

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petitions for Special Leave to Appeal (C) Nos. 12495-12498/2025

[Arising out of impugned final judgment and order dated 29-01-2025 in WP No. 5253/2023 29-01-2025 in WP No. 12485/2024 29-01-2025 in WP No. 12487/2024 29-01-2025 in WP No. 12488/2024 passed by the High Court of Andhra Pradesh at Amravati]

ASSISTANT COMMISSIONER OF CENTRAL TAXES & ORS. Petitioner(s)

VERSUS

M/S. GEMINI EDIBLES AND FATS INDIA LIMITED & ANR. Respondent(s)

FOR ADMISSION and I.R.

IA No. 112212/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 09-05-2025 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Raghavendra P Shankar, A.S.G.
 Mr. Gurmeet Singh Makker, AOR
 Mr. Karan Lahiri, Adv.
 Ms. Prerna Dhall, Adv.
 Mr. Vishnu Shankar Jain, Adv.
 Mr. Ajay Jain, Adv.

For Respondent(s)

UPON hearing the counsel, the Court made the following
O R D E R

We are not inclined to interfere with the impugned judgment;
hence, the present special leave petitions are dismissed.

Pending application(s), if any, shall stand disposed of.

Signature Not Verified
Digitally signed by
babita pandey
Date: 2025.05.09
17:18:24
Reason: [S]

(BABITA PANDEY)
AR-CUM-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

APHC010103562023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3508]

WEDNESDAY ,THE TWENTY NINETH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NOs: 5253/2023, 12485, 12487 & 12488 of 2024

Between:

M/s. Priyanka Refineries Private Limited

...PETITIONER

AND

Deputy Commissioner St and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1.HARINATH N (DEPUTY SOLICITOR GENERAL OF INDIA))

2.SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

3.GP FOR COMMERCIAL TAX

WRIT PETITION NO: 12485/2024

Between:

Gemini Edibles And Fats India Limited

...PETITIONER

AND

The Assistant Commissioner Of Central Taxes and
Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARAN TALWAR

Counsel for the Respondent(S):

1.B V S CHALAPATI RAO

2.M UMA DEVI (CENTRAL GOVT COUNSEL)

3.GP FOR COMMERCIAL TAX

WRIT PETITION NO: 12487/2024

Between:

Gemini Edibles And Fats India Limited

...PETITIONER

AND

The Assistant Commissioner Of Central Taxes and
Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARAN TALWAR

Counsel for the Respondent(S):

1.B V S CHALAPATI RAO

2.M UMA DEVI (CENTRAL GOVT COUNSEL)

3.GP FOR COMMERCIAL TAX

WRIT PETITION NO: 12488/2024

Between:

M/s.Gemini Edibles And Fats India Limited,

...PETITIONER

AND

The Assistant Commissioner Of Central Taxes and
Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARAN TALWAR

Counsel for the Respondent(S):

1. B V S CHALAPATI RAO
2. M UMA DEVI (CENTRAL GOVT COUNSEL)
3. GP FOR COMMERCIAL TAX

The Court made the following common order:

As all the four Writ Petitions relate to the same issues, they are being disposed of, by way of a common order.

2. The petitioners are engaged in the business of manufacturing, distributing and branding of edible oils and specialty fats in India. In the process of the manufacture of these products, the petitioners had sourced various raw materials on which GST had already been paid. It so transpired that the rate of GST payable on edible oils and specialty fats was lower than the rate of tax levied on the inputs or raw materials sourced by the petitioner.

3. Section 5 (3) of the CGST Act provides for a situation where the input tax credit available in the ledger of a registered person can be refunded, if the rate of tax on the final product is lower than the rate of tax payable on the inputs used for manufacture of such a final product. This system is popularly known as 'inverted duty structure'.

4. The petitioners, on the ground that their products fall into the category of inverted duty structure, had filed applications for refund of the input tax credit, under Section 54 of the CGST Act, for the periods prior to 18.07.2022. These applications were rejected by the 1st respondent, in the

respective writ petitions, by way of various orders. The details are given below.

Sl. No	W.P.No.	Refund Applications details	Period	Impugned Order	Amount
1.	12485/2024	ARN.No. AA3701240229 62F dated 23.01.2024	August 2020	Order No.GEXCOM/RFD/G ST/3307/2024-ADMN-CGST-DIV-NLR-COMMRTE-GUNTUR dated 22.03.2024	Rs.79,68,094/-
2.	12487/2024	ARN No.AA37012402 2458E Dated 23.01.2024	June 2020	Order No.GEXCOM/RFD/G ST/3307/2024-ADMN-CGST-DIV-NLR-COMMRTE-GUNTUR dated 22.03.2024	Rs.6,48,05,706/-
3.	12488/2024	ARN No.AA37022402 5178D Dated 21.02.2024	December, 2020	Deficiency Memo dated 06.03.2024	Rs.9,91,69,602/-
4	5253/2023	AA3701230302 42X dated 20.01.2023	January-February, 2021	Deficiency Memo dated 02.02.2023	Rs. 64, 868/-
		AA3701230302 80X dated 20.01.2023	May-June, 2021	Deficiency Memo dated 02.02.2023	Rs. 7,75,206/-
		AA3701230303 26P dated 20.01.2023	July,2021	Deficiency Memo dated 02.02.2023	Rs. 5,01,542/-
		AA3701230303 41X dated 20.01.2023	August,20 21	Deficiency Memo dated 02.02.2023	Rs. 3,33,538/-
		AA3701230303 61V dated 20.01.2023	September ,2021	Deficiency Memo dated 02.02.2023	Rs. 1,21,419/-
		AA3701230303 87H dated 20.01.2023	October,2 021	Deficiency Memo dated 02.02.2023	Rs. 4,86,540/-
		AA3701230304 13U dated 20.01.2023	November, 2021	Deficiency Memo dated 02.02.2023	Rs. 6,22,609/-
		AA3701230304 36M dated 20.01.2023	December, 2021	Deficiency Memo dated 02.02.2023	Rs. 4,43,280/-
		AA3701230304	January,2	Deficiency Memo	Rs. 4,09,289/-

		71S dated 20.01.2023	022	dated 02.02.2023	
		AA3701230305 28H dated 20.01.2023	February,2 022	Deficiency Memo dated 02.02.2023	Rs. 4,43,401/-
		AA3701230305 28H dated 20.01.2023	March,202 2	Deficiency Memo dated 02.02.2023	Rs. 4,49,230/-
		AA3701230305 76G dated 20.01.2023	April,2022	Deficiency Memo dated 02.02.2023	Rs. 6,07,552/-
		AA3701230306 16K dated 20.01.2023	May,2022	Deficiency Memo dated 02.02.2023	Rs. 3,36,538/-
		AA3701230307 93G dated 20.01.2023	June,2022	Deficiency Memo dated 02.02.2023	Rs. 3,04,488/-
		AA3701230308 21P dated 20.01.2023	July,2022	Deficiency Memo dated 02.02.2023	Rs. 7,06,377/-

5. In all the rejection orders, the ground of rejection was that Circular No.181/13/2022-GST, dated 10.11.2022 had clarified that no application for refund, under Section 54 of the CGST Act, would be permissible, after 18.07.2022, in relation to the products of the petitioners. The petitioners have approached this Court, challenging the aforesaid orders of rejection as well as Circular No.181/13/2022-GST, dated 10.11.2022, apart from No.9/22-Central Tax (Rate), dated 13.07.2022.

6. Before going into the issues raised by the Petitioners, it would be necessary to set out some facts. Though, the general scheme of Section 54, provided for refund of such input tax credit, in cash, certain products were deemed ineligible for such benefit being given. The Central Government, from time to time, has been issuing notifications listing out the products which are

ineligible for the benefit of Section 54 of CGST Act. One such notification issued by the Central Government is Notification No.5/2017-Central Tax (Rate) dated 28.06.2017. Subsequently, another Notification bearing No.9/22-Central Tax (Rate), dated 13.07.2022 was issued. In this notification dated 13.07.2022, the Government included various types of edible oils and specialty fats. By such inclusion, the manufacturers/sellers of such products become ineligible for grant of refund, under Section 54 of the CGST Act.

7. It is the admitted case of the petitioners that the petitioners had become ineligible for grant of refund, under Section 54 of the CGST Act, from 18.07.2022 onwards, on account of the circular interpreting the notification in a particular manner. Aggrieved by the said notification, as well as the circular, the petitioners have approached this Court, by way of the Writ Petitions challenging Notification No.9/22-Central Tax (Rate), dated 13.07.2022.

8. Sri Karan Talwar, and Sri Karthik Puttamreddy, the learned counsel appearing for the petitioners, would contend that while the petitioners are not pressing the challenge to Notification No.9/22-Central Tax (Rate), dated 13.07.2022, seek leave of the Court to have the liberty to challenge the notification by subsequent proceedings.

9. The learned counsel for the petitioners would now contend that the petitioners had made applications for refund of input tax credit, after 18.07.2022, for the periods wherein input tax credit had been credited, prior to 18.07.2022. A perusal of the material placed before this Court would show

that though the applications for refund were made after 18.07.2022, the said applications relate to refund of input tax credit which arose prior to 18.07.2022.

10. The 1st respondent took the stand that the Circular bearing No.181/13/2022-GST, dated 10.11.2022 had clarified that no application for refund, under Section 54 of the CGST Act, would be permissible after 18.07.2022 for goods mentioned in Notification No.9/22.

11. The learned counsel for the petitioners assail the circular No.181/13/2022-GST, dated 10.11.2022, on the ground that neither the notification bearing No.5/2017-Central Tax (Rate), dated 28.06.2017 nor the notification bearing No.9/22-Central Tax (Rate), dated 13.07.2022 had placed any such bar on a claim for refund. They would submit that a plain reading of these two notifications had made the dealers of such products, ineligible to claim refund, in relation to any input tax credit which arises after 18.07.2022. They would submit that the notification does not in any manner bar an application being filed after 18.07.2022 for periods before 18.07.2022.

12. Sri B.V.S. Chalapathi Rao, learned counsel for the respondents would contend that as per Section 54 of the CGST Act, the petitioner would have to make an application within two years and as the said applications have not been made within two years, no claim can be raised. Smt. Santhi Chandra, learned counsel for the respondent in W.P.No.5253 of 2023 contends that the declaration of ineligibility, in Notification No.9/22-Central Tax

(Rate), dated 13.07.2022, would mean that the registered person cannot make an application for refund after 18.07.2022. She would contend that it is not a question of whether there was input tax credit available prior to 18.07.2022 but a case where applications cannot be made after 18.07.2022.

13. Before going into these questions, the objection of Sri B.V.S. Chalapathi Rao would have to be rejected on the short ground that the said objection has not been raised in the impugned order. The Hon'ble Supreme Court in the case of **Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi and Ors.**,¹ had categorically held that additional grounds cannot be raised, beyond the grounds available in the impugned order.

14. Section 54 of the CGST Act states that any person claiming refund of any tax and interest, if any, may make an application before the expiry of two years from the relevant date in such form as may be prescribed. Sub-section (3) of Section 54 reads as follows:

(3) subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than—

- (i) Zero rated supplies made without payment of tax;
- (ii) Where the credit has accumulated on account of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

¹AIR 1978 SC 851

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

15. As per sub-section (3) of Section 54, any registered person who is supplying any kind of goods would be entitled for refund of input tax credit once the rate of tax on inputs is higher than the rate of tax on the output supply made by him. However, the very same provision also stipulates that the Government, on the recommendations of the council, can notify goods which would not be eligible for such refund.

16. In the present case, the Government, by Notification No.5/2017 dated 28.07.2017, had initially set out a list of goods which would not be eligible for claiming refund under Section 54 of the CGST Act. Subsequently, this list was increased by inclusion of various other goods, by Notification No.9/2022 dated 13.07.2022. The goods, so included, were various kinds of edible oils and specialty fats apart from coal, lignite etc. This notification came into force on 18.07.2022.

17. In view of the specific stipulation that the Notification comes into effect only from 18.07.2022, it would clearly mean that input tax credit which accumulates in the tax credit ledger of the registered person, on account of the mismatch between the input tax and the output tax, before 18.07.2022, can be recovered by the registered person, by way of an application under

Section 54 of the CGST Act. This would not mean that, an application cannot be made after 18.07.2022. Restriction would apply only to the extent of input tax credit arising after 18.07.2022.

18. In the impugned circular, while clarifying that the notification is prospective, the Government went on to state that applications cannot be made after 18.07.2022. This Court finds that the said clarification is neither logical nor in accordance with the understanding of law in such cases.

19. This Court would hold that once a stipulation is made that the notification, in question, operates from 18.07.2022, it would mean that any input tax credit which arose on account of the mismatch between the input tax and the output tax, prior to 18.07.2022, can always be recovered by the registered person, by making an application under Section 54 of the CGST Act.

20. In the circumstances, we are of the opinion that Circular No.181/13/2022-GST, dated 10.11.2022, would have to be struck down, to the extent of the clarification that the restriction imposed by the Notification, dated 13.07.2022, would be applicable in respect of all refund applications filed on or after 18.07.2022.

21. Consequent to this, the impugned orders of rejection of refund, mentioned above, are set aside and the said respondents are required to reconsider the said applications, in terms of Section 54 of the CGST Act and

without relying upon the clarification issued in Circular No.181/13/22-GST, dated 10.11.2022, for non-suiting the petitioners herein.

22. The said applications are to be considered by the respondents within a period of six weeks from the date of receipt of this order. It is further clarified that no view has been taken on the validity of Notification No.9/2022-Central Tax (Rate) dated 13.07.2022, as the same has not been pressed and leave has been sought for challenging the same in any subsequent proceeding. The same is left open for consideration.

23. Accordingly, these Writ Petitions are allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

MAHESWARA RAO KUNCHEAM, J

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

&

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

W.P.Nos.5253 of 2023, 12485, 12487 & 12488 of 2024

(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 29.01.2025

RJS