GST APPELLATE TRIBUNAL
STATE BENCH, RAJKOT

Appeal Nos. APL/29/2026; APL/33/2026/; APL/34/2026; APL/35/2026; APL/36/2026; APL/60/2026; APL/74/2026; and APL/75/2026

(arising out of Order-in-Appeal No. RAJ-EXCUS-000-APP-11, 15 & 16-2023-GST-ADC dated 28.02.23, RAJ-EXCUS-000-APP-057-2023-GST-ADC dt 19.05.23 RAJ-EXCUS-000-APP-031 to 036-2023-GST-ADC dt 20.03.23 RAJ-EXCUS-000-APP-13 & 14-2023-GST-ADC dt 28.02.23 passed by the Additional Commissioner (Appeals), GST & Central Excise, Rajkot)

Commissioner of CGST & Central Excise, Rajkot … Appellant (Revenue)

versus

M/s. Reliance Industries Ltd. (GSTIN 24AAACR5055K3ZB) … Respondent

CORAM:

Hon'ble Pramod Kumar Rai, Member (Judicial)

Hon'ble Kishori Lal, Member (Technical)

Date of hearing: 08.10.2026

Date of pronouncement:04 November 2026

Appearances:

Shri Sanjay Dharaiya, Authorised Representative, for the Appellant (Revenue);

Shri Vishal Agarwal Advocate, for the Respondent.

FINAL ORDER

Appeal Nos. APL/29/2026; APL/33/2026/; APL/34/2026; APL/35/2026; APL/36/2026; APL/60/2026; APL/74/2026; and APL/75/2026 have been filed by the Revenue on the identical issue against the same assessee namely M/S Reliance Industries Limited for different periods. The Respondent has also filed an identical-submissions to all these appeals. We are therefore taking up all these eight appeals for disposal by this common order. The facts have been taken from Appeal No. APL/74/2026 and the submissions made by the respondent in this appeal.

1.0 Brief Facts of the case

A Refund Application was filed by M/S Reliance Industries Limited (herein after referred to as 'Respondent Assessee') under the category of "any other" for un-utilised ITC lying in their Electronic Credit Ledger (Herein after referred to as 'ECL') on the ground that the said closing balance lying in their ECL remained un-utilized and the same was admissible as refund as per the judgment dated 18.02.2022 passed by the Hon'ble Gujarat High Court in case of M/s. IPCA

laboratories Ltd. Vs Commissioner, Special Civil Application No. 638 of 2021. Accordingly, the claimant had filed the refund Application.

1.1 On examination of the said refund claim certain deficiencies were noticed by the Refund Sanctioning Authority and a Show Cause Notice for rejecting the refund claim was issued. The grounds proposed for rejection inter-alia included:

(i) There is no provision in Act/Rule/Notification/Circular issued to grant refund in respect of un-utilised ITC available in the ECL.

(ii) As per section 54(3) of the CGST Act, 2017 (here in after referred to as 'the Act') refund of un-utilised ITC is allowed only in the following cases:

a. zero rated supplies made without payment of tax;

b. 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: in the instant case these conditions have not been fulfilled.

(iii) The judgment dated 18.02.2022 passed by the Hon'ble Gujarat High Court pertains to M/s. IPCA Laboratories Ltd. only. Since the Respondent Assessee were not party in the said case, the question of refund on the basis of said judgement does not arise.

(iv) The judgement in the case of M/S Britannia Industries Limited versus Union of India (supra) was relied upon by the Hon'ble Gujarat High Court in the case of IPCA Laboratories (supra) and Britannia judgment has been challenged by the Revenue before the Hon'ble Supreme Court by way of SLP (Civil) Number 013431 of 2021 and the matter is sub-judice there.

(v) It was further mentioned in the show cause notice that the Writ Petition filed in the case of IPCA Laboratories pertains to the rejection of refund filed for unutilised ITC on export of goods without payment of IGST under Section 54(3) of CGST Act,

2017 and did not pertain to the ITC which remained unutilised in their ECL. Hence the Gujarat High Court judgment in IPCA Laboratories case is not relevant to the case at hand.

1.2 The Show Cause Notice was adjudicated vide Refund Rejection Order F.No.X.54(89)69/GST-Refund/2022-23 dated 16.08.2022 and the entire refund claim was rejected under Rule 92(3) of the CGST Rules 2017.

1.3 Being aggrieved by the impugned order, the Respondent Assessee filed the appeals against the Orders in Original, wherein they interalia stated that:

i. The refund claim in question was rejected on the wrong presumption that there is no provision in GST Law to grant a refund except in the Circumstances provided under Section 54(3) of the Central Goods and Service Tax Act, 2017;

ii. The present refund claim does not fall under the purview of Section 54(3) ibid as their unit falls under SEZ area hence the CGST paid by them is required to be refunded;

iii. They relied upon the decision of Gujarat High Court in the case of M/s IPCA Laboratories wherein it was held that the SEZ unit can file a refund claim and is eligible for refund of unutilised Input Tax Credit;

iv. The adjudicating authority is bound to follow judicial discipline and therefore the interpretation and findings of the Hon'ble Gujarat High Court with regard to the provisions of the said Act and the Central Goods and Service Tax Rules, 2017 are equally binding on other assessees;

v. The decision in the case of M/s IPCA Laboratories is based on the decision in the case of Britannia Industries Ltd. vs. Union of India, which has been challenged by the Revenue by way of an appeal before the Apex Court. The stay order is not given by the apex court. and therefore, decision of the High Court would continue to be binding on all subordinate authorities. In support of this plea, they relied upon various decisions of appellate forums which are as under:

a. Union of India Vs Kamlakshi Finance Corporation Ltd.;1991 (55) ELT 433 (SC);

b. CIT Vs. Godavari Saraf; 1978 (2) ELT 624, (B0F);

c. CCE Mumbai Vs. Valson Dyeing Bleaching & Printing Works; 2010 (259j ELT 33 (Bom)

d. Samtel India Ltd. Vs. Commissioner of CE, Jaipur; 2003 (155) ELT 14 (SC))

Thus, the ratio of. the judgment of the Hon'ble Gujarat High Court in IPCA Laboratories case was binding on the Assistant Commissioner and he could not refuse to follow the same on the ground that the Appellant Revenue was not a party to the same;

vi. The Hon'ble Gujarat High Court after going through various provisions of the SEZ Act, 2005, IGST Act, 2017, CGST Act, 2017 & CGST Rules, 2017 held that since the supplies made to SEZ units were zero rated supplies and were therefore not subject to any IGST/ CGST etc., the SEZ unit would be entitled to claim a refund of the credit distributed by the ISD, as in the scheme of the Act, it was not possible for the ISD to file a refund claim;

vii. They also stated that recently the Hon'ble Madras High Court in the ease of M/s ATC Tyers Pvt. Ltd. Vs. Joint Commissioner, CE; 2022- VIL-245-Madrias wherein it was held that a refund claim under Rule 89 could be filed by an SEZ unit in respect of unutilized credit distributed by ISD, as the whole purpose of providing for refund was to give incentive for exports and to reduce the burden of taxes to make the exports more competitive in international markets;

viii. The Hon’ble Gujarat High Court has in its two judgments very clearly interpreted the provisions of Rule 89 of the CGST Rules, 2017 as well as Section 54 of the CGST Act, 2017 which according to the Department, allows only a supplier and not receiver to file a refund claim, for the reason that in case of supplies to SEZ unit, the liability to pay tax on such supplies is on the supplier and the receiver SEZ unit is not at all liable to pay any kind of tax on supplies received by it. The Hon'ble High

Court rejected the said Department's plea as untenable by holding that in respect of credit distributed by ISD, once the ISD cannot file a refund claim, the SEZ unit was fully entitled to file a refund claim in respect of credit distributed to it. Therefore, the ratio of the Hon'ble Supreme Court judgment in the case of Samtel India Ltd. is clearly applicable in the present case;

ix. The adjudicating authority has erred in holding that the facts involved in the IPCA Laboratories case are different from those in the present case in as much as the issue involved in the case of IPCA Laboratories pertains to the rejection of refund application filed for unutilized ITC on export of goods without payment of IGST under Section 54(3) of the CGST Act, 2017. The Hon'ble High Court in the present case held that once supplies to the SEZ unit are not chargeable to tax, being zero rated supply, the tax wherever paid, is liable to be refunded and in case the credit has been distributed by the ISD, which itself cannot file a refund claim, then the SEZ unit would be entitled to claim the refund of unutilised credit in respect of supplies for which invoice is raised on an ISD.

They also relied upon the decision of Hon'ble Madras High Court in the case of Platinum Holdings Vs. Additional Commissioner of GST; 2022 (58) GSTL 3 (Madras); In view of this, the facts involved in the IPCA Laboratories & Britannia Industries Case are no different from the present case;

x. The adjudicating authority has completely erred in arriving at the conclusion that the refund claim filed by the Appellant Revenue is not admissible since no Act/Rule /Notification/Circular has been issued to grant refund in respect of unutilised credit available in the credit ledger. They contended that the said Claim was covered under Para No. 3 of Master Circular No.125/44/2019-GST, CBEC-20/16/04/18-GST dated 18.11.2019 issued by CBEC, which provided for. different situations, where a refund could be claimed under Section 54 of the CGST Act. One of the categories in the said Circular refers to refund on account of 'any other ground or reason'. It was also submitted that the Appellant Revenue's refund claim came

under the category 'any other ground or reason' and was thus duly covered by the Master Circular.

1.4 The first appellate authority deliberated upon all the contentious issues along with the judgements of the hon'ble Gujarat High Court in the case of *IPCA Laboratories* and *Britannia Industries* and held that in view of the decisions of the High Courts and Supreme Court, the ratio of the decision of Gujarat High Court in the case of *IPCA Laboratories* is applicable to the case at hand. Accordingly, the appeal was allowed vide OIA No. RAJ-EXCUS-000-APP-13-2023- GST-ADC dated 02.03.2023.

1.5 The said OIA was subjected to review by the learned Commissioner and on examination of the aforesaid he is of the view that the aforesaid OIA is not proper, legal and correct on the following grounds:

(i) As per Notification No 15/2017- Integrated Tax (Rate) dated 30.06.2017, in exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Service Tax Act, 2017, the Central Government have exempted all goods or services or both imported by a unit or a developer in the Special Economic Zone, from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) for authorized operations and as per Notification No. 18/2017 -Integrated Tax (Rate) exempted services imported by a unit or a developer in the Special Economic Zone for authorized operations, from the whole of the integrated tax leviable thereon under section 5 of the Integrated Goods and Services Tax Act, 2017.

(ii) Further, as per Section 16 (1) (b) of Integrated Goods and Services Tax Act, 2017 supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit is considered as "Zero rated Supply". Thus, the petitioner being a SEZ unit was not eligible for Refund under Section 54 of the CGST Act, 2017.

(iii) Further, Section 16 (3) of Integrated Goods and Services Tax Act, 2017 prescribed the options under which a registered person becomes eligible for claim of refund. Under Option 1 which is available under section 16 (3) (a) of IGST Act, a registered person may supply such goods or services or both under bond or Letter of undertaking to SEZ Developer or SEZ Co-Developer or SEZ Units without payment of integrated tax and also claim refund of unutilized input tax credit. Further, under Option 2 under section 16 (3) (b) of IGST Act a registered person may supply such goods or services or both to SEZ Developer or SEZ Co-Developer or SEZ Units on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied in accordance with Section 54 of Central Goods and Service Tax Act or rules made there under. Thus, it is clear that as per the provisions of Section 16 (3) of Integrated Goods and Services Tax Act, 2017 only the supplies of goods or services or both to SEZ Developer or SEZ Co-Developer or SEZ Units is eligible for claim of refund and there is no provision for granting of refund to the SEZ unit in the IGST Act, 2017. Therefore, claim of the petitioner holds no merits.

(iv) Section 54 of the Central Goods and Services Tax Act, 2017 deals with provisions relating to grant of refund. As per Section 54 (3) of the CGST Act, 2017, a registered person may claim Refund of any unutilized input tax credit at the end of any tax period, provided that no refund of unutilized input tax credit shall be allowed in cases other than zero-rated supplies made without payment of tax and 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.

(v) Further, Rule 89 of the Central Goods and Services Tax Rules, 2017 deals with grant of refund to the assessees and in terms of Sub-rule 1 of Rule 89 the petitioner being the receiver is not eligible for refund of ITC.

(vi) Thus, on collective reading of provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017, Section 16 of the Integrated Goods and Services Tax Rules, 2017 together with Rule 89 (1) of the Central Goods and Services Tax Rules, 2017, it is clear that when a supply is made to the SEZ unit or SEZ Developer it is the supplier and not the receiver who shall file the Refund Application. The reason for the same is that in case of supply to a SEZ unit (which is considered as Interstate Supply) the liability to pay tax on such supplies is on the supplier. The receiver i.e. SEZ unit is not at all liable to pay any kind of tax on such supplies received by them. Thus, the petitioner was not at all liable to pay any tax on the supplies received by them and therefore is not liable to claim refund as per the prevalent provisions as discussed herein above.

(vii) The Central Board of Indirect Taxes and Customs (CBIC) vide Circular No. 17/17/2017- GST dated 15.11.2017 communicated that the applications pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders and a procedure was laid down for such manual filing and processing of the refund claims. However, the Refund Claimed by the petitioner cannot be processed under any of the category of eligible Refunds Specified under Manual Refund Processing accordingly, the refund claim was rightly rejected by the Refund Sanctioning Authority.

(viii) Further, in GST regime SEZ units are not required to pay any tax on supplies made to them by Domestic Tariff Area units, rather it is the supplier who is required to pay taxes if that supplier is not selling the goods under LUT and that the supplier is only eligible to claim the Refund.

(ix) Further, in terms of Section 2 (61) of CGST Act 2017 and proviso to Rule 8(1) of CGST Rules 2017 the Input Service Distributor shall obtain separate registration as Input Service Distributor and is not a registered person for the purpose of making supplies under the GST laws. An ISD only distribute input tax credit received by it on account of common services to its other distinct entities.

Accordingly, the credit distributed by an ISD cannot be equated with tax paid on supplies made by a registered person to the SEZ Unit.

(x) The 2nd proviso to Rule 89 (1) of CGST Rules 2017 provides that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the Application for refund shall be filed by the supplier of goods.

(xi) Thus, it is evident that the refund on supplies to SEZ Unit/Developer is allowed only to supplier of goods/services and only in those cases where the supplies have been received from DTA (Domestic Tariff Area) on payment of tax and are meant for authorized operations. Therefore, the ITC distributed by ISD to SEZ Unit/ Developer is not eligible for refund and the judgment dated 18.02.2022 rendered in the case of *M/s. IPCA laboratories Ltd. Vs Commissioners*, SCA No. 638 of 2021 by Hon'ble High Court of Gujarat is at variance with the provisions of GST Law. Further, the department have filed an appeal against the order of Hon'ble Gujarat High Court in case of M/s. IPCA Laboratories Ltd. before the Hon'ble Supreme Court vide SLP(C) No.12588/2022.

1.6 Accordingly, the learned Commissioner authorized Deputy/ Assistant Commissioner, CGST Division-I, Jamnagar to file appeal before the Hon'ble GST Appellate Tribunal praying for setting aside the OIAs passed by the Additional Commissioner (Appeals), GST & Central Excise, Rajkot and the said Deputy/ Assistant Commissioner, CGST filed the aforementioned appeals.

Hence the matters are before us.

2.0 Case for the Appellant Revenue

The case of the Revenue is contained in para 1.5 here-in-before. In their post hearing submissions dtd. 10.10.2026 they have reiterated the factual and legal position extracted herein before and have summarised the same in Para F, thus:

"F. In sum.

The Respondent needs four steps: (i) the supply to its ISD was zero-rated; (ii) so no tax was payable; (iii) Britannia and IPCA say so; (iv) so all of it is refundable. **Step (i) fails on the word "to" in Section 16(1)(b); (ii) falls with it; (iii) fails on a plain reading of the judgments; (iv) fails on Rule 89(4), the first proviso to Section 54(3) and VKC Footsteps.** The Revenue's reading honours every provision and both judgments."

3.0 Case for the Respondent Assessee

3.1 The Respondent assessee have submitted by way of their written submissions dtd. Nil filed along with appeal, that

(i) in terms of section 16 (1) of the IGST Act, supply of goods or services to a SEZ unit for its authorised operations qualifies as zero rated supply. Accordingly, no Tax is payable on such supplies in so far as the output supplies of the Appellant Revenue are concerned the majority of such supplies are towards export of goods while a small portion is to the domestic tariff area (DTA). In case of DTA supply custom duty is discharged by the recipients as provided for under the Customs law.

(ii) The Respondent assessee was entitled to refund anyways since no tax ought to have been suffered at all on the inward applies to the SEZ unit. The legislative and regulatory intent is crystal clear that in case of inverse applies for authorised operations of SEZ no taxes are to be embedded and to achieve this and multiple options are available.

(iii) Refund claim filed under Rul 89 (4) of the CGST Rules was sanctioned and disbursed without demur. Balance amount that remained in the ECL which represented nothing other than tax paid in excess where the incidence was born by the respondent assessee. It is this excess tax that is the subject matter of the present dispute.

3.2 Refund claimed is not of unutilized ITC under Section 54(3) of the CGST Act, but rather is a refund of excess tax paid:

3.2.1 The Appellant Revenue has completely misunderstood the rationale behind claiming the refund. The entitlement of refund arises from the fact that no GST is payable at all on supplies made to SEZ units for its authorised operations. In terms of Section 16(3) of the IGST Act, in case of supplies made to SEZ units for authorised operations, either no tax is payable at the threshold or tax paid is eligible for refund.

3.2.2 It is not in dispute that the tax is paid by the Respondent assessee to the suppliers and hence, the incidence of the excess amount of tax is borne by the Respondent assessee and hence in terms of Section 54(8)(e) of the CGST Act, the refund amount is to be paid to the taxpayer in cases of excess payment of tax.

3.2.3 In the present case, as mentioned above, the IGST amount stands discharged despite there being no warrant to do so in terms of Section 16 of the IGST Act and since the Respondent assessee has borne the incidence of this amount, it is entitled to receive this amount as refund.

3.2.4 The Appellant Revenue labours under the misconception that the refund is sought of unutilized ITC in terms of Section 54(3) of the CGST Act. The refund is eligible in terms of Section 54 (1) read with Section54(8)(e) of the CGST Act, read with Section 16 of the IGST Act.

3.2.5 The position that no GST is payable on inward supplies to SEZ units is admitted in the appeal in para 8.2 to 8.4, 8.8 and is otherwise also well-established. This, in fact, is the basis of the judgments of the jurisdictional High Court in the case of IPCA and Britannia. Reliance is this regard is also placed on the following judgments in this regard:

(i) Platinum Holdings Pvt. Ltd. [2022 (58) GSTL 3 (Mad.)];

(ii) Urjita Electronics Pvt. Ltd. [2025 (29) Centax 360 (Mad.)] and

(iii) McKinsey Global Services India Pvt. Ltd. WP No. 26469 of 2026; WP No. 28949 of 2026.

3.2.6 In terms of the Explanation to Section 54 of the CGST Act, "refund" includes refund of tax paid on zero-rated supplies of goods or services and hence the present case is covered under the ambit of Section 54(1) of the CGST Act, 2017. In terms of Section 7 of the SEZ Act, read with Section 16 of the IGST Act (as also Section 51 of the SEZ Act stipulates that the provisions of the SEZ Act will override all other laws), no tax is payable on the inward supplies of an SEZ unit. It is submitted that no tax having been payable on the inward supplies of an SEZ unit, the Respondent assessee is entitled to refund of any tax having so been paid. It is submitted that the ratio laid down squarely applies to the facts of this case.

3.2.7 The reliance placed by the Appellant Revenue on the judgment of the Hon'ble Supreme Court in the case of VKC Footsteps is wholly inconsequential inasmuch as the present case is not one of refund of unutilized ITC, but rather is a refund of tax paid in excess, where the incidence is borne by the Respondent assessee.

3.3 The issue is squarely covered by the judgments of the jurisdictional High Court

3.3.1 Without prejudice to the above, it is submitted that the present case is squarely covered by the judgments of the jurisdictional High Court in the cases of *IPCA* and *Britannia Industries Ltd.* (supra). As is emerging from the facts of those cases, the SEZ unit had claimed refund of tax paid by its suppliers (either on invoices raised on ISD who passed on and through ISD units or in certain cases, also through third party vendors as is specifically recorded in the IPCA judgment) and the Hon'ble High Court held that there the SEZ units are entitled to refund.

3.3.2 In the case of ISD credits (which forms a major part of the refund amount) of the present claim, the Hon'ble Court specifically held that since the supplier is unable to claim refund, the refund can be claimed and has to be paid to the recipient SEZ unit.

3.3.3 There is no cogent basis whatsoever for the Appellant Revenue to distinguish these judgments on facts. It is submitted that the Hon'ble Court did not permit the refund on the count of zero-rated supplies or unutilized ITC, but on the count that the SEZ unit was entitled to claim refund on ITC distributed by the ISD unit.

3.4 Entitled to refund claim of tax paid on inward supplies

3.4.1 There is no restriction whatsoever under the GST law that an SEZ unit cannot claim refund of tax paid on inward supplies. In fact, the Hon'ble High Courts of both Gujarat and Madras have endorsed the position that an SEZ unit is permitted to claim refund of tax paid on inward supplies.

3.4.2 The Respondent assessees have laid emphasis on para 13 to 15 of the judgment of the Hon'ble Madras High Court in the case of Platinum Holdings and para 21 of the judgement of the Hon'ble Gujarat High Court in the case of Britannia Industries. The Appellant Revenue has failed to appreciate that in terms of Section 54(8)(e) of the CGST Act, it is the person who bears the incidence of tax who is entitled to claim refund. **This concept of "unjust enrichment" has been a part of the basic fabric of indirect tax law since times immemorial.**

3.4.3 The reliance placed on Circular No. 17/17/2017- GST, dated 15.11.2017 and Circular No. 24/24/2017-GST, dated 21.12.2017 does not assist the Appellant Revenue's case inasmuch as these circulars do not (indeed could not either, being in the nature of clarificatory circulars only), in any manner, circumscribe the right of the SEZ unit to claim refund. The category of refund claim selected is of no relevance whatsoever to determine the eligibility to claim refund. Any irregularity, if any, therein would be, at the highest, a procedural infraction and would not stand in the way of the substantive right to claim refund. Further the category under which the refund is being claimed has been introduced through circulars or the RFD 01 form and is not flowing from the statute, consequently reliance a non-statutory stipulation cannot be the basis for denying the claim for refund.

4.0 Discussion and findings

4.1 The Respondent assessee are availing ITC in respect of credit distributed by their ISD unit in respect of common services and in some cases, tax paid on inward supplies by their supplier and filed the refund claims for unutilized ITC for making zero rated supply of goods/services.

They submitted that the above said closing balance lying in credit ledger remains un-utilized in their credit ledger and the same is admissible as refund as per judgment rendered by the Hon'ble Gujarat High Court in case of M/s. IPCA laboratories Ltd. in Special Civil application No.638 of 2021.

4.2 We have carefully gone through the submissions made by both the sides including the case laws and the following two questions arise for determination before us:

(i) Whether the Respondent assessee's claim fall under the category of 'refund of unutilised ITC lying in their ECL or 'the refund of excess tax paid by their supplier'?

(ii) Whether the refund of unutilised ITC distributed by ISD can be claimed by an SEZ unit as recipient of the services?

4.3 First issue: Whether the Respondent assessee's claim fall under the category of 'refund of unutilised ITC lying in their ECL or 'the refund of excess tax paid by their supplier'?

4.3.1 The Appellant Revenue's case revolves around only one issue that there is no Rule/Act/Notification/ Circular which allows grant of refund in respect of the unutilized ITC available in the ECL except in the cases of (i) zero rated supplies made without payment of tax and (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.

4.4 The Documents and the law reveal thus:

4.4.1 The SCN dtd. 15.07.2022 issued by the Appellant Revenue mentions clearly that

"…The said refund application filed under category of any other for input Tax Credit remains unutilized in electronic credit ledger for the month of May2020."

4.4.2 The Respondent assessee has clearly mentioned in their Written submissions thus:

"1. The Respondent assessee is an SEZ unit located in Jamnagar Gujarat, engaged, inter alia, in the export of petroleum and petrochemical products.

2. In terms of Section 16(1) of the IGST Act, supply of goods or services to SEZ units for its authorized operations qualifies as a "zero-rated supply". Further, in terms of Section 16(3) of the IGST Act, as it stood then, a zero-rated supply can be made without payment of IGST under bond or letter of undertaking or, in the alternative, tax may be paid on a zero-rated supply and subsequently, refund of such tax paid may be claimed."

4.4.3 Section 16(3) of IGST Act, 2017 which the Respondent assessee is relying upon provides thus:

"Section 16. (1) *….*

(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:"* [Emphasis supplied]

4.4.4. Para 2 of the impugned OIA mentions thus*:*

"2. The facts of the case, in brief, are that the appellant had filed a refund claim of Rs.6,00,84,317/- under Section 54(3) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'COST Act or said act') read with 92(3) of the Centra1 Goods 86 Services Tax Rules,2017 (hereinafter referred as the 'said rules') in respect of unutilized input tax credit (ITC) ***in respect of credit distributed by their Input Service Distributors (ISD) and in some cases, tax paid on inward supplies by their suppliers****,.."* [Emphasis supplied]

This has not been questioned or controverted by the Respondent assessee at any stage, so far, the Respondent assessee has, however, taken an additional stand before us that

"Refund claimed is not of unutilized ITC under Section 54(3) of the CGST Act, but rather is a refund of excess tax paid where the incidence has been borne by the Respondent." But this is not backed by any documentary evidence or law.

4.4.5 The supplier of services to the respondent assessee paid the tax voluntarily for a long time and it cannot be assumed, in any way, that the tax was paid by mistake or under any duress or coercion, during investigation or otherwise. In their post hearing written submissions dtd. 13.10.2026 the Respondent assessee has submitted thus:

> *"23. In this context, the submission made by the Appellant that the supplier is not aware that the SEZ unit is the recipient at the time of supply is, factually incorrect for the reason that the supplier has entered into a contract for the rendition of services to the SEZ unit and hence, would very much be aware that it is the SEZ unit that is receiving the services. Furthermore, the supplier could have issued the invoice directly to the SEZ unit, rather than routing it through the ISD mechanism. Merely because the invoice is routed through the ISD mechanism, it makes no difference to the fundamental fact that the supply in question is an inward supply of the SEZ unit, qualifying as "zero-rated" supplies".*

4.5 Thus, it is very clear from the above that both the Appellant Revenue and the Respondent assessee are on the same page to the extent that the refund claims filed by the respondent assessee pertain to the claim of unutilised ITC, availed by them on the basis of the credit distributed to them by their ISD.

4.6 Second issue: Whether the refund of unutilised ITC distributed by ISD can be claimed by an SEZ unit as recipient of the services?

4.6.1 The relevant statutory provisions in this regard are contained in section 54 of the CGST Act, 2017 and Rule 89 of the CGST Rules, 2017. Relevant portions of these provisions are extracted herein below for the sake of brevity.

Section 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:

….

(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 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.

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file, subject to the provisions of rule 10B, an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

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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

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4.6.2 Validation/Invalidation of laws falls exclusively within the functions of the judiciary, and occurs after examination of the vires of a particular law.[1] Ronald Dworkin while making a statement of the main claims of the "plane fact" view of the grounds of law stated thus[2]: *"The law is only a matter of what legal Institutions like legislatures and city councils and courts have decided in the past. If some body of that sort has decided that workmen can recover compensation for injuries by fellow workman, then that is the law. If it has decided the other way, then that is the law."*

4.6.3 Thus, the law is as enacted by the competent Legislature and interpreted by the Courts. The court can enlarge or limit the scope of a statutory provision for example the court can declare a law as *ultra vires* of its parent Act or read down a particular provision. The Apex Court[3] observed that

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1 *G V K Inds. Ltd*. v *The Income Tax Officer* (2011) 4 SCC 36, Para 73: 2011-TIOL-128-SC-IT-CB: 2017 (48) STR 177 (SC), 5jj bench.

2 In his famous book 'Law's Empire' by Ronald Dworkin, 2nd Edition Reprint 2008, at P-7.

3 in the case of *B.R. Enterprises v. State of U.P. and Others* (1999) 9 SCC 700, Para 81

"*Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward.* ***Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution.*** *These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. …This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power.*" [Emphasis supplied]

4.6.4 The law governing the application of "Rule of Reading Down", while examining the constitutional validity of the statute is well crystalized. The court may apply it when it finds that a particular provision if for its plain meaning cannot be saved from invalidation and so by restricting or reading it down, the court makes it workable so as to salvage and save the provision from invalidation.[4] While upholding the constitutional validity of Rule 28(2) of the CGST Rules, the Gujarat High Court[5] directed that the expression *"whichever is higher*" shall be read down, since the expression *"whichever is higher*" is arbitrary as it does not confer any option to the corporate guarantor to pay GST on the actual commission/charge, since actual consideration is the indispensable factor which makes the levy and Rule workable**.** And the provision of Section 17(5)(d) was read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used by the Apex Court in *Eicher Motors*[6], the very purpose of the credit is to give benefit to the assessee.[7]

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4 *Calcutta Gujarati Education Society & Anr. v Calcutta Municipal Corpn. & Ors.* (2003) 10 SCC 533

5 *Torrent Power Ltd. v Union of India* Guj HC Judgment dtd 14.08.2026 in CNR No: GJHC240548362024, Para 109

6 *Eicher Motors Ltd. v Union of India* (1999) 2 SCC 361, 1999 (106) E.L.T. 3 (S.C.)

7 *Safari Retreats Private Limited v Chief Commissioner of CGST, 2019 (25) G.S.T.L. 341 (Ori.) SLP Accepted/ Granted against this judgment (2023) 5 Centax 206 (S.C.)*

4.6.5 The Apex Court in *GVK Industries*[8] while interpreting the scope of Clause (2) of Article 245 of the constitution of India observed that the only organ of the State which may invalidate laws is the judiciary. Consequently, the text of Clause (2) of Article 245 should be read to mean that it reduces the general and inherent powers of the judiciary to declare a law ultra-vires only to the extent of that one ground of invalidation. The Apex Court in para 53 observed thus:

"The power of the judiciary to invalidate laws that are ultra-vires flows from its essential functions, Constitutional structure, values and scheme, and indeed to ensure that the powers vested in the organs of the State are not being transgressed, and that they are being used to realise a public purpose that subserves the general welfare of the people. It is one of the essential defences of the people in a constitutional democracy."

4.6.6 Further the Bombay High Court specifically dealt with the issue[9] regarding binding nature of the orders passed by the High Courts and observed thus:

*"**23.** We are conscious of the fact that we are fallible and, therefore, an order passed by us may not meet the approval of all and some may justifiably consider our order to be incorrect. However, the same has to be corrected/rectified in a manner known to law and not by disregarding binding decisions of this Court. …We are also conscious of the fact that we are not final and our orders are subject to appeals to the Supreme Court. However, for the purposes of certainty, fairness and uniformity of law, all authorities within the State are bound to follow the orders passed by us in all like matters, …However, till such time as the decision of this court stands it is not open to the Tribunal or any other Authority in the State of Maharashtra to disregard it while considering a like issue. …**It is not open to the Tribunal to sit in appeal from the orders of this Court and not follow it.** In case the doctrine of precedent is not strictly followed there would be complete confusion and uncertainty. The victim of such arbitrary action would be the Rule of law of which we as*

8 *GVK Inds Ltd & Anr*. v *The Income Tax Officer & Anr* 2011-TIOL-128-SC-IT-CB, Para 53.
9 In *HDFC Bank Ltd., Mumbai* v *The Deputy Commissioner of Income Tax 2(3), Mumbai & Ors.* 2016-TIOL-408-HC-MUM-IT: (2016) 383 ITR 529 (Bom).

the Indian State are so justifiably proud." [Emphasis supplied]

4.6.7 Thus, the law declared by the High Court will be binding upon all authorities and Tribunals functioning within the State.

4.6.8 **Courts' Interpretation of relevant provisions**

Section 54(3) and Rule 89 (4) relevant for the case have been interpreted thus:

4.6.9 The Gujarat High Court in *IPCA Laboratories*[10] case observed that the issue is no longer *res integra* in view of the judgment and order passed by the Gujarat High Court in the case of *Britannia Industries Limited v. Union of India*[11]. which is based on *Amit Cotton Industries*[12]. In *IPCA Laboratories* case the Gujarat High Court held that the writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor. Relevant paragraphs of IPCA laboratories case (supra) are extracted below:

"10. The issue raised in the present writ application is no longer res integra in view of the judgment and order passed by this Court dated 11th March, 2020 in the case of M/s. Britannia Industries Limited v. Union of India [Special Civil Application No. 15473 of 2019] [2020 (42) G.S.T.L. 3 (Guj.)]. We take notice of the fact that M/s. Britannia Industries Limited (supra) is based on M/s. Amit Cotton Industries v. Principal Commissioner of Customs [Special Civil Application No. 20126 of 2018, decided on 27th June, 2019] [2019 (29) G.S.T.L. 200 (Guj.)].

11. In view of the aforesaid, the writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor."

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10 IPCA *Laboratories Ltd. v Commissioner* 2022 (63) G.S.T.L. 187 (Guj.)
11 2020 (42) G.S.T.L. 3 (Guj.)
12 *Amit Cotton Industries v. Principal Commissioner of Customs* 2019 (29) G.S.T.L. 200 (Guj.)

4.6.10 In *Britania Industries* case (supra) the High Court held thus:

> *"21…. Rule 89 of the CGST Rules provides for procedure for application for refund of tax, interest, penalty, fees and prescribes that in respect of supplies to a SEZ unit, the application for refund has to be filed by the supplier of goods or services. The contention of the respondents that as the petitioner is not the supplier of the goods and services, the petitioner would not be entitled to file application for refund is not tenable because in facts of the present case, input service distributor i.e. ISD as defined under Section 2(61) of the CGST Act is an office of the supplier of goods and services which receives tax invoices issued under Section 31 of the CGST Act towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit of CGST, SGST or IGST paid on such goods or services. Therefore, in facts of the case, it is not possible for a supplier of goods and services to file a refund application to claim the refund of the input tax credit distributed by ISD. Therefore, the stance of the department that the petitioner is not entitled to seek the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable."*

4.6.11 In *Amit Cotton Industries*[13] case, which has been upheld by the Apex Court, the Gujarat High Court held that the Circular[14] will not save the situation for the Revenue. Rule 96 of the CGST Rules, 2017, is very clear and the writ-applicant is entitled to claim the refund of the IGST.

4.6.12 *ATC Tyers Pvt. Ltd. Vs. Joint Commissioner*, CE; 2022- VIL-245-Madrias is not on the issue at hand and hence not relevant.

4.6.13 In *Urjita Electronics Pvt. Ltd. v Joint Commissioner of Gst And Central Excise*[15] the Madras High Court observed thus:

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13 *Amit Cotton Industries v Principal Commissioner of Customs* 2019 (29) G.S.T.L. 200 (Guj.)
14 C.B.I. & C. Circular No. 37/2018-Cus., dated 9-10-2018.
[15] 2025 (29) Centax 360 (Mad.)

26. At the outset, it has to be stated that these 3 decisions are not directly applicable to the facts of the present case. Nevertheless, I am of the view that ***the refund of taxes paid by the supplier on the supplies effected to the petitioner are to be allowed in view of the special dispensation under the Special Economic Zone Act, 2005 [SEZ Act, 2005],*** *…*
[Emphasis supplied]

4.6.14 In *Platinum Holdings* (supra) the Madras High Court held thus

"17. Thus, on a combined reading of Section 54 and Rule 89, the restriction which has been read into the provision by the Revenue is, in my view, misplaced. In fact, the Officer in the impugned order proceeds on the basis that the second proviso to Rule 89 deploys the word 'only', which I do not find in the second proviso. It is a settled position that there can be no insertion of a word or phrase in a statutory provision or in a Rule which must be read and applied, as framed. No restrictions or amplifications of the Rule are permissible by interpretation. On the legal issue of entitlement to refund, I hold in favour of the petitioner."

4.6.15 In *McKinsey Global Services India Pvt. Ltd. v. Joint Commissioner (Appeals II) & Anr.*[16] the Madras High Court ruled thus:

"6. The subsequent judgment of this Court in Urjita Electronics reiterates the same position. I see no reason to deviate from the reasoning in those decisions. Consequently, the impugned order is set aside and the respondents are directed to process the refund application in accordance with this and other judgments cited herein."

Thus a Special Economic Zone (SEZ) unit cannot be denied a GST input tax credit (ITC) refund solely on the ground that it is not the supplier.

[16] WP No. 26469 of 2026 & WMP No.28949 of 2026, delivered on September 18, 2026,

4.6.16 No decision contrary to the above decisions of the Madras High Court has been cited before us by the Appellant Revenue, hence in view of the legal position explained here-in-before these decisions are binding on us.

4.6.17 With regard to the Appellant Revenue's submission that *Britannia* judgment (supra) has been challenged by the Revenue before the Hon'ble Supreme Court by way of SLP (Civil) Number 013431 of 2021 and the matter is sub-judice there, it would suffice to mention:

(i) that the Revenue has not produced any order nor made any submission to the effect that the said Britania judgement has been stayed by the Hon'ble Supreme Court. It is a settled law that the judgement remains operative and binding till the same is stayed by the higher Court. The CBIC has also instructed the Departmental authorities from time to time that refund should not be denied merely on the ground that the Department intends to or has filed an appeal against the order of the Appellate Authority. (Most Recent being Circular No. 259/05/2026-GST dtd. 26th Oct. 2026);

(ii) Further in addition to *IPCA* and *Britannia* judgments there are three more judgements of the Madras High Court (*Urjita*, *Platinum Holdings* & *McKinsey Global)* relied upon by the Respondent Assessee in support of their case and the Appellant Revenue have failed to submit any Order or even make a plea to the effect that these judgments have been reversed/stayed by the Supreme Court. **Hence these judgments are binding on us.**

4.6.18 Thus the law relating to the refund to SEZ unit provided under section 54 of CGST Act read with rule 89 of the CGST Rules, as interpreted by the Gujarat and Madras High Courts clearly provide that **since it is not possible for a supplier of goods and services to file a refund application to claim the refund of the input tax credit distributed by ISD the instance of the department that the petitioner (SEZ unit) is not entitled to see the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable.**

4.7 Relevancy of Board circulars

4.7.1 The Appellant Revenue vide para 8.9 of their Appeal (APL 07) has submitted that the CBIC issued Circular No. 17/17/2017- GST dated 15.11.2017 for manual filing and processing of refund claims in respect of zero-rated supplies and Circular No. 24/24/2017-GST dated 21.12.2017 for manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger. However, the Refunds Claimed by the Respondent assessee could not be processed under any of the category of eligible Refunds Specified therein and were accordingly rejected.

4.7.2 We have perused the aforementioned CBIC circulars and observe that as admitted by the Appellant Revenue CBIC vide Circular No. 17/17/2017- GST, dated 15.11.2017 prescribed procedure for Manual filing and processing of refund claims in respect of zero-rated supplies. The opening paragraph of this circular provides thus:

> *"**Due to the non-availability of the refund module on the common portal**, it has been decided by the competent authority, on the recommendations of the Council, that the applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders. Therefore, in exercise of the powers conferred by sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and for the purpose of ensuring uniformity, the following conditions and procedure are laid down for the manual filing and processing of the refund claims:…"* [Emphasis supplied]

4.7.3 Similarly, CBIC Circular No. 24/24/2017-GST, dated 21.12.2017 (Rescinded vide Circular No. 125/44/2019 - GST dated 18.11.2019) prescribed procedure for manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger. This circular in the opening paragraph provides thus:

> *"**Due to the non-availability of the refund module on the common portal**, it has been decided by the competent authority, on the recommendations of the Council, that the*

applications/documents/forms pertaininSg to refund claims on account of inverted duty structure (including supplies in terms of notification Nos. 40/2017-Central Tax (Rate)and 41/2017-Integrated Tax (Rate) both dated 23.10.2017), deemed exports and excess balance in electronic cash ledger shall be filed and processed manually till further orders…." [Emphasis supplied]

4.7.4 Thus, both Circular No. 17/17/2017- GST, dated 15.11.2017 and Circular No. 24/24/2017-GST, dated 21.12.2017 prescribed the procedure for processing the refund claims manually due to the non-availability of the refund module on the common portal and did not bring any substantial change in the law relating to right of refund to SEZ units . Therefore**, these circulars do not assist the Appellant Revenue's case inasmuch as these circulars do not, in any manner, circumscribe the right of the SEZ unit to claim refund.**

5.0 Conclusion

In view of the factual and legal position discussed herein before all the contentions urged in support of the aforementioned appeals fail and no fault can be found with the impugned 'Orders in Appeal' passed by the First Appellate Authority. Resultantly, the impugned orders of the First Appellate Authority are affirmed and all the (eight) appeals by the Appellant Revenue are dismissed.

Order pronounced in open court on **04 November 2026**.

Kishori Lal Digitally signed by Kishori Lal Date: 2026.11.06 16:21:41 +05'30'

(Sh Kishori Lal)
Technical Member

Pramod Kumar Rai Digitally signed by Pramod Kumar Rai Date: 2026.11.06 17:12:03 +05'30'

(Sh Pramod Kumar Rai)
Judicial Member

Place: Rajkot
Date: 04 November 2026