



## Tax alert: Amended formula for refunds under inverted duty structure also applicable on refunds prior to amendment

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Gujarat High Court holds that amendment brought in Rule 89(5) of the CGST Rules, towards inverted duty structure, is curative and clarificatory in nature and the same would be applicable retrospectively, for all refund applications filed within the prescribed period of two years irrespective of the date of filing of the application.

### In a nutshell



The GST law prescribes a specific formula for computation of refund under inverted duty structure, i.e. rate of tax on inputs being higher than the rate of tax on output supplies.



There was an anomaly in the formula which was challenged before the Supreme Court in the case of VKC Footsteps.

The formula was amended through Notification No. 14/2022 dated 5 July 2022 read with Circular dated 10 November 2022.



The Gujarat High Court held that the amended formula is clarificatory in nature and is applicable on refund applications filed prior to 5 July 2022 as well.



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## Facts of the case

- The petitioners filed applications for refund of unutilized input tax credit (ITC) on account of inverted duty structure as per the formula prescribed in Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (CGST Rules).
- An amendment was brought out in the prescribed formula through Notification No. 14/2022 – Central Tax dated 5 July 2022 read with Circular dated 10 November 2022 where the ITC pertaining to input services was included.
- However, the circular clarified that amendment is not clarificatory in nature and is applicable prospectively with effect from 5 July 2022.
- The petitioners were granted partial refund computed as per the formula under inverted duty structure for all the applications made prior to 5 July 2022 on the grounds that since the applications were filed prior to the amendment, the refund by the petitioners has to be decided based on the formula applicable prior to the amendment.
- Accordingly, the notification dated 5 July 2022 read with Circular dated 10 November 2022, was challenged before the Gujarat High Court.

## Observations and ruling:

- The Court observed that the question of prospective applicability of notification dated 5 July 2022 is no longer *res integra* as has been held by several High Courts including the Gujarat High Court in the case of Ascent Meditech Ltd. vs. Union of India and Ors.
- In the case of Ascent Meditech Ltd., it was held that:
  - The petitioner cannot be denied the refund only because the petitioner has been granted the refund prior to 5 July 2022 as it would create a discrimination resulting into inequality between the assesseees who have been granted refund prior to 5 July 2022 and the assesseees who have applied for refund after 5 July 2022.
  - As per the provisions the GST law, if the assessee has made refund application within the prescribed period of two years, then the assessee would be entitled to the refund as per the amended formula which has been notified w.e.f. 5 July 2022.
  - The Circular dated 10 November 2022, so far as it clarifies that the amendment is not clarificatory in nature, was quashed and set aside. It was held that Notification No. 14/2022 is applicable retrospectively as the amendment brought in the GST law is curative and clarificatory in nature.
  - The same would be applicable retrospectively to the refund or rectification applications filed within two years.
- The Gujarat High Court followed the said ruling and held that the refund rejected by the Revenue should be granted to the petitioners.

## Deloitte comments

The ruling of the Gujarat High Court would help provide a guiding principle in sanction of refund of inverted duty structure filed for the period prior the amendment which were rejected.

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