

**Unutilized ITC Refund on Business Closure -
is it entitled to encash under GST?**

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Introduction

The significant judgment rendered by the Sikkim High Court on June 10, 2025, in the case of *SICPA India Private Limited and Another versus Union of India and Others* addresses the crucial issue of whether a registered person is entitled to claim a refund of unutilized Input Tax Credit (ITC) upon the closure of business operations under the Central Goods and Services Tax Act, 2017 (CGST Act). The High Court's decision to allow such a refund, despite the absence of an explicit provision in Section 54(3) of the CGST Act for business discontinuation, marks a pivotal development in GST jurisprudence. This analysis will delve into the factual background, the arguments presented by both the Taxpayer and the Revenue, and the High Court's reasoning, highlighting the implications of this ruling on taxpayers facing similar circumstances.

Facts of the Case

SICPA India Private Limited (the "Petitioner"), a registered entity under the Goods and Services Tax (GST) in Sikkim, engaged in the manufacturing of security inks and solutions. In January 2019, the Petitioner resolved to discontinue its operations in Sikkim, subsequently divesting its machinery and manufacturing facilities between April 2019 and March 2020. Concurrently, the Petitioner appropriately reversed Input Tax Credit (ITC) as mandated by GST law during the asset sales. Upon cessation of business, the Petitioner possessed an accumulated unutilized ITC balance of INR 43,761,402/-.

The Petitioner sought a refund of this unutilized ITC pursuant to Sections 49(6) in accordance with section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act).

Section 49(6) states: *"The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54."*

Section 54 provides the procedural framework and conditions under which such refunds are granted. If a taxpayer has excess balance in either their electronic cash ledger or electronic credit ledger, it can be claimed as a refund. However, the refund is subject to conditions and procedures laid down in Section 54.

Section 54(1) states: *Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.*

In contrast, Section 54(3) specifically deals with the refund of unutilized Input Tax Credit (ITC) and applies only to registered persons. It permits a refund of accumulated ITC in two specific situations:

- (a) where zero-rated supplies are made without payment of tax, and
- (b) where credit accumulates due to an inverted duty structure (i.e., when the tax rate on inputs is higher than that on output supplies).

Although Section 54(3) is distinct in its scope, it is procedurally linked to Section 54(1) through Section 49(6). Therefore, both types of refunds are governed by the same procedural rules. In essence, Section 54(1) serves as the parent provision, while Section 54(3) functions as a specific application of refund relating solely to unutilized ITC. Accordingly, based on the above provisions, the refund application was rejected by the Assistant Commissioner, Central Goods and Services Tax (CGST) and Central Excise, Gangtok Division, Gangtok, Sikkim, through an order dated February 8, 2022.

Aggrieved by this rejection, the Petitioner lodged an appeal with the Additional Commissioner of CGST and Central Excise, Siliguri Appeals Commissionerate. The Appellate Authority, through an Order dated March 22, 2023, upheld the Assistant Commissioner's decision. The Appellate Authority reasoned that a combined reading of Sections 54(3) and 29(Cancellation or suspension of registration) of the CGST Act indicated that current regulations do not provide for the refund of unutilized ITC in cases of business discontinuation or closure. It was further clarified that Section 54(3) of the CGST Act restricts the allowance of unutilized ITC refunds to specific circumstances (as mentioned above), which do not include business discontinuation or closure. Consequently, the Petitioner filed a Writ Petition before the Sikkim High Court, challenging the impugned Order dated March 22, 2023.

Submissions of the Petitioner and the Department

The contentions of petitioner's were that the Section 54(3) carves out a specific exception by allowing the refund of unutilised Input Tax Credit (ITC) at the end of any tax period. However, such refunds of accumulated ITC are not granted automatically – they are strictly permitted only under the limited circumstances enumerated in clauses (i) and (ii) of Section 54(3). The mere availability of an exception cannot override or extinguish the vested right of the taxpayer to claim the Input Tax Credit (ITC) that has already accrued, along with the consequential right to seek a refund under Section 49(6) of the CGST Act. The First Appellate Authority (FAA) erred in not appreciating or examining the applicability of Section 49(6), thereby failing to consider a crucial statutory provision that safeguards the taxpayer's legitimate entitlement to refund of balances in the electronic ledgers. Various judicious precedents reliance placed in this regard including *Slovak India Trading Company Private Limited Vs Union of India [MANU/KA/0709/2006]* is a landmark decision by the Karnataka High Court, with important implications for the refund of unutilized CENVAT credit upon closure of business.

The Department argued that a business closure is not a statutorily recognized ground for the refund of unutilized Input Tax Credit (ITC) under the Goods and Services Tax (GST) regime. It was placed that Section 49(6) of the Central Goods and Services Tax Act, 2017 (CGST Act), while pertaining to balances in electronic ledgers, does not independently provide for refunds but rather predicates such refunds upon the conditions stipulated under Section 54 of the CGST Act. Consequently, the Department asserted that the Taxpayer's claim for a refund of unutilized ITC, arising from business cessation, lacks explicit support within the existing statutory framework and the relevance of section 29(5) of the CGST Act 2017 provides for reversal of ITC upon cancellation of registration, but not the refund.

Ruling of the Court

The core dispute emanates from the interpretation of Section 49(6) of the Central Goods and Services Tax Act, 2017 (CGST Act). This section stipulates that any unutilized Input Tax Credit (ITC) balance remaining in the electronic credit ledger, after the payment of tax, interest, penalty, or fees, shall be eligible for refund in accordance with the provisions of Section 54 of the CGST Act.

The Sikkim High court relying on **Slovak India Trading Company Private Limited Vs Union of India [MANU/KA/0709/2006]** has observed that, no express prohibition exists under Section 49(6) read with Section 54 and Section 54(3) of the CGST Act, 2017, precluding a claim for refund of Input Tax Credit upon the closure of a business unit. Although Section 54(3) enumerates limited circumstances for such refunds, the statute also does not provide for retention of tax without the authority of law.

Considering the above, the Sikkim High Court held that the Petitioners are entitled to the refund of unutilized ITC claimed by them and it is ordered so.

Our Observations

- The petitioner did not provide an explanation for the accumulation of Input Tax Credit (ITC). At the stage of initial scrutiny, this lack of clarity regarding the reasons for such accumulation should have been addressed.
- **Refund of GST particularly in respect of unutilised Input Tax Credit (ITC), is a vested right of the taxpayer when such credit has lawfully accrued in accordance with the provisions of the CGST Act.** This right is not a matter of discretion but flows directly from the statutory framework, particularly under Sections 49(6) and 54. The law clearly provides that any balance remaining in the electronic credit or cash ledger, after discharge of tax liabilities, may be claimed as a refund subject to prescribed conditions.
- In the decision of *Slovak India Trading Co. 2006 (201) ELT 559 (Kar.)* allowing the refund of unutilised ITC in the event of business closure, it was observed that the absence of an express statutory prohibition entitles taxpayers to claim a refund under Section 49(6) read with Section 54 of the CGST Act. The High Court's ruling on this matter which was maintained by the Hon'ble SC *2008 (223) E.L.T. A170 (S.C¹)*, primarily relies on the principles established in *Slovak India Trading Co. vs Union of India* which was held by the court that refund of unutilized CENVAT credit may be allowed to a manufacturer in cases of closure of business even in the absence of specific provisions for refund in respective act. It was observed that Rule 5 of the CENVAT Credit Rules, 2004, which dealt with refunds, did not impose any restrictive condition for refund in cases where the credit remained unutilized for reasons other than exports. Nevertheless, under **GST regime**, to overcome such precedent, an explicit restriction vide **section 54(3)** is provided to **restrict** the circumstances under which **refund of accumulated ITC** is permitted.
- Interestingly, the Hon'ble HC of Bombay in the matter of Gauri Plasticulture (P) Ltd 2019 (30) GSTL 224 (Bom.) has categorically held that the rationale of *Slovak India* maintained by Hon'ble SC does not forms to be the law of land under Article 141 of the Constitution as the question of law was still kept open. Further, it also held that,

¹ The SLP of revenue was dismissed based on the concession of fact that the that the views of the Tribunals to the aforesaid effect have not been appealed against by the Revenue/Union of India.

“29. We do not think that by taking assistance of this provision, we will be able to hold as contended by Mr. Patil that the Cenvat credit can be refunded even in relation to those inputs which have not been used in the manufacture of the final product or the exported goods. We are called upon to read something in the substantive rule and which is totally absent therein. When Rule 5 follows Rule 4, which is titled as “Conditions for Allowing Cenvat credit”, then, we must understand the scheme in such manner as would make the law workable and consistent. **Refund of Cenvat credit in terms of Rule 5 is permissible only when there is a clearance of a final product of a manufacturer or of an intermediate product for export without payment of duty under a bond or letter of undertaking of a service provider, who provides an output service which is exported without payment of tax and by applying the format which is carved out** with effect from 1st April, 2012 by the substituted Rule 5.”

- The Supreme court ruling in **Union of India and Ors. Vs. VKC Footsteps India Pvt. Ltd. [2021 (52) GSTL 513 (SC)]** was not cited and discussed before the High Court. In this decision, the Apex Court categorically held that: “61.....it has been urged that Section 54(3) constitutes one homogenous class of registered persons who have unutilized ITC. The fallacy of the argument is in the hypothesis that unutilized ITC cannot be unbundled for the purpose of fiscal legislation. Accumulated ITC may result due to a variety of circumstances, some of which may while others may not lie within the volition of a registered person..... 62.....Parliament while enacting sub-section (3) of Section 54 has stipulated that no refund of unutilized ITC shall be allowed other than in the two specific situations envisaged in clauses (i) and (ii) of the first proviso. Whereas clause (i) has dealt with zero rated supplies made without the payment of tax, clause (ii), which governs domestic supplies, has envisaged a more restricted ambit where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies.” This establishes that **Section 54(3)** includes a **legislative restriction**, and **this distinction is not arbitrary or unconstitutional**, unlike the context in the *Slovak* case under the **CENVAT regime**, which lacked such a specific statutory restriction.
- In the landmark Supreme Court ruling in **Mafatlal Industries Ltd. v. Union of India 1997 (89) ELT 247 (S.C.)** laid down a fundamental principle: “*Refunds of tax can be claimed only in accordance with the statutory scheme. There is no inherent right to refund outside of what the legislature expressly provides. Only on unconstitutional levy the right to claim refund arises outside the provisions of such Act.*” This decision firmly established that all refund claims are creatures of statute and must strictly conform to the conditions, limitations, and procedures prescribed under the law. This reflects a **deliberate legislative shift under GST** from the relatively flexible **CENVAT regime** to a **strictly codified refund mechanism** under **CGST**, aligning with the **Mafatlal doctrine**.

Conclusion

Hence, the decision of Sikkim High court and its reason creates interpretive dispute, as it broadens refund eligibility beyond what the law in its literal words express. It is settled principle that taxing statute must be interpreted in the light of what is clearly expressed, one cannot imply anything which is not expressed; one cannot import provisions in the statutes so as to supply any assumed deficiency.

Taxpayers may envision relief vide this judgment and venture into the benefit of this judgment after analysing their facts and circumstances, but its long-term influence is debatable. Absent of legislative clarification or a apex court's ruling, this decision could

trigger additional disputes, particularly when tax authorities oppose refund claims. Businesses should exercise prudence, understanding that the GST framework, as interpreted by the Supreme Court, fiscal does not provide an inherent right to claim refund beyond the provisions of law unless it is an unconstitutional levy. Therefore, till a clear and enforceable precedent governs this area or there is an appropriate legislative intervention, taxpayers will defy with such disputes.

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