

A2Z Taxcorp LLP

Any restrictive amendment for filling refund claim to be applied prospectively and cannot curtail vested rights

The Hon'ble Delhi High Court in the case of *Kanika Exports v. Union of India & Ors. along with M/s Malik Seasoning and Spices Pvt. Ltd. v. Commissioner of GST [W.P.(C) 12512/2021 and W.P.(C) 17538/2022, order dated April 18, 2026]* held that the relevant date for computing limitation period of two years under Section 54 for refund of unutilised ITC (including exports without payment of tax and inverted duty structure) for the period prior to amendment would be reckoned as per the unamended Explanation 2(e), i.e., end of the financial year, and the amended provision cannot be applied retrospectively to curtail vested rights.

Facts:

M/s Kanika Exports the Petitioner in W.P.(C) 12512/2021 is a partnership firm engaged in export of readymade garments and filed a refund application dated March 29, 2020 claiming refund of accumulated unutilised ITC for July 2017 to March 2018. M/s Malik Seasoning and Spices Pvt. Ltd. the Petitioner in W.P.(C) 17538/2022 filed refund applications dated March 28, 2021 and March 30, 2021 for refund of unutilised ITC accumulated due to inverted duty structure. Both the parties are hereinafter referred to as **(‘the Petitioners’)**.

The Union of India & Ors. / Commissioner of GST **(‘the Respondent’)** rejected the refund claims as time-barred by computing limitation from the date of exports and applying amended Explanation 2(e) of Section 54 of the CGST Act, 2017 for inverted duty cases.

The Petitioners contended that refund of unutilised ITC is governed by Section 54(3) read with unamended Explanation 2(e), and the relevant date is the end of the financial year (March 31, 2018 / March 31, 2019), hence the claims were within limitation.

The Respondent contended that the relevant date should be the date of exports under Explanation 2(a), and that the amended Explanation 2(e) to Section 54 of the CGST Act, 2017

A2Z Taxcorp LLP

(effective February 1, 2019) applies to all refund applications filed thereafter, making the claims time-barred.

The Petitioners were aggrieved by rejection of refund claims by Orders-in-Original and Orders-in-Appeal as time-barred and approached the Court by way of writ petitions seeking quashing of such orders and direction for grant of refund.

Issue:

Whether the relevant date for computing limitation for refund of unutilised ITC is the end of the financial year under unamended Explanation 2(e), and whether the amended Explanation 2(e) applies retrospectively to earlier periods?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) 12512/2021*** held as under:

- Observed that, Section 54 provides different “relevant dates” depending on the nature of refund and transaction.
- Noted that, refunds of “tax paid” and refunds of “unutilised ITC” are distinct categories governed by different clauses.
- Observed that, Explanation 2(a) of Section 54 of the Act applies only to refund of tax paid on exports and not to refund of unutilised ITC.
- Held that, refund of unutilised ITC is governed by Explanation 2(e) read with Section 54(3) and that, prior to amendment, Explanation 2(e) provided that relevant date is the end of the financial year in which refund claim arises.
- Observed that, amendment w.e.f. February 1, 2019 restricting Explanation 2(e) cannot be applied retrospectively.

A2Z Taxcorp LLP

- Held that, the applicable provision is the one existing on the date of transaction, and limitation cannot be curtailed by subsequent amendment.
- Noted that, applying Explanation 2(a) to unutilised ITC refunds would create anomalous situations and defeat the scheme of the Act.
- Further noted that, refund of unutilised ITC is a 'different species of refund' requiring compliance and reflection in Electronic Credit Ledger.
- Held that, relevant date in present cases is end of financial year under unamended Explanation 2(e) and directed that, rejection orders are set aside and the Department shall process refund applications within three months.

Our Comments:

The judgment analyses the scheme of Section 54 of the CGST Act and distinguishes between refund of tax paid and refund of unutilised ITC. The Hon'ble High court of Jammu and Kashmir in the case of ***Bharat Oil Traders v. Assistant Commissioner and Anr. [(2025) SCC Online J&K 1416]*** conclusively held that, "The right to claim refund with respect to period preceding the amendment cannot be curtailed by the amendment. The amended section cannot operate retrospectively so as to take away a vested right. This amendment must be treated as prospective unless it is given retrospective effect. The vested right of the petitioner cannot be unilaterally revoked or curtailed by a subsequent amendment to the statute unless the amendment expressly provides for retrospective application. Thus, even though the amendment came into force on February 1, 2019, it cannot curtail the rights vested in the petitioner."

The reasoning aligns with settled principle that amendments affecting substantive rights are prospective unless expressly retrospective.

Relevant Provisions:

A2Z Taxcorp LLP

Section 54 of the CGST Act, 2017

“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 1[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:

A2Z Taxcorp LLP

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."

...

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 sub-section (3).

(2) "relevant date" means-

A2Z Taxcorp LLP

(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;

(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;

(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;

A2Z Taxcorp LLP

(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 subsection (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.”

Section 16 of the IGST Act, 2017

“16. Zero rated supply.-

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely: -

(a) export of goods or services or both; or

(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.”

[CLICK HERE FOR OFFICIAL JUDGMENT COPY](#)

(Author can be reached at info@a2ztaxcorp.com)

A2Z Taxcorp LLP

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.

