IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22339 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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MESSRS SHREE RENUKA SUGARS LTD.

Versus

STATE OF GUJARAT

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Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2
GOVERNMENT PLEADER for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 13/07/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Leave to amend the prayer clause by amending one of the numbers of the impugned order is allowed. Learned advocate for the petitioner to carry out the same forthwith.

1. By way of the present petition, which is filed under Article 226 of the Constitution of India, the petitioners have prayed for the following relief/s:

> *"(A)That Your Lordships may be pleased to issue a Writ of Certiorari or any other appropriate writ, direction or order, quashing and setting aside the order Nos.ZD240822013296L and ZD240822001278N dated 26.08.2022, both dated 26th August, 2022 (Annexure-"J"), with all consequential reliefs and benefits to the Petitioner;*
>
> *(B) That Your Lordships may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, directing the Respondent No.2 to consider, decide and sanction all the supplementary claims filed by the Petitioner as listed in Annexure-"F".*
>
> *(C)Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct Respondent No.2 to forthwith decide the Petitioner's supplementary refund claims on merits, on the terms and conditions that may be deemed fit by this Hon'ble Court.*
>
> *(D)An ex-parte ad-interim relief in terms of Para 17(C) above may kindly be granted.*
>
> *(E)Any other and further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."*

2. Looking to the issue involved in the present petition, learned advocates appearing for the parties jointly requested that this petition be finally disposed of at admission stage. Hence, Rule. Learned AGP Ms. Shrunjal Shah waives service of notice of Rule qua respondents.

3. The brief facts leading to filing of the present petition are as under:

3.1. It is the case of the petitioner that petitioner No.1 is a company engaged in sugar industry. The petitioner is engaged in manufacturing, trading and supplying/selling sugar and allied products. The petitioner has been selling and supplying such goods within the country and also exporting substantial quantities of goods to foreign countries. It is stated that petitioner has been importing materials like raw sugar under Advance Authorization Scheme. Such imports are allowed to be made under exemption of integrated tax because import duties including integrated tax are exempt when such materials are imported under a valid Advance Authorization. The petitioner would process raw sugar in their refineries and refined sugar so produced is sold in the domestic market as well as exported to foreign countries. It is stated that the supplies made in the domestic market are always on payment of GST at appropriate rate, whereas the exports are made under Bond without payment of integrated tax on exported

refined sugar.

3.2. It is stated that exports made by the petitioner are in the nature of zero-rated supplies as contemplated under Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act' for short). It is further stated that since such zero-rated supplies are made without payment of tax, ITC availed by the petitioner in respect of input supplies used in relation to making zero-rated supplies without tax remains unutilized and such unutilized ITC gets accumulated in the petitioner's credit ledger. It is also stated that by virtue of Section 54(3) of the Central Goods and Services Tax Act ('CGST Act' for short) and also Section 16(3) of the IGST Act, the petitioner is entitled to claim refund of such unutilized ITC. Further, under Rule 89(4) of the CGST Rules, the Central Government has provided for a formula for calculating the amount of refund of unutilized ITC availed in respect of inputs and input services used in making zero-rated supplies of goods and the petitioner has been claiming refund of such unutilized ITC in accordance with this formula on regular basis.

3.3. It is further stated that petitioner has been claiming refund of the unutilized ITC of inputs and input services used in making zero-rated supply of goods on regular basis and such refund claims are sanctioned and paid by the respondent No.2 on regular

basis.

3.4. The petitioner has further stated that the present case is for the petitioner's refund claims of unutilized ITC used in making zero-rated supply of goods during the period of 11 months in Financial Year 2020-2021 and 2021-2022. It is further stated that the petitioner has been legally entitled to refund of a sum aggregating to Rs.1,10,67,67,172/- for these 11 months, however, the petitioner erroneously lodged claims for a lower amount of Rs.1,00,47,38,439/- due to inadvertent arithmetical error of their employee and therefore the respondents have sanctioned and paid refund aggregating to Rs.1,00,47,38,439/-. It is further stated that when the petitioner realized the error and lodged supplementary refund claims for the left out amount of refund being Rs.10,20,28,733/-, the respondents have refused to sanction and pay such refund on a specious basis that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner. The petitioner has, therefore, filed the present petition.

4. Heard learned advocate Mr. Paresh M. Dave for the petitioner and learned AGP Ms. Shrunjal Shah for the respondents.

5. Learned advocate for the petitioner, at the outset, referred the provisions contained in Section

16 of the IGST Act and thereafter referred the provisions contained in Section 54 of the CGST Act. Thereafter, learned counsel has referred the provisions contained in Rule 89 of CGST Rules and also referred the document produced at page 48 of the compilation i.e. Form GST RFD - 01, i.e., the Application for Refund. At this stage, learned advocate has also referred the statement produced at page 57 of the compilation. Learned advocate Mr. Dave submitted that the total refund that the petitioner had been entitled to for these 11 months in respect of export of goods without payment of tax (accumulated ITC) in accordance with the formula of Rule 89(4) of the Rules is Rs.1,10,67,67,172/-, however, there was an error in showing the refund amount which resulted in total refund amount being shown as Rs.1,00,47,38,439/-, and therefore, a sum of Rs.10,20,28,733/- remained to be shown in the applications as refund amount. Learned advocate referred the statement produced at page 57 of the compilation in support of the said contention.

5.1. Learned advocate for the petitioner, therefore, submitted that the amount of refund claimed by the petitioner was lower than what was actually admissible to the petitioner because of accumulated ITC involving zero rated supplies. It is submitted that all the 11 refund applications have been sanctioned and paid by the respondent No.2 after verifying and scrutinizing the applications. Thus,

the petitioner got refund claims aggregating to Rs.1,00,47,38,439/-.

5.2. Learned counsel further submits that when the petitioner realized the arithmetical error committed while submitting the applications for refund for particular months, the refund applications have been made within statutory period laid down under Section 54(1) of the CGST Act. However, while showing the category of refund application, the petitioner has shown "any other" as the category because refund applications for these 11 months had already been made under Clause 7(c) i.e. accumulated ITC category for export of goods without payment of tax and the same had been sanctioned and paid by CGST officers. It is clarified that these supplementary refund applications are only for correcting clerical and arithmetical error which crept in while making refund applications in past.

5.3. Learned advocate for the petitioner thereafter submitted that respondent No.2 issued two notices for rejecting the supplementary refund applications for July, 2020 and September, 2020 on the ground that "any other" category facilitated the tax payer to file a refund claim of a category other than listed in portal and the refund application made by the petitioner was not valid under "any other" category. It is submitted that petitioner filed reply on 10.08.2022 and explained the background in which the

supplementary applications for refund had to be filed. The petitioners have also explained why "any other" category was mentioned in the refund application, and that the refund claim only of that amount which was left out while making the application with incorrect calculations. Two separate replies were also filed. At this stage, it is submitted that the respondent No.2 passed orders and uploaded the same on common portal on 26.08.2022 without giving opportunity of hearing to the petitioner.

5.4. Learned advocate referred the said orders and submitted that from the orders passed by the respondents, it is clear that the respondent has reproduced the notices but the submissions made by the petitioner in the replies are not referred at all in the said orders. It is submitted that there was no bar under the law for supplementary refund claim for the same period for differential amount.

5.5. Learned advocate Mr. Dave would further submit that in the CGST Act, a refund application has to be filed on the common portal and in the format prescribed by the Government. In such prescribed form of application, the assessee is required to disclose grounds of refund claim with the category under which refund was claimed and the assessee is obliged to fill in such details against serial No.7 of the refund application. In the present case, the

petitioner claimed refund of accumulated ITC in respect of export of goods without payment of tax, and therefore, such category was declared while lodging the refund application initially. The said refund application has been sanctioned and paid also by the respondent No.2. However, another application for remaining amount of refund or for supplementary claim for the same category of accumulated ITC is not possible to be uploaded on the common portal because another application for the same month under the same category of accumulated ITC for export of goods without payment of tax is not accepted on the common portal, and therefore, the petitioner had no option but to upload the supplementary application under "any other" category. It is also submitted that there is no bar or prohibition under the law as regards submission of a supplementary refund claim, if an assessee had committed an error of claiming refund of a reduced amount while making refund application on the common portal. Learned counsel, therefore, urged that this petition be allowed and appropriate directions be issued to the respondents by quashing and setting aside the order impugned in the present petition.

5.6. Learned counsel has placed reliance upon the following decisions/orders in support of his submissions:

1. In ***Bombardier Transporation India Pvt.***

Ltd. v. Directorate General of Foreign Trade, reported in *2021 (377) ELT 489 (Guj.);*

2. In *P.A.Footwear Pvt. Ltd. v. Director General of Foreign Trade, New Delhi,* reported in *2020(372) ELT 660 (Mad.);*

3. *Order dated 11.02.2022 passed* by this Court *in Special Civil Application No.9151 of 2021* in the case of *M/s. Bodal Chemicals Ltd. v. Union of India;*

4. In *Vishnu Aroma Pouching Pvt. Ltd. v. Union of India,* reported in *2020(38) GSTL 289 (Guj.);*

5. *Order dated 21.07.2022 passed* by this Court *in Special Civil Application No.17424 of 2021* in the case of *M/s. Stitchwell Garments v. Union of India.*

6. On the other hand, learned AGP Ms. Shrunjal Shah has opposed this petition. Learned AGP has referred the averments made in the affidavit-in-reply filed on behalf of respondent No.2. It is submitted that the common portal calculates the refundable amount as per the formula and under Rule 89(4) of the CGST Rules. Learned AGP referred para 10 of the reply and submitted that as per the refund application submitted by the petitioner for July, 2020, the

maximum refund amount that could be claimed by the petitioner as per statement 3A of RFD-01 was Rs.5,57,57,863/- and the amount eligible for refund was Rs.2,91,60,705/-. It is submitted that the petitioner could claim a higher amount of refund up to a maximum of Rs.5,57,57,863/-. However, the petitioner only claimed Rs.2,91,60,705/- as refund by its own, and therefore, the petitioner is responsible for the less amount of refund claimed. Similarly, it is pointed out that for the month of September, 2020, the petitioner could claim an amount of Rs.15,85,34,281/-, however, the petitioner claimed only Rs.13,71,59,537/- for which the petitioner is responsible.

6.1. At this stage, it is further submitted that vide Circular dated 3rd October, 2019, the Government of India provided certain clarifications on the eligibility to file a refund application in form GST RFD-O1 for a period and category under which NIL Refund Application has already been filed. Learned AGP has referred Clause 3 of the said Circular and submitted that as per the said Clause no refund claims in Form GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.

6.2. It is submitted that in the case of the petitioner, after claiming the ITC refund once for each of the specified period, the petitioner

submitted supplementary refund application in "any other" category. It is submitted that for the said period, the petitioner had already claimed ITC refund and therefore the claim of the petitioner is rightly rejected by the respondent and thereby the respondent has not committed any error. Learned AGP, therefore, urged that this petition be dismissed.

6.3. Learned AGP has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***Union of India & Others v. VKC Footsteps India Private Ltd.,*** reported in ***(2022) 2 SCC 603***.

7. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it reveals that the petitioner is a company engaged in the business of manufacturing, trading and supplying/selling sugar and allied products. The petitioner has been selling and supplying such goods within the country and also exporting substantial quantities of goods to foreign countries. The petitioner states that the exports made by the petitioner are in the nature of zero-rated supplies as contemplated under Section 16 of the IGST Act. The petitioner further states that since such zero-rated supplies are made without payment of tax, ITC availed by the petitioner in respect of input supplies used in relation to making zero-rated supplies without tax remains unutilized and such unutilized ITC gets accumulated in the

petitioner's credit ledger. It is also the case of the petitioner that by virtue of Section 54(3) of the CGST Act and also Section 16(3) of the IGST Act, the petitioner is entitled to claim refund of such unutilized ITC. Further, under Rule 89(4) of the CGST Rules, the Central Government has provided for a formula for calculating the amount of refund of unutilized ITC availed in respect of inputs and input services used in making zero-rated supplies of goods and the petitioner has been claiming refund of such unutilized ITC in accordance with this formula on regular basis.

8. The present is a case for the petitioner's refund claims of unutilized ITC used in making zero-rated supply of goods during the period of 11 months in Financial Year 2020-2021 and 2021-2022. Learned advocate for the petitioner submitted that petitioner has been legally entitled to refund of a sum aggregating to Rs.1,10,67,67,172/- for these 11 months, however, the petitioner erroneously lodged claims for a lower amount of Rs.1,00,47,38,439/- due to inadvertent arithmetical error of the employee of the petitioner. It is submitted that the respondents have sanctioned and paid refund aggregating to Rs.1,00,47,38,439/-. It is the case of the petitioner that when the petitioners realized the error, they have lodged supplementary refund claims for the left out amount of refund being Rs.10,20,28,733/-, however, the respondents have refused to sanction and

pay such refund on a ground that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner.

9. At this stage, we would like to refer to the relevant provisions of law. Sub-Sections (3) and (14) of Section 54 of the CGST Act provides as under:

> "***54. Refund of tax.***
>
> *(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*
>
> *Provided that no refund of unutilised 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 rate 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:*
>
> *Provided further that no refund of unutilised 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.

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(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

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).

(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 dispatch 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;

6[(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, 7[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;

8[(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."

9.1. Section 16 of the IGST Act reads as under:

"16. (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 to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking. in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

PROVIDED that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-
(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.]

9.2. Now, we would like to refer to Sub-Rule (4) of Rule 89 of the CGST Rules, which reads as under:

"89: Application for Refund of Tax, Interest, Penalty, Fees or any Other Amount.

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(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula,-

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similar placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of

tax under bond or letter of undertaking, calculated in the following manner, namely:-

> *Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;*

(E) "Adjusted Total Turnover" means the sum total of the value of-
(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

> *(i) the value of exempt supplies other than zero-rated supplies; and*
>
> *(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,*
>
> *during the relevant period.*

(F) "Relevant period" means the period for which the claim has been filed."

10. Thus, from the aforesaid provisions, it is clear that the "refund amount" means the maximum refund

that is admissible. In the present case, the respondents have not disputed that the maximum refund that is admissible is Rs.1,00,47,38,439 and not the amount of Rs.1,10,67,67,172/-. However, the stand of the respondent is that the petitioner is responsible for the error committed by the employee of the petitioner in claiming the refund of lower amount than the maximum admissible amount.

11. From the record, it appears that out of Rs.1,10,67,67,172/-, the respondent has already granted refund for an amount of Rs.1,00,47,38,439/-, and therefore, the dispute is with regard to refund of an amount of Rs.10,20,28,733/-. When the petitioner realized the arithmetical error committed while submitting the applications for refund for particular months, supplementary applications have been made for getting the refund of aforesaid amount of Rs.10,20,28,733/- within statutory period laid down under Section 54(1) of the CGST Act. It is the case of the petitioner that while showing the category of refund application, the petitioner has shown "any other" as the category because refund applications for these 11 months had already been made under Clause 7(c) i.e. accumulated ITC category for export of goods without payment of tax and the same had been sanctioned and paid by CGST officers. It is also relevant to note that as the petitioner already filed refund application under Clause 7(c) i.e. accumulated ITC category at first point of

time, for the same month and same period, another/supplementary application for the refund of the differential amount of refund (not claimed by the petitioner on account of arithmetical error on the part of the petitioner) cannot be filed on the portal and therefore there was no option for the petitioner to submit the application under the category "any other". Thus, we are of the view that this is nothing but technical error and for such technical error, the claim of the petitioner cannot be rejected without examining the same by the respondent authority on its own merits and in accordance with law.

12. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of ***VKC Foodsteps India Private Limited (supra),*** wherein the Hon'ble Supreme Court observed in para 88, 99 and 142 as under:

> *"88. The jurisprudential basis furnishes a depiction of an ideal state of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gain saying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279A(6) embodies has*

to be progressively realized. The doctrines which have been emphasized by Counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the states before bringing them within the umbrella of GST. These aspects must be borne in mind while assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the PART F High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. If the legislature has intended that the equivalence between goods and services

should be progressively realized and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.

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99. We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' Counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We therefore, accept the submission which has been urged by Mr N Venkataraman, learned ASG.

142. The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or 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 unutilised 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 Natarjan and Mr Sridharan by prescribing an order of utilisation 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 assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same."*

12.1.In the aforesaid decision, the Hon'ble Supreme Court has an occasion to deal with the issue where the High Court has expanded the provision for refund beyond what the legislature has provided, and therefore, the aforesaid decision would not render any assistance to learned AGP in the facts of the present case.

13. Now, we would like to refer to the decisions relied on by the learned advocate appearing for the petitioner. In the case of ***Bombardier Transportation India Pvt. Ltd. (supra),*** the Division Bench of this Court observed in para 23 and 25 as under:

> *"23. The writapplicant submits that as per its understanding, the EDI system, which is an electronic system developed and managed by the respondent no.3 with an objective to digitalize transmission of shipping bills between Respondents, suffers from lacunae that it does not permit amendment, which is specifically permitted in terms of Section 149*

of the Customs Act, 1961, to be carried electronically through EDI system. It is a settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system.

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25. In view of the above, the present writ-application succeeds and is hereby allowed. The respondents nos.1 and 2 are directed to grant the benefits of the MEIS to the writ-applicant within a period of four weeks from the date of the receipt of this order."

13.1. In the case of ***M/s Bodal Chemicals Ltd. (supra)***, the Division Bench of this Court observed in para 9 and 11 as under:

"9. We are of the view that the respondents cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches. The writ applicant herein has been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GSTR – 6 return for recording and distributing the ISD credit of Rs.20,52,989/-. As usual, there is no response at the end of the GSTN. The writ applicant is not allowed to distribute the ISD credit of Rs.20,52,989/- as the same has not been recorded, reported and declared in the GSTR – 6 return.

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11. For all the aforegoing reasons, this petition succeeds and is hereby allowed. The respondents are directed to allow the writ applicant to furnish manually the GSTR – 6

return with details of the ISD credit of Rs.20,52,989/- and also permit distribution of such credit to the constituents of the writ applicant. Let this entire exercise be undertaken within a period of six weeks from the date of the receipt of writ of this order."

13.2.In the case of *M/s. Stitchwell Garments (supra)*, the Division Bench of this Court observed and held in para 5.2 to 5.4 and 6 as under:

"5.2 The entitlement of the petitioner for availment under export scheme is not in dispute. Entering a particular code to receive the benefit was only part of procedure. It could not overreach or obliterate the substantive right claimable by the petitioner once the petitioner was eligible under the scheme to get the benefit. The decisions relied on by the learned advocate for the petitioner lay down that technical glitch ought not to have been permitted to take toll of the petitioner's rights under the scheme to avail the benefits.

5.3 Supreme Court in Saiyad Mohammad Bakar El-Edroos (Dead) By Lrs. Vs. Abdulhabib Hasan Arab & Ors. [(1998) 4 SCC 343], held that procedure cannot operate to defeat the ends of justice, it must stand to the aid of justice,

"8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away be the procedural law what is given by the substantive law."

5.4 Even if the petitioner had entered wrong scheme code, it was only an irregularity and not illegality. In Solanki Parvatikumari Rameshbhai Vs. State of Gujarat being Special Civil Application No. 22981 of 2017, Single Judge of this Court explained the differentiation between illegality and irregularity,

> *"5.2 Law conceives a clear differentiation between illegality and irregularity. This nice distinction brings home the case of the petitioner. An illegality is something which amounts to substantial failure in compliance of requirement. It denotes such breach of rule or requirement which alters the position of a party in terms of his right or obligation. Illegality denotes a complete defect in the jurisdiction or proceedings. Illegality is properly predictable in its radical defects. It is a situation contrary to the principle of law. As against this, an irregularity as defined lexicographically, is want of adherence to some prescribed rule or mode of proceedings. It consist in omitting the rule something that is necessary for due and orderly conducting of a suit or doing it in an unreasonable time or improper manner. In Law Lexicon by R. Ramanatha Aiyar, 1997 Edition, irregularity is defined as "a neglect of order or method; not according to regulations; the doing of an act at an unreasonable time, or in an improper manner; the technical term for every defect in practical proceedings or the mode of conducting an action or defence, as distinguished from defects in pleading. Irregularity is failure to observe that particular course of proceedings which, conformable with the practice of the court, ought to have been observed".*

> *6. In the aforesaid view, the petition deserves to be allowed. Resultantly, the decision of Respondent Director General of Foreign Trade reflected in email communication dated 10.06.2021 refusing to change the Scheme Code from 19 to 60 in EDI shipping bills is hereby set aside. Respondents no.1 and 2 herein are directed to accept the application of the petitioner for export benefits under the Scheme of Rebate of State and Central taxes and Levies (RoSCTL) in respect of 70 shipping bills referred to in order dated 04.01.2021, the Principal Commissioner of Customs, Customs House, Mundra. The acceptance of the petitioner's application may be by manual mode if the system does not permit the correction. The application of the petitioner for the above purpose shall be deemed to have been filed with Code 60."*

14. Keeping in view the aforesaid decisions, it is settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. As discussed hereinabove, the petitioner has no option but to upload the supplementary application under "any other" category for the refund of the left out amount, which was due to an arithmetical error committed by the employee of the petitioner. We are of the view that the said claim of the petitioner for refund of the left out amount of Rs.10,20,28,733/- cannot be rejected outright merely on technicality and that too when the substantive conditions are satisfied without scrutiny by the respondent in

accordance with law. Thus, the petition deserves to be allowed.

15. The petition is allowed. The impugned order Nos. ZD240822013296L and ZD240822013287K dated 26.08.2022 are hereby quashed and set aside. The respondents are directed to allow the petitioner to furnish manually the refund applications for refund of the left out amount of Rs.10,20,28,733/-. However, it is open for the respondents authority to scrutiny the claim of the petitioner for refund of the aforesaid amount in accordance with law and to take appropriate decision on the applications which may be made by the petitioner. Let this exercise be undertaken by the respondents within a period of six weeks from the date of receipt of the applications from the petitioner. Rule is made absolute.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI,J)

LAVKUMAR J JANI