



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 9660/2024

M/s MO Industries, Jagner Road, Roopwas, Bharatpur, Rajasthan, 321404 Through Its Partner Mr. Hemendra Kumar Goyal, S/o Omprakash, Aged About 48 Years, R/o 502, Telipada, Rupbas, Bharatpur, Rajasthan, 321404.

-----Petitioner

Versus

1. Union Of India, Through The Chief Commissioner, Central Goods And Services Tax, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005.
2. The Joint Commissioner (Appeals), Central Excise And CGST, NCRB, Statue Circle, Jaipur-302005.
3. The Assistant Commissioner, CGST Division-F, In Front Of Ghana Gate, Jawahar Nagar, Bharatpur-321001.
4. State Of Rajasthan, Through The Chief Commissioner, Kar Bhawan, Ambedkar Circle, Jaipur-302004.

-----Respondents

For Petitioner(s) : Mr. Ravi Gupta, Adv.
For Respondent(s) : Mr. Ajay Shukla, Adv. with
Mr. Raghav Sharma, Adv. &
Mr. Sandeep Taneja, AAG with
Ms. Kinjal Surana, AGC

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

08/07/2024

AVNEESH JHINGAN, J (ORAL):-

1. This petition is filed aggrieved of order dated 02.04.2024 whereby, the appeal filed by the respondent was accepted.
2. Brief facts are that the petitioner is engaged in manufacturing of Mustard Oil, Palm Oil and Mustard de-oiled cake. The petitioner filed an application dated 29.07.2021 seeking refund of Rs.19,62,616/- of the Input Tax Credit (ITC)



accumulated due to Inverted Tax Structure. The refund was for the period starting from March, 2021. The refund was allowed on 05.08.2021. In the appeal filed by the Department, refund order was quashed relying upon Circular No.135/15/2020-GST dated 31.03.2020.

3. Learned counsel for the petitioner submits that the Circular relied upon by the Appellate Authority was held to be repugnant and in conflict with Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 (for short, 'the Act') by this Court in **D.B. Civil Writ Petition No.5714/2021 (Baker Hughes Asia Pacific Limited vs. Union of India & Ors.)** decided on 30.06.2022. The contention is that the Appellate Authority has only reproduced part of concluding para of the judgment and accepted the appeal of the Department.

4. Learned counsel for the respondents defends the impugned order, submits that the petitioner is not entitled to refund even if the Circular is not applied.

5. Before proceedings further, it would be necessary to reproduce the concluding part of **Baker Hughes Asia Pacific Limited** (supra):-

"14. In wake of the discussion made herein above, we are of the firm opinion that the circular dated 31.03.2020, being a subordinate legislation, is repugnant and conflicting to the parent legislation i.e. Section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner. Otherwise also, the claim for refund of ITC filed by the petitioner was for a period prior to issuance of the circular dated 31.03.2020. Consequently, rejection of the petitioner's claim for accumulated input tax credit by the respondent No.3 Deputy Commissioner, State Tax, Circle Barmer with



reference to para 3 of the Circular dated 31.03.2020, is invalid on the face of the record and cannot be sustained.

15. Thus, the order dated 05.01.2021 is hereby quashed and set aside. The respondents are directed to forthwith, refund the accumulated input tax credit to the petitioner as per its entitlement.

16. The writ petition is allowed in these terms.”

6. Division Bench of this Court while dealing with the challenge of the Circular No.135/15/2020-GST held it to be in conflict with Section 54 (3)(ii) of the Act. It was also considered that claim of refund of ITC was prior to date of issuance of the Circular.

7. The additional reason given shall not nullify the fact that the Circular had not stood the judicial scrutiny. The Appellate Authority has allowed the appeal solely relying upon the Circular No.135/15/2020-GST. Consequently, the impugned order is set aside. The matter is remitted back to the Appellate Authority to decide the appeal afresh in accordance with law.

8. The writ petition is allowed.

(ASHUTOSH KUMAR),J

(AVNEESH JHINGAN),J

Madan/Monika/20

Whether Reportable : **Yes**