

TAX INFO

Dated 30/07/2022

Latest update on GST Law: **Refund of accumulated ITC on account of inverted structure is allowed in cases where accumulation of ITC is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) as per some concessional notification issued by the Government as given in judgement by Rajasthan High Court.**

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| Name of Petitioner | Baker Hughes Asia Pacific Limited |
| Name of Respondent | Union Of India |
| Court | Rajasthan High Court |
| Date of Judgement | 30/06/2022 |
| Appeal No. | D.B. Civil Writ Petition No. 5714/2021 |

Brief Facts of the Case Law:

The petitioner entered into a development contract with the company Vedanta Limited which has been granted exclusive rights to carry out petroleum operations in Rajasthan by the Government of India. Vedanta entered into a sub-contract dated 11.12.2018 with the petitioner for supply of these articles. For the purpose of execution of the contract, the petitioner procured goods from authorised vendors at GST rates varying between 5% to 28%. In order to reduce the burden of tax and the cascading effect and to give a boost to the oil and gas industry, the Central Government issued a Notification No.3/2017- CGST dated 28.06.2017 providing for an effective GST Rate of 5% on all supplies made for specified operations subject to certain conditions. The petitioner procured the goods by paying GST from 5% to 28% (Input Tax) and supplied the same to the Vedanta at the fixed GST rate of 5% (Output Tax) under the notification No.3/2017-Central Tax (Rate), dated 28.06.2017. Thus, Input Tax Credit available to the petitioner is much higher than its Output Tax Liability and as a consequence, a significant percentage of Input Tax Credit accumulated in favour of the petitioner on account of difference in rate of tax (GST). The petitioner claimed a legitimate refund amount of Rs.27,02,26,876/- in FORM No.GST-RFD-01 bearing ARN- AA080920066706Y for the period between September, 2018 to September, 2019 as per the inverted duty structure in terms of Section 54(3)(ii) of the CGST Act. A notice under FORM-GST-RFD-08 dated 19.12.2020 was received requiring the petitioner to show cause as to why the refund claim be not rejected in light of the Circular dated 31.03.2020 issued by the CBIC which stipulates that refund under the inverted duty structure in terms of Section 54(3)(ii) of the CGST/SGST Act would not be available where the input and output supplies are the same. The petitioner filed a detailed reply to the show cause notice dated 09.12.2020 claiming that there was no restriction on claiming refund in such cases where the inputs and output supplies are same as outward supplies were made at concessional GST rates under the CGST notification dated 18.11.2019 which approves refund in cases where input and output supplies are same and where GST on output supply is fixed at a lower rate. However, the Department rejected the refund claim vide impugned order dated 05.01.2021. The petitioner has thus, approached this Court through this writ petition preferred under Article 226 of the Constitution of India for assailing para 3 of the impugned circular dated 31.03.2020 and so also the rejection order dated 05.01.2021.

Contention of the Petitioner:

The petitioner relies upon Para 59 of the Circular No.125/44/2019-GST – CBEC-20/16/04/18-GST wherein, it has been clarified that refund under Section 54(3)(ii) of the CGST Act i.e. inverted duty structure, is to be allowed when the inputs are being procured at the normal GST rate and the output supplies are being made at a lower GST rate because of the lower rate notification in place. Also, the subordinate legislation in form of a statutory circular cannot supersede or override the parent statute and as such. The impugned circular, to the extent it disallows Input Tax Credit under the Inverted Duty Structure where input and output supplies are same, and so also the impugned order dated 05.01.2021, are per se illegal and hence deserve to be struck down.

Contention of the Department:

Input and output supplies made by the petitioner are same thereby, leading to no value addition on the goods supplied by it and hence, the petitioner's claim for refund is not compliant with the criteria of inverted duty structure prescribed under Section 54(3) of CGST Act, 2017 and therefore, the tax credit would not be available to the petitioner. In this reference, reliance has been placed on Para No.3.2 of the Circular dated 31.03.2020.

Decision of the Court:

Section 54(3)(ii) of the CGST Act is absolutely unambiguous and does not carve out any exception that Input Tax Credit under the Inverted Tax Structure would not be applicable where the input and the output goods are the same. For the purpose of clarification, CBIC issued a notification dated 18.11.2019 para-No.59, which makes it clear that the supplier who supplies goods at a concessional rate to companies involved in specified projects is entitled to refund under the inverted tax structure as per Section 54(3)(ii) of the CGST Act. The circular dated 31.03.2020 on the strength whereof the petitioner's claim for ITC refund has been rejected, clarifies that refund of accumulated ITC under Section 54(3)(ii) the CGST Act would not be applicable in cases where the input and output supplies are the same. This circular is in the nature of an explanation and was issued on 31.03.2020 whereas the petitioner's claim for refund was a prior period between September, 2018 to September, 2019 on which date, the clarification dated 18.11.2019 was in force which clearly stipulates that a registered dealer who supplies goods at concessional rate is eligible for refund under the Inverted Tax Structure. Section 54(3)(ii) of the CGST Act does not indicate that ITC would be admissible only if the goods supplied had been subjected to some process. The provision allows refund of credit accumulated on account of supplies and does not mention that the credit could be claimed only if the supplier has made any value addition/ enhancement to the goods supplied. The very purpose of fixing the rate of GST at 2.5% each towards CGST/SGST on goods supplied for execution of petroleum projects was introduced with the object of promoting the oil and gas exploration activities.

The circular dated 31.03.2020, being a subordinate legislation, is repugnant and conflicting to the parent legislation i.e., Section 54(3)(ii) of the CGST Act and hence, the same cannot be applied to deny the legitimate claim for accumulated ITC refund claim filed by the petitioner. Otherwise also, the claim for refund of ITC filed by the petitioner was for a period prior to issuance of the circular dated 31.03.2020.

Consequently, rejection of the petitioner's claim for accumulated input tax credit with reference to para 3 of the Circular dated 31.03.2020, is invalid and cannot be sustained. Thus, the order dated 05.01.2021 was set aside. The Department was directed to refund the accumulated input tax credit to the petitioner as per its entitlement.

Authors' Note:

After the delivery of this judgement dated 30.06.2022, the CBIC has issued **Circular No. 173/05/2022-GST dated 06.07.2022** wherein it is clarified that refund of accumulated input tax credit on account of inverted structure as per Section 54(3)(ii) of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. Thus, the view of the Honourable High Court was duly considered by the CBIC and the clarification is given in the **Circular No. 173/05/2022-GST dated 06.07.2022 accordingly.**

Therefore, now it is absolutely unambiguous that refund of accumulated input tax credit on account of inverted structure as per Section 54(3)(ii) of the CGST Act, 2017 **would be allowed** in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies.

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