

GST UPDATE

Gujarat HC Allows Refund of
“Accumulated Credit on Input
Service” in case of “Inverted Duty
Structure”



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The judgment by Gujarat High court on July 24, 2020 has come out with relief for many industries functioning in the field of textiles, railway locomotives and parts, handlooms, solar modules, e-commerce etc. as it was held that by prescribing the formula in sub-rule 5 of Rule 89 of the CGST Rules, 2017 to exclude refund of tax paid on ‘input service’ as part of the refund of unutilized 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 unutilized input tax credit’.

Facts of the Case:

The Petitioner VKC footsteps India Pvt. Ltd. presented a writ petition in the Gujarat high court praying to the court to hold that the amended Rule 89(5) of the CGST Rules is ultra vires Section 54(3) inasmuch as Section 54(3) provides for refund of **‘any unutilized input tax credit’** accumulated on account of inverted duty structure thereby covering credit of both ‘inputs’ and ‘input services’. Further, referring to the amended rule is violative of Article 14 of constitution of India. In addition this he challenged the constitutional validity of Section 164(3) of the CGST Act, 2017. Engaged into the business of manufacture and supply of footwear which attracts GST at the rate of 5%, the petitioner procures input services such as job work services, goods transport agency services etc. along with input such as PU Polyol, synthetic leather etc. Amongst the input procured majority is taxed at the rate of 12% or 18%, consequently leading the supplier to fall into the inverted tax structure setup.

The learned counsel of the petitioner postulated that the idea behind the introduction of GST was to achieve a seamless flow of credit by allowing a continuous chain of set-off from the original manufacturer to the last retailer in the supply chain and eliminate the burden of cascading effect.

Held by High Court:

Gujarat HC reads down Explanation (a) to the Rule 89(5) to the extent it denies refund of ITC relatable to input services (by defining 'Net ITC' to mean input tax credit availed on inputs only) in case of inverted duty structure (IDS);

Holds that the Explanation (a) of Rule 89(5) of the CGST Rules is contrary and ultra-vires to the provisions of Section 54(3) of the CGST Act; Accepts Petitioner's submission that Rule 89(5) is violative of provision of sub-section 3 of Section 54 of CGST Act, 2017, which entitles any registered person to claim refund of "any" unutilized ITC;

Infers that Section 7 of the CGST Act,2017 dealing with "scope of supply" includes all forms of supply of goods or services, further, "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; Thus, expounds that "input" and "input service" are both part of the "input tax" and "input tax credit" and "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 purview of "Input tax credit"";

Cites that, "keeping in mind scheme and object of the CGST Act, 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 unutilized input tax credit";

Thereby, directs Revenue to allow Petitioner's refund claim considering the unutilized ITC of "input services" as part of the "net input tax credit" (Net ITC) for the purpose of calculation of refund of the claim as per Rule 89(5) of CGST Rules, 2017 for claiming refund u/s 54(3) of CGST Act, 2017

For more details, Read the Judgement from the Link below:

<https://taxguru.in/wp-content/uploads/2020/07/VKC-Footsteps-India-Pvt.-Ltd.-Vs.-Union-of-India-Gujarat-High-Court.pdf>

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