

Supreme Court holds Inverted Rate Structure refund is only for Inputs and not for input services. But directs GST Council to take note of the anomalies and do the needful.

The much awaited judgement of the Hon'ble Supreme Court on the issue of eligibility of refund of Input Tax Credit on input services, in case of inverted rate structure, where the outward supply attracts a lesser rate than the inward supply of inputs.

Earlier, the Gujarat High Court has held that such refund was admissible while a contrary view was taken by the Madras High Court. Appeals were filed both by the department and taxpayers and the same were heard finally by the bench of Supreme Court comprising of Justice D.Y. Chandrachud and Justice M.R. Shah.

In its elaborate judgement, the Supreme Court has upheld the amendments made to Rule 89 (5), restricting such refund only for inputs and held that the same is not ultra vires Section 54 of the GST Act. The Supreme Court has observed that the intention of the Government is to grant such credit only for inputs and the Court cannot enter into the policy domain of the Government and direct sanction of refund for input services also.

Before the Supreme Court, on behalf of intervenors, Shri. G. Natarajan, Advocate from Swamy Associates has made an alternative plea and claimed that the input services credit must first be allowed to be utilised for payment of tax on the inverted rated supplies, but the formula mandates the entire tax liability is paid only out of input credit, to keep the refund entitlement at minimum level. He also cited examples, as to how the formula is discriminating between two taxpayers and sought to read down the formula. The Court observed *"In making such an assumption the formula tilts the balance in favour of the revenue by reducing the refund granted. We are equally cognizant of the fact that the proposed solution, that is prescribing an order of utilisation of the ITC accumulated on input services and inputs, may tilt the balance entirely in favour of the assesses"*.

It is pertinent to note that the anomaly pointed out has also been conceded by the Additional Solicitor General of India, who only submitted that this is a policy matter and the Court cannot intervene and legislate.

While conceding that they are alive to the anomalies of the formula, the Court stopped short of reading down the formula but directed the GST Council to look in it, keeping the hopes of the taxpayers alive.

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Inverted duty refund only for inputs, not input services: SC

Prefers Madras HC ruling; asks GST Council to relook the formula

SHISHIR SINHA

New Delhi, September 13

The Supreme Court on Monday held that inverted duty refund is admissible only with respect to inputs and not for input services, thus putting to rest the doubts after contradictory views by the High Courts of Madras and Gujarat. However, the apex court pointed to some anomalies in the computation formula for refund and urged the GST Council to look into them.

Impact on many sectors

The decision will have an impact on companies engaged in the manufacture of footwear and textiles as also those in the e-commerce business.

"We affirm the view of the Madras High Court and disapprove of the view of the Gujarat High Court," a Division Bench of Chief Justice Dhananjaya Y. Chandrachud and Justice MR

Shah observed, while disposing of a bunch of 14 petitions.

The Gujarat High Court had held that refund of input services was admissible while the Madras High Court had ruled against it. The apex court upheld the amendments made to Rule 89 (5), restricting such refund only for inputs and said that it is not ultra vires of Section 54 of the GST Act. It also observed that the intention of the government is to grant such credit only for inputs and the Court cannot enter into the policy domain of the government and direct the sanction of refund for input services also.

According to experts, though there will be an impact, the ruling has not closed options for the players.

On behalf of intervenors, G Natarajan, an advocate from Chennai, made an alternative plea before the Supreme Court that the input services credit must first be allowed to be used to pay tax on the inverted rated supplies though the formula mandates the entire tax liability is paid only out of input credit, so as to keep the refund entitle-



The decision will impact firms that manufacture footwear, textiles and those in the e-commerce business

ment to the minimum. The Court observed that "In making such an assumption the formula tilts the balance in favour of the Revenue by reducing the refund granted. We are equally cognizant of the fact that the proposed solution, that is, prescribing an order of utilisation of the ITC accumulated on input services and inputs, may tilt the balance entirely in favour of the assesses."

Further, it strongly urged the GST Council to reconsider the formula and take a policy decision on it.

Tushar Aggarwal, Founder Partner, Tattvam Advisors, said: "The decision will impact footwear, solar power, textile, EPC

and various other industries that are under the inverted duty structure and have substantial ITC of input services."

Will end litigations

Aditya Singhania, Founder, Singhania's GST Consultancy & Co, said that the verdict puts an end to the litigation that were arising pan-India seeking refund on input services also. Yet, it's not a dead loss for taxpayers as the credit remains alive in their credit ledger.

Though the judgment gives the GST Council the room to relook the formula prescribed under Rule 89(5), to propose a mechanism by which the ITC on input services, otherwise not eligible for refund, is utilised first even while reducing the tax payable on the inverted rated supply of goods and services. "However, it appears that unless such a mechanism comes into place, the ruling will have some influence on the prices to the end-consumers as the GST on these input services seems to get off-loaded on the end-consumers," he said.

Also read p3

At 5.3%, retail inflation further in Aug on cheap

OUR BUREAU

New Delhi, September 13

Retail inflation based on the Consumer Price Index (CPI) slipped to a four-month low of 5.30 per cent in August mainly as vegetables became cheaper. However, prices of edible oil are still on fire, as reflected in the inflation rate for 'oil and fat' at 33 per cent.

With the retail inflation trending down for the third month in succession after hitting a record high 6.30 per cent in May, pressure is expected to ease on the RBI Monetary Policy Committee. The committee is scheduled to meet in from October 6 to 8 and expected to hold its hand on the policy interest rate with an accommodative stance. It will also need to keep an eye on the volatility in crude oil prices.

Headline retail inflation rate was 5.59 per cent in July and 6.69 per cent in August last year.

Easing prices softened the headline inflation rate in August. Though some food items did record a rise, prices of others dipped,

keeping the overall food inflation flat. Cheaper eggs, meat and fish, fruits, pulses and cereals made up for pricier milk, oils and fats, vegetables, sugar and spices.

According to Sunil Kumar Sinha, Principal Economist with India Ratings and Research, it is seventh consecutive month of retail inflation remaining above 5 per cent and 23rd month of holding above the RBI's target inflation rate of 4 per cent.

Rural incomes, wages hit

Although the monsoon was desultory in August, it did not affect the cereals inflation. On the contrary, cereals saw seventh consecutive month of deflation. Low agriculture productivity and deflation in cereal prices may impact rural incomes and, in turn, hinterland demand. In fact, this is already getting reflected in lower rural wage growth, say economy watchers.

"Inflation is expected to

walks away from negotiations take in 'pricy' PharmEasy

In May, PharmEasy acquired rival MedLife. In June, it also

Cabinet gearing for a PLI scheme for auto

Sops to promote production/exports of clean energy vehicles, advanced components may come this week



ITC REFUND ISSUE

Some units may appeal against SC verdict

Industry sees court's observation on 'anomalies' as a key positive

AMITI SEN
MEENAKSHI VERMA AMBWANI

New Delhi, September 13

The Supreme Court's decision to allow Input Tax Credit (ITC) on just goods inputs in inverted tax structure under the Goods & Services Tax while computing refund, and not on input services, has come as a disappointment for sectors such as textiles, footwear and solar power. However, these sectors, which have been hit the most by the decision, have taken heart from the Court's observation that the GST Council should look into existing anomalies, and hence, want to pursue the matter further.

"While we must respect the judgment of the SC, the issue may not have reached finality... The Court has noted some anomalies and suggested the GST Council to look into the same. One needs to consider various aspects, before taking a final decision on future course of action for MSMEs..." a Delhi-based GST consultant pointed out.

The judgment is likely to mostly affect small and medium enterprises in pharmaceuticals, textiles, fertilisers and footwear space, as they depend significantly on job work, which is classified as services,

and hence, not eligible for input tax refund.

"Large units generally get everything manufactured inside as they are more integrated. It is mostly smaller textile units that depend on job work and outsource numerous activities such as dyeing, stitching, weaving and embroidery. It involves considerable payouts. In a situation where money supply is already tight for the MSME sector, denying them input tax refund adds to their woes," said

Sanjay Jain, Chairman, National Textile Committee, Indian Chamber of Commerce.



Job work as service

Although job work is classified as service, it is actually a manufacturing activity, pointed out Jain, adding that it is not like a normal service-like audit, where fee is relatively a negligible component of costs. "The more important thing is that you are not allowing it to be adjusted in your GST output obligation. If that was allowed, the industry would first adjust the amount and the balance is to be refundable in ITC," Jain said. He added that the possibility of some units appealing against the SC verdict could not be ruled out.

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SC says no input credits on tax paid on services

KANU SARDA @ New Delhi

IN a big setback to businesses that accumulate input tax credit (ITC) due to inverted duty structure, the Supreme Court on Monday ruled that these businesses can claim ITC only on goods and not services.

The Supreme Court held that provisions of the Central Goods and Services Act excludes unutilised input tax credit accumulated on account of input services and held that refund is entitled only for credit accumulating on inputs under inverted duty structure in GST Act.

A bench comprising Justice DY Chandrachud and MR Shah

REFUND ONLY FOR CREDIT ON INPUTS

The Central Goods and Services Act excludes unutilised input tax credit accumulated on account of services and that refund is entitled only for credit accumulating on inputs under inverted duty structure

said, "When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated at par on a matter of a refund of unutilised ITC cannot be accepted."

The court upheld the order of the Madras High Court while setting aside the order of the Gujarat High Court.

The inverted duty structure applies to industries like tex-

tiles and printing ink and EPC, etc. where the GST on outputs is lower than that on input goods, input services and capital goods. These industries should have normally got the refunds under inverted duty structure under CGST Act.

"The GST inverted duty refunds is limited by Rule 89(5) of CGST Rules to only input materials. Hence the excess GST paid on input services like job work, professional charges,

factory repairs, etc. on the one hand and on capital goods like machinery on the other hand, is not available for refund," says Kolkata-based chartered accountant Vivek Jalan.

The court refused to accept the challenge to the constitutional validity of Section 89(5) as it felt that such an interpretation, if carried to its logical conclusion, would involve unforeseen consequences, circumscribing the legislative discretion of Parliament to fashion the rate of tax, concessions and exemptions. The SC, however, accepted that the GST Council needed to take a relook at the refund calculation formula.

SC upholds refund of unutilised ITC

LEGAL CORRESPONDENT
NEW DELHI

The Supreme Court on Monday confirmed a Madras High Court judgment which upheld a fiscal formula included in the Central Goods and Service Tax Rules to execute refund of unutilised Input Tax Credit (ITC) accumulated on account of input services.

The Supreme Court Bench led, by Justice D.Y. Chandrachud, passed the judgment in the face of two contradicting judgments of Gujarat and Madras High Courts on the validity of Rule 89(5) of the Central Goods and Service Tax Rules, 2017.

Rule 89(5) provides a formula for the refund of ITC, in "a case of refund on account of inverted duty structure".

The Bench said though the formula suffers from "inequities", it did not deserve to be struck down. "We strongly urge the GST Council to reconsider the formula and take a policy decision," the court said.