



GST REFUND IN THE CASE OF INVERTED DUTY STRUCTURE

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Recently the Hon'ble Gujarat High Court has pronounced a land mark Judgment in the case of **VKC FootstepsIndia Pvt. Lt. vs. Union of India and 2 other(s) – 2020-TIOL-1273-HC-AHM-GST** that Net ITC in formula given under Rule 89(5) of CGST Rules, 2017 will include the value of input services also. In effect the assessee will be eligible to claim refund of input services in case of inverted duty structure. For the benefit of one all I discuss below this land mark decision.

Petitioner is engaged in the business of manufacture and supply of footwear which attracts GST @5% and the majority of the inputs and input services procured by them attract GST @12% or 18% - inspite of utilization of credit for payment of GST on outward supply, there is an accumulation of unutilized credit in electronic credit ledger

- Respondents are allowing refund of accumulated credit of tax paid on inputs such as synthetic leather, PU polyol etc. but refund of accumulated credit of tax paid on procurement of 'input services' such as job work service, goods transport agency service etc. are being denied.

- petitioners have, therefore, challenged validity of amended Rule 89(5) of the CGST Rules, 2017 to the extent it denies refund of input tax credit relating to Input services.

Originally the Rule contained input service also but by Notification No.21/2018 – Central Tax dated 18.04.2018 the input service has been deleted and this deletion has been given retrospective effect i.e. from 01.07.2017 by Notification No.26/2018 – Central Tax dated 13.06.2017.

Respondents argued that Rule 89(5) of the CGST Rules more particularly the explanation (a) thereof, provides that "Net Input Tax Credit shall mean "input tax credit" availed on "inputs" during the relevant period other than the "input tax credit" availed for which refund is claimed under sub-rule (4A) or(4B)" - therefore, the petitioner is eligible to refund only for the "inputs"

Section 164 of the CGST Act provides wide powers to the Government for framing rules for any or all purposes and hence Rule 89(5) of the CGST Rules is not *ultra vires* to Section 54(3) of the CGST Act.

The amendment made in Rule 89(5) provides only a mode of calculation for the purpose of refund in the case of inverted duty structure.

CBIC in Para 14 of the Circular 79/53/2018-GST dated 31.12.2018 has clearly explained that the term "any unutilized input tax credit on account of rate of tax on inputs being higher than the rate of tax on output supplies" applies only to inputs. For this CBIC relied Section 2(59) of the CGST Act where 'input' has been defined as any goods other than capital goods used or intended to be used....

Petitioner has argued that the amended Rule violates the provisions of sub-section 3 of Section 54 of the CGST Act, 2017 which entitles any registered person to claim refund of "any" unutilized input tax credit

- Delhi High Court in the case of Intercontinental Consultants & Technocrats P Ltd. -**2012-TIOL-966-HC-DEL-ST** has held that the rule which goes beyond the statute is *ultra vires* and thus liable to be struck down

GST is a legislation integrating goods and services in to one fold and it cannot be segregated artificially for the purpose of refund.

The Hon'ble Gujarat High Court has held that - From the conjoint reading of the provisions of Act and Rules, it is clear that the action of prescribing the formula in sub-rule 5 of Rule 89 of the CGST Rules, 2017, to exclude refund of tax paid on "input services" as part of the refund of unutilized input tax credit is contrary to the provisions of sub-section 3 of section 54 of the Act which provides for claim of refund of "any unutilized input tax credit"

- moreover, clause (ii) of proviso to sub-section 3 of section 54 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

- keeping in mind the scheme and the object of the Act, 2017, the intent of the government by framing the rule restricting the statutory provision cannot be the intent of law as interpreted in Circular 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 unutilized input tax credit

- Explanation (a) to rule 89(5) which denies refund of "unutilized input tax" paid on "input services" as part of the "input tax credit" accumulated on account of inverted duty structure is **ultra vires** the provisions of section 54(3) of the Act

- Explanation (a) to the rule 89(5) is read down to the extent that Explanation (a) which defines "Net Input Tax credit" means "Input Tax credit" only

- the said Explanation (a) of Rule 89(5) of the Rules is held to be **contrary to the provisions of section 54(3) of the Act.**

- Net ITC should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act

- Respondents are directed to allow the claim of the refund made by the petitioners considering the unutilized 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 Rules for claiming refund under sub-section 3 of section 54 of the Act

From above important and welcome judgment it can be concluded that

1. Though it may be argued that the decision will be applicable only within the Gujarat State I am of the view that the sound logic arrived in the decision will be followed in all India level till any contrary decision emerges in the matter.
2. Government may issue a suitable clarification at the earliest to support business in present COVID situation to ease out the pain of businessman and support the Atmanirbhar Bharat mission.
3. When our Honorable prime minister announced be vocal for be local, and offered 20 lacs crores relief package to MSME sector Govt. may think to allow even refund of capital goods credit also under inverted duty structure as lot of investment is going in such project and not allowing refund add working capital blockage resulting huge opportunity cost (interest) loss to business especially MSME sector in this tough time.
4. All eligible Business need to start preparation of filing refund of input services without any further delay to get the liquidity in time based on this unique judgment. In case of Refund claims already filed only for inputs it is suggested to submit additional claim manually. This is due to system constraint in the electronic portal of not allowing second refund claim for the same period.
5. Subsequent to above Hon'ble Gujarat High Court decision similar matter has been heard in Hon'ble Madras High Court for 12 days (From AUGUST 17 to August 28) with marathon arguments by both sides and decision is awaited.