LEGAL FLASH ALERT

Hiregange & Associates
Chartered Accountants

03.08.2020

1. GST: Allowing input services for Inverted Duty Structure refund - enabling cash refund.

Hon High Court of Gujarat, in the case of VKC Footsteps India Pvt Ltd., held that, the intent of the Government by framing the rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018-GST dated 31.12.2018 to deny the registered person refund of tax paid on "input services' as part of refund of unutilized input tax credit.

Further, Explanation (a) to Rule 89(5) which denies the refund of "unutilized input tax" paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017.

In view of the above, Explanation (a) to the Rule 89(5) is read down to the extent that Explanation (a) which defines "Net Input Tax Credit' means "input tax credit on input" only. The said explanation (a)of Rule 89(5) of the CGST Rules is held to be contrary to the provisions of Section 54(3) of the CGST Act. In fact, the Net ITC should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act.

Our Comments

It is a welcome judgement by Hon`ble High Court of Gujarat. Taxpayers who were claiming refund under inverted duty structure were denied refund of ITC on input services by way issue of retrospective Notification No. 21/2018-CT dated 18.04.2018. Now the judgement quashing such restrictive rule would enable the taxpayers to claim refund on even input services.

(VKC FOOTSTEPS INDIA PVT LTD V/s UNION OF INDIA AND 2 OTHER(S) 2020-TIOL-1273-HC -AHM-GST dated 24th July, 2020)

2. GST: Delayed issue of Deficiency Memo will not hold good

Sub rule (2) and (3) of the CGST Rules 90 provides that within 15 days from the date of filing of the refund application, the department has to either communicate discrepancy/ deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02.

In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of the GST Act.

Recently, the Hon High Court of Delhi in the case of Jain International held that admittedly, acknowledgment and deficiency memo has not been issued in respect of refund application within the stipulated time, the refund application would be presumed to be complete in all respects in accordance with sub-rule (2), (3) and (4) of Rule 89 of GST Rules.

Our Comments

The negligence of refund sanctioning authority has resulted in payment of interest to the taxpayers. Justice prevailed for not granting legitimate refunds on time. Revenue officers who claims to be safeguarding interest of revenue are causing loss of revenue due to their negligence.

(Jian International vs Commissioner of Delhi GST, 2020 (7) TMI 611- Delhi Hight Court)

3. Service Tax: Foreclosure charges for pre mature closing of loans are not leviable to service tax

The Larger Bench of Hon'ble Tribunal settles the difference of opinion in two earlier judgments of Housing and Dev. Corporation Limited and Magma Fincorp Limited and holds that foreclosure charges for pre mature termination of the loans does not fall within the ambit of 'services', and hence not liable to service tax.

The Tribunal observes that consideration for a services means flow of money from the promise at the desire of promisor, however in a breach of contract, money does not flow at the desire of promisor (banks), and therefore does not satisfy the consideration test under Section 2 (d) of the Contract Act.

Foreclosure charges are for disruption of services and not for provision of lending services. Fore-closure charges are not alternate mode of performance of in as much as alternate performance still calls for performance while foreclosure is repudiation. Merely because damage clause is there, it does not mean it gives option of violation to the party.

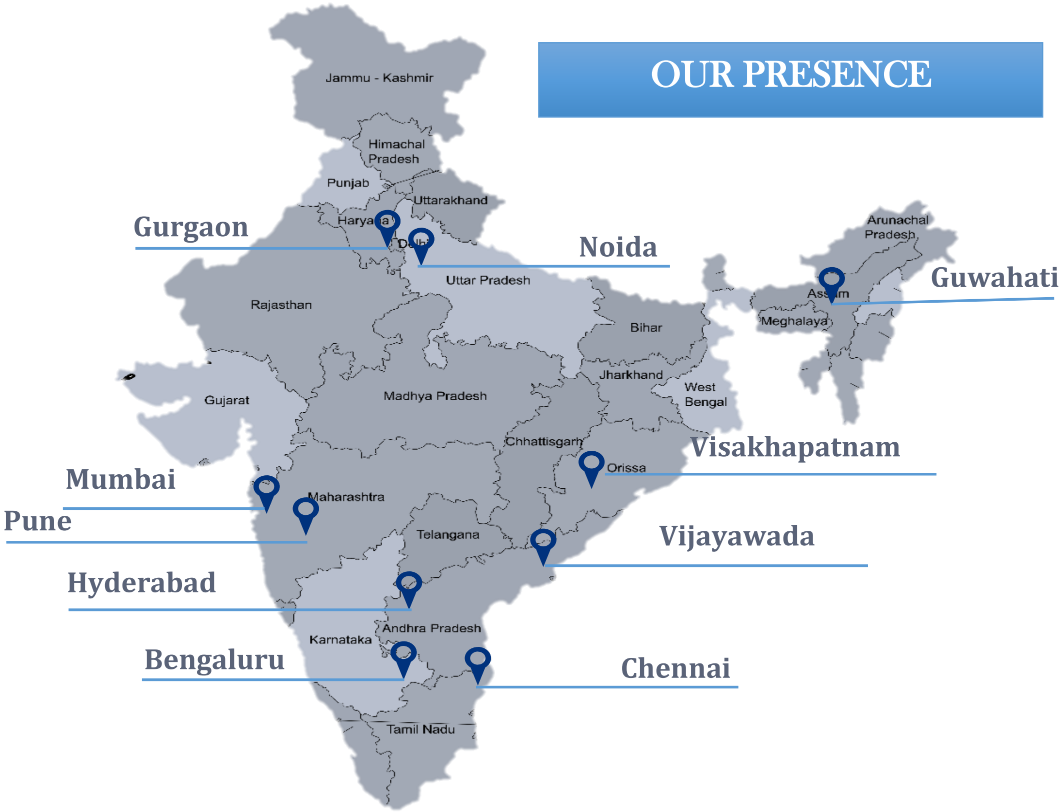
Our Comments

The Hon'ble Tribunal correctly traces the nature of compensation for breach/ repudiation while upholding that these damages results in non-provision. The cardinal rule of provision of services that something should be done is explicitly brought by the Tribunal.

This judgments sets the tone in which the future courts are accepted to deal with the damages of various types. In fact the ratio of the judgment also gives goods merits for the persons facing similar allegations under GST also.

(COMMISSIONER OF SERVICE TAX VS REOCO HOME FINANCE LTD 2020-TIOL-1039)

OUR PRESENCE



Gurugram (NCR)
509, Vipul Trade Centre, Sohna
Road, Sector 48,
Gurugram – 122 009.
Tel:+918510950400
ashish@hiregange.com

Mumbai
No.409, Filix, Opp. Asian Paints, LBS
Marg, Bhandup West,
Mumbai – 400 078.
Tel:+919867307715
vasant.bhat@hiregange.com

Pune
Rajyog Creations Apartment,
Flat No. 5, IV Floor, Anand Park,
Above HDFC Bank, Aundh,
Pune - 411 007.
Tel:+917680000205
ravikumar@hiregange.com

Hyderabad
4th Floor, Anushka Pride,
Road Number 12, Banjara
Hills, Hyderabad,
Telangana – 500 034.
Tel:+919908113787
sudhir@hiregange.com

Bengaluru (HO)
1010, 2nd floor, 26 th Main,
(Above Corporation Bank)
4th T Block, Jayanagar,
Bengaluru - 560 041.
Tel:+918041210703
madhukar@hiregange.com

www.hiregange.com

Noida (UP)
Skybox Business Centre, Office No.
B2 Basement C-22, C Block, Sector
65, Noida (UP).
Tel:+918510950400
ashish@hiregange.com

Guwahati
2A, 2nd Floor, Royal Silver Tower,
Ulubari, Guwahati- 781 007.
Tel:+917670087000
mannu@hiregange.com

Vishakhapatnam
D.No 8-1-112, Premier House, 2nd
Floor, Vidyanagar, Opp.III Town
Police Station, Pedda Waltair,
Visakhapatnam-530017
Tel:+918916009235
anil@hirengange.com

Vijayawada
D. No. 40-26/1-8, Sri Ram Nagar,
Mohiddin Estates,
Labbipet, Vijayawada – 520010
Tel:+9199000 68920
rajeshmaddi@hirengange.com

Chennai
Fagun Chambers,
Third Floor, No.26,Ethiraj Salai,
Egmore, Chennai – 600 008.
Tel:+919962508380
vikram@hiregange.com