

## GST ARTICLE

### Refund of ITC on closure of Business; The debate rekindles

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#### 1. Introduction

The Goods and Services Tax (GST) was introduced as a unified, transparent tax regime to simplify compliance and enhance the ease of doing business. However, for businesses undergoing closure, the experience is often far from simple-particularly when it comes to claiming refunds. Whether it involves unutilized input tax credit, balances in electronic cash ledgers, or transitional credits, the refund process is riddled with legal uncertainties, procedural bottlenecks, and interpretative rigidity. Winding up a business under GST has thus become a complex and prolonged exercise.

However, some light at the end of the tunnel comes in the form of the recent judgment by the Sikkim High Court in *SICPA India Private Limited and Another vs Union of India and Others* ([2025-VIL-570-SIK](#)), which offers a much-needed judicial interpretation favouring the rights of businesses to claim refunds even post-closure-marking a significant step toward restoring the core promise of GST.

#### 2. Facts

The Petitioner, engaged in the manufacture of security inks and solutions, decided to discontinue its business operations in 2019. All machinery was sold, and appropriate reversal of ITC was undertaken. Despite this, a substantial balance remained in the electronic credit ledger. A refund of this unutilized ITC,

amounting to Rs. 4,37,61,402/-, was sought under Section 49(6) of the CGST Act.

The Assistant Commissioner, CGST, rejected the refund claim. The first appellate authority affirmed the rejection, stating that under a combined reading of [Sections 54\(3\)](#) and [29](#) of the CGST Act, refunds on account of business closure are not statutorily permissible.

Section 54(3) of the CGST Act restricts refund of unutilized ITC to two situations-zero-rated supplies and inverted duty structure-excluding business discontinuance.

Aggrieved by dual rejections, the Petitioner approached the Sikkim High Court under Article 226 of the Constitution.

### **3. Case of the Petitioner**

The Petitioner argued that:

- [Section 49\(6\)](#) permits refund of balances in the electronic credit and cash ledgers, subject to the refund procedure under Section 54.
- While Section 54(3) is a specific carve-out, it cannot override or eliminate a vested right to refund arising from accumulated credit under Section 49(6).
- Heavy reliance was placed on the pre-GST judgment of the Karnataka High Court in *Union of India v. Slovak India Trading Co. Pvt. Ltd.* ([2006-VIL-53-KAR-CE](#)), affirmed by the Supreme Court when its SLP was dismissed [[2007-VIL-43-SC-CE](#)].

### **4. Government's Stand**

The Union of India contended:

- Business closure is not recognized under the CGST Act as an eligible ground for refund.
- Section 49(6) merely directs refund subject to Section 54; it does not independently confer a right.
- Section 29(5) provides for reversal of credit upon cancellation of registration-not for its refund.

Thus, the claim lacked statutory backing.

## 5. Question of Law Before the Court

**Whether refund of ITC under Section 49(6) of the CGST Act is confined to situations enumerated in Section 54(3), or whether every registered person is entitled to such refund upon business discontinuance?**

## 6. Discussion and Findings

The High Court analysed:

- Section 49 outlines payment mechanisms; sub-section (6) provides that the balance remaining post-tax payment can be refunded *in accordance with Section 54*.
- The appellate authorities interpreted Section 54(3) narrowly, allowing refund only for the two situations explicitly provided.

However, the High Court departed from this restrictive view by relying heavily on *Slovak India Trading Co. Pvt. Ltd.* In that case, the Karnataka High Court had held that refund cannot be denied merely on account of business closure. The Tribunal had allowed the refund, noting no express prohibition in the rules-and the High Court upheld this reasoning.

Applying this logic, the Sikkim High Court found that:

- There is **no express prohibition** in Section 49(6) or Section 54(3) against claiming refund of unutilized ITC due to closure.
- Statutory silence cannot be construed to justify retention of tax without authority of law.

Hence, the Court directed the refund to be granted.

## 7. A Word of Caution

While this is a progressive interpretation, certain caveats must be noted.

- The Sikkim High Court's reasoning leans heavily on *Slovak India*, also followed by the Bombay High Court in *Commissioner of C. Ex., Nasik v. Jain Vanguard Polybutlene Ltd.* ([2010-VIL-134-BOM-CE](#)), where the Supreme Court dismissed the SLP but *left the question of law open* [[2011-VIL-39-SC-CE](#)].
- Subsequently, in *Gauri Plasticulture Pvt. Ltd. v. Commissioner of Central Excise, Indore* ([2006-VIL-38-CESTAT-MUM-CE-LB](#)), a larger bench of the Bombay High Court distinguished *Slovak*, holding that refund of CENVAT credit is not allowed merely because credit remained unutilized on closure-emphasizing that credit must be *used*.

Under GST, the Supreme Court in *Union of India & Ors. v. VKC Footsteps India Pvt. Ltd.* ([2021-VIL-81-SC](#)) held:

*"Section 54(3) stipulates that **no refund of unutilized ITC shall be allowed** except under the two specific conditions in clauses (i) and (ii)."*

Whether this observation is binding ratio or obiter remains debatable, but it raises caution flags about overextending judicial interpretations.

Notably, the Sikkim High Court judgment does not clarify whether *Gauri Plasticulture* or *VKC Footsteps* were brought to its attention.

## 8. Conclusion

The Sikkim High Court's judgment in *SICPA India* breathes fresh life into a long-standing debate on the right to claim refunds upon business closure under GST. By recognising that Section 49(6) does not expressly bar such refunds, the Court takes a taxpayer-centric and purposive approach.

However, this relief comes amidst a fragmented judicial landscape. While *Slovak India* and *Jain Vanguard* support the petitioner's stance, the larger bench ruling in *Gauri Plasticulture* and the Supreme Court's observations in *VKC Footsteps* signal judicial reluctance to broaden refund entitlements beyond express statutory limits.

The issue, therefore, remains far from settled. Until there is authoritative pronouncement by the Supreme Court or legislative clarification, refund of unutilized ITC on closure of business will remain a matter of legal interpretation and litigation risk.

That said, this decision is a significant step forward. It rekindles the idea that GST, as a value-added tax, should not become a cost to business when no further taxable activity remains. It is hoped that future jurisprudence continues to evolve in a manner that balances statutory precision with economic and constitutional fairness.

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