



Disallowance of refund of Input Tax Credit upon discontinuance of business, Single Member Bench decision overturned

Union of India vs. SICPA India Pvt. Ltd.¹

The Division Bench of Sikkim High Court in SICPA India Pvt. Ltd. ('SICPA'/'Respondent Assesses') has disallowed refund of unutilised Input Tax Credit ('ITC') on closure/ discontinuance of business.

Facts of the case

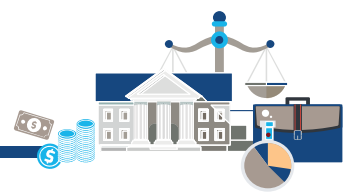
- The Respondent, a company engaged in the business of manufacturing security inks and solutions discontinued its operations carried out at its Sikkim registration due to absence of orders from the customer, viz., Reserve Bank of India.
- Due to closure of business operation, SICPA had accumulated balance of ITC amounting to Rs. 4,37,61,402/- for which refund was claimed in terms of Section 49(6) of the CGST Act to be refunded in accordance with the provisions of Section 54 of the Act.
- The refund claim for unutilised ITC balance lying in the electronic ledger was made by filing FORM GST RFD-01 under the category 'any other' under section 49(6) of the CGST Act.
- It claimed that during the period April 2019 - March 2020, it reversed ITC at the time of sale of all the machineries and manufacturing facilities as per applicable provisions under GST law which was denied by Revenue in its counter-affidavit.
- Revenue placed reliance upon Apex Court decision in *VKC Footsteps (India) (P) Ltd*² and Division Bench of Tripura High Court in *M/s Sterlite Power Transmission Limited*³ which was sought to be distinguished by the Assessee stating that same did not deal with claim for refund on closure of unit.
- The Single Judge allowed writ petition of SICPA and consequent refund of unutilized ITC on following grounds:
 - Karnataka High Court in *Slovak India Trading Company Private Limited*⁴ while allowing refund for unutilized input credit, at the time of closure of unit found no express prohibition in Rule 5 of the CENVAT Credit Rules, 2002.
 - Similarly, in the instant matter there is no express prohibition in Section 49(6) read

¹ TS-772-HC(SIK)-2025-GST

² 2021 (52) G.S.T.L. 513 (S.C.)

³ 2024-VIL-1381-TRI

⁴ 2006 SCC OnLine Kar 854 and (2006) 201 ELT 559 Karn



with Section 54 and 54(3) of the CGST Act, for claiming a refund of ITC on closure of unit.

- Although, Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the Statute also does not provide for retention of tax “without the authority of law”.

Discussion and findings

- The parties did not refer to the judgment of the Supreme Court in *VKC Footsteps*⁵ before the learned Single Judge.
- The High Court of Karnataka in *Slovak India*⁶ was dealing with dissimilar facts and interpreting Rule 5 of the Cenvat Credit Rules, 2004 and not Section 49(6) or Section 54(3) of the CGST Act.
- The Bombay High Court in *Gauri Plasticulture P. Ltd.*⁷ after a detailed analysis and consideration that refund of unutilised amount of CENVAT Credit on account of closure of manufacturing activities cannot be granted, further opined that the order of Supreme Court in *Slovak India*⁸ cannot be read as a declaration of law under Article 141 of the Constitution of India.
- Certain fundamental principles of interpretation of a taxing statute must be borne in mind -(i) taxing statute must be interpreted in the light of what is clearly expressed and (ii) in interpreting a taxing statute, equitable considerations are entirely out of place and that the Court must look squarely at the words of the statute and interpret them.

Judgment

- The words "in accordance with the provisions of Section 54", used in Section 49, is a clear indication that this permissibility to refund must be in accordance with the provisions of Section 54 and in no other manner.

- While on the face of it, Section 49 ('Payment of Tax') and 54 ('Refunds') deals with different aspects, an application for refund under section 49(6) must necessarily be processed as contemplated under Section 54.
- It is clear that sub-section 6 of Section 49 contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger only in the manner stipulated by the provisions of Section 54 and in no other manner.
- Thus, the judgment passed by Single Judge is contrary to the opinion in *VKC Footsteps*⁹.
- The accumulated credit is subject to reversal under Section 29(5) and no refund can be granted under Section 49(6)/ Section 54.

Dhruva Comments

The ruling has held that Section 54(3) is a restriction to the refund on account of closure of unit as it does not fall on either of its two clauses and the opinion of Single Judge deviates from well-settled principles of statutory interpretations of taxing statutes and ventures into the legislative domain reserved for Parliament. Refund is available only in specified circumstances enumerated under Section 54 and said provision is a restriction to the refund on account of closure of unit.

It has once again reiterated the settled law regarding strict interpretation of taxing statute and the Court's decision is in line with Supreme Court decision in case of *Mafatlal Industries*¹⁰ which observed that, refund can only be claimed in accordance with statutory scheme.

⁵ Supra

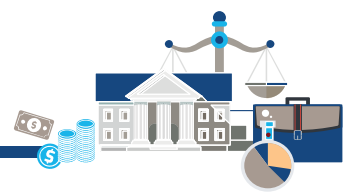
⁶ Supra

⁷ TS-960-HC-2018(BOM)-EXC

⁸ Supra

⁹ Supra

¹⁰ (1997) 5 SCC 536



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