

Refund allowed in case of inverted duty structure on account of Multiple Input having higher GST rate than output

The Hon'ble Rajasthan High Court (Jaipur Bench) in the case of *M/s. Nahar Industrial Enterprises Limited v. Union of India [Civil Writ Petition No. 8476 of 20/21 dated October 31, 2023]*, allowed the Writ Petition and held that refund of Input Tax Credit (“ITC”) can be claimed when there are multiple inputs having a higher rate of GST than the rate of GST on output supplies.

Facts:

M/s. Nahar Industrial Enterprises Limited (“**the Petitioner**”) is engaged in the business of manufacturing textiles and its operations ranging from spinning, weaving and spinning. During the process of manufacturing the Petitioner used various raw materials which included cotton, manmade fiber and other inputs. The rate of GST on the raw material used as input varied from 5 percent to 28 percent. The output/manufactured products are cotton yarn, cotton blended yarn, polyester viscose yarn, and polyester/viscose blended yarn. The rate of GST on output ranges from 0.1 percent to 12 percent. As the rate of GST on input was higher than the rate of GST on output, the Petitioner being the case of inverted duty structure, believed that it was entitled to claim the refund of unutilised credit at the end of the relevant tax period under Section 54(3) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”). Therefore, the Petitioner filed a refund application under Section 54(3) of the CGST Act for January, 2020 to March, 2020.

The Revenue Department (“**the Respondent**”) issued a Show Cause Notice proposing rejection of the claim for refund. The Respondent vide order dated August 24, 2020, rejected the Petitioner's claim for refund on the ground that the Petitioner's case does not fall in the category of inverted duty structure.

Aggrieved by the said order, the Petitioner filed an appeal before the Respondent Commissioner. The Respondent Commissioner vide Order dated October 06, 2020 and May 11, 2021 (**“the Impugned Orders”**), affirmed the Respondent Authority's findings and dismissed the appeal, thereby holding that the Petitioner case does not fall within the category of Inverted Duty Structure, therefore, the Petitioner is not entitled to refund of unutilised ITC by invoking provisions of Section 54(3) of the CGST Act.

Aggrieved by the Impugned Orders, the Petitioner filed a writ petition before the Hon'ble Rajasthan High Court (Jaipur Bench) contending that the Impugned Order of rejection of the claim for refund of utilised ITC is illegal and based on complete misrepresentation and misconstruction of letter and spirit of the statutory scheme of refund under Section 54(3) of the CGST Act.

Issue

Whether the refund of ITC can be claimed when there are multiple inputs having a higher rate of GST than the rate of GST on output supplies?

Held:

The Hon'ble Rajasthan High Court (Jaipur Bench) in the case of ***Civil Writ Petition No. 8476 of 2021*** held as under:

- Observed that, as per Section 54(3) of the CGST Act, once all the inputs and output supplies are on comparative basis, it is found that the rate of GST on inputs is higher than the rate of GST on output supplies, the scheme of refund is required to be given full effect and cannot be denied on grounds that rate of GST, on comparative analysis is more or less the same.
- Noted that, as per clause (ii) of the proviso to Section 54(3) of the CGST Act, the statutory scheme of refund of unutilised ITC would apply provided it fulfills statutory precondition that the accumulation of unutilised ITC is due to the rate of GST on input exceeds the rate

of GST on output supplies, despite multiple input and output supplies. Therefore, the scheme of refund based on inverted duty structure would be applicable in the present case.

- Relying upon the ***Circular No. 79/53/2018-GST dated December 31, 2018 and Circular No. 125/44/2019-GST dated November 18, 2019***, it is further noted that, the scheme of inverted duty structure and refund would be applicable even when there are multiple inputs having a higher rate of GST than the GST rate on output supplies.
- Held that, the Impugned Orders are set aside and directed the Respondent to freshly consider the Petitioner's claim for refund as per the observations made by the Court. Hence Writ Petition is allowed.

Relevant Provisions:

Section 54 of the CGST Act:

“Refund of Tax

(1)

(2)

(3) *Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully

exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.”

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