

## Inverted Duty Structure under GST Regime:

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- In the earlier taxation regime, the refund of unutilized input tax credit was able to be claimed in case of exports whereas in case of GST regime, the refund of unutilized input tax credit can be claimed in case of zero rated supplies made without payment of tax and Inverted duty structure. The Relevant date for claiming the refund for inverted duty structure is due date of furnishing returns for the period in which claim for refund arises. Earlier the relevant date in case of refund of unutilized input tax credit is from the end of the financial year in which such claim for refund arises. There was amendment in Relevant date for Inverted duty structure for filing the application.
- The Transitional credit pertaining to erstwhile law cannot be treated as part of net input tax credit and no refund of such unutilized transitional credit is admissible. It has been clarified for the formula of Inverted duty structure that where there are multiple inputs attracting different rate of taxes, the Net ITC covers the ITC availed on all inputs in the relevant period irrespective of their rate of tax. Exporter will be eligible to take credit of tax at 0.5%/1% paid by him.
- The supplier who supplies at above **concessional rate** is also eligible for refund under inverted duty structure. The Exporter of such goods is eligible to export the goods only under LUT/bond and cannot export on payment of IGST. The applicant can claim refund only when the rate of tax on inputs is higher than the output supplies.
- The Applicant can claim refund in case of inverted duty structure, wherein the credit has been accumulated on account of the rate of tax on inputs is being higher than the rate of output supplies. For example, in case of Incense sticks where the output tax rate is 5% and the inputs are at different rate at 18%, 12% or 5% then the applicant can claim refund of accumulated credit under Inverted duty structure.
- The applicant cannot claim refund under inverted duty structure due to change in the GST rate on the same goods at different points of time. For example: the applicant has purchased the goods at applicable rate of 18% and later the rate of tax on such goods is reduced to 12% therefore in such instance there will be accumulation of credit of 6% credit which is not eligible for refund to be claimed under Inverted duty structure. Therefore, the refund of accumulated Input Tax credit would not be applicable in case where the rate of tax on input and output supplies are same though it is accumulated due to change in rate of tax.
- The formula prescribed for claiming Refund under GST for Inverted Duty structure is Maximum Refund Amount = {(Turnover of Inverted Rated

**supply of goods**) x Net Input Tax Credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods. While the Act restricted refund only on inputs (for no reason), rules allowed for refund even on input services. This discrepancy was sought to be amended retrospectively but the same has been challenged in the Rajasthan High Court in the case of Shree Rama Newsprint Limited and the High Court has allowed a interim stay for such retrospective amendment

- It has been clarified for the formula of **Inverted Duty Structure** that where there are multiple inputs attracting different rate of taxes, the Net ITC covers the ITC availed on all inputs in the relevant period irrespective of their rate of tax. The Net ITC shall mean the input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub Rules (4A) or (4B) or both.
- Therefore, the credit on inputs should be considered for calculating refund claim on account of inverted duty structure. Rule 89(5) of CGST Rules 2017 relating to refund of input tax credit on account of inverted duty structure has been challenged. Section 54(3)(ii) provides that refund of any unutilized input tax credit may be claimed by the registered person in case where credit has been accumulated on account of rate of tax on **Inputs** being higher than the rate of tax on output supplies.
- Rule 89(5) of the CGST Rules is amended vide Notification 21/2018 dated 18.4.2018 by excluding input services for computation of 'net input tax credit', for computation of the refund amount under the rules, with retrospective effect from 1-7-2017.
- Therefore, allowing the refund of tax paid on inputs is challenged on the ground that it is unreasonable, irrational, discriminatory and there is no apparent justification for excluding the tax paid on input services from the purview of net input tax credit for computing the refund amount under Inverted Duty Structure.
- There are certain restrictions imposed through notification by not allowing to claim the refund of unutilized tax credit for services like constructions services, woven fabrics, textiles etc. It may be thus be seen that all these notifications relate to adverse provisions, disallowing certain goods and services from the scope of refunds, relating to inverted duty structure.
- Vide Notification No. 21/2018- CT dated 18.04.2018, the CGST Rules were amended retrospectively to provide that taxpayers would not be entitled to claim refund of taxes paid on Input services. The Gujrat High Court in case of VKC Footsteps India Private Limited Vs Union of India & Others 2020-VIL-340-Guj dated 24-7-2020 held that the registered

person is entitled to claim refund of taxes paid on Inputs as well as Input Services.

- In case the refund of Input tax credit availed on Input services is restrained then it will lead to blockage of funds/working capital and affect the cost competitiveness of small business entity, especially in the current pandemic situations.