



Tax alert: Refund of unutilized input tax credit disallowed on business closure: Division bench of Sikkim High Court

12 September 2025

The division bench of Sikkim High Court has ruled that refund of unutilized input tax credit (ITC) is not permissible in the event of business closure under the GST law, thereby overruling a single bench order which permitted the refund.

In a nutshell



Refund of ITC is governed by Section 54(3) of the CGST Act, which permits refunds only under specific circumstances enumerated therein and does not extend to cases such as the closure of business.



Section 29(5) of the CGST Act mandates the reversal of accumulated credit in the event of closure of business, and no refund can be claimed under Sections 49(6) or 54(3) of the CGST Act.



Refund is a matter of statutory prescription, and Parliament is within its legislative authority to define the circumstances under which a refund can be claimed under GST Law.



Scroll down to read the detailed alert

Background

- The taxpayer was engaged in the manufacture of security inks and solutions.
- During the period, January 2019, on account of business exigencies, the taxpayer ceased its operations and decided to discontinue its operations in the state of Sikkim.
- The taxpayer sold all its machinery and manufacturing facilities and claimed to have reversed the Input Tax Credit (ITC) as per the applicable provisions under the CGST Act.
- Against this background, the taxpayer sought refund of unutilized ITC after discontinuing its business operations in Sikkim.
- The application was submitted in FORM GST RFD-01 under the "any other" category but was not accompanied by the self-declaration needed to establish eligibility of refund and that the incidence of such tax and interest had not been passed on to any other person. It was also contended that the refund claim was distinct from the provisions of Section 54(3) of the CGST Act and was specifically filed under Section 49(6) of the CGST Act.
- The Assistant Commissioner rejected the refund application, asserting that the claim was legally untenable, which was upheld by the Appellate Authority. Aggrieved, the taxpayer filed a writ petition before the Sikkim High court (HC), wherein the Ld. single judge¹ examined refund provisions, referred to the decision of Karnataka High Court (HC) in **Slovak India Trading Company Private Limited**² (Slovak India) and observed that there was no express prohibition in section 49(6), read with section 54 and 54(3) of the CGST Act, for claiming a refund on the closure of a unit. Although section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, the statute does not provide for the retention of tax without the authority of law. Consequently, it was held that the Company was entitled to the refund of unutilised ITC claimed by them.
- Being aggrieved, Revenue filed an appeal before the Division Bench of the Sikkim HC.

High Court division bench decision³

- The HC relied upon the Supreme Court's decision in **VKC Footsteps (India) (P) Ltd.** (VKC Footsteps)⁴ wherein it was held that refunds are strictly governed by statutory provisions.
- It noted that Section 49(6) of the CGST Act does not provide an independent right to claim a refund. Instead, any refund application under Section 49(6) must be processed as per the provisions of Section 54, which deals specifically with refunds.
- Section 54(3) of the CGST Act restricts refunds to two specific circumstances: zero-rated supplies and inverted duty structures. Closure of business does not fall within these circumstances; thus, no refund of unutilized ITC is permissible in such cases.
- The court distinguished the present case from previous judgments under the erstwhile regime, such as Slovak India and **Jain Vanguard Polybutlene Ltd.**⁵.
- Mention was made to the three-Judge bench decision of Bombay HC in **Gauri Plasticulture P. Ltd.**⁶ wherein it was held that refund of unutilised amount of Cenvat Credit on account of closure of

¹ SICPA India Private Limited v. UOI 2025-VIL-570-SIK

² 2006 SCC OnLine Kar 854 and (2006) 201 ELT 559 Karn.

³ UOI v. SICPA India Private Ltd. 2025-VIL-933-SIK

⁴ (2022) 2 SCC 603

⁵ (2010) SCC OnLine Bom 2168

⁶ (2019) SCC OnLine Bom 996

manufacturing activities, cannot be granted.

- The court also emphasized that a taxing statute must be interpreted based on its clear expression, without importing provisions to address assumed deficiencies. Equitable considerations are not applicable in interpreting taxing statutes. Also, the opinion that there is no express prohibition in section 49(6) read with section 54 of the CGST Act for claiming a refund on closure of unit, is not correct. Section 54(3) of the CGST Act, in fact, is a restriction to the refund on account of closure of unit as it does not fall on either of its two clauses.
- It was observed that, in principle, in the event of closure of business, the accumulated credit is required to be reversed under Section 29(5) of the CGST Act, and no refund can be granted under Sections 49(6) or 54(3) of the CGST Act.

Comments

The division bench of the Sikkim HC has thoroughly evaluated the statutory provisions regarding refund of unutilized ITC under GST Laws based on the principles laid down in the apex court judgement in the case of VKC Footsteps and concluded that refund of unutilized ITC in business discontinuance scenario shall not be eligible. It has been reinstated that refund is a matter of statutory prescription and can only be provided within the four corners of law. By distinguishing the judgements pertaining to the erstwhile regime, it has provided clarity that the ratio of said judgments cannot be extended to the GST regime.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see <http://www.deloitte.com/about> to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.

© 2025 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited