

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.24508 of 2022**

**ORDER:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. M.V.J.K.Kumar, learned counsel for the petitioner and Mr. L.Venkateswar Rao, learned counsel for respondents No.2 to 4.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a declaration that para 3.2 of Circular No.135/05/2020-GST, dated 31.03.2020, of the Central Board of Indirect Taxes and Customs (briefly, 'the Board' hereinafter) is *ultra vires* Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (briefly, 'the CGST Act' hereinafter). Petitioner further seeks a direction to respondent No.4 for refund of Rs.29,89,016.00 with interest in terms of Section 54 of the CGST Act.

3. Notice in this case was issued on 08.06.2022.

4. In the hearing today, Mr. L.Venkateswara Rao, learned counsel for respondents No.2 to 4 has placed before us a copy of Circular No.173/05/2022-GST, dated 06.07.2022, of the Board. As per the said circular, it has been clarified that in cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of Section 54 of the CGST Act would be allowed in those cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. As per the said circular para 3.2 of the Circular No.135/05/2020-GST, dated 31.03.2020, has been substituted in the following manner:-

*“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.*

*3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”*

5. In view of the aforesaid development, learned counsel for respondents No.2 to 4 submits, on the basis of written instructions, that petitioner would be eligible for refund

and therefore, the case of the petitioner for refund would be processed.

6. Having regard to the above, respondent No.4 is directed to process the claim of refund of the petitioner in terms of Section 54 of the CGST Act. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

7. This disposes of the writ petition.

8. Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**UJJAL BHUYAN, CJ**

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**SUREPALLI NANDA, J**

20.07.2022

vs