

EY Tax Alert

Division bench of Sikkim HC sets aside the order of single judge bench and holds refund of unutilized ITC is not available on closure of business

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes the recent ruling of the division bench of Sikkim High Court (HC)¹ regarding refund of unutilized input tax credit (ITC) on closure of business, under the Central Goods and Services Tax Act, 2017 (CGST Act).

Earlier, the single judge bench of the Sikkim HC² had held that the assessee can claim refund of unutilized ITC on closure of business. Aggrieved, Revenue filed a writ appeal before the division bench of the Sikkim HC.

The key observations of the division bench of the HC are:

- ▶ The Supreme Court (SC) in case of VKC Footsteps³ had held that Parliament is within its legislative authority to decide whether refund of ITC should be permitted or not. Section 49(6) contemplates refund of balances in the electronic cash or credit ledger only in the manner laid down under Section 54.
- ▶ The view that refund on closure of a unit is permissible due to the absence of an express prohibition in Section 49(6) is not correct. Section 54(3) itself limits refunds to two specific situations, and since closure of business does not fall within these, refunds on this ground are clearly excluded.
- ▶ Although Section 49(6) does not provide for refund of accumulated ITC upon discontinuation of business, assessee has admittedly sought refund under the said provision.
- ▶ Given the clear wording of Section 54(3), accepting the single judge's view would amount to judicial re-writing, which is impermissible in law. It would, in effect, require adding a new clause to Section 54(3) to permit refund on closure of business, thereby creating an entitlement not envisaged by Parliament.

Accordingly, the division bench of the Sikkim HC set aside the order passed by the single judge, holding that there was an error apparent in law in the impugned judgment and held that refund of unutilized ITC is not available on closure of business.

¹ TS-772-HC(SIK)-2025-GST

² Refer EY Tax Alert- HC holds petitioner entitled to refund of unutilized ITC on closure of business dated 13 June 2025

³ (2022) 2 SCC 603



The better the question.
The better the answer.
The better the world works.



Shape the future
with confidence

Background

- ▶ Assessee 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 machinery and manufacturing facilities.
- ▶ At the time of sale of assets, the assessee 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.
- ▶ As per Section 49(6) of the Central Goods and Services Tax Act, 2017 (CGST Act), the balance in electronic cash or credit ledger may be refunded in accordance with Section 54, after payment of tax, interest, penalty, fee, etc.
- ▶ As per proviso to Section 54(3), refund of unutilized ITC is allowed only in two cases viz., (1) zero-rated supplies made without payment of tax, and (2) where the credit has accumulated on account inverted rate structure.
- ▶ Adjudicating Authority rejected the refund application filed by the assessee and such rejection was upheld by the Appellate Authority.
- ▶ Subsequently, the assessee filed a writ petition before the Sikkim High Court (HC). The single-judge bench of HC allowed refund on the following grounds:
 - ▶ 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.
 - ▶ Karnataka HC in case of Slovak India Trading Company Private Limited⁴ allowed refund of CENVAT credit on discontinuance of business in absence of express prohibition under the CENVAT Credit Rules, 2004.
 - ▶ Although Section 54(3) allows refund only in two circumstances, the statute does not provide for retention of tax without authority of law.
- ▶ Aggrieved, Revenue filed a writ appeal before the division bench of Sikkim HC.

Revenue Contentions

- ▶ The relevant provisions for refund of ITC under the CGST Act have been examined and decided by

Supreme Court (SC) in case of VKC Footsteps (India) (P) Ltd vs. Union of India.⁵

- ▶ Division bench of Tripura HC in case of Sterlite Power Transmission Limited⁶ held that in case of accumulated ITC remaining in the credit ledger of the taxpayer, refund cannot be made out under Section 54(3) as none of the enumerated conditions are met.
- ▶ The claim for a refund on the grounds of closure of business is legally untenable. The accumulated credit must be reversed under section 29(5) and no refund can be granted under sections 49(6) and 54 of the CGST Act read with the relevant rules.
- ▶ The entitlement for the refund arises only if statutory conditions are satisfied. Section 49(6) is not a refund granting provision and it merely provides that any balance in the electronic credit or cash ledger may be refunded in accordance with the provisions of Section 54.

Section 54(3) permits refund only in two specific cases and closure of business is not specified under it.

- ▶ Circular No. 125/44/2019-GST dated 18th November 2019, specifies categories of refund admissible from cash and credit ledgers through FORM GST RFD-01. Notably, a refund on closure of business is not included in the list.
- ▶ Karnataka HC in Slovak India (*supra*) dealt with a different factual situation, interpreting Rule 5 of the CENVAT Credit Rules rather than Section 49(6) or Section 54(3) of the CGST Act.

SC had dismissed the Revenue's appeal against the Karnataka HC's decision in case of Slovak India⁷ on the ground that the Tribunal's ruling, which favored the assessee, was based on several other Tribunal decisions that the Revenue did not challenge.

- ▶ A three-judge bench of the Bombay HC in Gauri Plasticulture P. Ltd. v. CCE⁸ held that refund of unutilized CENVAT credit on closure of manufacturing activities is not permissible.

The Court further clarified that the SC's order in Slovak India cannot be treated as a declaration of law under Article 141 of the Constitution.

Assessee Contentions

- ▶ SC in case of VKC Footsteps (*supra*) was dealing with the issue of refund of input services for cases covered under inverted duty scheme of refund under Section 54(3)(ii) of the CGST Act and not a case of claim for refund on closure of unit.

⁴ MANU/KA/0709/2006

⁵ (2022) 2 SCC 603

⁶ (2024) SCC Online Tri 879

⁷ 2008 (223) ELT A170 (SC)

⁸ (2019) SCC OnLine Bom 996

- ▶ Further, Tripura HC in case of Sterlite Power Transmission (*supra*) was dealing with a different case related to refund of tax paid through the cash ledger due to blockage of the credit ledger, and upon its reopening, a refund was sought for the excess cash payment in view of available ITC in the credit ledger.
- ▶ Therefore, the Revenue has not made out a case for interference with the judgment of the learned single judge which is sound and reasoned.

HC ruling

- ▶ SC in VKC Footsteps (*supra*) interpreted Section 54(3), noting that Parliament was aware that ITC can accumulate for various reasons. Despite this, Parliament chose to identify and address only certain circumstances under the refund provisions.

SC while interpreting Section 49 and 54 observed the following:

- ▶ No Constitutional rights can be asserted to claim a refund. Refund is a matter of statutory prescription. Parliament is within its legislative authority in determining whether a refund of unutilized ITC should be allowed or not.
- ▶ While recognizing entitlement to a refund, it is open to legislature to define the circumstances in which a refund can be claimed.
- ▶ The first proviso to Section 54(3) is not a condition of eligibility but a restriction which must govern a grant of refund.
- ▶ Interpreting Section 54(3) in any other manner would involve a judicial re-writing of the provision which is impermissible in law.
- ▶ The use of the phrase “*may be refunded*” in Section 49(6) gives an indication that it may be permissible to be refunded. Further, the use of words “*in accordance with the provisions of section 54*” is a clear indication that this permissibility to refund must be in accordance with the provisions of Section 54 and in no other manner.

Section 49 of the CGST Act falls under *Chapter X - Payment of Tax*, while Section 54 falls under *Chapter XI - Refunds*. These provisions address distinct aspects of the law.

- ▶ The assessee has admittedly sought refund under Section 49(6) of the CGST Act. The said provision does not provide for a refund of accumulated ITC upon discontinuing business.
- ▶ The decision of the single judge is contrary to the decision of SC in case of VKC Footsteps (*supra*). The aforesaid judgement was not brought to the notice of the single judge.

Given the clear language used by Parliament in Section 54(3), accepting the single judge’s opinion

would amount to judicial re-writing, which is not permissible in law.

It would effectively require inserting an additional clause in Section 54(3) to allow refund on closure of business, thereby recognizing an entitlement beyond what was contemplated by the Parliament.

- ▶ Further, impugned judgment of the single judge held that CGST Act does not allow retention of tax without legal authority.

In this case, the accumulation of ITC is not outside the scope of Chapter X. This indicates that such accumulation has occurred through a legal statutory process.

Parliament has envisaged a refund of accumulated ITC strictly in accordance with Section 54. However, Section 54 does not provide for a refund of unutilized ITC in cases of business closure. Therefore, rejection of the refund application falls within the scope of Section 54 and is lawful.

- ▶ Accordingly, the division bench of the Sikkim HC set aside the order passed by the single judge, holding that there was an error apparent in law in the impugned judgment and disallowed refund of accumulated ITC on closure of business.

Comments

- There have been divergent rulings on the issue of refund of credit upon business closure under the erstwhile regime. The matter is currently pending before the Supreme Court [SLP(C) No. 7390/2020].
- Even if SC allows refund of credit under the erstwhile regime, its applicability under GST may need evaluation since the CENVAT Credit Rules had no express prohibition on refund of unutilized ITC, unlike the proviso to Section 54(3) of the CGST Act.
- The industry may consider making representations to the Government for permitting refund of credit lying in the ledger upon business closure.
- Taxpayers who have already received refund basis the single judge order may need to evaluate requirement for repayment of such refund.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon Temple
Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

8th Floor, Building No. 14A
Block 14, Zone 1
Brigade International Financial Centre
GIFT City SEZ
Gandhinagar - 382355, Gujarat
Tel +91 79 6608 3800

Bengaluru

12th & 13th Floor
"UB City", Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground & 1st Floor
11, 'A' wing
Divyasree Chambers
Langford Town
Bengaluru - 560 025
Tel: + 91 80 6727 5000

3rd & 4th Floor
MARKSQUARE
#61, St. Mark's Road
Shantala Nagar
Bengaluru - 560 001
Tel: + 91 80 6727 5000

1st & 8th Floor, Tower A
Prestige Shantiniketan
Mahadevapura Post
Whitefield,
Bengaluru - 560 048
Tel: + 91 80 6727 5000

Bhubaneswar

8th Floor, O-Hub, Tower A
Chandaka SEZ, Bhubaneswar
Odisha - 751024
Tel: + 91 674 274 4490

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

6th & 7th Floor, A Block,
Tidel Park, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Aikyam
Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jaipur

9th floor, Jewel of India
Horizon Tower, JLN Marg
Opp Jaipur Stock Exchange
Jaipur, Rajasthan - 302018

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

3rd Floor, Unit No 301
Building No. 1
MindSpace Airoli West (Gigaplex)
Located at Plot No. IT-5
MIDC Knowledge Corridor
Airoli (West)
Navi Mumbai - 400708
Tel: + 91 22 6192 0003

Altimus, 18th Floor
Pandurang Budhkar Marg
Worli, Mumbai - 400 018
Tel: +91 22 6192 0503

Pune

C-401, 4th Floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

10th Floor, Smartworks
M-Agile, Pan Card Club Road
Baner, Taluka Haveli
Pune - 411 045
Tel: + 91 20 4912 6800

Ernst & Young LLP

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at Ground Floor, Plot No. 67, Institutional Area, Sector - 44, Gurugram - 122 003, Haryana, India.

© 2025 Ernst & Young LLP. Published in India.
All Rights Reserved.

ED None.


This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.


ey.com/en_in

 @EY_India

 EY

 EY India

 EY Careers India

 @ey_indiacareers



Download the EY India Tax Insights App