

TAX FLASH NEWS

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Suppliers who supply goods at a concessional rate to companies involved in specified projects are entitled to refund under the inverted tax structure

Rajasthan High Court¹ has affirmed that supplying dealers would be entitled to claim refund of accumulated unutilised tax credit irrespective of the fact that the input and output supplies are the same as has been stipulated in Circular No. 135/05/2020 – GST dated 31 March 2020.

Facts of the case

- Petitioner entered into a development contract with Recipient-Company. This Recipient-Company has been granted exclusive rights to carry out petroleum operations by the Government of India.
- To execute the contract, Petitioner procures goods by paying GST ranging between 5% to 28% and supplies the same to Recipient-Company at fixed GST rate of 5% on account of concessional rate notification no. 3/2017-Central Tax (Rate) dated 28 June 2017 for petroleum exploration activities.
- Petitioner filed refund claim on account of ITC accumulated due to inverted duty structure for the period September 2018 to September 2019. Adjudication officer rejected the refund claim on the ground that refund under the inverted duty structure would not be available where the input and output supplies are the same.
- Aggrieved by the order of the adjudication officer, Petitioner filed the writ petition.

Revenue's contentions

- Input and output supplies made by the Petitioner are same, thereby, leading to no value addition on the goods supplied by it. Therefore, Petitioner's claim for refund is not compliant with the criteria of inverted duty structure.

- Further, para 3.2 of Circular No. 135/05/2020 – GST dated 31 March 2020 clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same. (This circular is issued to clarify refund related issues).

Petitioner's contentions

- There is no restriction on claiming refund in cases where the inputs and output supplies are same due to concessional/fixed GST rate on outward supplies.
- Further, para 59 (in the context of supplies of exports at concession rate) of Circular No. No. 125/44/2019 – GST dated 18 November 2019 clarifies that supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted duty structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.
- Reliance was played on decision of Guwahati High Court² which categorically disapproved the stipulation made in the Circular dated 31 March 2020 i.e. impugned circular relied on by the Revenue in the present case.
- Subordinate legislation in form of a statutory circular cannot supersede or override the parent statute.

High Court's decision

Rajasthan High Court quashed the impugned order and directed the Revenue to refund the accumulated input tax credit. It held that:

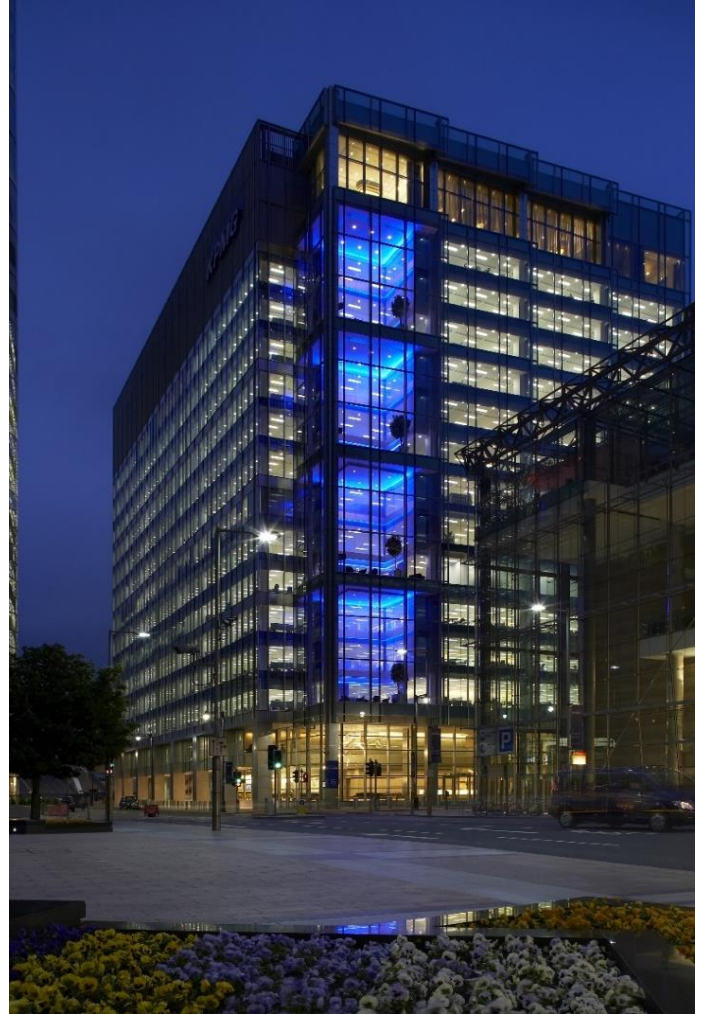
¹ Baker Hughes Asia Pacific Limited v. Union of India & Ors [2022-VIL-449-RAJ]

² B.M.G. Informatics Pvt. Ltd. v. Union of India & Ors [2021-VIL-650-GAU]

- Circular dated 31 March 2020 (relied by Revenue), being a subordinate legislation, is repugnant and conflicting to the parent legislation i.e. section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the Petitioner.
- The claim for refund of ITC filed by the Petitioner was for a period prior to issuance of the circular dated 31 March 2020. Consequently, rejection of the claim by the adjudicating officer for accumulated ITC with reference to para 3 of the circular dated 31 March 2020 is invalid on the face of the record and cannot be sustained.

Our comments

This is an important judgement specifically in cases where the output tax rate is lower because of specific concession and also would provide relief in case of conflicting circulars.



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