

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

Subsidiary's independent services to US parent were zero-rated exports; refund of unutilised ITC was allowable: HC

FACTS OF THE CASE:

- Infodesk India (P.) Ltd. ("the Petitioner") is an Indian company and a wholly owned subsidiary of Infodesk Inc., USA.
- The Petitioner was engaged in providing software consultancy, IT infrastructure support, editorial/content services, customer support and related back-end services exclusively to its overseas parent company.
- Services were rendered under a bilateral service agreement on a principal-to-principal basis, and the Petitioner was compensated on a cost-plus markup model.
- Invoices were raised on the overseas parent and consideration was received in convertible foreign exchange.
- The Petitioner treated the said supply as export of services and filed an application for refund of unutilised Input Tax Credit (ITC) under section 54 of the CGST Act read with section 16 of the IGST Act.
- The GST authorities rejected the refund claim on the grounds that:
 - the services rendered constituted "intermediary services" under section 2(13) of the IGST Act; and
 - the refund claim was time-barred, due to delay in submitting physical supporting documents.
- Aggrieved by the rejection of refund, the Petitioner filed a writ petition before the Gujarat High Court.

GROUNDINGS OF THE CASE

Grounds raised by the Tax Authorities

- The Petitioner was allegedly acting as an intermediary, facilitating services between the overseas parent and its customers, and therefore the place of supply was in India.
- Since intermediary services are excluded from export of services, the supply could not be treated as zero-rated under GST.
- The refund application was allegedly barred by limitation, as certain documents were submitted beyond the prescribed period.

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Grounds raised by the Petitioner

- The Petitioner was providing services on its own account to its overseas parent and was not arranging or facilitating services between two other parties.
- The arrangement involved only two parties (the Petitioner and its overseas parent), whereas an intermediary transaction requires three parties.
- All conditions of export of services under section 2(6) of the IGST Act were satisfied, including receipt of consideration in convertible foreign exchange.
- Filing of the refund application on the GST common portal within the statutory time limit constitutes valid compliance, and delay in physical submission of documents cannot defeat the refund claim.
- The rejection of refund was arbitrary, merely procedural, and contrary to settled judicial principles.

CONCLUSION:

- The Gujarat High Court held that the services provided by the Petitioner to its overseas parent company were not intermediary services within the meaning of section 2(13) of the IGST Act.
- The Court observed that the Petitioner was rendering services on its own account under a principal-to-principal arrangement, and there was no element of arranging or facilitating supply between two other parties.
- Since all the conditions prescribed under section 2(6) of the IGST Act were satisfied, the services qualified as export of services and were therefore zero-rated supplies under section 16 of the IGST Act.
- On the issue of limitation, the Court held that electronic filing of the refund application within the prescribed time is sufficient compliance with section 54 of the CGST Act, and delay in submission of physical documents cannot be a ground to deny refund.
- Accordingly, the High Court set aside the refund rejection orders passed by the tax authorities and directed them to process and grant the refund of unutilised Input Tax Credit to the Petitioner in accordance with law.

Infodesk India (P.) Ltd. vs. Union of India [2025] 181 taxmann.com 395 (Gujarat) [27-11-2025]

No ITC reversal on post transaction registration cancellation of supplier: HC
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FACTS OF THE CASE:

- The recipient availed Input Tax Credit (ITC) on inward supplies received from a supplier who was validly registered under GST at the time of supply.
- The supplier issued tax invoices in accordance with GST law and charged GST.
- The recipient received the goods/services and made payment along with tax to the supplier.
- Subsequently, the GST department cancelled the supplier's registration retrospectively, after the transactions were completed.
- Based solely on such retrospective cancellation, the department proposes reversal of ITC in the hands of the recipient.

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GROUNDNS

➤ Eligibility of ITC to be tested on date of supply

- As per Section 16(2) of the CGST Act, ITC eligibility depends on conditions prevailing at the time of supply.
- On the transaction date, the supplier was a registered taxable person and invoices were valid.

➤ Recipient cannot be penalised for subsequent events

- Retrospective cancellation of supplier registration is a subsequent event beyond the recipient's control.
- GST law does not impose an obligation on the recipient to monitor future compliance or tax payment by the supplier.

➤ Violation of principles of natural justice

- Denial of ITC without establishing fake invoices, non-receipt of goods/services, or collusion is arbitrary.
- Burden lies on the department to prove that transactions are non-genuine.

➤ Judicial precedents

- High Courts (including Calcutta HC in Suncraft Energy Pvt. Ltd. and Madras HC) have held that ITC cannot be denied merely due to retrospective cancellation of supplier registration when transactions are genuine.

CONCLUSION:

- Since all conditions of Section 16(2) were duly satisfied at the time of supply, the ITC availed by the recipient is legally valid.
- Retrospective cancellation of the supplier's GST registration cannot be a standalone ground for ITC reversal.
- In the absence of any evidence of fraud, bogus invoices, or non-receipt of goods/services, the proposed ITC reversal is unsustainable in law and liable to be set aside.

***Saniya Traders vs. Additional Commissioner Grade-2 [2025] 181 taxmann.com 487 (Allahabad)
[03-12-2025]***

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· TEAM WORK · BRIGHT MINDS · INNOVATIVE IDEAS ·

From:

**Tax Team of Desai Saksena and Associates
Chartered Accountants**

CA Varsha Nanwani (Senior Manager - Taxation)
Vikas Jogle (Manager - International Taxation)
CA Neelu Dusseja (Senior Manager - Indirect Taxation)
CA Neha Patel (Manager - Taxation)
CA Ajay Sachani (Manager - Taxation)
Digvijay Hirwani (Assistant Manager - Taxation)
Alok Sharma (Deputy Manager - Indirect Taxation)

Contacts:

If you have any questions or would like to have additional information on the topics covered in this alert, please email one of the following DSA professionals:

- ✓ CA Varsha Nanwani (Senior Manager – Taxation)
varsha@dsaca.co.in
- ✓ Vikas Jogle (Manager – International Taxation)
vikas@dsaca.co.in
- ✓ CA Neelu Dusseja (Senior Manager – Indirect Taxation)
neelu@dsaca.co.in
- ✓ CA Neha Patel (Manager - Taxation)
neha@dsaca.co.in
- ✓ CA Ajay Sachani (Manager – Indirect Taxation)
ajay@dsaca.co.in
- ✓ Digvijay Hirwani (Assistant Manager - Taxation)
digvijay@dsaca.co.in
- ✓ Alok Sharma (Deputy Manager – Indirect Taxation)
sharma.alok12@gmail.com