

# EY Tax Alert

HC holds petitioner entitled to refund of unutilized ITC on closure of business

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## Executive summary

This Tax Alert summarizes the recent ruling of the single judge bench of the Sikkim High Court (HC)<sup>1</sup> on refund of unutilized input tax credit (ITC) on closure of business, under Goods and Services Tax (GST).

Petitioner, a manufacturer, discontinued its business in the State of Sikkim and filed for refund of balance unutilized ITC. The refund claim was rejected by the Adjudicating Authority as well as the Appellate Authority. Aggrieved, petitioner filed a writ petition before the HC.

The key observations of the HC are:

- ▶ Karnataka HC in case of Slovak India Trading Company Private Limited<sup>2</sup> allowed refund of CENVAT credit on discontinuance of business in absence of express prohibition on refund of such credit under CENVAT Credit Rules, 2004.
- ▶ Similarly, there is no express prohibition in Section 49(6) read with Section 54 of the Central Goods and Services Tax Act, 2017 (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.

Basis above, HC set aside the order passed by the Appellate Authority and held that petitioners are entitled to the refund of unutilized ITC claimed on closure of business.

<sup>1</sup> TS-513-HCSIK-2025-GST

<sup>2</sup> MANU/KA/0709/2006



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# Background

- ▶ Petitioner was engaged in the business of manufacturing security inks and solutions with Goods and Services Tax (GST) registration in the State of Sikkim.
- ▶ In January 2019, it decided to discontinue its operation in the State of Sikkim, pursuant to which, it sold all the machineries and manufacturing facilities.
- ▶ At the time of sale of assets, Petitioner had appropriately reversed the input tax credit (ITC) as per the applicable provisions under the GST law.
- ▶ However, it still had accumulated ITC at the time of closure of its business and accordingly, filed for refund of such unutilized ITC balance.
- ▶ Adjudicating Authority rejected the refund application filed by the Petitioner.
- ▶ Petitioner filed appeal before the Appellate Authority against the order passed by the Adjudicating Authority.
- ▶ Appellate Authority upheld the order passed by the Adjudicating Authority on the ground that refund of ITC under Section 54(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) was allowed only in two cases mentioned in the said Section and would not extend to refund of unutilized ITC on account of closure of business.
- ▶ Aggrieved, petitioner filed a writ petition before the Sikkim High Court (HC).

# High Court Ruling

- ▶ Section 49 of the CGST Act lays down the method of payment of tax, interest, penalty and other amounts. Section 49(6) provides that the balance in electronic cash or credit ledger, after payment of tax, interest, penalty, fee, etc., may be refunded in accordance with Section 54.
- ▶ Section 54(3) allows refund of unutilized ITC at the end of any tax period. However, the same is restricted to only two cases viz., (1) zero-rated supplies made without payment of tax, and (2) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.
- ▶ In Slovak India Trading Company Private Limited<sup>3</sup>, the company had applied for refund of unutilized CENVAT credit which was available, at the time of closure of unit.

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) allowed the refund stating *inter alia* that it cannot be rejected on closure of unit.

Karnataka HC agreed and opined that there is no express prohibition in Rule 5 of the CENVAT Credit Rules, 2004 for refund in such cases.

- ▶ Similarly, in the instant case, there is no express prohibition in Section 49(6) read with Section 54 of CGST Act, for claiming 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.
- ▶ Thus, Petitioner is entitled to the refund of unutilized ITC claimed by it on closure of business.
- ▶ Accordingly, HC set aside the impugned order of the Appellate Authority and allowed the writ petition.

## Comments

- a. This is the first HC ruling under GST on the subject matter and is likely to benefit taxpayers intending to surrender GST registration and seek refund of unutilized ITC.
- b. The Order of the single judge is likely to be challenged by the department before the divisional bench of the HC.
- c. Under the erstwhile regime, there have been divergent rulings of the HCs and CESTATs on this issue.
- d. SC dismissed the Revenue's appeal against the Karnataka HC's decision in case of Slovak India on the ground that the Tribunal's ruling, which favored the assessee, was based on several other Tribunal decisions that the Revenue had not challenged. [2008 (223) ELT A170 (SC)].

<sup>3</sup> MANU/KA/0709/2006

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