

Refund of accumulated ITC under inverted duty structure is allowed even when the supply of goods made at a concessional tax rate – Rajasthan HC

22 July 2022



Summary

The Goods and service tax (GST) authorities had rejected the refund in view of the circular¹ stipulating that the refund under the inverted duty structure (IDS)² would not be available where the input and output supplies are the same. In this respect, the Rajasthan High Court (HC) stated that the refund provision under the IDS is unambiguous and does not carve out any exception. Further, the provision does not indicate that input tax credit (ITC) would be admissible only if the goods supplied had been subjected to some process. The court opined that the circular, being subordinate legislation, is repugnant and conflicting with the parent legislation. Hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner.

Facts of the case

- The petitioner³ entered into a contract with Vedanta Limited (hereinafter referred to as 'company') to supply the essential goods required to carry out petroleum operations by the company. The petitioner procured goods from authorised vendors at GST rates varying between 5% to 28% and supplied the same to company at concessional GST rate of @5% under the notification⁴.
- The petitioner claimed that a significant percentage of ITC is accumulated on account of the difference in the rate of tax which was much higher than the rate of output tax. Thus, it filed a refund claim under IDS.
- Based on the circular⁵, the Revenue rejected the refund claim stating that refund of accumulated ITC under IDS

would not be available when the input and output supplies are the same.

- The petitioner contended that a statutory circular cannot supersede or override the parent⁶, hence refund cannot be rejected.

Rajasthan HC observations and ruling⁷:

- **No exception on refund claim under IDS:** The HC stated that the refund provision⁸ of IDS is absolutely unambiguous and it does not impose any exception on refund claim. Further, the provision allows refund of credit accumulated on account of supplies and does not mention that ITC would be admissible only if there is a value addition/enhancement in goods supplied.
- **Refund claim filed for a period prior to issuance of circular:** The CBIC has

¹ Para 3.2 of the circular No.135/05/2020-GST dated 31 March 2020

² in terms of Section 54(3)(ii) of the CGST/SGST Act

³ Baker Hughes Asia Pacific Limited operating in state of Rajasthan

⁴ Notification No.3/2017- CGST dated 28 June 2017

⁵ Circular No.135/05/2020 – GST dated 31 March 2020

⁶ B.M.G. Informatics Pvt. Ltd. Vs. Union of India & Ors, M/s. Shivaco Associates & Anr. vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes & Ors

⁷ D.B. Civil Writ Petition No. 5714/2021 dated 30 June 2022

⁸ Section 54(3)(ii) of the CGST Act, 2017

clarified⁹ that the supplier who supplies goods at a concessional rate to companies involved in specified projects is also eligible for refund on account of IDS. Further, the circular denying refund, being a subordinate legislation, is repugnant and conflicting with the parent legislation. Hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner. Furthermore, the refund claim filed was for a prior period from the circular date. Therefore, the petitioner is eligible for a refund of accumulated ITC as per its entitlement.

Our comments

Earlier, the Calcutta HC, in case of M/s. Shivaco Associates,¹⁰ had held that curtailing of benefit by way of circular amounts to overreaching the provisions laid down in the Act, which is impermissible. Similarly, the Gauhati HC in case of BMG Informatics Private Limited¹¹ had held¹² that rejection of refund claim of accumulated ITC under IDS on the basis of the circular would be unsustainable under the law. The present ruling is also in line with the above rulings.

Further, to mitigate the ambiguities/litigations on this issue and pursuant to the recommendation of the 47th GST Council meeting, the CBIC has recently clarified¹³ that the intention of the earlier circular was not to cover those cases where the input and output goods are the same, and the output supplies are made under concessional rate notification.

This is a welcome and much-awaited clarification that shall hopefully put an end to litigation on the subject matter.

⁹ Para 59 of the Circular No.125/44/2019-GST – CBEC-20/16/04/18-GST

¹⁰ WPA No. 54 of 2022

¹¹ WP(C)/3878/2021, WP(C)/3675/2021, WP(C)/3880/2021, WP(C)/4120/2021

¹² By the Calcutta HC and Gauhati HC, respectively

¹³ Circular No. 173/05/2022-GST dated 6 July 2022

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