

IMPORTANT GST UPDATES



Issued in case of Malabar Fuel Corporation by Kerala High Court
WP(C) No. 26112 of 2023 | Date: 11-01-2024

Ruling

Refund of Accumulated Credit Admissible on Payment of Higher Tax on Input Supplies Even When the Input & Output Supplies Are Same

Observations & Findings

Malabar Fuel Corporation, the petitioner, is engaged in the bottling of Liquefied Petroleum Gas (LPG) for both domestic and commercial purposes. They are obligated to remit GST at an 18% rate on the bulk procurement of LPG from refineries. However, when they supply bottled LPG to domestic customers, it incurs a GST rate of 5%, while for commercial customers, it stands at 18%. This incongruity results in an imbalance where the input tax exceeds the tax liability for domestic supplies.

In pursuit of resolution, the petitioner sought refunds under Section 54 of the CGST Act for the accumulated Input Tax Credit (ITC) pertaining to LPG supplies to domestic customers post-bottling. Initially, these refund requests faced rejection, citing Circular 135/05/2020-GST dated 31.3.2020. Consequently, the petitioner has challenged these rejections in the High Court.

The petitioner argued that the circular's provision, which denies the refund of accrued ITC when the tax on input supplies surpasses that on output supplies, has been contested and contradicted by various High Courts, including those of Gauhati, Calcutta, Rajasthan, and Delhi. These courts have asserted that such denial runs contrary to the statutory provision outlined in Section 54 of the CGST Act.

Additionally, the Court noted that Sub-section (3)(ii) of Section 54 of the CGST Act allows a dealer to claim a tax refund when credit accumulates due to a higher tax rate on inputs compared to output supplies, except in cases of nil-rated or fully exempted supplies, or those specified by the Central Government based on GST Council recommendations. The petitioner's case does not fall within the aforementioned exceptions.

Consequently, the Court decreed that the petitioner is entitled to a refund for the accumulated credit resulting from the higher tax rate (18%) on input supplies received for bottling LPG for domestic supply, given that the tax rate on the output is only 5%.