HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) D. B. Civil Writ Petition No. 8476/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

Connected With

(2) D. B. Civil Writ Petition No. 7664/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.

3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur, NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt-Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

(3) D. B. Civil Writ Petition No. 8487/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

(4) D. B. Civil Writ Petition No. 8489/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

(5) D. B. Civil Writ Petition No. 8490/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

(6) D. B. Civil Writ Petition No. 8491/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur NCR Building Statue Circle, Jaipur.
4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.
5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

(7) D. B. Civil Writ Petition No. 8492/2021

M/s Nahar Industrial Enterprises Limited, Having its office at 6th Mile Stone, Bhiwadi-Alwar Road, P.O. Khijuriwas, Bhiwandi-301018, Distt. Alwar Rajasthan through the Authorized Signatory Mr. Daljeet Singh Virdi S/o Late Sh. Kirpa Singh R/o 2116, Phase-1, Urban Estate, Dugri, Ludhiana, 141013 aged about 66.

----Petitioner

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. Principal Commissioner of Central Goods and Services Tax, NCR Building, Statue Circle, Jaipur.
3. Additional Commissioner (Appeals), Central Goods and

Services Tax, Jaipur NCR Building Statue Circle, Jaipur.

4. Assistant Commissioner, Central Goods and Services Tax, Division-D, Bhiwadi, Distt- Alwar.

5. State of Rajasthan, through Principal Secretary Finance, Government of Rajasthan, Government Secretariat, Janpath, Jaipur

----Respondents

For Petitioners	:	Mr. M.P. Devnath Advocate through Video Conferencing assisted by Mr. Pranav Malik Advocate.
For Respondents	:	Mr. Kinshuk Jain Advocate assisted by Mr. Jay Updhayay Advocate & Mr. Saurabh Jain Advocate.

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE

31/10/2023

(Per Manindra Mohan Shrivastava,J.)

1. As the common issue of law arises for consideration in these petitions, this common order shall govern disposal of these writ petitions filed by one and the same petitioner with reference to different tax periods ventilating its grievance on account of rejection of its claim for refund of unutilised input tax credit. For brevity and convenience, the facts stated in D. B. Civil Writ Petition No. 8476/2021 are being referred to.

2. The petitioner, a public limited company, seeks to assail orders dated 06.10.2020 and 11.05.2021 passed by Respondent No. 3, Additional Commissioner (Appeals), Central Goods and Services Tax, Jaipur, whereby, petitioner’s appeals, against the orders rejecting its claim for refund, have been disposed off.

3. Facts of the case:

Quint essential facts necessary for adjudication of controversy involved in these writ petitions are in narrow encompass and stated infra:

3.1 The petitioner-company is engaged in manufacturing of textiles and its operation thereof ranging from spinning, weaving and processing. It is registered under the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act, 2017'). In the process of manufacturing, the petitioner uses various raw materials. Rate of goods and services tax (hereinafter referred to as 'GST') on inputs varies from 5% to 28%. The raw materials used are cotton, manmade fibre and other inputs. The output/manufactured products are cotton yarn, cotton blended yarn, polyester/viscose yarn, polyester/viscose blended yarn. The rate of GST on outputs ranges from 0.1% to 12%. According to the petitioner, as the rates of GST on inputs was higher than the rates of GST on outputs, it is entitled to claim refund of unutilised credit at the end of relevant tax period, it being a case of inverted duty structure, under the statutory scheme of Section 54, sub-section (3) of the CGST Act, 2017.

3.2 For the relevant year in question, i.e. January, 2020 to March, 2020, the petitioner filed refund application under Section 54(3) of the CGST Act, 2017, to the tune of Rs. 1,31,39,059/- in respect of the unutilised input tax credit accumulated on account of inverted tax structure. According to the petitioner, application was filed on the GSTN portal of the petitioner in the form and manner prescribed under Rule 89 of the Central Goods and

Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules, 2017').

3.3 A show cause notice was issued proposing rejection of claim for refund on the statement that the petitioner's case does not fall under the category of "inverted duty structure". Vide order dated 24.08.2020, the adjudication proceedings eventually culminated in rejection of petitioner's claim for refund on the ground that the petitioner's case does not fall in the category of inverted duty structure.

3.4 Feeling aggrieved, the petitioner preferred separate appeals against rejection of claim for refund for different tax periods before the Commissioner (Appeals), Central Excise and CGST, Jaipur (hereinafter referred to as 'the Appellate Authority'). Those appeals came to be disposed off by the learned Appellate Authority vide two common orders dated 06.10.2020 and 11.05.2021, affirming the findings recorded by the Adjudicating Authority that the petitioner's case does not fall in the category of inverted duty structure and it is not entitled to refund of unutilised ITC through invocation of the provisions contained in Section 54(3) of the CGST Act, 2017.

3.5 Though Section 112 of the CGST Act, 2017 provides for further appeal before Goods and Service Tax Appellate Tribunal (GSTAT), there being no Appellate Tribunal in existence, rejection of petitioner's claim by the Adjudicating Authority and its affirmation by the Appellate Authority is under challenge in these writ petitions.

4. Submissions on behalf of the petitioner:

4.1 Learned counsel appearing on behalf of the petitioner contended that the impugned order of rejection of its claim for refund of unutilised input tax credit is illegal and based on complete misinterpretation and misconstruction of not only against the letter, but also the spirit of the statutory scheme of refund engrafted under Section 54, sub-section(3) of the CGST Act, 2017. According to him, the scheme of refund under Section 54(3) of the CGST Act, 2017 is attracted where the credit, as input tax credit, has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. This gives rise to a situation of inverted duty structure during a particular tax period and, therefore, the credit accumulated due to inverted duty structure entitled the petitioner to claim refund as per the mechanism of refund specified under Rule 89 of the CGST Rules, 2017 through application of a specified formula applied for relevant tax period.

4.2 Further submission is that there being no dispute that packing material, consumables, spares etc. used as raw material are qualified as input in terms of provisions contained in Section 16 of the CGST Act, 2017 read with definition of "input" under Section 2(59) of the CGST Act, 2017, petitioner's claim for refund was required to be considered by applying the principle that Section 54(3) of the CGST Act, 2017 and Rule 89(5) of the CGST Rules, 2017 do not stipulate one-to-one correlation between all inputs or outputs. Referring to the formula specified under Rule 89(5) of the CGST Rules, 2017, it is contended that net ITC

claimed during the claim period is to be considered relating to all inputs. Further contention is that since ITC and adjusted total turnover is taken GSTIN wise, therefore, the inverted rated supplies will also be taken GSTIN wise, i.e., turnover of all input supplies which are taxed at a rate lower than the rate of tax on inputs.

It is also argued that in case of multi taxable output supplies, the scheme of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 requires a rational construction implying a workable formula that the determination of inverted duty supplies will be done by comparing the average rate of duty of inputs with the rate of duty of outputs and when the formula is logically interpreted, the same envisages consideration of all inputs and all outputs.

4.3 Next submission of learned counsel for the petitioner is that denominator “Adjusted Total Turnover” as contained in under Rule 89 of the CGST Rules, 2017, expressly provides for inclusion of all products quantified under the expression “sum total of the value of”. Thus, it is contended, law provides for refund calculation GSTIN wise and not productwise.

4.4 The formula as specified in Rule 89(5) of the CGST Rules, 2017 envisages that the output liability on all inverted rated supplies is deducted from the input tax credit apportioned to such inverted rated supplies and when such ITC is more than the output liability, refund amount will be positive and would give rise to a claim for refund.

It is also contended that GSTN portal, which itself only allows filing of refund application GSTIN wise and the portal only allows the claimant to file a refund application for one tax period only once, it is neither permissible, nor possible to claim refund by filing multiple refund applications product wise for the same tax period.

It is further contended that ground of rejection is not referable to any of the provisions of the law. It is based only on the consideration that the output sales is to the extent of 80% of goods having 5% duty only and input too is majorly of 5% rate. Hence, the rate being more or less the same, it is not a case of inverted duty structure, which consideration is not permissible while examining as to whether it is a case of inverted duty structure. The submission is that 100% cotton goods are only 50% of the total goods and the rest is cotton dominated blends for which other inputs have rates of 18% whereas output rate is 5%. Further, rest of the outputs are synthetic dominated blends and 100% polyester/viscose for which inputs bear rate of 12%, 18% and 28%. Legal submission is that the law does not recognise the words, "more or less". Even if overall rate of all inputs is marginally higher than the rate of output, credit accumulations would entitle refund under "inverted rated structure" as provided under Section 54(3) of the CGST Act, 2017.

4.5 Further submission is that other ground of rejection is that refund is mainly due to high input purchases and they are in stock during the claim period is again not referable to the scheme of Section 54(3) of the CGST Act, 2017 or the formula under Rule

89(5) of the CGST Rules, 2017 as it does not talk of stock, but only refers to output turnover (adjusted turnover) during the claim period. Rule 89(5) of the CGST Rules, 2017 envisages that total ITC claim of inputs during the claim period gets consumed in respect of the turnover of the claim. In other words, if refund is sanctioned, ITC claimed for the relevant period cannot be carried forward to the subsequent periods. The usages finishes in a particular claim period only. Even if tax period is taken as one year, there is accumulation of credit, thus, nullifying stock impact and refund accrues by application of formula envisaged in Rule 89(5) of the CGST Rules, 2017.

Further contention is that determining factor for applicability of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 is rate of tax and quantum of ITC content and not value/quantum of individual inputs (going into an output) and the outputs.

4.6 The third ground of rejection of petitioner's claim for refund is Circular No. 125/44/2019-GST dated 25.11.2019 which is not applicable to the present case as it only pertains to one product and many inputs whereas present being a case of many inputs and many outputs, is also not based on correct understanding and import of the aforesaid circular. In any case, that was not a ground for rejection of the claim of the petitioner by the Adjudicating Authority. Therefore, the affirmation of rejection of the claim of the petitioner by the Appellate Authority on such ground was not available.

4.7 Further submission is that reference to table presented by the department to buttress the submission that there is no accumulation in two quarters in the financial year 2019-20 was not the basis for the order passed by the Commissioner (Appeals). There is no challenge to the computation of inverted rated supplies but the claim is denied on the ground that present is not a case of inverted duty structure. Computation of accumulated credit on account of inverted rated supplies has to be only in accordance with the provisions contained in Section 54 of the CGST Act, 2017 by applying the formula prescribed in Rule 89 of the CGST Rules, 2017 and not otherwise. Deduction of total output liability from total ITC (as contained in the chart) is not the correct way of arriving at the refund amount. The formula envisages that the ITC gets apportioned on the basis of the turnover, i.e., it gets allocated to inverted duty supplies and to supplies other than inverted. Assuming, though not admitting, that the method used by the department is correct, there is accumulation in various periods. Referring to the language narrated in Section 54 of the CGST Act, 2017, it is contended that the term "output supplies" has been used in plural form which is indicative of legislative intention that all output supplies are to be included for ascertaining inversion and not just one output. Rejection of claim of the petitioner is based on misinterpretation of the words, "output supplies" as only output whereas the definition as well as the formula prescribed under Rule 89(5) of the CGST Rules, 2017 will only include supplies where the rate of tax on output is lower than rate of tax on inputs.

5. <u>Submissions on behalf of the respondents:</u>

5.1 Referring to the pleadings in the reply, learned counsel for the respondents would submit that the petitioner's claim for refund was scrutinised and after due application of mind to various grounds and the facts obtaining on record as also taking into consideration the spirit of provisions with regard to refund based on inverted duty structure, the Adjudicating Authority rejected the claim. The Appellate Authority affirmed the order of the Adjudicating Authority after detailed consideration of the contentions and having found that the refund claim filed by the petitioner-taxpayer was not fit to be categorised under inverted duty structure and claim of the petitioner was rejected. The authorities, i.e., Adjudicating Authority and the Appellate Authority both found that inputs and outputs both were attracting same rate of GST of 5%, 12% and 18%.

5.2 Further submission of learned counsel for the respondents is that under Section 54(3) of the CGST Act, 2017, a registered person may claim refund of any unutilised input tax credit at the end of any tax period meaning thereby that refund of unutilised input tax credit shall be allowed only in cases where credit has accumulated on account of rate of tax of inputs being higher than the rate of tax of output supplies. Therefore, it is contended, in order that a claim for refund is allowed under inverted duty structure, it is not only required to be established that rate of tax on inputs is higher than the rate of tax on output supplies, but also that the credit has accumulated on that count only. He would further submit that refund is allowable only by application of the

formula specified in Rule 89(5) of the CGST Rules, 2017. In the present case, rate of tax of inputs was found to be more or less 5%, 12% and 18% whereas the tax rate on output supply was also 5%, 12% and 18%. ITC availed on the inputs procured at the rate of 28% GST was very negligible. Taking into consideration these peculiar facts obtaining on record, the Adjudicating Authority as well as the Appellate Authority were of the view that tax rate on the inputs and outputs are more or less the same and thus, the petitioner does not qualify for refund and, therefore, present is not a case covered under inverted duty structure. As the authorities were of the opinion that inverted duty structure scenario is not present, there was no occasion to apply the formula mentioned in Rule 89(5) of the CGST Rules, 2017.

5.3 Learned counsel for the respondents also places reliance upon the clarificatory circulars issued by the Central Government on 31.12.2018 and 18.11.2019 wherein it has been clarified that the refund of unutilised ITC in case of inverted duty structure, as provided in Section 54(3) of the CGST Act, 2017, is available only where ITC remains unutilised even after setting off of available ITC for payment of output tax liability. He would further submit that the petitioner, having availed input tax credit for the particular tax period, utilised the same for payment of output tax liability and, therefore, there was, in fact, no accumulation of tax as claimed by the petitioner. Relying upon clarificatory circular dated 18.11.2019, it is submitted that no refund is available in respect of unutilised transitional credit which is of earlier tax regime (TRAN-1). A chart has been annexed with the written submissions

to demonstrate that there was no accumulation of ITC. The authorities found that the petitioner was engaged in the manufacturing of cotton yarn, cotton blended yarn, polyester/viscose yarn, polyester/viscose blended yarn and the major inputs of the taxpayer was cotton, manmade fibre which constituted 75% to 85% of total inputs of taxable value received during the relevant period at the rate of 5% GST whereas during the relevant period more than 75% of the total output supply of the taxpayer is 100% cotton yarn and cotton blended yarn (consisting of more than 50% cotton) which attracts rate of 5% GST. Thus, the inward supply and outward supply was found to be equal and at par, i.e., at the rate of 5% GST. The accumulation during the relevant tax period was mainly because the petitioner during the relevant period procured more inputs and affected less output supplies. Therefore, it is contended, the accumulation was not due to rate of tax of inputs being higher than the rate of tax on output supplies. In such a situation, Section 54(3) of the CGST Act, 2017 is not attracted as there is no accumulation on account of input tax rates being higher than the output supply tax rates. Learned counsel would further submit that Circular dated 31.12.2018 is not applicable because the said circular deals with those cases where output supplies attract the single rate of GST and multiple inputs are used attracting different rates of GST. As in the present case, there are multiple output supplies attracting different rate of GST (5%, 12% and 18%) and multiple input supplies attracting same rate of GST (5%, 12% and 18%), the petitioner is not entitled to refund by relying upon Circular dated

31.12.2018. Relying upon the decision of the Hon'ble Supreme Court in the case of **Union of India & Others Vs. VKC Footsteps India Private Limited (2022) 2 SCC 603**, it is submitted that stipulation in the first proviso to Section 54(3) of the CGST Act, 2017, namely, "no refund shall be allowed", and "in cases other than", operate as limitation on the expression "claim" used in substantive part of Section 54(3) of the CGST Act, 2017. Therefore, the provision is couched in negative language which manifests intention of the legislature to confine refund only to two specific situations as stipulated in sub-clause (i) and (ii) of first proviso to Section 54(3) of the CGST Act, 2017. He would further submit that refund, not being a fundamental right or constitutional right, cannot be claimed de hors the statutory scheme.

6. <u>Statutory provisions:</u>

6.1 Section 54 of the CGST Act, 2017 provides for refund of tax. Under sub-section (1) of Section 54 of the CGST Act, 2017, a person claiming refund of "any tax and interest", if any, paid on such tax or any other amount paid, is required to make an application within a period of two years of the relevant date. Further, Section 54(3) of the CGST Act, 2017 provides for a claim of refund of unutilised ITC. The provision contained in sub-sections (1), (2) and (3) of Section 54 of the CGST Act, 2017, being relevant for adjudication of controversy involved in these petitions, is extract below:

> "**54. Refund of tax**
> (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two

years from the relevant date in such form and manner as may be prescribed:

PROVIDED that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [such from and] manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of [two years] from the last day of the quarter in which such supply was received.

(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.

(4) XXXXXX
(5) XXXXXX
(6) XXXXXX”

6.2 Rule 89 of the CGST Rules, 2017 contains detailed provisions with regard to application for refund of tax, interest, penalty, fees or any other amount. Rule 89(5) of the CGST Rules, 2017 specifically deals with refund on account of inverted duty structure by providing a specific formula which, for ready reference, is extracted as below:

> "**89. Application for refund of tax, interest, penalty, fees or any other amount**
>
> (1) xxxxxx
> (2) xxxxxx
> (3) xxxxxx
> (4) xxxxxx
>
> (5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-
>
> Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – [{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}].
>
> *Explanation:* For the purposes of this sub-rule, the expression-
>
> (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both; and
>
> [(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]]]"

6.3 Thus, under the statutory scheme of the CGST Act, 2017 and CGST Rules, 2017, claim of refund of any unutilised input tax credit at the end of any tax period can be allowed subject to fulfillment of statutory limitations and in accordance with the formula as provided in Rule 89(5) of the CGST Rules, 2017.

6.4 The statutory scheme of refund of tax under Section 54(3) of the CGST Act, 2017 came up for consideration before the Hon'ble Supreme Court in its authoritative pronouncement in the case of **Union of India & Others Vs. VKC Footsteps India Private Limited (supra)**. The divergence between the views of two High Courts in the matter of challenge to constitutional validity of Rule 89(5) of the CGST Rules, 2017 on the ground that it is ultra vires Section 54, sub-section (3)(ii) of the CGST Act, 2017 formed subject matter of consideration of the Hon'ble Supreme Court. The background which led to enactment of Section 54(3) of the CGST Act, 2017 providing for refund of accumulated credit due to inverted duty structure was noted by the Hon'ble Supreme Court as below:

> "**2.** While envisaging a refund in the latter of the above two situations, Parliament was cognizant of the fact that ITC may accumulate due to a variety of reasons. However, Parliament envisaged a specific situation where the credit has accumulated due to an inverted duty structure, that is where the accumulation of ITC is because the rate of tax on inputs is higher than the rate of tax on output supplies. Taking legislative note of this situation, a provision for refund has been provided for in Section 54(3). The Central Goods and Services Tax Rules 2017 ("the CGST Rules") have been formulated in pursuance of the rule-making power conferred by Section 164 of the CGST Act. Rule 89(5) provides a formula for the refund of ITC, in "a case of refund on account of inverted duty structure". The said formula uses the term "net ITC". In defining the expression "net ITC", Rule 89(5) speaks of "input tax credit availed on inputs."

After having dealt with the constitutional scheme of GST and adverting to some of the key definitions contained in the CGST Act, 2017 defining "goods", "services", "input", "input service", "input tax", "input tax credit", "output tax" and "outward supply" as also the provisions contained in Section 16 and 49 of the CGST

Act, 2017 providing for eligibility and conditions for taking ITC, legal position was analysed as below:

> "**73.** The provisions of Section 16 and Section 49 indicate the following position:
>
> **73.1.** The ITC in the electronic credit ledger may be availed of for making any payment towards output tax under the CGST Act or under the IGST Act.
>
> **73.2.** The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the CGST Act or its Rules.
>
> **73.3.** The balance in the electronic cash ledger or electronic credit ledger after the payment of tax, interest, penalty, fees or any other amount payable under the Act or Rules may be refunded in accordance with the provisions of Section 54.
>
> **73.4.** Sub-section (6) of Section 49, in other words contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger in the manner stipulated by the provisions of Section 54."

The Hon'ble Supreme Court analysed and interpreted Section 54(3) of the CGST Act, 2017 as below:

> "**76.** The crux of the dispute in the present case pertains to how sub-section (3) to Section 54 and Explanation 1 to sub-section (1) of Section 54 are to be understood and interpreted. For convenience of analysis, the interpretation of sub-section (3) of Section 54 can be distributed in its main tier and the three provisos. The main part of sub-section (3) provides that a registered person may claim refund of any unutilised ITC at the end of any tax period. Tax period is defined in Section 2(106) as the period for which the return is required to be furnished. While enacting Section 54(3), Parliament has envisaged a claim for the refund of unutilised ITC by a registered person at the end of the tax period. The first tier is the main provision of Section 54(3) which lays down four conditions:
>
> (i) A claim of refund;
> (ii) By a registered tax person;
> (iii) Of any unutilised ITC; and
> (iv) At the end of any tax period, subject to the provisions of sub-section (10).

77. The second tier is the first proviso. The first proviso begins with the expression "no refund of unutilised ITC shall be allowed in cases other than" which is followed by clauses (i) and (ii). The opening line of the first proviso contains two expressions of significance, namely, "no refund shall be allowed" and "in cases other than". The expression "allowed" in the proviso must be contrasted with the expression "claim" in the substantive part of sub-section (3). A refund can be allowed only in the eventualities envisaged in clauses (i) and (ii). The expression "other than" operates as a limitation or restriction.

78. The third tier of sub-section 54(3) consists of the two clauses of the first proviso which deal with two distinct cases: clause (i) deals with zero-rated supplies made without payment of tax, while clause (ii) deals with credit which has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. Proviso (ii) embodies the concept of an inverted duty structure. Proviso (ii) states that the refund of unutilised ITC shall be allowed only when the credit has accumulated because the rate of tax of inputs is higher than the rate of tax on output supplies. Input, as we have already noted, is defined in Section 2(59) to mean goods other than the capital goods. "Output supplies" is not defined in the statute. As seen above, Section 16 stipulates the eligibility and conditions for availing ITC. ITC accumulates when the credit cannot be utilised either partly or in whole and this may occur for a variety of reasons. The credit of ITC may accumulate for several reasons. Without spelling out an exhaustive list of circumstances, the accumulation may be due to: (a) an inverted duty structure when the GST on output supplies is less than the GST on inputs; (b) stock accumulation; (c) capital goods; and (d) partial reverse mechanism for certain services. There could be other reasons as well, such as excessive discounts or predatory pricing."

The legislative intent behind enacting clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017 was noted by the Hon'ble Supreme Court as below:

"**82.** While enacting clause (ii) of the first proviso to Section 54(3) in the CGST Act, Parliament, took legislative notice of a specific eventuality, namely, "where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies". Parliament would be cognizant of the fact that ITC may accumulate for a variety of reasons, of which an inverted duty structure is one situation. Parliament was legislating

to provide for a refund and therefore restricted it to the two situations spelt out in clauses (i) and (ii) of the first proviso. The opening words of the substantive part of Section 54(3) contemplate a claim of refund of "any unutilised input tax credit". Undoubtedly, any unutilised ITC would include credit on account of tax charged on any supply of goods or services or both. The opening sentence of Section 54(3) provides for (i) a claim of refund by a registered person; (ii) of any unutilised input tax credit; (iii) at the end of any tax period. But the impact of the first proviso, as its opening words indicate, is that:

82.1. "No refund" of unutilised ITC "shall be allowed" "in cases other than" (i) and (ii).

82.2. The expression "claim" in the substantive part must be distinguished from the phrase "shall be allowed" in the opening sentence of the first proviso. Likewise, the expression "may claim refund" in the opening part must be distinguished from "no refund" in the opening part of the first proviso.

82.3. The impact of the first proviso is that a refund of unutilised ITC shall be allowed only in cases falling under (i) and (ii). The expression "only" in the previous sentence is not a judicial addition to statutory language but follows plainly from the expressions "no refund" of unutilised ITC shall be allowed "in cases other than".

82.4. The expression "in cases other than" is a clear indicator that clauses (i) and (ii) are restrictive and not conditions of eligibility. A refund, in other words, can be allowed in the two contingencies spelt out in clauses (i) and (ii) of the first proviso.

82.5. There is a clear distinction between clause (i) and clause (ii) of the first proviso: (a) in the case of exports, the contingency is zero-rated supplies without any distinction between input goods or input services; (b) in contrast for domestic supplies, clause (ii) relates to the accumulation of credit on account of rate of tax on inputs being higher than the rate of tax on output supplies.

82.6. The legislative draftsperson has made a clear distinction between clause (i) and clause (ii) of the first proviso and it was in this context that the opening words of Section 54(3) have used the expression "may claim refund of any unutilised ITC".

82.7. Explanation 1 to Section 54, while defining the expression "refund" for the purposes of the section adopts an inclusive definition covering (a) refund of tax paid on zero-rated supplies of goods or services or both; (b)

refund of tax paid on input goods or inputs services used in making such zero-rated supplies; (c) refund of tax on supply of goods regarded as deemed exports; and (d) refund of unutilised ITC as provided under sub-section(3) of Section 54.

82.8. Explanation 1 indicates that with reference to exports, the legislature has brought within its fold ITC on input goods and input services. In contrast, in the case of domestic supplies it has contemplated refund of unutilised ITC "as provided under sub-section(3)". The Explanation is a clear indicator that in respect of domestic supplies, it is only unutilised credit which has accumulated on the rate of tax on input goods being higher than the rate of output supplies of which a refund can be allowed. Clause (ii) of the first proviso in other words is a restriction and not a mere condition of eligibility."

7. Analysis and Conclusion:

7.1 The petitioner-company manufactures cotton yarn, cotton blended yarn, polyester/viscose yarn, polyester/viscose blended yarn. The rate of GST on these output supplies varies from 0.1% to 12%. Raw material used for manufacturing of aforesaid goods is cotton, manmade fibre, packing material, store consumables and spares and other inputs on which rate of GST varies from 5% to 28%. The description of inputs and output supplies and respective rate of tax on each of the inputs and output supplies would be clear from following table:

Description of output	**Rate of GST on output**	**Inputs utilised in manufacture of output**	**Rate of GST applicable on inputs**
Cotton yarn	5%	Cotton	5%
		Packing material	12%
		Other inputs	28%
		Store consumables and spares	18%
Cotton blended yarn	5%	Cotton	5%
		Manmade fibre	18%
		Packing material	12%
		Other inputs	28%

		Store consumables and spares	18%
Polyester/Viscose blended yarn	12%	Cotton	5%
		Manmade fibre	18%
		Packing material	12%
		Other inputs	28%
		Store consumables and spares	18%
Polyester/viscose Yarn	12%	Manmade fibre	18%
		Packing material	12%
		Other inputs	28%
		Store consumables and spares	18%
Other outward supply	0.1%	Cotton	5%
		Manmade fibre	18%
		Packing material	12%
		Other inputs	28%

7.2 From perusal of the aforesaid table, it is clear that while rate of GST on many inputs and output supplies are the same, yet, rate of GST on various inputs (raw materials) is higher than the rate of GST on output supplies. It is further discernible that while two output supplies namely cotton yarn and cotton blended yarn are taxable at the rate of 5%, the rate of GST on inputs, except cotton, is more than the rate of tax on output supplies. One of the input (raw material) namely cotton attracts 5% GST, but all other inputs namely packing material, store consumables and spares, manmade fibre and other inputs carry higher rate of tax, i.e., 12%, 18% and 28%.

As far as other two output supplies namely polyester/viscose blended yarn and polyester/viscose yarn are concerned, rate of GST on these output supplies is 12% on each goods. For manufacturing of polyester/viscose blended yarn, as many as five inputs (raw materials) are utilised, namely cotton, manmade fibre,

backing material, store consumables and spares and other inputs. Cotton alone is taxable at the rate of 5% which is lower than the rate of GST on output supply. Other input, namely, packing material carries 12% rate of GST which is equal to the rate of GST on such output supply. However, three other inputs, namely, manmade fiber, store consumables and spares and other inputs attract higher rate of GST which is 18% and 28%.

Similarly, polyester/viscose yarn is also taxable @ 12% and out of four inputs, the rate of GST on packing material alone being 12% is equal to the rate of tax on such output supply. However, remaining inputs, namely, manmade fibre, store consumables and spares as also other inputs carry rate of tax higher than the rate of tax on such output supply.

Under the heading "other outward supply", the rate of GST is only 0.1% whereas all the inputs (raw materials) used to manufacture carry higher rate of GST, i.e. 5%, 12%, 18% and 28%.

7.3 The above comparative analysis clearly shows that all the inputs taken together and utilised through the process of manufacturing, the output supplies would carry higher rate of GST as compared to the rate of GST on such inputs, either taken individually or collectively both. The rate of tax on output is ranging from 0.1% to 5% or 12% whereas rate of tax applicable on some inputs may be 5% or 12%, but on remaining inputs, rate of GST is certainly higher than 5% or 12%.

7.4 The provision contained in proviso (ii) to Section 54(3) of the CGST Act, 2017, as it stands and on its plain reading, uses the

expression, "where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies". The language of the aforesaid provision is plain and simple signifying the plurality of both inputs and output supplies. The statute purposely uses the words, "inputs" and "output supplies".

7.5 It is well settled that a taxing statute is to be strictly construed. Conscious use of the plural words, "inputs" and "output supplies" by the legislature has to be given full effect to. Use of the word, "inputs" signifies a situation where there may be more than one input and it is not possible to read "inputs" as "input" alone, so as to restrict its meaning. In other words, one of the basic principles of interpretation of statute is to read the statute as it is.

7.6 The Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Madras Vs. Kasturi & Sons Ltd., (1999) 3 SCC 346**, while explaining the principle of strict construction of taxing statute and relying upon its various earlier decisions, propounded that in a taxing Act, one has to only look fairly at the language used therein.

The Hon'ble Supreme Court in the case of **State of Jharkhand & Others Vs. Tata Steel Limited & Others, (2016) 11 SCC 147**, while applying the rule of literal construction to a taxing statute, held thus:

> "**22.** Thus, the aforesaid decision makes it quite clear that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the

> notification. It has also been held by the Constitution Bench, if the taxpayer is within the plain terms of the exemption, it cannot be denied its benefits by calling in aid any supposed intention of the exempting authority. That apart, it has also been stated therein that if different intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different. The larger Bench has not applied the said principle to the case involved therein."

At the same time, the shift from literal to purposive construction has not left the taxing statutes untouched leaving them "as some island of literal interpretation". The principle of purposive construction will be applied when the literal construction leads to absurdity as has been held by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Pondicherry Vs. Acer India Ltd., (2004) 8 SCC 173**. The context, scheme of the relevant Act as a whole and its purpose are as relevant in construing a taxing Act as in construing any other Act.

7.7 In the case of **The Controller of Estate Duty, Gujarat Vs. Shri Kantilal Trikamlal, (1976) 4 SCC 643**, it has been held that every taxing statute has a fiscal philosophy-a feel of which is necessary to gather the intent and effect of its different clauses.

Fiscal philosophy and legislative intent behind enacting and introducing refund clause in the case of inverted duty structure, as discerned and analysed by the Hon'ble Supreme Court in the case of **Union of India & Others Vs. VKC Footsteps India Private Limited (supra)**, extensively relied upon and quoted hereinabove, provides a beacon light in placing appropriate interpretation and construction of clause (ii) of proviso to Section 54, sub-section (3) of the CGST Act, 2017. With regard to the

objective behind the scheme of refund of unutilised input tax credit on inverted duty structure, the words "inputs" and "output supplies" need to be given full effect to without placing any restriction on these words, much less restricting the same to a situation of singular input and singular output supply. In other words, the scheme of refund of unutilised input tax credit which has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies cannot be restricted only to those cases where there is single input and single output supply. Taking into consideration the legislative intendment, objective of the scheme of refund, the literal interpretation has to be given full effect to. Consequently, the scheme of refund in case of inverted duty structure will continue to apply irrespective of the number of inputs and number of output supplies. At this stage, it would be apposite to refer to pertinent observations made in this regard by the Hon'ble Supreme Court in the case of **Union of India & Others Vs. VKC Footsteps India Private Limited (supra)** as below:

> "**86.** …… In an ideal tax regime, with a uniform rate of taxes on inputs goods, input services and outward supplies, the chance of accumulating unutilised ITC as a result of an inverted rate structure would be minimal. An inverted duty structure arises where the rate of tax on inputs exceeds the rate of tax on output supplies as a result of which the unutilised ITC may get accumulated. ……."

Therefore, in a case where there is accumulation of unutilised ITC as a direct result of rate of tax on inputs exceeding the rate of tax on output supplies, the scheme of refund as embodied in Section 54(3) of the CGST Act, 2017 gets attracted.

The Hon'ble Supreme Court in the aforesaid decision, having analysed the report of the Joint Committee, Empowered Committee of State Finance Ministers on Business Process for GST and on Refund Process published in August, 2015, noted that under the proposed GST law, ITC will be allowed, so as to remove the cascading effect of taxes and it is the ultimate customer who should bear the burden of taxes. It was also noticed by the Hon'ble Supreme Court that there can be cases where there is an accumulation of credit due to inverted duty structure. It was only those cases of ITC accumulation which are on account of inverted duty structure, i.e., GST on output supplies being less than the GST on inputs that the scheme of refund would be applicable. Accumulation of unutilised input tax credit for other reasons like stock accumulation, capital goods and partial reverse charge mechanism for certain services may not attract the refund mechanism. In para no. 81 of the aforesaid decision, it was observed by the Hon'ble Supreme Court that in other cases, there are provisions based on recommendations of the Committee, providing for carrying forward of unutilised ITC to the next tax period(s).

7.8 We are not oblivious of the legal position as adumbrated in Para no. 106 of the decision of the Hon'ble Supreme Court in the case of **Union of India & Others Vs. VKC Footsteps India Private Limited (supra),** which was made clear while relying upon the dictum in the case of **Assistant Commissioner of Commercial Taxes (Asst.) Dharwar & Others Vs. Dharmendra Trading Company & Others (1988) 3 SCC 570,**

that the principles governing a benefit, by way of refund of tax paid, may well be construed on an analogous frame with an exemption from the payment of tax or reduction in liability.

However, in view of our considerations and interpretation placed on the provisions contained in clause (ii) of proviso to Section 54(3) of the CGST Act, 2017, while applying the rule of literal construction and strict interpretation, the statutory scheme of refund of unutilised input tax credit is applicable despite there being multiple inputs and output supplies provided it fulfills statutory precondition that accumulation of unutilised input tax credit is on account of rate of tax on inputs exceeding the rate of tax on output supplies.

In the present case, the rates of tax on inputs are 5%, 12%, 18% and 28% whereas the rates of tax on output supplies are 0.1%, 5% and 12%. Obviously, the rate of tax on inputs is certainly higher than the rate of tax on output supplies/various end products. Merely because present cases involve multiple inputs and multiple output supplies, the scheme of refund based on inverted duty structure cannot be held to be inapplicable.

7.9 The orders passed by the Adjudicating Authority and the Appellate Authority, impugned before this Court, have denied the benefit of refund under the scheme of Section 54(3) of the CGST Act, 2017 on considerations which are not legally permissible and are against the statutory prescription and the legislative object.

The impugned orders proceed on erroneous assumptions and presumptions. The premise on which the claim for refund has been outrightly rejected is that the output sales is to the extent of

80% of goods having 5% duty only and input too is majorly of 5% rate. On that basis, it has been concluded that the rate is more or less the same. This approach that "rate is more of less the same", runs contrary to the statutory scheme. This patently violates not only the letter but also the spirit of the law. The statutory prescription being that where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies is sought to be substituted on the consideration that where the rate of tax is more or less the same. That would amount to altering the legislative scheme. Once all the inputs and output supplies on comparative basis lead to a situation where the rate of tax on inputs is higher than the rate of tax on output supplies, the scheme of refund is required to be given full effect to and it cannot be denied on such considerations that rate of tax, on comparative analysis, is more or less the same. This, at the same time, perilously boarders perversity because the rate of tax on many inputs is much higher than the rate of tax on output supplies. While rate of tax on certain inputs is 18% and 28%, none of the output supplies attracts rate of tax beyond 12%. Then, how the rate of tax could be said to be more or less the same. Further, on facts also, it is found that 100% cotton goods are only 50% of the total goods and the rest is cotton dominated blends for which other inputs have rates of 18% whereas output rate is 5%. Balance outputs are synthetic dominated blends and 100% polyester/viscose for which inputs bear rates of 12%, 18% and 28%. The factual assertions made in this regard in the writ petitions have not been denied by the respondents. Therefore, we

have to accept the submission of learned counsel for the petitioner that even if the overall rate of all inputs is marginally higher than rate of output supplies, the accumulation of unutilised input tax credit on such account will bring it within the net of inverted duty structure.

7.10 The other ground of rejection of claim of refund is equally unsustainable in law as it proceeds on the ground that the claim of refund is mainly due to high input purchases and they were in stock during the claim period(tax period). The authorities, while examining the claim of refund of the petitioner, were not only obliged to apply the statutory scheme as contained in Section 54(3) of the CGST Act, 2017, in its true spirit, but also to keep in view the law providing for refund mechanism as contained in Rule 89(5) of the CGST Rules, 2017, which does not talk of the stock, but refers to output turnover (adjusted turnover) during the claim period. Rule 89(5) of the CGST Rules, 2017 envisages that total ITC claimed on inputs during the claim period gets consumed in respect of the turnover of the claim period. Obviously, once refund is sanctioned, the ITC claimed for the relevant tax period cannot be carried forward to the subsequent claim periods (tax periods). Thus, determining factor for applicability of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 is rate of tax and quantum of ITC content and not the value/quantum of individual inputs (going into an output) and the outputs. The stock based approach, therefore, violates the statutory scheme of refund.

7.11 At this stage, we may usefully refer refer to Circular No. 79/53/2018-GST dated 31.12.2018 and Circular No. 125/44/2019-GST dated 18.11.2019 both issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, Minister of Finance, Department of Revenue, Government of India, wherein scheme of inverted duty structure has been held applicable in a situation where there are multiple inputs having rate of tax higher than the rate of tax on output supplies. Though the aforesaid circulars do not provide necessary guidelines in dealing with claims for refund where there are multiple outputs, it is clear that the competent authority has issued clear guidelines for application of refund mechanism even in those cases where there are multiple inputs which are in line with the statutory scheme of refund engrafted under Section 54(3) of the CGST Act, 2017. However, the situation as to how the refund scheme would be applied in cases of more than one output supplies has not been dealt with in any of the aforesaid circulars. In view of our detailed considerations hereinabove, where the rates of tax on some of the inputs are higher than the rates of tax on output supplies, where the outputs are more than one, the statutory scheme of refund based on inverted duty structure shall become applicable.

7.12 As to how the refund would be computed in case the conditions and limitations provided under Section 54(3) of the CGST Act, 2017 are fulfilled, is provided under Rule 89(5) of the CGST Rules, 2017 which provides for a formula for making such computation. In a case of accumulation of unutilised input tax credit on account of rate of tax on inputs being higher than the

rate of tax on output supplies, the refund mechanism is governed by the said formula providing for maximum limit of refund and therefore, refund claim is to be determined on the basis of computation based on statutory formula prescribed in Rule 89(5) of the CGST Rules, 2017 and not on the basis of any other mode of computation and determination of actual amount of refund payment under the law.

7.13 During the course of arguments and in the written submissions filed by the parties, facts and figures of relevant tax periods (giving rise to more than one petition) have been placed before this Court. In some of the cases, learned counsel for the respondents highlighted that in respect of certain tax periods, there is no accumulation of unutilised input tax credit. Learned counsel for the petitioner referred to some of the figures to submit that even if it is assumed that in respect of certain tax periods, there was no accumulation of unutilised input tax credit, in many cases such position obtains on record. Since the orders impugned in these writ petitions are not based on such factual premises but the rejection of claim of refund is based on erroneous interpretation of law and on considerations, we find such factual premises to be untenable in law. Therefore, we would not enter into those factual aspects. However, since in all the cases, the legal premise on which claim of refund has been rejected is contrary to the letter and spirit of the scheme of refund as provided under Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017, we are inclined to set aside all the orders, impugned in these writ petitions, passed by the

Adjudicating Authority and the Appellate Authority with a direction to the Adjudicating Authority to undertake fresh exercise of consideration of claim of refund in the light of the observations made by this Court in this order applying the same on case to case basis. It, however, goes without saying that where there is no accumulation of unutilised input tax credit, claim of refund would not arise at all.

7.14 Writ petitions are, accordingly, allowed in the manner and to the extent as indicated hereinabove. Impugned orders are set aside.

7.15 Office is directed to place a copy of this order on record of each connected writ petition.

7.16 No orders as to costs.

(ANIL KUMAR UPMAN),J (MANINDRA MOHAN SHRIVASTAVA),J

MANOJ NARWANI /