



**ADV. VIJAY GUPTA**

**MOB. 9810663833**

**R. No. D/325/1985**



**ADV. DEV RAJ SHARMA**

**MOB. 9811387613**

**R. No. D/925R/1998**

**TOPIC:** Claim of GST Refund of Unutilized ITC in case of closure of business.

**CASE LAW:** SICPA India Pvt. Ltd. v. Union of India: 2024 SCC online Sikk-12 (HC)

**FACTS:** The company had ceased its operations in the state of Sikkim, as we know GST requires state-based registration and credit of one state can't be set off against that of other state, hence post-closure of operations, the company applied for a refund of unutilized ITC amounting to approximately ₹4.37 crore, which was reflected in the electronic credit ledger of the company in its GST portal. The refund claim was submitted under Section 54 of the central goods and services tax act, 2017 or CGST Act. But the GST authorities rejected its claim, they argued that Section 54(3) of the CGST act permits refund of ITC only in cases of zero-rated supplies i.e. exports and supplies to SEZ or an inverted duty structure.

**JUDGMENT:** The Court noted that there is no express prohibition in the CGST act against the refund of ITC in the event of closure or caseation of business. In this case, Section 54(3) limits the scenarios in which unutilized ITC may be refunded, this must be read in harmony with Section 49(6). Hence, in that case Section 54(1) allows refund of "any tax and interest, if any, paid by him or any other amount paid by him", which is not confined to Section 54(3) alone.

The Court emphasized a basic principle of constitutional GST act, which states that, "**the State cannot retain tax without the authority of law**" as stated in the case of **CCE v. Hindustan Zinc Ltd., (2015) 5 SCC 101**. It further stated that, in case the ITC remains in the input tax credit ledger of a taxpayer who has ceased operations, and there is no scope of any future utilization of credit, then retaining such credit would be unjust and unconstitutional.

**RELEVANT PROVISION: Section 49(6) of the CGST Act:** The balance in the electronic credit ledger may be refunded in accordance with the provisions of section 54.” This section establishes the eligibility of a taxpayer to seek a refund of the input tax credit balance, being reflected in credit ledger subject to Section 54.

This judgment of High court highlights that a purposive and harmonious interpretation of the GST law is essential, which means the main purpose of ITC is to prevent tax-on-tax and it was not introduced to create unnecessary financial burden on businesses, especially those that have shut down due to any reasons.

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VIJAY GUPTA, ADV