

GIB/GUJ/VKC Footsteps/24-07-2020/HC-124

High Court Category : Refund on accounts of Inverted Duty Structure

State : Gujarat

Order No.: GIB/GUJ/VKC Footsteps/24-07-2020/HC-124

Name of Entry :

VKC Footsteps India Pvt. Ltd.

Date : 28-07-2025

Breif Issue :

Facts & Issue of The Case:

Since these petitions are arising out of the common issue, the same were heard analogously and are being disposed of by this common Judgment. The following petitions were clubbed into the said decisions;

- i. Gyscoal Alloys Ltd.
- ii. The Quarry Owners Association.
- iii. Adani Wilmar Limited.
- iv. South Gujarat Textile Processors Association.
- v. Hasankha Rehmankha Belim through His Brother.
- vi. ADI Tradelink.
- vii. ADI Enterprises.
- viii. M/S Topland Engines Private Limited.

The petitioner **VKC Footsteps India Pvt** is engaged in the business of manufacture and supply of footwear which attracts GST @5%. The Petitioner procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST for use in the course of business and avails input tax credit of the GST paid thereon. The inputs and input services attract GST at the rate of 12% or 18%.

Thus, GST rate paid by the Petitioner on procurement of input is higher than the rate of tax payable on their outward supply of footwear. Hence, it results in accumulation of unutilized credit in electronic credit ledger of the Petitioners.

Section 54(3) (ii) of the CGST Act lays down the eligibility criteria for the grant of refund on account of inverted duty structure allows refund of any unutilized input tax credit at the end of any tax period due to an inverted tax structure. Here, there is no specific mention of goods (inputs) or services (input services) alone. Hence, it is evident that the provision covers both services and goods.

However, Rule 89(5) of the CGST Rules defines a formula for calculating the amount of ITC refund

due to the inverted tax structure. The maximum refund amount is equal to $\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods\ and\ services) \times Net\ ITC \div Adjusted\ Total\ Turnover\} - tax\ payable\ on\ such\ an\ inverted\ rated\ supply\ of\ goods\ and\ services.$

Circular No. 79/53/2018- GST dated 31.12.2018 provides example at para 4(b) which is informative,

- i. if, the rate of GST on some inputs is higher than the rate of GST applicable on the output supply, while rate of GST on some other inputs is lower than the rate of GST applicable on the said output supply, then that is a situation of inverted duty structure governed by Section 54(3) of the CGST Act
- ii. if, assessee supplies goods and none of which involve inverted duty structure, it is not entitled for any refund of unutilized input tax credit,
- iii. if, assessee supplies goods involving only inverted duty structure, then entire unutilized credit is refundable to it and (iv)if, an assessee is engaged in making two supplies, one involving inverted duty structure and other not involving inverted duty structure, then it is not entitled for refund for second category of supplies and eligible for refund only for first category of supplies.

The provision of Rule 89(5) of the CGST Rules, 2017 as originally introduced was **substituted** vide **Notification No. 21 /2018-CT dated 18.4.2018** prescribing a **revised formula** for determining the refund on account of inverted duty structure which was given **retrospective effect from 1.7.2017** vide **Notification No. 26/2018-CT dated 13.6.2018.**

The revised formula inter alia excluded input services from the scope of 'net input tax credit' for computation of the refund amount.

Hence, respondents are allowing refund of accumulated input tax credit of tax paid on inputs However, refund of accumulated credit of tax paid on procurement of input services is being denied.

Petitioners have therefore challenged validity of amended Rule 89(5) of the CGST Rule,2017 to the extent it denied refund of input tax credit relatable to input services.

Decision of Advance Ruling Authority :

Decision

High Court held that by prescribing the formula in Rule 89(5) of the CGGST Rules,2017 to exclude refund of tax paid on 'input service' as part of the refund of unutilised input tax credit is contrary to the provisions of Sub-section 3 of Section 54 of the CGST Act,2017 which provides for claim of refund of 'any unutilised input tax credit'.

"Input tax credit" is defined in Section 2(63) means the credit of input tax.

"Input tax" is defined in Section 2(62), whereas the word "input" is defined in Section 2(59) means any goods other than capital goods and "input service" as per Section 2(60) means any service used or intended to be used by a supplier.

Whereas "input tax" as defined in section 2(62) means the tax charged on any supply of goods or services or both made to any registered person.

Hence, “input” and “input service” are both part of the “input tax” and “input tax credit”. Therefore, as per Section 54(3), a registered person may claim refund of “any unutilised input tax”, therefore, by way of Rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to “input” excluding the “input services” from the point of view of “Input tax credit”.

Also, Section 54(3)(ii) also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017.

Hence, the intent of the Government by framing the Rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018- GST dated 31.12.2018 to deny the registered person refund of tax paid on “input services” as part of refund of unutilised input tax credit.

It was held that Explanation (a) to Rule 89(5) which denies the refund of “unutilised input tax” paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017. The said explanation (a) of Rule 89(5) of the CGST Rules is held to be contrary to the provisions of Section 54(3) of the CGST Act. In fact the Net ITC should mean “input tax credit” availed on “inputs” and “input services” as defined under the Act.

The respondents are therefore, directed to allow the claim of the refund made by the petitioners considering the unutilised input tax credit of “input services” as part of the “net input tax credit” (Net ITC) for the purpose of calculation of the refund of the claim as per Rule 89(5) of the CGST Rules, 2017 for claiming refund under Sub-section 3 of Section 54 CGST Act, 2017.

CASES REFERRED BY HC

1. *Intercontinental Consultants & Technocrats Pvt. Ltd. Vs. Union Bank of India* reported in 2013(29) S.T.R. (Del.)
2. *Central Bank of India v. Their Workmen*, AIR 1960 SC 12
3. *Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd.*, (1984) 2 SCC 50,
4. *Devi Datt v. Union of India*, AIR 1985 Delhi 195 Supreme Court in State of Uttar
5. *Pradesh v. Babu Ram Upadhyay*, AIR 1961 SC 751.
6. *CIT v. S.Chenniappa Mudaliar*, (1969) 74 ITR 41
7. *Bimal Chandra Banerjee v. State of M.P. and Ors.*, (1971) 81 ITR 105,
8. *CIT, Andhra Pradesh v. Taj Mahal Hotel*, (1971) 82 ITR 44
9. *In Commissioners of Customs and Excise v. Cure and Deeley Ltd.*, (1961) 3 WLR 788 (QB)
10. *Constitution Bench judgment in the case of Commissioner of Income Tax (Central)- I, New Delhi v. Vatika Township Private Limited*
11. *Phillips v. Eyre* [(1870) LR 6 QB1]
12. *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.*
13. *Lohara Steel Industries Ltd. v. State of A.P.* reported in (1997) 2 SCC 37,
14. *The State of Bombay and Anr. v. The United Motors (India) Ltd. and Ors.* ([1953] SCR 1069 at 1097).