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Tax Flash News

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Refund of unutilized input tax credit on closure of business allowed

Executive summary

GST law does not explicitly address refund of Input Tax credit (ITC) under situations such as business closure. Consequently, taxpayers suffer a loss as they have to forego ITC.

In a recent case[1], the petitioner sought under Section 49(6) of the CGST Act, 2017, a refund of unutilized ITC lying due to closure of business. The refund was rejected by the adjudicating and appellate authorities. However, the Sikkim High Court allowed the refund by relying on a judgement from the Central Excise regime.

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[1] *SICPA India Private Limited and Another* [WP (C) No. 54 of 2023]

Facts of the case

The petitioner is engaged in business of manufacturing security inks and solutions. The petitioner closed its business in January 2019. At the time of the said closure, the petitioner had an accumulated ITC balance of INR ~4.37 crores.

The petitioner filed a refund of such accumulated ITC which was rejected by the adjudicating and appellate authorities. Aggrieved by such order, the petitioner approached the Sikkim High Court.

Petitioner's contentions

The petitioner contended that section 49(6) of the CGST Act, 2017 provides for refund of the balance in electronic cash ledger and electronic credit ledger after payment of tax in accordance with the provisions of section 54 of the CGST Act, 2017.

Section 54(3) of the CGST Act, 2017 is the exception carved out in the provision that allows refund of unutilized ITC only in two situations [zero-rated supplies and/or inverted duty structure]. The said exception cannot take away the vested right of ITC and its refund under section 49(6) of the CGST Act, 2017.

The petitioner relied upon various judicial precedents including the Karnataka High Court judgement in case of *Slovak India Trading Company Private Limited*[2] (Slovak India).

Respondent's contentions

Against the contentions of the petitioner, the respondent argued that the refund of unutilized ITC is restricted to the two situations mentioned in section 54(3) of the CGST Act, 2017 and closure of business is not one of them.

Section 49(6) of the CGST Act, 2017 does not independently provide for refund but is dependent on the conditions stipulated under section 54 of the CGST Act, 2017.

Even section 29(5) of the CGST Act, 2017 provides for reversal of ITC upon cancellation of registration but not a refund.

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[2] 2006 (201) E.L.T. 559 (Kar.)

High Court's decision

The High Court relied on the judgement of *Slovak India (supra)* and observed that the company in that case had applied for refund of unutilized ITC at the time of closure of unit. The Customs Excise and Service Tax Appellate Tribunal (CESTAT) allowed the refund stating that it cannot be rejected on closure of the company. The High Court agreed and opined that there was no express prohibition in Rule 5 of the CENVAT Credit Rules, 2002.

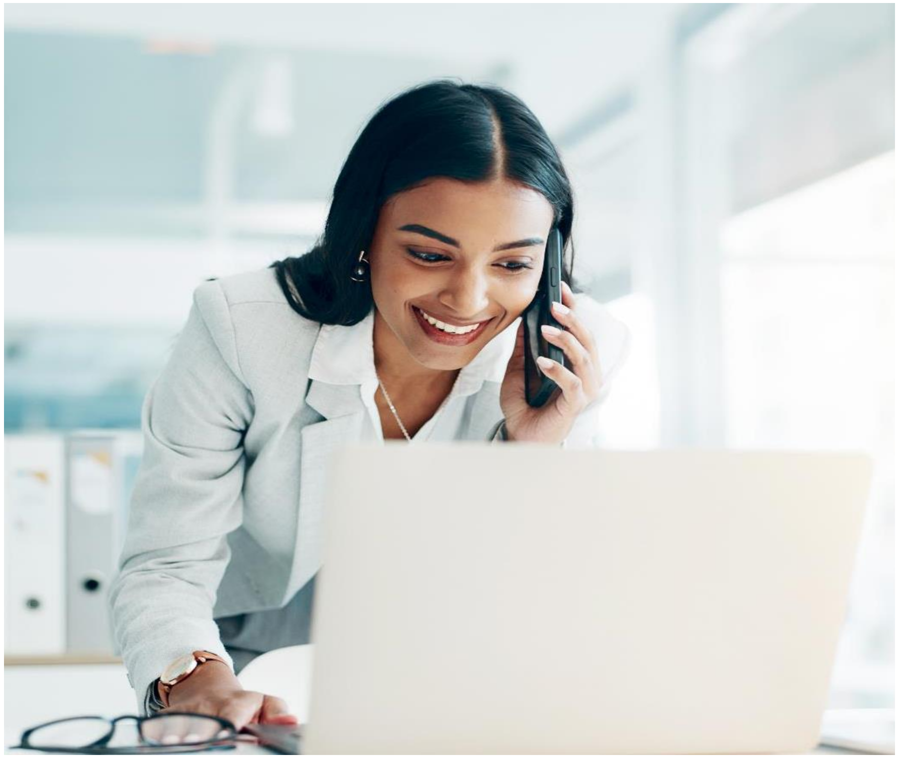
Similarly, in the instant case, there is no express prohibition in section 49(6) read with section 54(3) of the CGST Act, 2017, for claiming a refund of ITC on closure of unit.

Although, section 54(3) of the CGST Act, 2017 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.

Thus, petitioner is entitled to refund, and the impugned order is quashed.

Our comments

This is a first of its kind judgement which allows refund of accumulated ITC in situations other than those mentioned under section 54(3) of the CGST Act, 2017. Taxpayers can leverage this judgement while applying for refunds or defending cases of rejection of refunds of unutilized ITC on account of situations other than those mentioned in section 54(3) of the CGST Act, 2017.



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