

**SC upheld the validity of Rule 89(5) of CGST Rules i.e. Refund under Inverted Duty Structure restricted to Inputs only**

In the ***Union of India & Ors. v. VKC Footsteps India Pvt Ltd. [Civil Appeal No 4810, 4809, 4811, 4807, 4767, 4804, 4806, 4802, 4783, 4775-4781, 4769-4774, 4805, 4808, 4764-4765 of 2021 and Writ Petition (C) 489 of 2021 dated September 13, 2021]***, the current writ petition was filed following divergence in the rulings provided in ***VKC Footsteps India Pvt. Ltd. v. Union of India [R/ Special Civil Application No 2792 of 2019]*** and ***Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [Writ Petition Nos 8596, 8597, 8602, 8603, 8605 and 8608 of 2019]*** wherein validity of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) was challenged.

Section 54(3) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) provides for claiming of refund of Unutilized ITC and Rule 89(5) of the CGST Rules provides for a formula to calculate the refund of said Unutilized ITC. An amendment vide *Notification No.26/2018- Central Tax by the Government of India, Ministry of Finance, Department of Revenue of Central Board of Indirect Taxes and Customs dated June 13, 2018* substituted the Rule having retrospective effect from July 01, 2017. Also, the revised formula excluded input services from the scope of “Net Input Tax Credit” (“Net ITC”) for computation of refund under Inverted Duty Structure (IDS). Consequently, the substituted rule of 89(5) of CGST Rules denied refund on ITC claimed on Input Services, i.e. allowing refund of ITC on inputs alone.

The Hon’ble Gujarat High Court in ***VKC Footsteps India Pvt. Ltd. v. Union of India [R/ Special Civil Application No 2792 of 2019]***, held that by prescribing a formula in Rule 89(5) of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC under IDS Rule 89(5) thereby restricting the refund only to input goods had acted ultra vires Section 54(3).

On the contrary, the Hon’ble Madras High Court in ***Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [Writ Petition Nos 8596, 8597, 8602, 8603, 8605 and 8608 of 2019]*** had a dissenting view with that of Gujarat High Court by noting that the proviso to Section 54(3) as well as its implications have not been taken into consideration in VKC Judgment provided by the Hon’ble Gujarat High Court except for a brief reference.

The Hon’ble Supreme Court in the current case while analyzing the validity of formula prescribed in Rule 89(5) observed that while the anomalies of the formula do continue to exist, an anomaly per se cannot invalidate a fiscal rule which has been framed in exercise of the power of delegated legislation. The Court by applying the dictum of the case ***RK***

***Garg v. Union of India (1981) 4 SCC 675***, observed “*this Court should not in the exercise of the power of judicial review allow itself to become a one-time arbiter of any and every anomaly of a fiscal regime despite its meeting the jurisdictional framework for the validity of the legislation, including delegated legislation.*”

Further noted that the challenge to Rule 89(5) as a piece of delegated legislation on the ground that it is ultra vires to Clause (ii) of the first proviso to Section 54(3) is lacking in substance. There lies no disharmony between them.

Held the views of the Madras High Court in the case of ***Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [Writ Petition Nos 8596, 8597, 8602, 8603, 8605 and 8608 of 2019]*** are affirmed with, and the judgment provided by the Gujarat High Court in ***VKC Footsteps India Pvt. Ltd. v. Union of India [R/ Special Civil Application No 2792 of 2019]*** is to be set aside.

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