

Sikkim HC allows refund of unutilised input tax credit upon closure of business

12 June 2025

Summary

The Sikkim High Court (HC) has held that a taxpayer is entitled to a refund of its accumulated unutilised input tax credit (ITC) upon closure of business, even though such a refund is not explicitly provided for under the GST laws.

Relying on the Karnataka HC's decision in the case of Slovak India Trading Company Private Limited, which permitted refund of unutilised CENVAT credit in the absence of an explicit prohibition, the HC found the same principle applicable under the GST regime. As there is no specific bar under the CGST Act against refunding the ITC on business closure, the court set aside the appellate order and allowed the petitioner's refund claim.

Background

- SICPA India Pvt. Ltd. (the petitioner) was engaged in manufacturing security inks and solutions, with its principal place of business located in Sikkim. In 2019, the petitioner decided to discontinue its operations in Sikkim.
- From April 2019 to March 2020, the petitioner undertook the sale of all the machinery and manufacturing facilities and duly reversed the required ITC. The petitioner was left with an accumulated ITC balance of INR 4.38 crore in its electronic credit ledger (ECrL).
- The petitioner filed a refund claim for the unutilised ITC balance under the CGST Act¹, invoking Section 49(6) of the CGST Act, which provides for a refund of any balance in the ECrL, read with the refund mechanism provided under Section 54 of the CGST Act.
- The Assistant Commissioner rejected the refund application, citing a lack of statutory provision permitting the refund of unutilised ITC in cases of a business closure. On appeal, the appellate authority upheld this decision, reasoning that the first proviso to Section 54(3) allows refund only in two specified cases, i.e., zero-rated supplies without tax payment or accumulation of the ITC due to inverted duty structure.
- The aggrieved petitioner filed a writ petition before the Sikkim HC, challenging the appellate order and asserting a legal right to a cash refund of its unutilised ITC.

Issues before Sikkim HC

- Whether the entitlement to the refund of the unutilised ITC under Section 49(6) of the CGST Act is limited only to the cases carved out under Section 54(3) of the CGST Act or whether any registered company discontinuing business is eligible to claim such refund upon closure of business.

Petitioner's contentions

- Section 49(6) of the CGST Act explicitly provides for a refund of any balance remaining in the ECrL after the payment of tax and other dues, subject to the procedure laid down under Section 54.
- The restrictive proviso in Section 54(3), which allows refunds of unutilised ITC only for zero-rated supplies and inverted rate structures, cannot be read to take away the petitioners' vested right to legitimately accumulated ITC. While Section 54(3) lists certain circumstances where a refund of unutilised ITC is allowed, it does not expressly prohibit refund in other cases, including on account of a business closure. Therefore, it cannot take away the vested right of the ITC accrued to the petitioner.

¹ The Central Goods and Services Tax Act, 2017

- The appellate authority failed to address the applicability of Section 49(6) in the present context.
- The petitioner relied on various precedents² to support the principle that the state should not retain the unutilised credit without the authority of law, and a refund should be permissible when a business ceases operations.

Respondent's contentions

- The refund of unutilised ITC cannot be granted on account of business closure, as the first proviso to Section 54(3) of the CGST Act restricts refunds to only zero-rated supplies and cases of inverted duty structure, thereby excluding the closure of business.
- Section 49(6) does not independently permit a refund but is subject to Section 54. Further, Section 29(5) mandates the ITC's reversal only upon registration cancellation, not refund.
- An alternative statutory appellate remedy under Section 112 of the CGST Act exists and was not exhausted by the petitioner.

Sikkim HC's observations and ruling [WP(C) No.54 of 2023 dated 10 June 2025]

Maintainability of petition considering alternate remedy

- The court, relying upon the Supreme Court's decisions³, observed that the writ jurisdiction under Article 226 is plenary and cannot be excluded merely because an alternative remedy exists, particularly where the matter raises a pure question of law and does not involve disputed facts. Hence, the writ petition was held maintainable.

Refund of unutilised ITC on business closure permitted in the absence of express legal bar

- The court noted that while Section 49(6) of the CGST Act permits the refund of any balance in the ECrL after the payment of all dues, such refund must comply with Section 54. Section 54(3) restricts the grant of refund of unutilised ITC to two scenarios, i.e., zero-rated supplies or cases of inverted duty structure. However, there is no express statutory prohibition against refunding the ITC upon business closure.
- In support of this view, the court relied on the Karnataka HC's decision in the case of Slovak India Trading Company Private Limited, which held that the refund of unutilised CENVAT credit could not be denied merely upon the closure of business, in the absence of express prohibition in the rules. The Sikkim HC considered this reasoning equally applicable under the GST regime since there is no explicit bar in the relevant GST provisions.
- Accordingly, the court set aside the appellate authority's order and allowed the refund claim, holding that the petitioners were entitled to a refund of unutilised ITC upon business closure.

² Shabnam Petrofills Pvt. Ltd. v. Union of India (Gujarat HC) (No.- R/Special Civil Application No. 16213 Of 2018); Union of India v. Slovak India Trading Company Pvt. Ltd. (Karnataka HC) (C.E.A No. 5 of 2006); and Eicher Motors Ltd. v. Union of India (SC) (No.- 7 & 8 of 1998)

³ State of U.P. v. Indian Hume Pipe Co. Ltd. and Godrej Sara Lee Ltd. v. Excise and Taxation Officer

Our comments

The present ruling marks a departure from the settled interpretation of Section 54(3) of the CGST Act by allowing a refund of unutilised ITC upon business closure, despite the absence of any specific statutory provision. This interpretation contrasts with the Supreme Court's decision in the case of VKC Footsteps India Private Limited⁴, where a strict reading of Section 54(3) confined ITC refunds to two specific situations: (i) zero-rated supplies without payment of tax and (ii) accumulation due to an inverted duty structure. The apex court held that courts cannot expand the scope of refunds beyond the statutory limits.

The broader approach adopted by the Sikkim HC may open the doors to refund claims in cases of discontinued operations or winding up, leading to interpretational challenges and potential misuse by taxpayers attempting to monetise the ITC beyond the statutory framework.

Given this divergence from the Supreme Court's landmark ruling, the ruling is likely to undergo further appellate scrutiny. It also highlights a legislative gap in the treatment of the ITC upon the closure of business, which may require clarification from the GST Council or appropriate statutory amendment to ensure consistency and safeguard revenue.

**Connect
with us on**



@Grant-Thornton-Bharat-LLP



@GrantThorntonIN



@GrantThorntonBharat



@GrantThorntonBharatLLP



@Grantthornton_bharat



GTBharat@in.gt.com

© 2025 Grant Thornton Bharat LLP. All rights reserved.

Grant Thornton Bharat LLP is registered under the Indian Limited Liability Partnership Act (ID No. AAA-7677) with its registered office at L-41 Connaught Circus, New Delhi, 110001, India, and is a member firm of Grant Thornton International Ltd (GTIL), UK.

The member firms of GTIL are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered independently by the member firms.

GTIL is a non-practicing entity and does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

⁴ Civil Appeal No 4810 of 2021