

# Gujarat HC allows refund of unutilised ITC distributed by input service distributor to SEZ unit

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## Summary

The Gujarat High Court (HC), in a recent case, has allowed the petition filed by a special economic zone (SEZ) unit for the claim of refund of input tax credit (ITC) distributed by input service distributor (ISD).

The HC observed that the petitioner, being an SEZ-unit making zero-rated supplies under the GST, was unable to utilise the credit of ITC of Integrated Goods and Service Tax (IGST) received from its ISD. Accordingly, since the credit remained unutilised in the electronic credit ledger (ECL), an application for a refund claim was made. Thus, the HC concluded that the petitioner is entitled to a refund as the ISD cannot claim the refund.

## Facts of the case

- The petitioner<sup>1</sup>, an SEZ unit, filed a refund claim with regard to the credit of IGST distributed by its ISD for the services pertaining to the SEZ unit.
- The said claim was rejected on the ground that the refund cannot be processed under any specified category of refund<sup>2</sup>.
- Being aggrieved, the petitioner filed the present writ for refund of unutilised credit lying in Electronic Credit Ledger and to set aside the impugned order rejecting the refund claim.
- Further, the petitioner prayed that in case there is no provision for obtaining refund by

an SEZ, then relevant provisions for granting refund of unutilised IGST credit lying in the electronic credit ledger be framed to bring parity and to remove financial hardship faced by genuine exporters.

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

- **ISD cannot file refund claim:** The HC rejected tax department's contention that the petitioner, not being a supplier, wouldn't be entitled to file refund application<sup>4</sup>.
- **No supplier to claim refund:** ISD is an office of the supplier of goods and services that receives tax invoices issued towards the receipt of input services and issues a prescribed document for the purpose of

<sup>1</sup> Britannia Industries Limited

<sup>2</sup> under manual refund processing Circular No. 17/17/2017-GST) dated 15.11.2017 and Circular No. 24/24/2017-GST dated 21.12.2017

<sup>3</sup> C/SCA/15473/2019 dated 11 March 2020

<sup>4</sup> Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017

distributing the credit. Therefore, it is not possible for a supplier of goods and services to file a refund application in the present case.

- **Tax department's stance not tenable:** As per the procedure for application for refund of tax, interest, penalty, fees prescribed under the GST law, in respect of supplies to a SEZ unit the application for refund has to be filed by the supplier of goods or services. It is not possible for a supplier of goods and services to file a refund application to claim refund of ITC distributed by ISD, therefore, the stance of the department that the petitioner is not entitled to seek the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable.
- **Refund claim allowed:** Thus, the Gujarat HC allowed the petition for claim of refund of ITC distributed by ISD.

#### Our comments

The availability of refunds to SEZ units in respect of credits distributed by ISD has been a controversial matter due to a lack of clarity in respect of refund-related provisions under the GST law.

This is a welcome judgment by the Gujarat HC and will help to provide the required clarity as well as relief to the SEZ units. Further, the HC has made an important observation that service tax attributable to the services used in more than one unit is to be distributed on a pro-rata basis of the turnover during the relevant period and similarly credit of service tax is distributed to all the units by the ISD and therefore, the claim of refund made by the SEZ unit is required to be granted.

The ruling may set a precedent for other similar cases. However, it is likely to be challenged in the apex court.

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