THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.A. No. 02 of 2025

1. Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110001.

2. The Commissioner of Central Goods and Services Tax
& Central Excise,
GST Bhawan,
Haren Mukherjee Road,
Hakimpara,
Siliguri, West Bengal – 734001.

3. The Additional Commissioner of Central Goods and
Services Tax & Central Excise,
Siliguri Appeal Commissionerate,
Siliguri GST Bhawan,
Haren Mukherjee Road,
Hakimpara, Siliguri, West
Bengal – 734001.

4. The Assistant Commissioner,
Central Goods and Services Tax & Central Excise,
Gangtok Division,
Indira Bye Pass,
Near District Court,
Sichey, Gangtok,
East Sikkim – 737101. .....Appellants

versus

1. SICPA India Private Limited, 308-312
Mercantile House, 15 Kasturba Gandhi Marg,
New Delhi – 110001.
Through its Authorized Representative.

2. Mr. Sachin Jindal – Finance Controller/Company Secretary,
SICPA India Private Limited,
308-312 Mercantile House,
15 Kasturba Gandhi Marg,
New Delhi – 110001. ..... Respondents

Appeal under Rule 148 of the Sikkim High Court (Practice and Procedure) Rules, 2011

[*against the impugned judgment dated 10th June, 2025 passed by the learned Single Judge in W.P.(C) No. 54 of 2023 in the matter of SICPA India Private Limited and Another vs. Union of India and Others*]

Appearance:

Ms Sangita Pradhan, Deputy Solicitor General of India with Ms Natasha Pradhan and Ms Sittal Balmiki, Advocates for the Appellants.

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

J U D G M E N T

(5th September, 2025)

Bhaskar Raj Pradhan, J.

The writ appeal preferred by the Union of India desires the interpretation of section 49(6) and section 54(3) of the Central Goods and Services Tax Act, 2017 (for short, the CGST Act) by the Division Bench. The interpretation of the provisions arises as the respondent - SICPA India Private Ltd. (for short, SICPA) insists that the unutilised Input Tax Credit (for short, ITC) is required to be refunded by the appellant under section 49(6) of the CGST Act. SICPA succeeded before

the writ Court and therefore, the Union of India has preferred this appeal.

Submissions

2. The learned Deputy Solicitor General of India submits that the CGST Act and the relevant provisions for refund of ITC has already been examined and decided by the Hon'ble Supreme Court in ***Union of India vs. VKC Footsteps (India) (P) Ltd***.[1] and the present writ appeal may be disposed of as the interpretation rendered therein is binding. She also relied upon the judgment of the Division Bench of Tripura High Court in ***M/s Sterlite Power Transmission Limited vs. Additional Commissioner, CGST and CX and others***[2], in which it was held that in case of accumulated ITC remaining in the credit ledger of the tax payer, refund is not made out under section 54(3) of the CGST Act as none of the enumerated conditions are made out.

3. The learned Counsel for SICPA submits that in a writ appeal, the scope of interference is very limited and narrow relying upon the judgment of the Hon'ble Supreme Court in ***Airports Authority of India vs. Pradip Kumar Banerjee***[3]. He contends that the refund claim was filed under section 49(6) of the CGST Act but as both the Assistant Commissioner as well as the Appellate Authority rejected the refund on the interpretation of section 54(3) only, they had to prefer

[1] (2022) 2 SCC 603
[2] (2024) SCC Online Tri 879
[3] (2025) 4 SCC 111

the writ petition. The learned Counsel distinguishes ***VKC Footsteps*** (supra) stating that Hon'ble Supreme Court was dealing with the issue of refund of input services for cases covered under inverted duty scheme of refund under section 54(3)(ii) of the CGST Act and not a case of claim for refund on closure of unit. Distinguishing ***Sterlite Power Transmission*** (supra), it is submitted that the case related to the refund of tax paid through cash ledger as ITC ledger was blocked and on reopening, a claim of refund was made for excess payment of cash with respect to availability of ITC. The learned Counsel submits that, therefore, the appellant has not made out a case for interference with the judgment of the learned Single Judge which is sound and reasoned.

Consideration

4. The appellant is aggrieved by the opinion of the learned Single Judge allowing the writ petition preferred by SICPA reversing two concurrent findings of the Assistant Commissioner, Central Goods and Services Tax (CGST) and Central Excise vide order dated 08.02.2022 and that of the Additional Commissioner of CGST and Central Excise as the Appellate Authority vide order dated 22.03.2023.

5. The Assistant Commissioner rejected the refund application filed by SICPA under section 49(6) of the CGST Act claiming unutilised ITC lying in electronic credit ledger amounting to Rs.4,37,61,402/- upon discontinuance of business.

6. The Appellate Authority upheld the order of the Assistant Commissioner rejecting the refund.

7. SICPA was a company incorporated under the provisions of the Companies Act, 1956 engaged in the business of manufacturing security inks and solutions. In the writ petition, SICPA contended that since January 2019 no operations had been carried out at their Sikkim registration due to absence of orders from the customer, viz., Reserve Bank of India and therefore, it decided to discontinue its operation in the State of Sikkim. It was also claimed that during the period April 2019 - March 2020, SICPA sold all the machineries and manufacturing facilities and at the time of sale of assets SICPA had reversed the ITC, as per applicable provisions under GST law. It was contended that due to closure of business operation, SICPA had accumulated balance of ITC amounting to Rs. 4,37,61,402/- for which refund was claimed in terms of section 49(6) of the CGST Act to be refunded in accordance with the provisions of section 54 of the Act. The refund claim for unutilised ITC was made by filing FORM GST RFD-01 under the category _any other‘- —under sub-section (6) of section 49 of the CGST Act for unutilised ITC balance lying in the electronic ledger upon discontinuance of business‖. The Form, it is noticed, did not contain the self declaration by SICPA under section 54(4) on its claim that it was not applicable. This means that the application was not accompanied by - (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and (b) such documentary or other evidence

(including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.

7(i). In the counter-affidavit, the appellant denied the assertion of SICPA that it had reversed the ITC as per the CGST Act. It further denied that section 49(6) of the CGST Act entails balance and electronic credit ledger or electronic cash ledger in accordance with the provision of section 54 of the CGST Act. It was submitted by the appellant that SICPA's claim for refund on the ground of closure of business is legally untenable; the accumulated credit must be reversed under section 29(5); and no refund can be granted under sections 49(6) and 54 of the CGST Act read with the relevant rules. It was also contended by the appellant that the entitlement for the refund arises only if statutory conditions are satisfied. The appellant submitted that SICPA's attempt to claim refund of unutilised ITC by selecting the category ―any other‖ in FORM GST RFD-01 is not legally correct since section 49(6) is not a refund granting provision and it merely provides that any balance in the electronic credit or cash ledger may be refunded ―in accordance with the provisions of section 54‖. Section 54(3), as per the appellant, permits refund only in two cases provided for in clauses (i) and (ii) thereof, and closure of business is not covered under it. They relied upon Circular No. 125/44/2019-GST dated 18th November 2019, issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and

Customs, which gives the categories of refund entitled for cash ledger and credit ledger. The

Circular enumerated various types of refund to be filed in FORM GST RFD-01 and it is noticed that refund on closure of business is not enumerated therein.

8. The learned Single Judge examined section 49 as well as section 54 of the CGST Act, referred to the decision of the High Court of Karnataka in ***Union of India vs. Slovak India Trading Company Private Limited***[4] and reasoned that —..... *there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund 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 refund of unutilised ITC claimed by them and it is ordered so.*‖

[4] 2006 SCC OnLine Kar 854 and (2006) 201 ELT 559 Karn.

8(i). We notice that the parties did not refer to the judgment of the Hon‘ble Supreme Court in ***VKC Footsteps*** (supra) before the learned Single Judge.

Slovak India

9. In ***Slovak India*** (supra) referred to by the learned Single Judge, the High Court of Karnataka had examined a refund claim which was allowed by the Tribunal when there was no provision in rule 5 of the Cenvat Credit Rules, 2002, to refund the unutilised credit. The Tribunal

allowed the claim application on the ground that refund cannot be rejected when the assessee goes out of Modvat Scheme or when the company is closed. The assessee was engaged in the manufacture of shoes. It surrendered its registration and thereafter made a refund application. During internal audit, it was noticed that the assessee had availed Cenvat Credit of the materials received by them during the past on the strength of the photocopies of the duplicate copies of invoices and the original copies of invoices were never produced. The assessee had availed the credit. On scrutiny, it was noticed that there was neither production nor clearance of finished goods. Cenvat Credit availed by the assessee was irregular. Show-cause notice was issued. Reply was submitted. Order was thereafter passed allowing Cenvat Credit availed on the invoices in the show-cause notice except one. Refund claim was rejected in terms of section 11B of the Act. It was stated that there was no provision in rule 5 for refund. The appeal was unsuccessful but the Tribunal allowed the refund. The High Court opined that —*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 that 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(i). Therefore, in ***Slovak India*** (supra), the High Court of Karnataka was dealing with unsimilar facts and interpreting rule 5 of the Cenvat Rules and not section 49(6) or section 54(3) of the CGST Act.

9(ii). The High Court of Bombay followed ***Slovak India*** (supra) in ***Commissioner of Central Excise, Nasik vs. Jain Vanguard Polybutlene Ltd***.[4] by noticing that the Special Leave Petition (SLP) against the judgment in ***Slovak India*** (supra) had been dismissed by the Hon'ble Supreme Court by a reasoned order [*see 2008 (223) E.L.T. A170 (S.C.)*]. It was noticed that the statement of the learned Additional Solicitor General was recorded who had conceded that various judgments relied upon by the Karnataka High Court were not appealed against by the Revenue; Notwithstanding this concession, it is not possible to say that the SLP was dismissed in view of the concession given by the Additional Solicitor General; No concession was given with regard to the correctness of the judgment of the Karnataka High Court and it was confirmed on its own merits; It was reasoned that question arising for consideration on facts almost identical to previous case, the Revenue cannot be allowed to take a different view. However, the Hon'ble Supreme Court dismissed SLP No. CC 10805/2011 against the judgment of the High Court of Bombay in ***Jain Vanguard Polybutlene*** (supra) vide order dated 12.07.2011 but left the question of law open.

9(iii). Although the learned Single Judge relied upon ***Slovak India*** (supra), it is also noticed that a three Judges Bench of High Court of

[4] (2010) SCC OnLine Bom 2168

Bombay in ***Gauri Plasticulture P. Ltd. vs. Commissioner of Central Excise***[5] examined as to whether a refund of unutilised amount of Cenvat Credit on account of closure of manufacturing activities can be granted. It also examined as to whether what is observed in the order dated January 25, 2007 passed by the Hon'ble Supreme Court in a petition for Special Leave to Appeal (Civil) No. CC467 of 2007 (Union of India vs. Slovak India Trading Co. Pvt. Ltd.) can be read as a declaration of law under Article 141 of the Constitution of India. The Bombay High Court opined after a detailed analysis and consideration that refund of unutilised amount of Cenvat Credit on account of closure of manufacturing activities cannot be granted. It also opined that the order of the Hon'ble Supreme Court in ***Slovak India*** [i.e., *2008 (223) E.L.T. A170 (S.C.)*] cannot be read as a declaration of law under

Article 141 of the Consitution of India.

Section 49 and Section 54 of the CGST Act

10. For the purpose of examining the question posed to us in the present writ appeal, it is necessary to read both the provisions carefully. For the said purpose, we quote section 49(6) and section

54(3) hereunder:

"CHAPTER X
PAYMENT OF TAX

49. Payment of tax, interest, penalty and other amounts.—(*1*) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited

[5] (2019) SCC OnLine Bom 996

to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41 or Section 43-A, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(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.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or Section 74.

(*9*) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

(i) ―tax dues‖ means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) ―other dues‖ means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).‖

―CHAPTER XI **REFUNDS**

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:

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 such form and manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under Section 55, entitled to a refund of tax paid by it on

inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (*10*), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(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:

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subject 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.

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in Section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under subsection (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (*5*) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (*5*), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;
(b) refund of unutilised input tax credit under sub-section (*3*);
(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
(d) refund of tax in pursuance of Section 77;
(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(8-A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (*8*).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression ―specified date‖ shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (*11*), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under subsection (*2*) of Section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (*5*) or sub-section (*6*) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) —refund‖ includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under subsection (*3*).

(2) —relevant date‖ means—

(*a*) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under Section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
(h) in any other case, the date of payment of tax.‖

[emphasis supplied]

11. The CGST Act is a taxing statute. Certain fundamental principles of interpretation of a taxing statute must be borne in mind before we examine the provisions of the CGST Act. Those are:

(i). It is settled law that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency (***see Union of India & Others vs. Ind-Swift Laboratories Limited***[6]).

(ii). It is also equally well settled that in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply

and assume deficiency (see ***Commissioner of Sales Tax vs. Modi Sugar Mills Ltd.***[7]).

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[6] (2011) 4 SCC 635
[7] (1961) 12 STC 182(SC)

12. We shall now examine whether the judgment rendered by the Hon'ble Supreme Court in ***VKC Footsteps*** (supra) is distinguishable from the facts of the present case.

VKC FOOTSTEPS

12(i). In ***VKC Footsteps*** (supra), the Hon'ble Supreme Court was called upon to examine two conflicting views of the High Court of Gujarat and the High Court of Judicature of Madras passed in writ petitions under Article 226 of the Constitution of India. The Gujarat High Court directed the Union of India to allow the claim for refund made by the petitioner before it considering unutilised ITC on input services as part of ―net ITC‖ for the purpose of calculating refund in terms of rule 89(5) in furtherance of section 54(3). The Madras High Court came to a contrary conclusion. It held that the refund is a statutory right and the extension of benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised ITC that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

12(ii). In an authoratative pronouncement, the Hon'ble Supreme Court examined the constitutional schemes of the GST, the various provisions of the CGST Act including the definitions of goods [section 2(52)]; services [section 2(102)]; input [section 2(59)]; input service

[section 2(60)]; input tax [section 2(62)]; input tax credit [section 2(63)]; inward supply [section 2(67)]; output tax [section 2(82)]; outward supply [section 2(83)]; section 16 and section 49; and section

54(3).

12(iii). The judgment clarifies that:

> *—The idea which permeates GST legislation globally is to impose a multi-stage tax under which each point in a supply chain is potentially taxed. Suppliers are entitled to and avail credit of tax paid at an anterier stage. As a result, GST fulfills the description of a tax which is based on value addition. Value addition is intended to achieve fiscal neutrality and to obviate a cascading effect of taxation which traditional tax regimes were liable to perpetuate. In a sense therefore, the purpose of a tax on value addition is not dependent on the distribution or manufacturing module. The tax which is paid at an anterior stage of the supply chain is adjusted. The fundamental object is to achieve both neutrality and equivalents by the grant of seamless credit of the duties paid at an anterior stage of the supply chain.*

12(iv). On examination of section 16 and section 49 of the CGST Act, the Hon'ble Supreme Court opined that:

> *"**72.** Sub-section (3) of Section 49 envisages that the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or its Rules in the manner and subject to conditions and within such time as is prescribed. Similarly, sub-section (4) of Section 49 stipulates that the amount available in the electronic credit ledger can be used for making payment towards output tax under the CGST Act or under the IGST Act in such manner and subject to the conditions and within such time as is prescribed. Sub-section (5) of Section 49 spells out the priorities according to which the amount of ITC available in the electronic credit ledger can be utilised. Subsection (6) of Section 49 is significant and provides as follows: "49. (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."*
>
> ***73.** The provisions of Section 16 and Section 49 indicate the following position:*
>
> ***73.1.** The ITC in the electronic credit ledger may be availed of for making any payment towards output tax under the CGST Act or under the IGST Act.*
>
> ***73.2.** The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the CGST Act or its Rules.*
>
> ***73.3.** The balance in the electronic cash ledger or electronic credit ledger after the payment of tax, interest, penalty, fees or any other amount payable under the Act or Rules may be refunded in accordance with the provisions of Section 54.*
>
> ***73.4.** Sub-section (6) of Section 49, in other words contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger in the manner stipulated by the provisions of Section 54."*

[emphasis supplied]

12(v). We notice that while interpreting section 54(3) of the CGST Act, the Hon'ble Supreme Court was of the view that while envisaging a refund in a case of credit accumulation as provided in section 54(3)(ii), Parliament was cognizant of the fact that ITC may accumulate due to a variety of reasons. However, Parliament envisaged a specific situation where the credit has accumulated due to an inverted duty structure that is where the accumulation of ITC is because the rate of tax on inputs is higher than the rate of tax on output supplies. Taking legislative note of this situation, a provision for refund has been provided for in section 54(3).

12(vi). The judgment summarizes its interpretation of section 54(3) of the CGST Act after a detailed analysis in the following manner:

> *"**98.** Sub-section (3) of Section 54 begins, in its main part, with the stipulation that a registered person may claim refund of any "unutilised ITC at the end of any tax period". Whether we construe the first proviso as an exception or in the nature of a fresh enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso. That clauses (i) and (ii) are the only two situations in which a refund can be granted is evident from the opening words of the first proviso which stipulates that "no refund of unutilised input tax credit shall be allowed in cases other than". What follows is clauses (i) and (ii). The intent of Parliament is evident by the use of a double-negative format by employing the expression "no refund" as well as the expression "in cases other than". In other words, a refund is contemplated in the situations provided in clauses (i) and (ii) and no other. To put it differently, the first proviso can be recast, without altering its meaning to read that a refund of unutilised ITC shall be allowed only in the cases governed by clauses (i) and (ii). Clause (i) deals with zero-rated supplies without payment of tax. Explanation 1 to Section 54 clarifies that the expression "refund" includes refund of tax paid on zero-rated supplies on goods or services or both, or on inputs or input services used in making such zero-rated supplies. On the other hand, in the case of deemed exports, Explanation 1 refers to a refund of tax on the supply of goods. Likewise in regard to domestic supplies, governed by clause (ii) of the first proviso, the expression "refund" means refund of unutilised ITC as provided*

under sub-section (3). With the clear language which has been adopted by Parliament while enacting the provisions of Section 54(3), the acceptance of the submission which has been urged on behalf of the assessee would involve a judicial re-writing of the provision which is impermissible in law. Clause (ii) of the proviso, when it refers to "on account of" clearly intends the meaning which can ordinarily be said to imply "because of or due to". When proviso (ii) refers to "rate of tax", it indicates a clear intent that a refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies. Reading the expression "input" to cover input goods and input services would lead to recognising an entitlement to
refund, beyond what was contemplated by Parliament."
[emphasis supplied]

12(vii). The judgment also opines:

***"99.** We must be congnizant of the fact that no consititional right is being asserted to claim a refund, as there cannot be. Refund is a matter of statutory prescription. Parliament is within its legislative authority in determining whether refund should be allowed of unutilised ITC tracing its origin both input goods and input services or, as it has legislated, input goods alone. By its clear stipulation, that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognizing an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibilty (as the assessees' the counsel submitted) but a restriction*
which must govern a grant of refund under Section 54(3). ....."
[emphasis supplied]

13. Therefore, in ***VKC Footsteps*** (supra), the Hon'ble Supreme Court has clearly laid down the following:

(i). CGST legislation is to impose a multi-stage tax under which each point in a supply chain is potentially taxed. Suppliers are entitled to and avail credit of tax paid at an anterior stage. As a result, CGST fulfills the description of a tax which is based on value addition. Value addition is intended to achieve fiscal neutrality and to obviate a cascading effect of taxation which traditional tax regime were liable to perpetuate.

(ii). No Constitutional right is being asserted to claim a refund. Refund is a matter of statutory prescription. Parliament is within its legislative authority in determining whether refund should be allowed of unutilised ITC.

(iii). While recognizing an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed.

(iv). Sub-section 6 of section 49, contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger in the manner stipulated by the provisions of section 54.

(v). Clauses (i) and (ii) of the first proviso to sub-section (3) of section 54 are the only two situations in which a refund can be granted.

(vi). The first proviso to section 54(3) is not a condition of eligibility but a restriction which must govern a grant of refund under section 54(3).

(vii). To interpret section 54(3) in any other manner would involve a judicial re-writing of the provision which is impermissible in law.

14. In view of the interpretation and clarification of sections 49 and 54 of the CGST Act by the Hon'ble Supreme Court in ***VKC Footsteps*** (supra), we have no hesitation in rejecting the contention of the learned Counsel for SICPA that they were eligible to be granted refund under section 49(6) alone. Section 49(6) permits the refund of the balance of electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under

the CGST Act or the Rules made thereunder in accordance with the provisions of section 54. The language used in sub-section (6) of section 49, i.e., —*may be refunded*‖ gives an indication that it may be permissible to be refunded. The words —*in accordance with the provisions of section 54*‖, thereafter, is a clear indication that this permissibility to refund must be in accordance with the provisions of section 54 and in no other manner. We notice that section 49 of the CGST Act falls under ‗Chapter X' dealing with —Payment of Tax‖. Chapter X consists of sections 49 to 53A which deals with tax. We also notice that section 54 falls under ‗Chapter XI' which deals with

‗Refunds' and consists of sections 54 to 58. On the face of it, section 49 and 54 deals with different aspects. Thus, an application for refund under section 49(6) must necessarily be processed as contemplated under section 54. It is clear that sub-section 6 of section 49 contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger only in the manner stipulated by the provisions of section 54 and in no other manner.

15. The distinction sought to be made by the learned Counsel for SICPA between refund of input services and refund claim for closure of unit can be answered by examining the provision of section 49(6) invoked by them. What is contemplated by section 49(6) is that the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the CGST Act or the rules made thereunder may be refunded in accordance with the provisions of section 54. Although, section 49(6) of the CGST Act does not

provide for refund of accumulated ITC upon discontinuance of business, SICPA admittedly sought refund under the said provision. The judgment of the Hon'ble Supreme Court in ***VKC Footsteps*** (supra) clarifies that refund can be granted only in the manner contemplated under section 54 and in no other manner. It is not the case of SICPA that their claim for refund fell in either of the two clauses in the first proviso to section 54(3). Admittedly, it was not a claim for refund of unutilised ITC relating to zero rated supplies made without payment of tax. It was also not a claim for refund where the credit had accumulated on 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 recommendation of the Council. Therefore, we reject this submission of the learned

Counsel for SICPA.

16. With great respect, we cannot agree with the opinion rendered in the impugned judgment as it is contrary to the opinion of the Hon'ble Supreme Court in ***VKC Footsteps*** (supra). Admittedly, ***VKC Footsteps*** (supra) was not brought to the notice of the learned Single Judge. With the clear language which has been adopted by Parliament while enacting the provisions of section 54(3), the opinion would involve a judicial re-writing of the provision which is impermissible in law. It would require us to add an additional clause in section 54(3) to enable the refund on

closure of business beyond clauses (i) and (ii) thereof. This would lead to recognising an entitlement to refund beyond what was contemplated by the Parliament. We are of the view that the opinion that there is no express prohibition in section 49(6) read with section 54 and 54(3) of the CGST Act for claiming a refund on closure of unit is not correct. We are of the view that section 54(3), in fact, is a restriction to the refund on account of closure of unit as it does not fall on either of its two clauses. The impugned opinion deviates from well-settled principles of statutory interpretations of taxing statutes and ventures into the legislative domain reserved for Parliament. Perceived hardship or inequality cannot permit interpreting taxing statute beyond well-settled parameters laid down by the Hon'ble Supreme Court.

17. In the impugned judgment, it was opined that the CGST Act does not provide for retention of tax without the authority of law. It is not the case of SICPA that the accumulated ITC is outside the provisions of _Chapter X'. This means that the accumulation of ITC is through a legal statutory process. The refund envisaged by the Parliament on account of accumulated ITC is only in accordance with the provisions of section 54. Section 54, however, does not envisage refund of unutilised ITC for closure of business. Thus, the rejection of the refund application is also within the parameters of section 54 and therefore, lawful. In such view of the matter, it could not have been held that the appellants were retaining tax without the authority of law. This opinion is based on the rendition of the Karnataka High Court in ***Slovak***

India (supra) holding that there is no express prohibition in terms of rule 5 of the Cenvat Credit Rules. In the Special Leave Petition against the judgement in ***Jain Vanguard Polybutlene Ltd.*** (supra), the Hon'ble Supreme Court left the above question of law open. Further, this opinion of the Karnataka High Court in ***Slovak India*** (supra) has been differed from by the three Judges Bench of the Bombay High Court in ***Gauri Plasiculture*** (supra).

18. Although, SICPA pleaded in the writ petition that at the time of sale of assets/inventory/machines they had reversed the ITC as per applicable provisions under GST law they did not specifically plead that it was done under section 29 of the CGST Act. The appellant denied this assertion of SICPA for want of knowledge. SICPA did not provide any details or proof of reversal of ITC in the writ petition. It was contended by the appellant that the accumulated credit must be reversed under section 29(5) of the CGST Act and no refund can be granted under section 49(6) and section 54, read with the relevant rules.

18(i). Section 29 reads as under:

> **"29. Cancellation or suspension of registration**.— (*1*) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—
>
> (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
>
> (b) there is any change in the constitution of the business; or
>
> (c) the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to optout of the registration voluntarily made under sub-section (3) of Section 25:
>
> Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the

registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under Section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (*b*), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under subsection (*3*) of Section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under Section 15, whichever is higher.

(6) The amount payable under sub-section (*5*) shall be calculated in such manner as may be prescribed.‖

[emphasis supplied]

18(ii). It is noticed that section 29 deals with cancellation of registration in view of discontinuance of business as well. Sub-section 5 of section 29 provides that when such cancellation takes place the registered person, i.e., SICPA herein, shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceeding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed: provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinary, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinary under section 15, whichever is higher. It further provides that the amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

18(iii). We find considerable force in the submission of the appellant that the accumulated credit must be reversed under section 29(5) and no refund can be granted under section 49(6) and section 54 of the CGST Act and the relevant rules. As SICPA did not furnish proof of such reversal or any details thereof and the appellant denied this assertion, it may not be proper to adjudicate upon this issue and we refrain from doing so as it would involve fact finding beyond the pleadings before us. However, we are certain that the writ petition was not maintanable as SICPA had not provided sufficient material to establish the facts

asserted crucial to the determination as to whether an amount of Rs.4,37,61,402/- was liable to be refunded to them.

19. Hence, we are of the view that there has been no violation of any Constitutional or statutory right of SICPA for which a writ could lie. The present writ appeal squarely falls within the parameters of law laid down by the Hon'ble Supreme Court in ***Airports Authority of India*** (supra) as there has occassioned error apparent in law in the impugned judgment.

20. Accordingly, the writ appeal is allowed and the impugned judgment set aside.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

Approved for reporting: **Yes**
Internet: **Yes**
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