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Reserved On : 10/10/2025
Pronounced On : 13/11/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18892 of 2023

With
R/SPECIAL CIVIL APPLICATION NO. 17246 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 17080 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 96 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 8319 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
	✓	X

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SHAH PAPERPLAST INDUSTRIES LTD. & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

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1. Heard learned advocate Mr.Uchit N. Sheth for the petitioners and learned advocate Ms. Hetvi H. Sancheti for the respondents.

2. Rule returnable forthwith. Learned advocate Ms. Hetvi Sancheti waives service of notice of rule on behalf of the respondents.

3. This group of petitions involve similar issue of denial of refund of tax in view of Circular No.172/04/2022-GST dated 06.07.2022 issued under section 168 of the Central Goods and Service Tax Act, 2017 (For short “the GST Act”).

4. For the sake of convenience, Special

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Civil Application No.18892 of 2023 is treated as a lead matter.

Facts :

5. Brief facts of Special Civil Application No.18892 of 2023 are that the petitioners are engaged in the business of manufacture and export of Tissue Paper, Wrapping Paper, Disposable Plastic Products. etc. being 100% Export Oriented Undertaking(EOU).

6. The petitioners purchased raw materials from the registered suppliers under the GST Act which was utilised for manufacture of the finished products for the purpose of export.

7. Section 54(3) of the GST Act provides

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for grant of refund of unutilised input tax credit in case of zero-rated supplies made without payment of tax. The petitioners are accordingly entitled to claim refund of unutilised input tax credit in respect of exports made without payment of tax. Supplies made by the registered person to a 100% EOU also qualified as deemed exports under the provisions of the GST Act. In case of deemed exports, the supply can also be made without payment of tax provided the necessary procedures in this regard are followed. If however, supplies are made to 100% EOU on payment of tax, refund of such tax can be claimed either by the supplier or by the recipient as per the third proviso to Rule 89(1) of the Central Goods and Services Tax Rules, 2017 (For short

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"the GST Rules").

8. The suppliers of the raw materials supplied the goods to the petitioners on payment of tax. Therefore, the petitioners were entitled to refund of tax paid to the suppliers as per Rule 89(1) of the GST Rules. Alternatively, the refund could also be claimed of unutilised input tax credit under section 54(3) of the GST Act since it is not disputed that the petitioners ultimately exported the goods manufactured out of the supplies of raw materials received on payment of tax.

9. The petitioners filed a refund application on 11.06.2022 for the month of April, 2022 claiming refund of tax under section 54(3) of the GST Act on the basis

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that the export had been made without payment of tax and the petitioners were entitled to claim the refund of unutilised input tax credit. The petitioners also filed an undertaking along with the refund application that the petitioners had not purchased the goods without payment of tax under the deemed export Notification No.48/2017 dated 18.10.2017 and Circular No.14/2017 dated 06.11.2017 and the suppliers had not claimed the refund of such tax. The provisional refund was granted on 02.07.2022 pursuant to the refund application.

10. The Central Board of Indirect Taxes and Customs (CBIC) issued Circular No. 172/04/2022-GST dated 06.07.2022 wherein it was provided in para 2.2 that in case

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of deemed export, the tax paid would not be considered as input tax credit and therefore, same would not be considered while calculating the refund under Rule 89(4) or Rule 89(5) of the GST Rules.

11. Respondent no.4-Assistant Commissioner, Central GST & Excise, Vadodara-I issued the show cause notice dated 20.07.2022 seeking to withdraw the refund already granted for the month of April, 2022 alleging that the tax paid on deemed exports would not be considered as input tax credit.

12. The petitioners filed preliminary objections against the withdrawal of the refund. However, it was informed by the respondent authority that in view of circular dated 06.07.2022, refund granted

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to the petitioners would be withdrawn.

13. The petitioners therefore preferred Special Civil Application No.17246 of 2022 challenging the Circular No.172/04/2022-GST dated 06.07.2022 as well as notice for withdrawing refund for the month of April, 2022. During the pendency of the petition, the respondent authority passed the impugned order dated 18.08.2022 withdrawing the refund for the month of April, 2022 amounting to Rs.28,40,959/-.

14. The petitioners therefore, amended Special Civil Application No.17246 of 2022 to challenge the said order. By order dated 07.09.2022, notice was issued by the Court and ad-interim relief against coercive recovery was granted.

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15. In the meantime, the refund granted for the period from December, 2021 to March, 2022 was sought to be reviewed by the authority on the basis of circular dated 06.07.2022. By order dated 29.12.2022 passed under section 107(2) of the GST Act, relying upon the circular dated 06.07.2022, order dated 07.07.2022 passed by the Deputy Commissioner sanctioning the refund was reviewed by the Principal Commissioner, Central GST & Central Excise, Vadodara-1 and it was found that appeal be preferred against the order dated 07.07.2022 sanctioning the refund claim amounting to Rs.35,90,385/- under Rule 89(4) of the GST Rules on the ground that there was sanction of erroneous refund under Rule 89(4) instead of Rule 89(4A)/proviso to Rule 89(1) of

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the GST Rules.

16. On the basis of the review order, an appeal was preferred by the Revenue for challenging the refund order. The petitioners made submissions dated 28.08.2023 to the appeal filed by the respondents and pointed out that for the prior period, writ petitions were pending before this Court and therefore, appeal may be kept pending or in the alternative, the petitioners made submissions on merits of the case contending that the petitioners are entitled to refund of the accumulated input tax credit of inputs and input services under section 54(3) of the GST Act for zero-rated supplies made without payment of tax.

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17. The appellate authority however, by the impugned order dated 06.09.2023 allowed the appeal of the department and directed withdrawal of the refund already granted to the petitioners along with interest.

18. Being aggrieved, the petitioners have preferred this petition with the following prayers:

> "A. This Hon'ble Court may be pleased to strike down and declare impugned Para 2.2 of Circular No. 172/04/2022-GST dated 6.7.2022 issued under Section 168 of the Central Goods and Services Tax Act, 2017 as ultra-vires the provisions of Section 16(1) of the IGST Act read with Section 54 of the CGST Act and the rules made thereunder; Annexure"A"
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> B. This Hon'ble Court may be pleased to declare that the Petitioners being exporters making export without payment of tax are entitled to refund of unutilized input tax credit in accordance

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with the provisions of the statutory provisions;

C. Without prejudice to the above and in the alternative this Hon'ble Court may be pleased to declare that impugned Para 2.2 of Circular No. 172/04/2022-GST dated 6.7.2022 issued under Section 168 Annexure”A” of the Central Goods and Services Tax Act, 2017 applies prospectively only to exports made after date of issuance of the circular;

D. This Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 6.9.2023 (annexed at Annexure B) passed by appellate authority for recovering refund granted to the Petitioners for the period from December 2021 to March 2022 as being wholly without jurisdiction, arbitrary and illegal;

E. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay the operation, execution and implementation of impugned order dated 6.9.2023 (annexed at Annexure B);

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F. Ex parte ad interim relief in terms of prayer E may kindly be granted;

G. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

19. Special Civil Application No.17246 of 2022 is filed for the period prior to the impugned order passed by the appellate authority whereas Special Civil Application No.17080 of 2023 is filed against the appeal order for the period of refund claimed for the month of May, 2022. Special Civil Application No.96 of 2025 is filed against the appellate order of withdrawal of the refund for the period from June, 2018 to May, 2019 whereas Special Civil Application No.8319 of 2025 is filed by Kumar World Trade Pvt. Ltd.

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for rejection of the refund application on the same ground for the period from August, 2022 to March, 2023.

Submissions of the petitioners :

20. Learned advocate Mr. Uchit N. Sheth for the petitioners submitted that Circular dated 06.07.2022 is ultra vires to section 16(1) of the GST Act which provides that any registered person shall be entitled to input tax credit on supply of goods or services or both which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the Electronic Credit Ledger of such person. It was also pointed out that section 16 of the Integrated Goods and Services Tax Act, 2017 (For short “the IGST Act”) also provides for refund of tax after payment

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of tax or refund of unutilised input tax credit without payment of tax. It was submitted that para 2.2 of the circular dated 06.07.2022 which provides that tax credit shall not be considered for calculating the refund on the ground that the purchases made by the petitioner is for the deemed export and therefore, refund cannot be granted under Rule 89(4) or Rule 89(5) of the GST Rules, is contrary to the provisions of the GST Act and the IGST Act and therefore, the circular is ultra vires to the provisions of the GST Act.

21. Learned advocate Mr. Sheth submitted that third proviso to Rule 89(1) of the GST Rules provides for refund of tax on deemed exports by the recipient of the

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deemed export supplies or the supplier of deemed export supplies and hence, circular barring refund in case of deemed exports is contrary to the Rule 89(1) of the GST Rules.

22. It was further submitted in the alternative that the impugned circular cannot be given a retrospective effect by the respondent authority as the circular was not in force at the time when the export transactions were made by the petitioners for the period under consideration in Special Civil Application No.17246 of 2022 and Special Civil Application No.18892 of 2023 i.e. from December, 2021 to April, 2022.

23. It was submitted that the action of

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the appellate authority of withdrawal of the refund granted to the petitioners on the ground that refund application ought to have been filed under Rule 89(4A) of the GST Rules and not under Rule 89(4) of the GST Rules is illegal and incorrect because Rule 89(4A) applies only to cases where the suppliers have taken benefit of deemed export Notification No.48/2017 dated 18.10.2017 whereas in the facts of the present case, neither the supplier nor the recipient has taken the benefit of the deemed export notification and therefore, Rule 89(4A) of the GST Rules has no applicability.

24. It was submitted that merely because the suppliers have sold the goods to the petitioners upon payment of GST instead of

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taking benefit of the deemed export notification, the petitioners cannot be barred from claiming the refund on the exports made by the petitioners under section 54(3) of the GST Act.

25. Learned advocate Mr. Sheth in the alternative submitted that the show cause notice under section 73 of the GST Act could have been issued by the respondent in case of non-payment of tax or erroneous automatic refund of tax but in cases where there exists a quasi-judicial order adjudicating and sanctioning the refund application of the petitioner, section 73 would not be applicable and only remedy which would have been available to the respondents was to file an appeal against the refund sanctioning order. It was also

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pointed out that in cases where order granting refund is not challenged by the Assessing Authority, the higher authority cannot suo-motu review the order and withdraw the grant of refund.

26. In support of his submissions, reliance was placed on the following decisions:

1) **Collector of Central Excise, Kanpur v. Clock (India) Pvt. Ltd., C-7, Panki Industrial Area, Kanpur** reported in (2000) 6 Supreme Court Cases 650.

2) **Priya Blue Industries ltd. v. Commissioner of Customs (Preventive)** reported in (2005) 10 Supreme Court Cases 433.

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3) **ITC Limited v. Commissioner of Central Excise, Kolkata IV** reported in (2019) 17 Supreme Court Cases 46.

4) **Patanjali Foods Ltd. v. Union of India and others** (Judgment dated 12.02.2025 passed in Special Civil Application No.17298 of 2024).

5) **Triupra Ispat (A unit of Lohia Group) v. Union of India and others** reported in 2021 SCC OnLine Tri 659.

6) **Commissioner of Central GST and Central Excise v. Krishi Rasayan Exports Pvt. Ltd.** reported in 2023 SCC OnLine J&K 333.

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7) **Commissioner of Central Excise, Shillong v. Jellalpore Tea Estate** reported in 2011 SCC OnLine Gau 18.

27. Learned advocate Mr. Sheth also referred to and relied upon the decision of Hon'ble Apex Court in case of **Eicher Motors Ltd. & another v. Union of India and others** reported in (1999) 2 SCC 361 as well as decision in case of **Jayam & Company v. Assistant Commissioner and another** reported in (2016) 15 SCC 125 and in case of **Union of India v. Vkc Footsteps India Private Limited** reported in (2022) 2 SCC 603 wherein it is held as under:

> "99. We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was

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> within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' the counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We, therefore, accept the submission which has been urged by Mr N. Venkataraman, learned ASG."

Submissions of the respondents:

28. On the other hand learned advocate Ms. Hetvi Sancheti for the respondents submitted that the jurisdiction under

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sections 73 and 74 of the GST Act can be validly invoked to recover an erroneous refund granted under section 54 of the GST Act even in the absence of an appeal preferred against the refund order. It was submitted that sections 73 and 74 of the GST Act empowers the proper officer to issue a show cause notice to determine the amount of tax not paid, short paid or erroneously refunded due to reasons such as non-levy, short-levy or erroneous refund whether by reason of fraud, collusion, willful misstatement, suppression of facts or otherwise.

29. It was submitted that section 54 of the GST Act provides for grant of

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refunds subject to scrutiny and verification by the proper officer, however, an erroneous refund granted under the provisions of the GST Act does not attain finality which precludes the recovery proceedings under section 73 or section 74 of the GST Act as both the provisions operate independently to safeguard the revenue interests.

30. It was submitted that remedy of appeal under section 107 of the GST Act or review under section 108 of the GST Act against a refund order is a distinct mechanism available to the department but is not a precondition for invoking section 73/74 of the GST

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Act to recover the amount erroneously refunded.

31. In support of his submissions, reliance was placed on the decision of Hon'ble Madras High Court in case of **M/s. Premier Cotton Textiles v. Commissioner of Central Excise** reported in 2019 (368) E.L.T. 465 (Madras).

32. Reliance was also placed on the decision of Hon'ble Supreme Court in case of **Grasim Industries Limited v. Commissioner of Central Excise** reported in (2011) 14 Supreme Court Cases 685 wherein the Supreme Court has held that show cause notice under section 11A of the Central Excise Act, 1944 which is

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akin to section 73 of the GST Act can be issued for recovery of an erroneous refund even without an appeal under section 35E of the Central Excise Act, 1944 which is akin to section 108 of the GST Act. It was pointed out that Hon'ble Apex Court emphasised in the said decision that section 11A operates as a recovery mechanism independent of the appellate or review process, ensuring that erroneous refunds do not escape scrutiny due to procedural technicalities.

33. Learned advocate Ms. Sancheti also further relied upon the decision of Hon'ble Apex Court in case of **Asian paints (India) Ltd. v. Commissioner of**

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Central Excise reported in 2002 (142) E.L.T. 522 (SC), wherein the Hon'ble Apex Court upheld the decision of the Larger Bench of the CESTAT to the effect that section 35E and section 11A of the Central Excise Act, 1944 operate in distinct realms.

34. It was therefore, submitted that the judgments relied upon by the petitioners regarding invoking section 35E of the Central Excise Act, 1944 or any other pari-materia provisions of other Acts are regarding classification of taxable goods or services, wherein self-assessment orders which were based either on wrong classification or wrong value of goods and services, tax was

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paid extra and refund was sought on the same ground. It was pointed out that in case of **Priya Blue Industries Ltd.** (supra), it was held that self-assessment orders at the behest of the assessee cannot be modified or changed without filing appeal and further tax collected cannot be refunded on the ground of being wrongly collected on refund application being made by the assessee without challenging the self-assessment order itself. It was submitted that in the facts of the said case, it was held that assessees are not vested with any such powers for opening the self-assessment orders whereas the provisions of section 73 and section 74 of the GST Act vests

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specific powers with the department to recover erroneous refund sanction.

35. It was submitted that in the facts of the case, no contentious issue has been adjudicated upon between the department and the assessee by the appellate authority and passing of an order under Form RFD-01 by the adjudicating authority cannot mean that issue of refund has been adjudicated upon.

36. It was submitted that it is a settled legal position that “if law prescribes certain thing to be done in a certain manner, it has to be done in that manner” and such principle is applicable in the facts of the case

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because as per the law, refund application ought to have been made under Rule 89(4A) of the GST Rules and therefore, the petitioners were bound by the same irrespective of the hardships or any other reason.

37. It was submitted that the deemed exports are required to be made under tax invoice upon payment of tax and following the procedure as provided under Circular dated 6.11.2017, therefore, in case of deemed exports, the supply cannot be made without payment of tax though either the supplier or recipient can claim refund of tax paid on deemed exports under Rule 89(1) of the GST Rules.

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38. It was further submitted that in cases where supply is not regarded as deemed export, the petitioner is entitled to refund of tax under Rule 89(4A) of the GST Rules. But in the facts of the case, the petitioners have claimed the refund under Rule 89(4) of the GST Rules read with section 54(3) of the GST Act instead of Rule 89(1)/89(4A) of the GST Rules.

39. It was further submitted that Circular dated 06.07.2022 is a clarificatory circular which elucidates the already existing GST law, thus such clarificatory circular cannot be said to be ultra vires the provisions of GST

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or IGST Act.

40. Learned advocate Ms. Sancheti submitted that after enforcement of the GST laws, no special treatment or benefit is granted to taxpayers registered as 100% EOU as such units are treated as normal taxpayer. Hence, no differentiation lies merely because the petitioner is a 100% EOU.

41. Reliance was placed on the Notification No.48/2017 dated 18.10.2017 issued in furtherance of the decision of 22nd GST Council meeting wherein the supplies made to 100% EOU was declared to be regarded as deemed export supply. It was submitted that in the 22nd GST Council meeting held on

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06.10.2017, it was decided that the supplies made by a registered person to EOUs would be considered as deemed exports and refund of tax paid on such supplies could be claimed either by the recipient or the supplier.

42. It was submitted that the petitioners have wrongfully filed the refund claim under Rule 89(4) of the GST Rules as the petitioners ought to have filed the refund claim under Rule 89(1) in case of deemed export supply or Rule 89(4A) in case of other supply not regarded as deemed export as per Circular dated 06.07.2022.

43. With regard to contention of the

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petitioners that circular dated 06.07.2022 would not be applicable retrospectively, it was submitted by learned advocate Ms. Sancheti that said circular is merely clarificatory in nature and therefore, the question of giving retrospective effect does not arise.

44. Reliance was placed on the decision of Hon'ble Supreme Court in case of **WPIL Ltd Ghaziabad v. Commissioner of Central Excise, Meerut** in Civil Appeal No.4228-4229 of 1999.

45. In support of her submissions reliance was also placed on the following decisions:

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1) **M/s. Premier Cotton Textiles** (supra).

2) **Grasim Industries Limited** (supra)

3) **Vkc Footsteps India Private Limited** (supra)

Analysis :

46. The questions that arises for the consideration in this group of matters can be framed as under:

1) Whether the refund claim filed by the petitioner was rightly disallowed by the respondents on the ground that the petitioners did not file the refund claim under Rule 89(4A) of the GST

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Rules?

2) Whether the refund claim filed by the petitioners could have been rejected applying para 2.2 of the Circular No. 172/04/2022-GST dated 06.07.2022 issued by the respondents with the retrospective effect?

3) Whether the respondents were justified in exercising suo motu powers for reviewing the orders sanctioning the refund claim of the petitioners under section 107(2) of the GST Act directing the authorised officer to prefer an appeal under section 107(3) of the GST Act?

4) Whether the respondent authorities were justified in issuance of notice under

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section 73 of the GST Act for recovery of refund issued to the petitioners without challenging the order on the ground that the refund has erroneously been made?

47. In order to answer the above questions, it would be germane to refer to the relevant provisions of the GST Act, IGST Act, GST Rules as well as notifications/circulars relied upon by both the sides:

Central Goods and Service Tax Act, 2017

2(39) "deemed exports" means such supplies of goods as may be notified under section 147.

Deemed Exports
147 The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured

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in India.

Eligibility and condition for taking input tax credit.
16(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

"Refund of tax.
54.(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 form and] manner as may be prescribed.

54(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

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input tax credit shall be allowed in cases other than-

(1) 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.

Appeals to Appellate Authority.
107(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to

apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Integrated Goods and Services Tax Act, 2017

Zero rated supply.
16(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely:-

(a) export of goods or services or both; or

(b) supply of goods or services or both 30 [for authorised operations) to a Special Economic Zone developer or a Special Economic Zone unit

16(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:

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Central Goods and Services Tax Rules, 2017

Application for refund of tax, interest, penalty, fees or any other amount

89(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

89(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) × Net ITC Where,- Adjusted Total Turnover

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

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(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period

(C) "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

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

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112)

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of section 2, excluding the turnover of services; and

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

[excluding the value of exempt supplies other than zero-rated supplies during the relevant period;]]

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

Explanation. For the purposes of this sub-rule, the value of goods exported out of India shall be taken as-

(1) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.)

89(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1305(E) dated the 18th October, 2017, refund of input tax credit,

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availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

89(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) × Net ITC + Adjusted Total Turnover} - 69[{tax payable on such inverted rated supply of goods and services × (Net ITC ITC availed on inputs and input services)}].

Explanation. For the purposes of this sub-rule, the expressions-

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period b[***]; and

"[(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]]

Notification No. 48/2017-Central Tax

New Delhi, the 18th October, 2017

G.S.R. (E). In exercise of the powers conferred by section 147 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed

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exports, namely:-

Table

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation

Explanation -

For the purposes of this notification,

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports

2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015. 20 for import of capital goods for physical exports.

3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

Circular No. 14/14/2017-GST

F. No. 349/21/2016 GST (Policy Wing)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
GST Policy Wing

New Delhi, dated the 6th November, 2017

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Director Generals / Director Generals (All)

Madam/Sir,

Sub Procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit/Bio-Technology Parks (BTP) Unit under deemed export benefits under section 147 of CGST Act, 2017-reg.

In accordance with the decisions taken by the GST Council in its 22nd meeting held on 06.10.2017 at New Delhi to resolve certain difficulties being faced by exporters post- GST, it has been decided that supplies of goods by a registered person to EOUs etc. would be treated as deemed exports under Section 147 of the CGST Act, 2017 (hereinafter referred to as 'the Act') and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies. Accordingly, Notification No. 48/2017-Central Tax dated 18.10.2017 has been issued to treat such supplies to EOU/EHTP/STP/BTP units as

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deemed exports. Further, rule 89 of the CGST Rules, 2017 (hereinafter referred to as "the Rules') has been amended vide Notification No. 47/2017- Central Tax dated 18.10.2017 to allow either the recipient or supplier of such supplies to claim refund of tax paid thereon.

2. For supplies to EOU/EHTP/STP/BTP units in terms of Notification No. 48/2017- Central Tax dated 18.10.2017, the following procedure and safeguards are prescribed –

(i) The recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "Form-A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to –

(a) the registered supplier;

(b) the jurisdictional GST officer in charge of such registered supplier; and

(c) its jurisdictional GST officer.

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU/EHTP/STP/BTP unit.

(iii) On receipt of such supplies, the EOU/EHTP/STP/BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –

(a) the registered supplier;

(b) the jurisdictional GST officer in charge of such registered supplier, and

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(c) its jurisdictional GST officer.

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU/EHTP/STP/BTP unit.

(v) The recipient EOU/EHTP/STP/BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form-B" (appended herewith). The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form - B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

3. The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU/EHTP/STP/BTP unit in terms of the Foreign Trade Policy, 2015- 20 and the duty exemption notification being availed by such unit.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

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5. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow."

Circular No.172/04/2022-GST

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 6th July, 2022

To

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Directors Generals/Directors Generaal (All)

Madam/Sir,

Subject: Clarification on various issue pertaining to GST-reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

i. refund claimed by the recipients of supplies regarded as deemed export;

ii. interpretation of section 17(5) of the CGST Act;

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iii. perquisites provided by employer to the employees as per contractual agreement; and

iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarify the issues as under:

xxx

S. NO.	Issue	Clarification
Refund claimed by recipients of supplies regarded as deemed export		
2	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net

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		ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

48. The undisputed facts are that the petitioners are 100% Export Oriented Unit. The petitioners filed refund claim in view of Notification No.48/2017 under section 54 of the GST Act read with Rule 89(4) of the GST Rules. The supplier of the goods to the petitioners did not avail the input tax credit and refund was sanctioned by the authorised officer and thereafter under section 107(2), the refund sanction order was reviewed on the ground that as the petitioners are 100% EOU, would be

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eligible to file refund claim either under proviso to Rule 89(1) or Rule 89(4A) of the GST Rules which provides that in case of supplies received on which the supplier has availed the benefit of the Notification No.48/2017, refund of input tax credit availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both shall be granted as the petitioners did not file the refund application under Rule 89(4A) or proviso to Rule 89(1) which stipulates that in respect of supplies regarded as deemed exports, the application for refund can be filed by the recipient of deemed export supplies or the supplier of deemed export supplies in cases where the recipient does not avail input tax credit on such supplies.

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49. It appears from the facts of the case that the petitioners are not the deemed exporters but are the exporter of the goods resulting into zero-rated supply as per section 16(1) of the IGST Act and all the inward supplies to the petitioners are made with payment of GST charged by the suppliers who have not taken benefit of any notification as deemed exporter. It is also not in dispute that the petitioners are exporting the goods at zero-rax ted supply without payment of taxes under Letter of Undertaking and the input tax credit of the inputs, capital goods and services got accumulated for which refund claim was filed.

50. It is also not in dispute in facts of the case that the suppliers of the raw materials to the petitioners who

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manufactured the finished products have not shown such supplies as deemed export but the supplies have been shown as regular B2B supplies i.e. in regular form only. The suppliers of the goods to the petitioners have never followed the procedure as per Circular No.14/14/2017 dated 6.11.2017 nor any invoices are endorsed as an EOU unit by the petitioners as per the procedure prescribed in the said circular.

51. Therefore, in facts of the case, zero-rated supplies made by the petitioners is not coming in the purview of the deemed exports because the petitioners have exported the goods and therefore, entitled to refund of the unutilised input tax credit as per the provisions of section 54(3) of the GST Act read with Rule 89(4)

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of the GST Rules.

52. So far as para. 2.2 of the Circular No.172/04/2022-GST dated 06.07.2022 is concerned, it only clarifies that input tax credit of the tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid, is not input tax credit in terms of provisions of Chapter-V of the GST Act and therefore, such input tax credit availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the Net ITC for computation of refund of unutilised ITC on account of zero-rated supplies under Rule 89(4) or on account of inverted rated structure under Rule 89(5) of the GST Rules. Such clarification was made in view

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of the issue as to whether the input tax credit availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the Net ITC for computation of refund of unutilised ITC under Rule 89(4) and Rule 89(5) of the GST Rules or not.

53. Rule 89(4) and Rule 89(5) of the GST Rules refers to the formula for computation of eligible refund in case of zero-rated supplies of goods or services or both without payment of tax under bond or Letter of Undertaking in accordance with the provision sub-section(3) of section 16 of the IGST Act.

54. So far as the facts of the case are concerned, the petitioners have not

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claimed any refund of the input tax credit on the deemed export supply. It appears that the respondents have lost sight of the fact that the petitioners are the exporters of the finished goods and the refund claim is filed by the petitioners being 100% EOU of zero-rated supply without payment of tax. The petitioners are therefore, not governed by para no. 2.2 of the Circular dated 06.07.2022. Had the suppliers of the raw materials to the petitioners claimed the refund being the deemed exporters regarding input tax credit paid on such deemed export supplies, then the clarificatory circular dated 06.07.2022 would have been applicable. When the petitioners are not the deemed export suppliers, Rule 89(4A) would also not be applicable to the

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petitioners as Rule 89(4A) has been omitted by the Central Goods and Services Tax (Second Amendment) Rules, 2024 with effect from 08.10.2024.

55. Therefore, the reasonings assigned by the appellate authority for applicability of Rule 89(4A) of the GST Rules is also contrary to the provisions of the GST Act, more particularly, section 2(39) of the GST Act which defines “deemed exports” to mean such supplies of goods as may be notified under section 147 and section 147 empowers the Central Government to notify the supply of goods as deemed export where the goods supplied do not leave India and payment for such supplies is either received in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

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Therefore, the supply of raw materials by the suppliers of the petitioners would amount to deemed export if the suppliers of the raw materials to the petitioners would have claimed the refund of the tax paid on such supplies. However, in facts of the case, the petitioners who have actually exported the goods have claimed the refund and therefore, the reliance placed by the respondent authorities on the basis of supplies made to the petitioners by the suppliers to attract the provisions of section 2(39) read with section 147 of the GST Act and Rule 89(4A) of the GST Rules, would not be applicable.

56. In view of above analysis of the provisions of the GST Act and the GST Rules, question no.1 is answered in favour of the petitioners to the effect that

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respondents were not justified in disallowing the refund claim of the petitioners on the ground that the petitioners did not file such claim under Rule 89(4A) of the GST Rules.

57. As the petitioners are exporters of the goods and has never claimed the input tax credit under Notification No.48/2017 as deemed exporter, para no.2.2 of clarificatory Circular No.172/04/2022-GST dated 06.07.2022 would not be applicable in the facts of the case and therefore, challenge to such circular is without any basis. We are therefore not deciding the question no.2 as to whether such circular would be applicable with retrospective effect or not in facts of the case.

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58. When we have already answered the issues on merits in favour of the petitioners to the effect that petitioners are entitled to refund claim of the ITC and the goods are exported without payment of tax under Rule 89(1)/89(4) of the GST Rules, whether the respondents were justified in review of the refund sanction order under section 107(2) of the Act or issue notice under section 73/74 of the GST Act for recovery of the refund paid to the petitioners would become academic and therefore, we are not dealing with the contentions raised and decisions relied upon by both the sides and the same are kept open to be dealt with in appropriate case.

59. In view of foregoing reasons,

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following orders are passed:

1) Insofar as Special Civil Application No.17246 of 2022 is concerned, order dated 18.08.2022 withdrawing the refund granted under the GST Act is hereby quashed and set aside and notice dated 19.08.2022 proposing to partially reject the refund for the month of May, 2022 is also hereby quashed and set aside.

2) Insofar as Special Civil Application No.18892 of 2023 is concerned, order dated 06.09.2023 passed by the appellate authority for recovering refund granted to the petitioners for the period from December 2021 to March, 2022 is hereby quashed and set aside.

3) Insofar as Special Civil Application

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No.96 of 2025 is concerned, the show cause notice dated 18.08.2023 and order dated 27.12.2023 passed by the respondents for recovery of the refund granted to the petitioner for the period from June, 2018 to May, 2019 are hereby quashed and set aside.

4) Insofar as Special Civil Application No.17080 of 2023 is concerned, order dated 06.09.2022 rejecting the refund claim of the petitioner confirmed by the appellate order dated 31.07.2023 for the month of May,2022 are hereby quashed and set aside.

5) Insofar as Special Civil Application No.8319 of 2025 order-in-original dated 17.05.2024 and order-in-appeal dated 26.02.2025 are hereby quashed and set

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aside. The prayer with regard to challenge to vires of para 2.2 of the Circular dated 06.07.2022 and applicability of such circular prospectively as well as the question relating to issuance of show cause notice under section 73/74 of the GST Act for exercise of powers of review under section 107(2) of the GST Act are not decided and kept open to be dealt with in an appropriate case.

6) Consequentially, the respondents shall pay the refund as per the claims made by the petitioners in accordance with law within 12 weeks from the date of receipt of a copy of this judgment.

60. All the petitions stand disposed of accordingly. Rule is made absolute to

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the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

After pronouncement of the judgement, learned advocate Mr. Shashvata Shukla prays for stay of the Judgement and Order.

Considering the reasons assigned in the order, the request is rejected.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR