

Madras HC upholds constitutionality of provisions relating to refund in case of inverted duty structure

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Summary

The Madras High Court (HC) has dismissed a batch of writ petitions challenging the constitutional validity of provisions related to refund in case of inverted duty structure (IDS) under the GST law.

The HC held that the relevant provisions (relating to refund) are clear and limit a registered person to claim refund of unutilised input tax credit (ITC) only to the extent that such credit has accumulated on account of the rate of tax on **input goods** being higher vis-a-vis output supplies. Further, the HC stated that the word 'inputs' encompasses all input goods, other than capital goods and **excludes input services**.

Furthermore, it observed that refund is a statutory right and the extension of benefit of refund only to the unutilised credit on inputs under IDS and excluding unutilised ITC of input services is a valid classification and a valid exercise of legislative power. Thus, it held that the amended provision is intra vires and does not need to be read down.

Facts of the case

- The petitioner¹ filed a writ petition before the Madras HC. It prayed that, on account of being subjected to IDS, it is entitled to refund of the entire unutilised ITC accumulated.
- Further, the petitioner challenged the constitutional validity of the relevant

refund related provisions² in case of IDS and contended that the amended provisions³ is ultra vires⁴.

Madras HC observations and ruling⁵

- **Refund of unutilised ITC available only in respect of input goods:** The relevant provision under the GST limits the entitlement of refund of ITC that get

¹ Tvl. Transtunnelstroy AFCONS Joint Venture

² Section 54(3)(ii) of the CGST Act, 2017

³ Rule 89(5) of the CGST Rules, 2017

⁴ Section 54 of the CGST Act, 2017 and Constitution of India

⁵ C/SCA/15473/2019 dated 11 March 2020

accumulated as a result of the rate of tax on **input goods** being higher than the rate of tax on **output supplies**.

- **‘Inputs’ means input goods and excludes input services:** Both the statutory definition and the context point in the same direction, namely, that the word ‘inputs’ encompass all input goods, other than capital goods, and excludes input services.
- **Amended provision is in conformity:** In light of the conclusion that a refund is permitted only in respect of unutilised ITC that accrues as a result of the higher rate of tax on input goods vis-à-vis output supplies, the HC held that the amended provision is in conformity with the statute.
- **Unable to subscribe to Gujarat HC’s view:** The HC expressed its inability to subscribe to the conclusions reached by the Gujarat HC⁶ and stated that it failed to take into consideration the scope function and impact of the relevant refund provisions.

- **Valid classification and exercise of legislative power:** The refund provisions do not infringe the Constitution⁷. Further, refund is a statutory right and the extension of the benefit of refund only to the unutilised credit on inputs under IDS by excluding unutilised ITC on ‘input services’ is a valid classification and a valid exercise of legislative power. Therefore, it is not necessary to interpret the amended provision and the definition of Net-ITC therein to include the words ‘input services’.
- **Petition dismissed:** The Madras HC concluded the amended provision is intra vires for both the general rule making power and the relevant refund provisions. Accordingly, the HC dismissed the batch of writ petitions challenging the constitutional validity of relevant provisions.

⁶ In the case of M/s VKC Footsteps Pvt. Ltd.

⁷ Article 14 of the Constitution of India

Our comments

Recently, the Gujarat HC in the case of M/s VKC Footsteps India Pvt. Ltd. held that the relevant provisions pertaining to refund in case of IDS under the GST law are ultra vires and need to be read down to the extent it denies refund of ITC on input services. Contrary to this, the Madras HC has now held that the relevant provisions are intra vires and does not need to be read down.

Considering the contradictory rulings, the matter is likely to reach the apex court.

Businesses will have to wait until the matter attains finality.

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NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II One International Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

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