

## Gujarat HC allows refund of ITC on input services under inverted duty structure

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## Summary

The Gujarat High Court (HC), in a recent case, has allowed refund of input tax credit (ITC) in respect of **input services** under the inverted duty structure (IDS). The HC held that the relevant provisions under the Goods and Services Tax law are contrary and ultra vires and need to be read-down to the extent it denies refund of ITC on **input services**.

### Facts of the case

- The petitioner<sup>1</sup> is engaged in the business of manufacture and supply of footwear, which attracts GST at the rate of 5%. Majority of inputs and input services used by the petitioner attract GST at the rate of 12% or 18%, thereby resulting in accumulation of unutilised credit in electronic credit ledger on account of IDS.
- The tax authorities allowed refund of accumulated ITC of tax paid on inputs however, refund of accumulated ITC of tax paid on procurement of **input services** was denied.
- The petitioner has therefore challenged validity of the relevant provisions<sup>2</sup> under the GST law to the extent it denies refund of ITC relating to input services.

### Gujarat HC's observations and ruling<sup>3</sup>

- **Relevant provision is violative:** The HC accepted the petitioner's submission that

the relevant provision denying refund of ITC of input services is violative of the refund provision<sup>4</sup>, which entitles any registered person to claim refund of "any" unutilised ITC.

- **Refund claim cannot be restricted only to input excluding the input services:** The HC observed that the scope of supply<sup>5</sup> includes all forms of supply of goods or services, further, input tax<sup>6</sup> means the tax charged on any supply of goods or services or both made to any registered person. Thus, since input and input service are both part of the input tax and input tax credit, such refund claim cannot be restricted only to input.
- **Refund of ITC of input services allowed:** The HC stated that keeping in mind scheme and object of the GST law, denying a registered person refund of tax paid on input services as part of refund of unutilised ITC<sup>7</sup> cannot be the intent of law. Thus, the HC directs the tax department to allow

<sup>1</sup> M/s VKC Footsteps India Pvt. Ltd.

<sup>2</sup> Rule 89(5) of the CGST Rule, 2017

<sup>3</sup> C/SCA/2792/2019 dated 24 July 2020

<sup>4</sup> Section 54 (3) of the CGST Act, 2017

<sup>5</sup> Section 7 of the CGST Act, 2017

<sup>6</sup> Section 2(62) of the CGST Act, 2017

<sup>7</sup> as interpreted in the Circular No.79/53/2018- GST dated 31.12.2018

petitioner's refund claim considering the unutilised ITC of input services as part of the net ITC for the purpose of calculation of refund claim.

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#### **Our comments**

Refund of accumulated ITC in respect of input services due to the inverted duty structure has been a matter of extensive litigation for businesses into e-commerce, textiles, fabric manufacturers, etc. This is a much-needed decision by the Gujarat HC as the amended provision denying the refund in case of input services was ultra vires to the GST law.

The government should now amend the said provision to avoid any further litigation and settle the long-drawn dispute on this aspect.

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