THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 10th June, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.54 of 2023

Petitioners : SICPA India Private Limited and Another

versus

Respondents : Union of India and Others

Application under Articles 226 and 227
of the Constitution of India

Appearance

Ms. Ankit Kanodia and Mr. Passang Tshering Bhutia, Advocates for the Petitioners.

Ms. Sangita Pradhan, Deputy Solicitor General of India for the Respondents.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Assistant Commissioner, Central Goods and Services Tax (CGST) and Central Excise, Gangtok Division, Gangtok, Sikkim, vide Order dated 08-02-2022, rejected the refund application filed by the Petitioners, claiming unutilized Input Tax Credit (ITC), lying in Electronic Credit Ledger amounting to ₹ 4,37,61,402/- (Rupees four crores, thirty seven lakhs, sixty one thousand, four hundred and two) only, upon discontinuance of business.

(i) The Petitioners were before the Additional Commissioner of CGST and Central Excise, Siliguri Appeals Commissionerate, assailing the same.

2. The Appellate Authority, vide Order dated 22-03-2023, upheld the Order dated 08-02-2022, of the Assistant Commissioner (*supra*). It was reasoned that on a combined reading of Sections

54(3) and 29 of the Central Goods and Services Tax Act, 2017 (hereinafter, the "CGST Act"), it is evident that the current regulations do not provide for refund of unutilized ITC in case of discontinuation or closure of business. That, it is evidently clear from the provisions mandated in Section 54(3) of the CGST Act which is restricted to circumstances under which the unutilized ITC is allowed for refund, discontinuation/closure is not one of them.

3. In the instant Petition, the prayers put forth *inter alia* are to quash, delete and set aside the impugned Order dated 22-03-2023, passed by the Respondent No.3 rejecting the claim for refund of unutilized ITC, on closure of its business. Further, to order that, proviso to Section 54(3) of the CGST Act is not applicable in respect of refund of unutilized balance of ITC under Section 49(6) of the CGST Act.

4. The Petitioners case summarized is that, it was engaged in the business of manufacturing security inks and solutions with GST registration in the State of Sikkim. The manufacturing units of the Petitioners were in full operation in the pre-GST regime. The Petitioners in January, 2019, decided to discontinue its operation in the State of Sikkim, pursuant to which the Petitioners sold all the machineries and manufacturing facilities from April, 2019 to March, 2020. At the time of sale of assets the Petitioners had appropriately reversed the ITC as per the applicable provisions under the GST law. The Petitioners had accumulated balance of ITC amounting to ₹ 4,37,61,402/- (Rupees four crores, thirty seven lakhs, sixty one thousand, four hundred and two) only, on account of the closure of its business and accordingly claimed refund of such unutilized ITC balance, in terms of Section 49(6) of the CGST Act, which entails that the balance in Electronic Credit

Ledger after payment of tax, penalty, fee or in every amount payable may be refunded in accordance with the provisions of Section 54 of the CGST Act, which was refused as reflected *supra* and has given rise to this Petition.

(i) Learned Counsel for the Petitioners submitted that Section 49(6) of the CGST Act provides for refund of the balance in Electronic Cash Ledger and Electronic Credit Ledger after payment of tax in accordance with the provisions of Section 54 of the CGST Act which lays down the procedure for refund. Section 54(3) of the CGST Act is the exception carved out in the provision, which requires that a registered company may claim refund of unutilized ITC at the end of any tax period, provided that, no refund of unutilized ITC shall be allowed except as provided in Section 54(3)(i) and (ii) of the CGST Act. It is contended that the said exemption cannot take away the vested right of ITC accrued to the Petitioners and refund thereof under Section 49(6) of the CGST Act. The Appellate Authority has failed to discuss as to why the provisions of Section 49(6) is not applicable in the Petitioners case. To buttress the submissions, reliance was placed on ***Shabnam Petrofils Pvt. Ltd.*** vs. ***Union of India***[1], ***The Union of India*** vs. ***Slovak India Trading Company Private Limited***[2] and ***Eicher Motors Ltd. and Another*** vs. ***Union of India and Others***[3]***.***

5. *Per contra,* Learned Deputy Solicitor General of India for the Respondents contesting the claims argued that, closure of business is not recognized under the statute as an eligible ground for refund and Section 49(6) of the CGST Act does not independently provide for refund but is dependent on the

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[1] 2019 SCC OnLine Guj 6910
[2] MANU/KA/0709/2006
[3] (1999) 2 SCC 361

conditions stipulated under Section 54 of the CGST Act. Moreover, Section 29(5) of the CGST Act provides for reversal of ITC upon cancellation of registration but not a refund. Besides, an effective alternative statutory remedy exists under Section 112 of the CGST Act which has not been exhausted by the Petitioners. That, the impugned Order being reasoned, proportionate and as per the statutory framework is not erroneous. The Petitioners attempt to seek refund of unutilized ITC on account of business closure is devoid of support in the statute. Consequently, the Petition deserves a dismissal.

6. The question that falls for determination in the instant dispute is whether the refund of ITC under Section 49(6) of the CGST Act is only limited to companies carved out under Section 54(3) of the CGST Act or does every registered company have a right to refund of ITC in case of discontinuance of business?

7. The parties were heard at length, all averments, documents on record perused as also the impugned Order.

(i) In the first instance, the argument pertaining to non-exhaustion of statutory remedy is taken up. Apposite reference is made to the decision of the Supreme Court in ***State of U.P. and Others*** vs. ***M/s. Indian Hume Pipe Co. Ltd.***[4], wherein the Court was dealing with an Appeal, which raised a short question of law i.e., whether or not hume pipes, which were the subject matter of the case amounted to "sanitary fittings" as contemplated by a Government notification, under the U. P. Sales Tax Act, 1948. In opposition of the Petition, it was argued *inter alia* therein that, the Court ought not to have entertained the Writ Petition and should have allowed the assessee to avail of the remedy provided to him

[4] (1977) 2 SCC 724

under the U. P. Sales Tax Act, 1948, particularly when a question of fact had to be determined. The Supreme Court observed that there is no rule of law that the High Court should not entertain a Writ Petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of the Supreme Court not to interfere with the exercise of discretion by the High Court. The High Court in the said matter had entertained the Writ Petition and decided the question of law arising in it which the Supreme Court opined was correct.

(ii) More recently, in ***M/s. Godrej Sara Lee Ltd.*** vs. ***Excise and Taxation Officer-cum-Assessing Authority and Others***[5], the Supreme Court yet again observed that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and observed as follows;

> **"4.** …….. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be

[5] AIR 2023 Supreme Court 781

> remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law……"

(iii) It is evident in the instant matter no question of fact requires determination and the matter was filed before this Court seeking its interference for the reasons made out in the prayers as already revealed (*supra*). The exercise of plenary powers by this Court as well as exercise of discretion in no manner is limited as already pointed out by the Supreme Court in ***M/s. Godrej Sara Lee Ltd.*** (*supra*). This thereby lends a quietus to the argument raised by Learned Deputy Solicitor General.

8. To comprehend the matter regarding the refund claimed, it is essential to consider the provisions cited hereinabove. Section 49(6) of the CGST Act provides as follows;

> **"49. Payment of tax, interest, penalty and other amounts.—**……
> (6) 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.
> ……"

(i) Section 49 of the CGST lays down the method of payment of tax, interest, penalty and other amounts. Section 49(6) of the CGST Act extracted hereinabove deals with how the balance after payment of tax, interest, penalty, fee, etc., is to be dealt with. It lays downs that the refund of such balance will be made in accordance with the provisions of Section 54 of the CGST Act. Section 54 of the CGST Act provides as follows;

> **"54. Refund of tax.—**(1) 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:
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> Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.**"**

(ii) Section 54(3) of the CGST Act reads as follows;

> **"54.** ……..……..……..……
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> (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:
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> Provided that no refund of unutilized input tax credit shall be allowed in cases other than**—**
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> (i) zero rated supplies made without payment of tax;
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> (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:
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> Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:
>
> Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.**"**

(iii) The Appellate forum in the impugned Order dated 22-03-2023, was of the view that Section 54(3) of the CGST Act was applicable only to the two circumstances mentioned in the said Section and would not extend to refund of unutilized input tax on account of closure of business.

(iv) On this facet, we may relevantly consider the decision in ***Slovak India Trading Company Private Limited*** (*supra*) where the High Court of Karnataka, at Bangalore, was considering;

(a) Whether under the facts and circumstances of the case the Tribunal is right in ordering for refund, even if there is no provision in Rule 5 of CENVAT Credit Rules, 2002, to refund the unutilized Credit?; (b) Whether under the facts and circumstances of the case the Tribunal is right in ordering refund even if there is no production and there is no clearance of finished goods? ; and (c) Whether under the facts and circumstances of the case the Tribunal is right in holding that respondent is entitle for refund even if it goes out of MODVAT Scheme or Company is closed. The Court considered Rule 5 of CENVAT Credit Rules, which deals with Refund of CENVAT Credit and observed as follows;

> **"5.** There is no express prohibition in terms of Rule 5. Even otherwise, it refers to a manufacturer as we see from Rule 5 itself. Admittedly, in the case on hand, there is no manufacture in the light of closure of the Company. Therefore, Rule 5 is not available for the purpose of rejection as rightly ruled by the Tribunal. The Tribunal has noticed various case laws in which similar claims were allowed. The Tribunal, in our view, is fully justified in ordering refund particularly in the light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme. In these circumstances, we answer all the three questions as framed in para 17 against the Revenue and in favour of the assessee.**"

9. As can be seen in ***Slovak India Trading Company Private Limited*** (*supra*) the company had applied for refund for unutilized input credit which was available, at the time of closure of unit. The Customs, Excise And Service Tax Appellate Tribunal (CESTAT) allowed the refund stating *inter alia* that it cannot be rejected on closure of the company. The High Court agreed and opined that there is no express prohibition in Rule 5 of the CENVAT Credit Rules, 2002.

(i) Similarly, in the instant matter there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund of ITC on closure of unit.

Although, Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the statute also does not provide for retention of tax without the authority of law. Consequently, I am of the considered view that the Petitioners are entitled to the the refund of unutilized ITC claimed by them and it is ordered so.

10. The impugned Order dated 22-03-2023, in Appeal File No.GAPPL/ADC/GSTP/1208/SLG-Appeal, of the Appellate Authority is set aside.

11. Writ Petition is accordingly allowed and disposed of.

(Meenakshi Madan Rai)
Judge
10-06-2025

Approved for reporting : **Yes**

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