

S.N.	Subject	Case	Held												
1.	Interim Stay on recovery wherein it was asked whether appeal has been filed before Tribunal against Appellate Order	Rajkalp Mudranalya (P.) Ltd. v. Superintendent [2023] 155 taxmann.com 608 (Gujarat) (26-10-23)	Order was passed by the Appellate Authority on dated 31 st July 2023 and since, no Tribunal was constituted, therefore order was challenged before High Court. Petitioner placed on record a communication 04.10.2023 by which, office of Superintendent initiated recovery of penalty pursuant to impugned order. The Court pursuant to taking order on record observed that reading of order would indicate that author of the order had opined that petitioner should inform the authority if any appeal or stay application has been filed against the OIA dated 31.07.2023 and whether the Appellate Authority has granted stay of the order. The Court granted interim stay on the order dated 4 th October 2023 till the next date of hearing and highlighted that contradistinction between authorities in question. that on one hand, though Tribunal is constituted but it is still not functioning and Competent Authorities thought it fit to issue orders of recovery asking assessee for information whether an appeal has been filed at all. (Section 112 of CGST Act, 2017)												
2.	Claim of Refund under "any other category" due to restriction by the Portal beyond the provisions of Rule 89(5) cannot be treated as filing of second refund application but a claim of balance amount which could not be claimed in First Refund application due to restriction of Portal	[2023] 155 taxmann.com 593 (Gujarat) Pee Gee Fabrics (P.) Ltd. v. Union of India (15-09-2023)	<p>Facts-The petitioner company came to know about claiming wrong credit on capital goods in the Year 2017 and thus petitioners were required to reverse ITC of such capital goods. Due to non-availability of DRC03 on GST Portal, petitioner Company had reversed the ITC in Form GSTR-3B of August 2018.</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>ITC available for the month of Aug 2018</td> <td>57,68,728/-</td> </tr> <tr> <td>Less: ITC reversed for FY 2017-18</td> <td>10,12,188/-</td> </tr> <tr> <td>Net ITC available</td> <td>47,56,539/-</td> </tr> <tr> <td>Less: Liability for the month of Aug 2018</td> <td>(32,02,738/-)</td> </tr> <tr> <td>Net ITC available for refund as per portal configuration</td> <td>15,53,801/-</td> </tr> </tbody> </table> <p>Thus, in view of the reversal, the amount of refund claimed by petitioners was proportionately reduced by Rs. 8,06,852/- in view of the calculation made by GST Portal. The petitioner, thereafter relying on clarification provided by circular no. 94/2019 dated 28.03.2019 claimed the balance amount of refund of Rs. 8,06,852/- i.e. [Rs. 22,78,798/- (-) Rs. 14,71,946/-] under "any other Specify" vide second refund application for the Month of August 2018 filed on 08.08.2019. Rejection of Refund filed under "any other" category-The petitioner company received refund of Rs. 14,71,946/- as per first refund application but however processing refund application filed under the head "Any Other head)", respondent authority disallowed the refund of Rs. 8,06,852/- for following reasons (i) As per circular no. 94/13/2019-GST dated 28.03.2019, there is no provision that second refund application can be filed for the same particular month Le. August 2018 under which appellant filed refund claim under the category "Any Other Specify" in inverted rate of structure; (ii) For the refund application filed, calculation should be as per Rule 89(5); (iii) The department has never asked to reverse the ITC on capital goods. The appellant had reversed the same on his own." Observation of the Court- a) Restriction by the Portal beyond the Rules-The Court observed that respondent authorities failed to consider that petitioners were entitled to refund amounting to Rs.22,78,798/- as calculated under Rule 89. GST Portal did not allow petitioners to submit refund application for the said amount and restricted the same to Rs.14,71,946/ in view of reversal of the credit of Rs.10,12,188/- on account of wrongly claimed credit on capital goods. b) Filing of Application by the Applicant is not second refund application but for the balance amount which was not granted-The petitioners therefore, had no other option but to file second application for claiming balance amount of refund of Rs. 8,06,852/-. The authorities failed to consider that petitioners had not filed second refund application for the same month but it has filed application for claiming balance amount of refund which was not granted though eligible. The petitioners had no other option but to file refund application in view of Circular No.94/2019 dated 28.03.2019 under "any other category". c) Aggregate amount of the refund applications is as per Rule 89(5)-As per the calculation made under Rule 89(5), petitioners were entitled to refund of Rs.22,78,798/- on the total turnover of inverted duty tax structure which was not in dispute and accordingly, petitioners were entitled to refund of Rs. 8,06,852/- which petitioners could not claim since GST Portal did not permit them to file refund application in view of reversal of wrongly claimed credit. d) Rejection on the Ground that Reversal of ITC on capital goods for previous period was correctly reduced was also not correct-Reasoning given for rejecting legitimate claim of the petitioner company that reversal of ITC on capital goods in Form GSTR-3B amounting to Rs.10,12,189/- is binding on the petitioner company and therefore, the petitioner company is not eligible for claim of refund as per Circular No.94/2019 cannot be accepted. e) Scope of Circular 94/2019 Explained-Circular No.94/2019 permitted a one-time measure for availing refund of ITC on account of inverted duty tax structure as per Notification No.20/2018 read with Circular No.56/2018 as the assessee were not able to claim refund of the accumulated ITC to the extent to which they were eligible. Therefore, it was clarified by Circular No. 94/2019 that when assessee was not eligible to claim the refund then ITC is required to be claimed under "any other" in FORM GST RFD-01A for same tax period in which said reversal has been made. The petitioners taking benefit of such circular preferred Second refund application dated 08.08.2019 for balance amount on account of accumulated inverted duty tax structure amounting to Rs. 8,06,852/ Held-Thus, respondent authorities have by adopting such a pedantic approach could not have rejected the legitimate claim of the petitioner company for balance amount of refund claim. (Section 54 of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017)</p>	Particulars	Amount	ITC available for the month of Aug 2018	57,68,728/-	Less: ITC reversed for FY 2017-18	10,12,188/-	Net ITC available	47,56,539/-	Less: Liability for the month of Aug 2018	(32,02,738/-)	Net ITC available for refund as per portal configuration	15,53,801/-
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