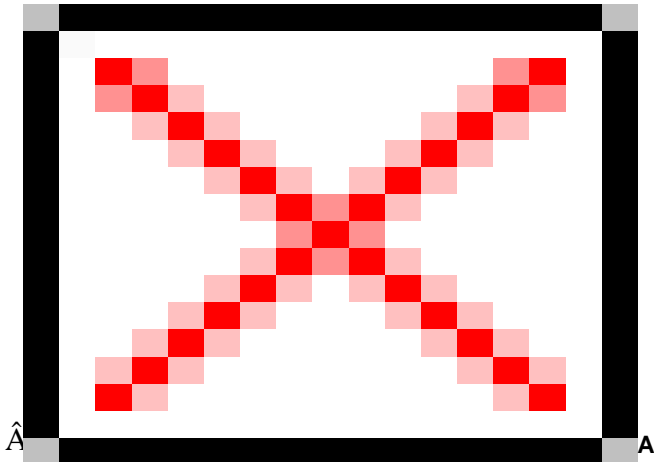


## VKC Footsteps Erased Govt Should Show The Way

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little history: In GST, when there is an inverted tax structure, that is, when the tax on supply is less than the input tax credit available, resulting in an unutilised or unutilisable credit, this becomes a cost to the taxpayer and it is not possible to pass it on to the ultimate consumer. An oft-repeated cliché is that

***one of the fundamental features of GST is seamless flow of input credit across the chain (from the manufacture of goods or provider of services till it is consumed).***

So, when this excess accumulated credit cannot be used, in deference to the basic feature of GST, the good government was kind to allow a refund of the accumulated credit. But it was easy to write and rewrite the law but not that easy, to get refund, as is always the case.

The report of the Joint Committee, Empowered Committee of State Finance Ministers on Business Process for GST and on Refund Process published in August 2015 noted that under the proposed GST law, ITC will be allowed, so as to remove the cascading effect of taxes and it is the ultimate customer who should bear the burden of taxes. However, the report noticed that there can be cases where there is an accumulation of credit due to an inverted duty structure. The report envisaged that there would be fewer rates of taxes and exemptions under GST and hence, the chances of an inverted duty structure would be **"minimal."**

At the same time, it recommended a refund of carried forward ITC.

The legal zigzag puzzle started with the Rule 89 of the CGST Rules with effect from 01.07.2017. Rule 89(4) at that time stipulated

**"Net ITC" means input tax credit availed on inputs and input services during the relevant period.**

This clearly means that the Government at that time firmly believed that the poor taxpayers need a little handholding and the ITC on inputs and input services have to be refunded. By April 2018, the government must have realised that too much of money is going back to the taxpayers and so something had to be done to stop this outflow. So, they amended Rule 89 with effect from 18.04.2018 to remove input services and the net ITC became

**"Net ITC" shall mean input tax credit availed on inputs during the relevant period.**

This had only prospective effect and after some time, they realised that still refunds have to be given for input services also for the period prior to 18.04.2018. So they amended the rule again on 13.06.2018 to make the amendment retrospectively effective from 01.07.2017 to stipulate

that refund will be given on the credit availed on inputs only and not on input services - from the very beginning, 1st July 2017.

Aggrieved and aghast, taxpayers rushed to High Courts.

On July 24, 2020, the Gujarat High Court in the VKC FOOTSTEPS INDIA - [2020-TIOL-1273-HC-AHM-GST](#) case, to the utter elation of the trade and lawyers, directed the Union Government to allow the claim for refund considering unutilised ITC on input services as part of "**Net ITC**" for the purpose of calculating refund.

The joy was however short-lived. On September 21, 2020, the Madras High Court in *Tvl. Transtonnelstroy Afcons Joint Venture* - [2020-TIOL-1599-HC-MAD-GST](#) declined to follow the Gujarat High Court judgement and did not allow the refund on accumulated credit of input services.

I wrote in these columns on 23.09.2020,

Obviously, the matter has to be finally decided by the Supreme Court. But if the Government is interested in avoiding litigation and showing a little concern for the taxpayers, this small refund can be allowed - after all it's not a huge burden on the government, but is a backbreaking load on each affected taxpayer.

But that was not to be.

In its judgement dated, September 13, 2021 - [2021-TIOL-237-SC-GST](#) the Supreme Court affirmed the view of the Madras High Court and disapproved the view of the Gujarat High Court - means you don't get refund of ITC on input services.

Fine! The Supreme Court has interpreted the law, but the government can be fair and magnanimous. Maybe the government will lose a few crores of rupees, but the taxpayers, in these difficult times will be immensely grateful if the government can grant the refund. You have won the case, Congratulations, be graceful in victory and allow the refund. After all, you know that it was a mistake in drafting and in the initial stages you believed that input services also deserved refund. In fact, some refunds were also given. The CAG in its Report No. 11 of 2019 (Indirect Taxes - Goods and Services Tax) pointed out this case:

***A taxpayer falling under Mumbai East GST Commissionerate claimed refund of Rs. 27.18 lakh on account of inverted duty structure for the month of March 2018 and the same was allowed as claimed. Scrutiny of the documents available on record revealed that the Net ITC of Rs. 41.74 lakh considered for computation of the maximum amount of refund also included credit availed on input services of Rs. 38.77 lakh. Thus, the admissible Net ITC as per Rule 89(5) of the CGST Rules, 2017***

***would be input credit of Rs. 2.98 lakh only. Hence, after taking Rs. 2.98 lakh as Net ITC into consideration, the maximum amount of refund as per prescribed formula works out to nil. Thus, there was an irregular grant of refund of Rs. 27.18 lakh by the department, which is required to be recovered.***

***When we pointed this out (February 2019), the Ministry, while accepting the observation (May 2019) reported issuance of SCN to the taxpayer.***

The Supreme Court has given its verdict; now there is no point in discussing the merits of the issue and the arguments advanced. It will be gracious on the part of the government to allow the refund, even though they have won the case. If you can give refund of input tax credit, pray, what is one good reason that you refuse to give refund in respect of input services and capital goods, except that you are the government and you have the power.

The Supreme Court had in the very famous *Ranadey Micronutrients* case - [2002-TIOL-184-SC-CX](#) - had observed, Consistency and discipline are of far greater importance than the winning or losing of court proceedings .

**Until Next Week.**