

TAX INFO

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Latest update on GST Law: Information regarding **Important ruling that refund of tax on input services under inverted duty structure is allowed** based on the **Judgement issued by Gujarat High Court.**

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Supply of services by intermediary is not export of services

Name of Petitioner	VKC Footsteps India Pvt. Ltd.
Name of Respondent	Union of India
Court	Gujarat High Court
Date of Judgement	24.07.2020
Order No.	Special Civil Application No. 2792 of 2019

The Petitioner is engaged in the business of manufacture and supply of footwear which attracts Goods and Service Tax (for short the "GST") at the rate of 5%. The Petitioner procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST for use in the course of business and avails input tax credit of the GST paid thereon. Majority of the inputs and input services attract GST at the rate of 12% or 18%. Thus, GST rate paid by the Petitioner on procurement of input is higher than the rate of tax payable on their outward supply of footwear. Therefore, in spite of utilization of credit for payment of GST on outward supply, there is accumulation of unutilized credit in electronic credit ledger of the Petitioners.

Rule 89(5) of the CGST Rules,2017 is enacted to provide formula for determining the refund on account of inverted duty structure and an assessee is entitled to refund of the unutilized input tax credit availed during the relevant period proportionate to the turnover of inverted rated supply of goods vis-à-vis total turnover of the assessee for that period. Vide **Notification No. 26/2018-CT dated 13.6.2018** the formula was revised which excluded input services from the scope of 'net input tax credit' for computation of the refund amount under the Rule by inserting the Explanation.

The Petitioners have therefore **challenged validity of amended Rule 89(5) of the CGST Rule, 2017** to the extent it denies refund of input tax credit relating to input services. It was submitted that excluding refund on input services in the formula prescribed in Rule 89(5) is plainly contrary to main Section 54(3) and proviso (ii) thereto and therefore to this extent Rule 89(5) is ultra vires. It was submitted that main Section 54(3) categorically provides that a person may claim refund of any unutilised input tax credit and there are no words either in main section 54(3) or under proviso (ii) to Section 54(3) whatsoever that the refund in question would only be limited to credit of tax paid on inputs only.

The said **explanation (a) of Rule 89(5) of the CGST Rules is held to be contrary to the provisions of Section 54(3)** of the CGST Act. In fact, the Net ITC should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act.

The respondents are therefore, **directed to allow the claim of the refund** made by the petitioners considering the unutilised input tax credit of "input services" as part of the "net input tax credit" for the purpose of calculation of the refund of the claim as per Rule 89(5) of the CGST Rules,2017 for claiming refund under Sub-section 3 of Section 54 CGST Act,2017.

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