

## Refund under inverted duty structure cannot be denied merely because tax rate on principal input and output is same – Delhi HC

13 December 2023



## Summary

The Delhi High Court (HC) has held that refund of accumulated input tax credit (ITC), arising out of inverted duty structure (IDS), cannot be denied merely because the GST rate on principal input and output is the same, without taking into account other inputs. The HC primarily highlighted the trite position that refund under IDS does not depend on the number of inputs and outputs and, accordingly, cannot be restricted on account of singularity of input. Setting aside the refund rejection order of the Adjudicating Authority (AA), the HC stated that the refund provisions do not prescribe comparison between tax rate of 'principal input' with output to determine refund under IDS.

## Facts of the case

- Indian Oil Corporation Limited (the petitioner) is engaged *inter alia* in bottling and distribution of LPG, both for domestic and industrial use.
- Pertinently, the bulk LPG, which is the principal input for the petitioner, carries a 5% GST rate, same as bottled LPG, which is the consequent output. However, numerous other inputs, including safety accessories, taxed at different GST rates, are also used in the production of the bottled LPG.
- The petitioner was denied refund of accumulated ITC on account of IDS, on the ground that GST rate applicable on principal input and output was the same. The petitioner's appeal against the rejection order was also rejected.
- Vide the petition, the petitioner assailed the impugned rejection orders contending that refund of accumulated ITC cannot be denied solely because the GST rate on principal input and output is the same.

## Delhi HC observations and judgement [W.P. (C) 10222/2023; Order dated 05 December 2023]

- **Refund of accumulated ITC under IDS cannot be confined to singular input:** Upon evaluating refund provisions, the HC observed that primarily, the refund of

accumulated ITC on account of IDS does not depend on the number of input or output of the assessee, and should be attributable to the accumulation of ITC on account of higher tax rate on input than output. Accordingly, the refund cannot be restricted to singular input or output. The HC observed that various inputs including safety accessories, carrying different GST rates, usually higher than what is applicable on output, are essential for manufacturing bottled LPG.

- **Refund provisions do not prescribe comparison between tax rates of principal input and output to determine refund:** The HC categorically stated that refund is not forbidden in cases where tax rate on input and output are same. On the contrary, refund under IDS is permitted only where ITC has accumulated on account of GST rate on input being higher than that of the output. The HC pertinently highlighted that the refund provisions do not prescribe comparison between tax rate applicable to 'principal input' and output for granting refund under IDS. Accordingly, it invalidated the denial of refund merely on account of same tax applicable to principal input and output, without considering tax rate on other inputs.

- **Refund under IDS cannot be permitted when input and output are same:** The HC examined the CBIC circular, which clarified that refund cannot be permitted when input and output are same, but ITC has accumulated due to different tax rates at different points of time. The HC stated that the Circular cannot be interpreted to mean that there is a

restriction of refund where tax rate on input and output are same and such interpretation is likely to violate the refund provisions, rendering the circular invalid. In view of the above, the HC allowed the refund claim of the petitioner and directed the Department to process the same along with interest.

### Our comments

This is a favourable judgement for the tax payers engaged in taxable supplies wherein tax rate of input is higher than that of the output resulting in IDS.

The HC elaborated on broader interpretation of 'inputs' and held that the Circular cannot insert any provision, which is not available in the Act. However, at the same time, it affirmed refund of accumulated ITC cannot be permitted on account of reduction in GST rate on same goods over the period of time, as also clarified by the CBIC circular.

Earlier, the Calcutta HC on similar basis permitted the refund in the case of Shivaco Associates, wherein refund of accumulated ITC was denied on the ground that input and output supply were the same though taxed at different rates. The HC observed that by way of the above CBIC Circular, the refund benefit was being curtailed leading to creation of a class inside a class, which cannot be permitted.

Similar decisions were given by the Rajasthan HC in Baker Hughes Asia Pacific Limited and by Gauhati HC in BMG informatics (P) Ltd, wherein the Courts held that the circular is unsustainable and liable to be ignored.

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