

Higher GST charged by the Vendor: ITC as well as refund available to the recipient

By: Team Tax Connect

Consider the situation where the input product was chargeable only at the rate of 5% and assessee supplier mistakenly charged higher rate of 18% GST on input for final product, which is chargeable to lower rate of GST of 5%. Inverted duty refund was denied on the ground that –

1. Assessee should also have collected 18% GST, at par with the rate of tax paid by the supplier for the input product.
2. Since the input product is chargeable only at the rate of 5%, however, it has been wrongly made at the rate of 18% by the vendor of the assessee. Therefore, the assessee cannot invoke Section 54(3) of CGST Act.

It was held in the case of THE COMMERCIAL TAX OFFICER-GD-III Vs M/s SUZLON ENERGY LIMITED [2023-VIL-810-MAD], that in terms of Section 54(3)(ii) of the CGST Act, 2017 if the rate of tax on input charged and paid is actually higher than the rate of tax on output, assessee can claim the refund. Accordingly, the assessee was considered entitled for refund in terms of the provision of the Section 54(3)(ii) of the Act and no merit was found in the contention of the Dept. that since the supplier had wrongly paid 18% IGST on the input, the assessee-respondent should have paid 18% duty on output. It was ordered that the Dept. cannot insist or advise the assessee to pay excess rate of duty than the duty prescribed in the law.

The judgement of the Hon'ble Division Bench of this Court in M/s. Modular Auto Limited vs. Commissioner of Central Excise, Chennai also supports the case where it has been held as follows:

"16. In the instant cases, it is not in dispute that whatever the portion of Service Tax component which was collected from the assesses by BIL was only the amount on which the CENVAT credit has been claimed by the assesses. Therefore, unless and until the assessment made on BIL was revised, which obviously could have been done, at this juncture, on account of the expiry of the period of limitation, the interpretation given by the Commissioner (Appeals) as well as the Tribunal with regard to the nature of invoice raised on the assesses is unsustainable. Furthermore, we find that the reason assigned by the Tribunal in paragraph 6.2 stating that the activity performed by the BIL for monitoring of production activities of the assesses cannot by any stretch of imagination be considered as an input service or in relation to the manufacture of final products of the assesses, is a statement, which is unsubstantiated by any record. At best, it can be taken as a personal opinion of the Tribunal, which could not have been a reason to reverse the credit availed by the assesses.

17. What is important to note that the assesses specific case is that there has been a service by BIL to the assesseees in the matter of retrieval of data and service tax has been collected and paid by BIL and the correctness, legality or otherwise of the tax paid by the subject providers cannot be called in question by the Central Excise Officer having the jurisdiction over the assesses availing the credit. This question has not been considered. If the impugned orders are allowed to stand, then it would in effect mean that the jurisdictional assessment officers of the assesses are sitting in the judgment over the assessment made on BIL, over which, they have no jurisdiction."

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person: Priyanka Vishwakarma

Email: priyanka.vishwakarma@taxconnect.co.in

BENGALURU

951, 24th Main Road, J P Nagar, Bengaluru, Karnataka – 560078.

Contact Person: Anil Pal

Email: anil.pal@taxconnectdelhi.co.in

DELHI (NCR)

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Poonam Khemka

Email: poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata - 700001

Contact Person: Tithly Roy

Email: tithly.roy@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh

Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Rohit Sharma

Email: rohit.sharma@taxconnect.co.in

Disclaimer:

This publication is for private circulation only. Views expressed herein are of the Tax Connect team and are based on the information, explanation, and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared based on published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.