictly. In this regard, reliance is placed upon the decision of the High Court of Bombay in ***Electrofronts and Anr. v. Union of India,*** **2003 SCC Online Bom 596**.

Analysis and Findings

57. The Petitioners herein have filed refund applications claiming refund of unutilised ITC on account of export of goods without payment of tax as also refund of ITC accumulated due to inverted duty structure. However, the said refund applications have been rejected by the Adjudicating Authority as

also the Appellate Authority on the ground that the same are time-barred. In view thereof, the issues that arise for consideration in the present petitions are:

(i) what would be the *relevant date* from which the two year period under Section 54 of the CGST Act is to be calculated;

(ii) whether the amendment to *Explanation 2(e)* to Section 54 of the CGST Act, brought into effect from 1st February, 2019, would apply to refund claims pertaining to a period prior to the said amendment?

Scheme of Section 54 of the CGST Act

58. The period within which the refund of any tax and interest under the CGST Act is to be sought, has been prescribed under Section 54. The said provision comprises various sub-sections and Explanations, which requires interpretation in the present petitions.

59. As per Section 54(1) of the CGST Act, an application for refund is required to be made before the expiry of two years, which is to be computed from the *relevant date*. Section 54(1) of the CGST Act stipulates three aspects:

(i) That refunds of any tax and interest can be claimed by tax payers;

(ii) The same ought to be claimed within two years;

(iii) That the two year period is to be calculated from the *relevant date*;

60. The amounts for which the refund can be claimed includes tax and interest. Under *Explanation (1)* to Section 54 of the CGST Act, the term *'refund'* has been defined as under:

> *"[...]*
>
> *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 unutilised input tax credit as provided under subsection (3)."*

61. The aforesaid definition of refund is an inclusive one. In terms thereof, the categories of amounts for which, *inter alia* refund can be claimed are as under:

(i) Refund of tax paid on zero-rated supplies of goods and services or both;

(ii) Refund of tax paid on inputs or input services used in making such zero-rated supplies;

(iii) Refund of tax on the supply of goods regarded as deemed exports;

(iv) Refund of unutilised ITC in terms of Section 54(3);

62. Thus, in respect of all the above four categories of amounts, refund applications can be filed.

63. Coming to the second aspect, *i.e.,* the limitation period within which refund can be claimed, the general rule is that refund applications have to be made prior to the expiry of two years from the *relevant date*. The expression *relevant date* is defined in *Explanation (2)(a)* to *(h)* to Section 54 of the CGST Act. The provision stipulates distinct *relevant dates* depending upon the nature of transaction, including supplies, exports, etc. For the sake of ready reference, *Explanation (2)* to Section 54 of the CGST Act is extracted below:

> *"[...]*
>
> *(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 despatch 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;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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 unutilised 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 thereunder, 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."

64. The determination of the *relevant date* depends upon several factors. It depends upon the nature of the refund amount as also the nature of the supply of goods or services. *Explanation (2)* to Section 54 of the CGST Act can be simplified as under:

(i) Under *Explanation 2(a)*, which is applicable to goods exported out of India, refund can be of either tax which is paid in respect of goods themselves or the tax paid on the inputs or input services used in such goods. In such a case, depending upon the mode of transport used, the broad principle is that the period of two years under

Section 54(1) of the Act, is to be reckoned from the date on which the ship or aircraft was loaded, in case of export by sea or air. In case of land transport, the date on which the goods pass the border. In case of postal export, the date of dispatch by the post office.

(ii) In the case of supply of deemed exports under *Explanation 2(b)*, the *relevant date* would be the date of furnishing of return.

(iii) In cases of zero-rated supply of goods/services to SEZ developer or SEZ units, where a refund of tax paid is claimed, the *relevant date* would be the due date for furnishing the return under Section 39 in respect of such supplies.

(iv) *Explanation 2(c)* pertains to services exported out of India or inputs or input services used in such services. In cases where supply of services had been completed prior to the receipt of payment, the *relevant date* is calculated based on the receipt of payment in convertible foreign exchange or in Indian rupees, wherever so permitted by the Reserve Bank of India. In cases where the payment of services had been received in advance, the date of the issuance of invoice would be the *relevant date*.

(v) As per *Explanation 2(d)*, if the tax amount becomes refundable in view of the orders passed by the Courts or Tribunals, the date of communication of such orders or judgments would be the *relevant date*.

(vi) Initially, *Explanation 2(e)* provided that, in cases of refund of unutilised ITC under Section 54(3) of the CGST Act, the *relevant date* would be the end of the *financial year* in which such claim for refund arises. However, this provision was substituted by the

Central Goods and Services Tax (Amendment) Act, 2018 dated 30th August, 2018 w.e.f. 1st February, 2019, whereby, it was restricted to clause (ii) of *first* provsio to Section 54(3) of the Act, instead of Section 54(3) as a whole. The scope and effect of this substitution requires consideration and shall be examined subsequently. The relevant unamended *Explanation 2(e)* to Section 54 of the CGST Act is extracted below for ready reference:

> *"(e) in the case of refund of unutilised input-tax credit under sub-section (3),* ***the end of the financial year in which such claim for refund arises****;"*

(vii) *Explanation 2(f)* is concerned with cases where any tax is paid provisionally. In such circumstances, the *relevant date* for seeking a refund would be the date of adjustment of tax after the final assessment.

(viii) Under *Explanation 2(g)*, in respect of persons other than suppliers, the *relevant date* would be the date of receipt of goods or services by such persons.

(ix) Finally, *Explanation 2(h)*, being a residuary provision, the *relevant date* would be the date of payment of tax.

65. In view of the above, it is evident that the determination of *relevant date* under Section 54 of the CGST Act is not uniform - the same depends upon the nature of the transaction and the category of the refund claimed. The statutory scheme highlighted hereinabove provides a comprehensive framework for indentifying the *relevant date* in diverse transactions, including exports, deemed exports, services, unutilised ITC etc.

Consequently, in each case, the applicable clause of *Explanation 2* must be carefully applied, in light of the nature of the transaction in question.

66. Having considered the scheme of Section 54 of the CGST Act, it is also relevant to consider the provision governing zero-rated supplies, as the Petitioner in ***W.P.(C) 12512/2021*** is seeking refund of ITC on export of goods without the payment of tax.

67. Section 16 of the IGST Act defines '*zero-rated supply*'. The same is extracted below for ready reference:

> *"**16. Zero rated supply**.—(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—*
>
> *(a) export of goods or services or both; or*
>
> *(b) supply of goods or services or both [for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit."*

68. In terms of the above provision, zero-rated supplies would include export of goods or services or both as also supply to any SEZ developer or SEZ unit.

Interpretation of 'Relevant date' and applicability of the amendment to Explanation 2(e) of Section 54 of the CGST Act.

69. The interpretation and application of Section 54 of the CGST Act, particularly in relation to determination of *relevant date* and the period of limitation for filing of refund claims, has been considered by various High Courts. At this stage, it is apposite to discuss the judicial precedents that have emerged on the interpretation of *relevant date* and the applicability of the amendment to *Explanation 2(e)* to Section 54 of the CGST Act.

70. The Nagpur Bench of the High Court of Bombay in ***M/s Babasaheb Keda Shetkari Sahakari Soot Girni limited (Supra)*** was considering the applicability of the amendment to *Explanation 2(e)* to Section 54 of the CGST Act. It was observed that the amendment came into effect on 1st February, 2019 and, therefore, the refund applications filed for the period prior to the said date would not be governed by the amended provision. The relevant paragraph of the said judgement is set out below:

> *"6. Insofar as the plea regarding applicability of the amendment to Section 54(1) of the GST Act is concerned**, it would be apparent that the amendment would be prospective in nature, unless so specified, which is not the case and therefore, the amended Section 54(1) would be applicable to the application for refund filed post 01/02/2019 to claim for refund in respect of returns filed consequent to that date. It would therefore, be apparent that the application for refund of the input tax to be filed by the petitioner would be covered by the earlier definition of 'relevant date' which defined the same as end of financial year and not the amended definition of 'relevant date' which defines it as due date for furnishing return**."*

71. As can be seen from the above decision, the High Court of Bombay has observed that the application of amendment to *Explanation 2(e)* to Section 54 of the CGST Act is prospective in nature.

72. A ld. Division Bench of this Court in '***Sethi Sons (India) v. Assistant Commissioner and Others'*** **2023 SCC OnLine Del 8351**, was also dealing with a case involving denial of refund of unutilized ITC accumulated on account of GST paid on inputs in respect of zero-rated supplies. In the said case, the Court observed that the two year limitation prescribed under Section 54(1) would apply in the following terms:

> *"19. In view of the above, there is no cavil that the petitioner was required to make an application for refund under Sub-section (1) of Section 54 of the CGST Act* ***within two years of the goods leaving India or crossing its territorial frontiers****."*

73. However, it was further observed that, since the Petitioner's refund application could not be uploaded in time due to technical glitches, the same ought to be considered on merits and not be denied on the ground of limitation. The relevant portion of the said decision reads as under:

> "*[...]*
>
> ***29****. It is also acknowledged that there were delays in processing refund due to various taxpayers. In the present case, the petitioner has affirmed that he did not file refund applications manually as he was guided by the jurisdictional GST Officers that the refund claim was required to be filed after the actual GST return in Form GSTR-9 was filed and after obtaining bank realization certificates. The petitioner claims that he filed his return on 30.01.2020 and filed an application for refund immediately thereafter. The respondent has denied that the concerned officer had misguided the petitioner in any manner and there is no record of any advice given by the concerned officer. However, we are inclined to accept the petitioner's version that he had made oral enquiries for filing an application for refund.* ***Ordinarily, this would be no ground to overlook the delay but this Court cannot be oblivious of the fact that during the initial period of the rollout of the GST regime, both taxpayers and the officials of the GST departments had faced innumerable difficulties which were being addressed. Some of the difficulties still persist and are being addressed. In this environment, it is not difficult to accept that a taxpayer would have sought advice from the jurisdictional officers. Undisputedly, the petitioner had acted in a bona fide***

manner.

> ***30. There is no dispute that the petitioner had attempted to file an application for refund on the GST portal twice but its application could not be uploaded on account of technical glitches. It is not disputed that the petitioner had also made a complaint and a ticket for the same was also raised.***
>
> ***31.*** *In the peculiar facts of the case, we are unable to accept that the petitioner's claim for refund is required to be denied on the ground of delay.*
>
> ***32.*** *In view of the above, we direct the proper officer to examine the petitioner's claim for refund and process the same, if it is found that the petitioner is entitled to the same."*

74. The Madras High Court in ***M/s Tulip Nilgiris Export Pvt. Ltd. (Supra)*** was also dealing with a case of refund in respect of unutilised ITC on account of exports. It was found that the Petitioner had inadvertently claimed lower refund than what it was entitled to. Accordingly, the Petitioner had claimed additional refund in a subsequent application. After considering the explanations and the definition of *relevant date* under Section 54 of the CGST Act, the Court held that the two year period is to be computed from the *relevant date*, which is the *date of exports.* The objection of delay was set aside, and the matter was remanded for fresh consideration. The relevant portion of the said judgement is set out below:

> "*….From the above provision, the conclusion that follows is that a refund claim may be made before the expiry of two years from the relevant date.* ***Such relevant date is required to be computed from the date of export of the goods concerned by any mode. Since the refund claim pertains to exports made between***

> ***July 2017 and November 2017 and the refund application was filed on 09.01.2019, it is clear that such refund application was made within two years from the relevant date.*** *Circular No.37, which was relied upon by learned counsel for the petitioner, clarifies that refund claims may be made not only on a calendar month basis but by clubbing claims pertaining to more than one calendar month or more than one quarter….*
>
> ***XXX***
>
> *7. The above discussion leads to the conclusion that the refund claim of the petitioner was made within the period of limitation prescribed by statute."*

75. The High Court of Gujarat in ***Nitrex Chemicals India Ltd (Supra)*** was considering the *relevant date* for filing of the refund application under Section 54 of the CGST Act. In the said case, the Petitioner was claiming refund of IGST paid on zero-rated supplies in the form of exports. Thereby, the Court had held that the *relevant date* would be the '*date of exports'*, as per *Explanation 2(a)* to Section 54 of the CGST Act. In this regard, the operative portion of the said decision reads as under:

> *"[…]*
>
> *17. On conjoint reading of Explanation 2 with Section 54(1), it is clear that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, has to make application before the expiry of two years from the relevant date and as per Explanation 2, relevant date means in the case of goods exported out of India is the date on which such goods are loaded either in Ship or aircraft, leaves India is the relevant date.* ***Therefore, in the facts of the case relevant date for the goods exported by the petitioner would be from the date of shipping mentioned in the shipping bills. Therefore, period of two years is***

required to be calculated from the date of shipping."

76. It is pertinent to note that in ***Nitrex Chemicals India Ltd (Supra)*** the refund application which was filed by the Petitioner was for claiming refund of IGST on account of exports only. Thereby, the *relevant date* was construed as the *date of exports*.

77. In ***Gillette Diversified Operations (Supra)***, the High Court of Madras was dealing with a batch of matters wherein the refund applications of the Petitioners were held by the Adjudicating Authority and the Appellate Authority, to be time-barred. The issue involved in the said judgement was framed as under:

> *"12. The point for consideration in these Writ Petitions are whether the refund claims were filed in time or beyond time within the meaning of Section 54 of the Central Goods and Service Tax Act,2017?"*

78. The Court considered similar provisions under Section 16 of the IGST Act. It was also noted that the Petitioners were claiming refunds on zero-rated supplies *i.e.,* exports, and hence the *relevant date* would be two years from the end of the tax period. The operative portion of the said decision is set out below:

> *"46. Ordinarily refund is to be made within a period of 2 years from the "**relevant date**" as defined in Explanation 2 to Section 54 of CGST Act, 2017. As per Sub-Section 3 to Section 54, a registered person may claim of refund of unutilized Input Tax Credit at the end of the "**tax period**". **Thus, Input Tax Credit remains unutilized can be subject matter of refund which is remaining unutilized at the end of the "tax period"**.*
>
> ***XXX***
>
> *54. The amendment to Explanation 2(e) to Section 54 of CGST Act, 2017 with effect from 01.02.2019 vide*

> ***Notification No.02/2019-CT*** *dated* ***29.01.2019*** *pursuant to CGST Amendment Act, 2018 (31/2018) dated 30.08.2018 was intended clarify what was explicit in Clause (ii) to Proviso to Section 54(3) of CGST Act, 2017.*
>
> *55. By the above amendment, the Parliament has clarified that the period of limitation for refund of utilized Input Tax Credit 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."*

79. Further, the Madras High Court found that, in the facts of the said case, the Petitioners were not claiming refund on the basis of ITC on account of inverted tax rate under clause (ii) of *first proviso* to Section 54(3) of the CGST Act. It was held that the refund claims had been filed within a period of two years from the *date of exports*. Thus, the Court held that the refund claims ought to be adjudicated on merits. In this regard, the observation of the Court is as under:

> *"70. In view of the above discussion, the stand of the Department is not correct.* ***That apart, legitimate export incentives are to be granted as long as there is a substantial compliance to the provision****."*

80. Recently, the Jammu and Kashmir High Court in ***'Bharat Oil Traders v. Assistant Commissioner and Anr.'*** **(2025) SCC Online J&K 1416**, dealt with a case involving inverted tax structure *i.e.,* where the rate of tax applicable on the inputs was higher than the rate applicable towards the outward supplies. The Petitioner was seeking refund of accumulated ITC. The Court considered that for the purpose of unutilised ITC under inverted duty structure, *relevant date* would have to be construed as per *Explanation 2(e)* to

Section 54 of the CGST Act. Further, the Court dealt with the amendment to *Explanation 2(e)* and gave a detailed analysis as under:

> *"**17. The issue that therefore arises for consideration is whether the amendment effective from February 1, 2019, which curtailed the period prescribed for filing refund applications, can be applied so as to divest or curtail the vested right of the petitioner in relation to the period preceding the amendment**.*
>
> ***18. The right to claim refund with respect to period preceding the amendment cannot be curtailed by the amendment. The amended section cannot operate retrospectively so as to take away a vested right. This amendment must be treated as prospective unless it is given retrospective effect.** The vested right of the petitioner cannot be unilaterally revoked or curtailed by a subsequent amendment to the statute unless the amendment expressly provides for retrospective application. **Thus, even though the amendment came into force on February 1, 2019, it cannot curtail the rights vested in the petitioner**.*
>
> ***XXX***
>
> ***20.** Thus, even though the amendment came into force on February 1, 2019, **it cannot curtail the right which had already vested prior thereto**. **Therefore, the unamended definition of "relevant date" would continue to apply**.*
>
> ***21.** This apart, **amendment to section 54 which changed the definition of "relevant date" with effect from February 1, 2019 cannot be applied retrospectively to the period prior to the amendment to curtail the petitioner's right to refund within the originally stipulated time**. It is well-settled that every statute is presumed to operate prospectively unless the same is expressly made retrospective, substantive amendments which alter or curtail the scope of tax payer vested rights are presumed to be prospective*

unless the legislation unequivocally provides otherwise.

> ***23.*** *The petitioner's claim for January 2019 to March 2019 was rejected only on the ground that no eligible inputs were received during the said period but no reasoned finding in this regard has been given. The refund claim for July 2017 to December 2018 are not barred by limitation as it falls within the extended limitation period afforded by the aforesaid notification. The refund claim from January to March 2019 is also not barred by limitation under section 54****. The retrospective application of the amendment would deprive the petitioner to claim refund, as this right had been vested with the petitioner. The claim of the petitioner, therefore, cannot be thrown out solely on technical grounds of delay****."*

81. In terms of the aforesaid judgement, the Court held that the amendment to *Explanation 2(e)* to Section 54 of the CGST Act cannot operate retrospectively so as to divest the vested rights of the claimant. In view thereof, the Court concluded that the refund application of the Petitioner in the said case, was not barred by limitation, as the *relevant date* ought to be construed differently in cases where refund of ITC is claimed under an inverted tax structure.

Applicability of the amendment to Explanation 2(e) to Section 54 of the CGST Act

82. At the stage, the issue to be considered in both these petitions is the applicability of the amended *Explanation 2(e)* to Section 54 of the CGST Act while determining the refund claims of the Petitioners.

83. In ***W.P.(C) 12512/2021***, the argument of the Petitioner is that the limitation period for filing of refund application is governed by the

unamended *Explanation 2(e)* read with *first* proviso to Section 54(3) of the CGST Act.

84. On the other hand, the argument of the Revenue is that in this case, the limitation period would be governed by the *Explanation 2(a)* to Section 54 of the CGST Act, as the case involves exports.

85. In ***W.P.(C) 17538/2022***, the contention of the Petitioner is that the amendment to *Explanation 2(e)* would not be applicable, as the refund claim pertains to the period 2017-2018 and 2018-2019 *i.e.,* prior to the enactment of the amended provision.

86. Per contra, the argument of the Department is that, since the refund applications were filed by the Petitioner in 2021, the *relevant date* has to be construed as per the amended *Explanation 2(e).*

87. It deserves to be noted that the amendment to *Explanation 2(e)* of the CGST Act was brought about by the Central Goods and Services Tax (Amendment) Act, 2018 dated 30th August, 2018 w.e.f. 1st February, 2019.

88. In ***W.P.(C) 12512/2021***, exports were effected *vide* E.G.M. dated 6th October, 2017 and E.G.M. dated 20th March, 2018, which is prior to the amendment to *Explanation 2(e) to* Section 54 of the CGST Act. The refund application, however, was filed on 29th March, 2020, *i.e.,* after the amendment came into force.

89. In the said case, the applicable provision would be the provision that existed when the exports were effected. Since the exports took place prior to 1st February, 2019, the applicable provision would be the provision prior to the amendment.

90. The High Court of Bombay in ***M/s Babasaheb Keda Shetkari Sahakari Soot Girni limited (Supra)*** has held that the refund applications pertaining to

the period prior to the enactment of the amended provision would not be governed by the amended provision. The Court has categorically held that the amendment is prospective in nature.

91. Similarly, in ***Bharat Oil Traders (Supra)***, the Jammu and Kashmir High Court undertook a detailed analysis of the applicability of the amendment to *Explanation 2(e)*. It was noted that right to claim refund is a vested right of the Petitioner. It was further observed that claiming refund for a period preceding the amendment cannot be curtailed by the amendment. It was held that the amended provision cannot operate retrospectively so as to take away a vested right of the Petitioner. Thus, it was observed that the amendment to *Explanation 2(e)* to Section 54 of the CGST Act cannot curtail the right which had already vested prior thereto.

92. This Court concurs with the view taken by the Bombay High Court and the High Court of Jammu & Kashmir. The settled legal position is that the provision that would be applicable would be the provision which existed on the date of the transaction. On the day when the transaction took place, the statute provided for a specific period of limitation. The said period cannot be curtailed on the basis of a subsequent amendment which came into existence and could not have been in the knowledge of the tax payer. Further, insofar as the refund claims of the Petitioner in ***W.P.(C) 17538/2022*** are concerned, the ratio in ***M/s Babasaheb Keda Shetkari Sahakari Soot Girni limited (Supra)*** and ***Bharat Oil Traders (Supra)*** squarely apply. The applicable provision would be the unamended *Explanation 2(e)* to Section 54 of the CGST Act.

Applicability of Explanation 2(a) and Explanation 2(e) of Section 54 of the CGST Act

93. The further issue that requires consideration in ***W.P.(C) 12512/2021*** is as to whether *Explanation 2(a)* or unamended *Explanation 2(e)* to Section 54 of the CGST Act would be applicable to the said case.

94. A perusal of *Explanation 2(a)* to Section 54 of the CGST Act would reveal that the same deals with the *relevant date* while construing the refund of ***'tax paid'*** on either:

- Goods themselves;
- Inputs in such goods;
- Inputs services used in such goods.

95. In all of these cases, it is the ***'tax paid'*** of which refund can be sought. On the other hand, under the *first* proviso to Section 54(3) of the CGST Act, the refund is in respect of ***unutilised ITC qua export of goods or services and on account of inverted duty structure***.

96. *Explanation 2(a)* and unamended *Explanation 2(e)* to Section 54 of the CGST Act operate on two separate footings, *i.e.,* ***'tax paid'*** on one hand and ***'unutilised ITC'*** on the other hand. If the case pertains to 'tax paid' refunds in respect of exports only, *Explanation 2(a*) would be applicable. However, if the case relates to a refund of unutilised ITC on account of exports, unamended *Explanation 2(e)* read with *first* proviso to Section 54(3) of the CGST Act would be applicable.

97. The statutory scheme of Section 54 of the CGST Act, as discussed hereinabove, indicates that there are varying situations in which refunds can be claimed, when goods/services are exported. Broadly, these are:

- **Situation I**-where tax is paid at the time of export of goods and

services;

- **Situation II**-where a claim is made for refund of unutilised ITC, either in the case of zero-rated supplies or on the account of inverted duty structure.

Clause (e) to Explanation 2 is a special provision for refund of unutilised ITC, as against Clause (a) to Explanation 2, which is the general provision for exports.

98. The expression '*relevant date'* is required to be construed with reference to the category under which the refund claim falls. In cases involving simple export of goods, and tax has been paid at the time of export, the *relevant date* would be construed in terms of *Explanation 2(a)*. In case of other kinds of exports such as deemed exports, *Explanation 2(b)* would apply. In respect of zero-rated supplies made to a SEZ developer or unit, the applicable provision would be *Explanation 2(ba)*. Insofar as export of services is concerned, the *relevant date* would be governed by *Explanation 2(c)*. In the case of unutilised ITC, *Explanation 2(e)* would be applicable. Therefore, the scheme of the Act accords different treatment to different types of exports. All exports are not treated identically.

99. Refunds in the case of unutilised ITC is a different species of refund, inasmuch as, for availing the said refund, the same must be reflected in the Electronic Credit Ledger *(hereinafter, 'ECL')*. For any ITC to be so reflected in the ECL, various statutory requirements are to be fulfilled, including compliances under Section 16 and 17 of the CGST Act, for the valid availment of ITC. Thereafter, such ITC has to be reflected in the ECL and remain unutilised at the end of the financial year. Thus, the filing of returns assumes crucial importance, whenever refund applications are filed for unutilized ITC.

100. In contrast, in cases of simple exports where tax is paid at the time of export and refund thereof is claimed, the above considerations do not arise. If *Explanation 2(a)* were to be applied uniformly to all categories of exports, including those involving unutilised ITC, it may result in an anomalous situation where exporters would be unable to claim refund of unutilized ITC completely, as the two year period from the *relevant date* may come to an end before the due date of claiming such ITC itself. Such an interpretation would defeat the scheme of the Act and render the entitlement to refund of unutilised ITC illusory in certain cases.

101. This can be demonstrated by way of an illustration. The due date for claiming ITC pertaining to financial year 2017-2018 was extended to 30th November, 2021 under Section 16(5) of the CGST Act. When such extensions are granted, the filing of the relevant GST forms which are to be deposited by the suppliers, along with completion of corresponding documentation, may be deferred, and consequently, the ECL may not reflect the unutilised ITC within the original time frame. *Relevant date* has to be, therefore, construed as per the last date for filing of return in such cases.

102. Therefore, *Explanation 2(e)* contemplates a different species of exports and refunds related thereto. In cases involving refund of unutilised ITC, thus, the *relevant date* must be construed in terms of *Explanation 2(e)* and not *Explanation 2(a*).

103. Further, in ***M/s Tulip Nilgiris Export Pvt. Ltd. (Supra)*** and ***Sethi Sons (India)***, *Explanation 2(e)* was not pressed by the parties. In ***Nitrex Chemicals India Ltd (Supra)***, the refund claim was for ***IGST paid*** on zero-rated supplies in the form of exports, which is why the *relevant date* was construed as per the *date of exports* under *Explanation 2(a)*. The facts and circumstances

therein are distinguishable from the present cases.

104. Accordingly, in ***W.P.(C) 12512/2021***, considering the discussion hereinabove, the applicable provision for determining the *relevant date* would be *Explanation 2(e)* and not *Explanation 2(a)* to Section 54 of the CGST Act.

Conclusion

105. In view thereof, in ***W.P.(C) 12512/2021***, the refund application was filed on 29th March, 2020. The *relevant date* would be reckoned as per the unamended *Explanation 2(e) i.e.,* end of the financial year, as the case relates to unutilised ITC.

106. In ***W.P.(C) 17538/2022***, the refund applications were filed on 28th March, 2021 and 30th March, 2021. In this case, the refund was claimed for ITC accumulated on the account of inverted duty structure. This case also pertains to unutilised ITC, thereby *Explanation 2(e)* would apply. The same is not disputed by the parties. However, the applicable provision would be the provision that existed prior to the amendment.

107. In both these petitions, the impugned orders holding the refund applications to be time-barred are, therefore, not tenable and are, accordingly, set aside.

108. The Department is directed to process the refund applications of the Petitioners on merits and pass appropriate orders, in accordance with law, within a period of three months from this order.

109. The petitions are disposed of in the said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

APRIL, 18 2026
dj/dk/sm