



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎ : 079-26305065

टैलेफैक्स : 079 - 26305136

Email- commrappl1-cexamd@nic.in

DIN20210264SW00002202B9

रजिस्टर्ड डाक ए.डी. द्वारा



क फाइल संख्या : File No : V2(GST)10/North/Appeals/20-21
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-048/20-21**
दिनांक Date : **28.01.2021** जारी करने की तारीख Date of Issue : **18.02.2021**

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original No **GST- RFD-06 NO. ZW2404200150404**, dated दिनांक: **08.04.2020** passed by Assistant/Deputy Commissioner, Central GST, Division-III, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/S Tata Motors, Village North Kotpura, Sanand, Ahmedabad, Gujarat-382170.

Respondent- Assistant/Deputy Commissioner, Central GST, Division-III, Ahmedabad-North

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.



ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Tata Motors Ltd., having office at Plot No. A-1, Tata Motors, Village North Kotpura, Sanand, Ahmedabad, Gujarat-382170 (hereinafter referred to as '*appellant*') against Order in Original No. ZW2404200150404 dated 08.04.2020 [hereinafter referred to as '*the impugned order*') passed by the Deputy Commissioner of Central Tax, Division III, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is a company duly registered under the companies Act, 1956 and is engaged in the manufacture of commercial motor vehicles & chassis thereof, cars and parts of motor vehicles. The present dispute relates to the appellants Sanand unit having GST Registraion no. 24AAACT2727Q1Z2.

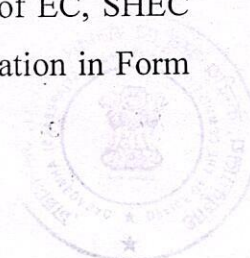
2.1 In terms of transitional provisions contained in CGST Act, the Appellants had transitioned closing balance of ITC as per ER-1 returns filed for the month of June'17 into GST by filing Form GST TRAN-1. Summary of ITC availed in Table 5(a) in Form GST TRAN-1 is given hereunder:-

Particulars	Basic Excise Duty	EC	SHEC	Service tax Basic	ST-EC	ST-SHEC	Total
Table 5(a)	473918886	2993957	1483525	1289725279	9531952	4763502	1782417089

From the above table, it is clear that under the head of EC and SHEC, the appellants has carried forward total credit of Rs.1,87,72,936/- and for the same, they have file ER-1 returns for the month of June'17.

2.2 In view of retrospective amendment in Section 140(1) of CGST Act, on the apprehension that CENVAT credit of cesses mentioned above, which was legitimately earned and carry forwarded by the appellant through GST TRAN- 1 may get denied, the appellant reversed the CENVAT credit of said cesses totaling Rs.1,87,72,936/- in Form GSTR-3B for the month of August 2018, under the head Central Tax. Out of total ITC of Rs.1,91,12,793- reversed by the appellant in GSTR-3B for August' 2018, reversal of Rs. 1,87,72,936/- was towards the EC and SHEC 'under protest' and balance amount of Rs.3,39,857/- was consisting of other reversals.

2.3 In pursuance to decision of the Hon'ble High Court of Madras in the case of Sutherland Global Services Pvt Ltd., reported in [2019-T1OL-2516-HC-MAD-GST], wherein the Hon'ble High Court allowed the transition of credit balance of EC, SHEC and KKC into GST. Accordingly, the appellant had filed a refund application in Form

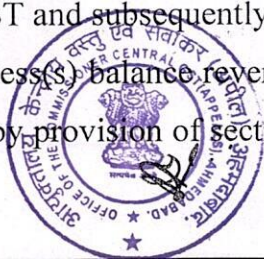


RFD-01 vide ARN No AA240220067208N dated 27.02.2020 to seek refund of CENVAT credit of EC and SHEC amounting to Rs.1,87,72,936/- carry forwarded in GST and subsequently reversed under protest.

2.4 The abovementioned refund claim was rejected by the adjudicating authority vide impugned order on the grounds that "Section 140(1) of the CGST Act does not allow ITC of E Cess & SHSE Cess and KKS.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds that:

- (i) The appellant submitted the reply to the show cause notice through email on 28.03.2020 and the same was uploaded on the common portal on 03.04.2020. However, without appreciating the submissions made and without even providing the hearing opportunity, the Adjudicating Authority passed the impugned order dated 08.04.2020 denying the refund claim.
- (ii) The Appellant submits that they are eligible to transition EC and SHEC balance in the GST regime.
- (iii) EC and SHEC was levied by the Central Government. EC and SHEC paid by a service provider/ manufacturer on their input services/inputs, were made eligible as CENVAT credit as per Rule 3(1)(vi),(via), (x) & (xa) of the CENVAT Credit Rules, 2004. Rule 3(7) ibid provided for utilization of CENVAT credit of EC and SHEC for payment of output EC and SHEC respectively. However, vide Notification 15/2015-C.E dated 01.03.2015, the Central Government exempted levy of EC and SHEC w.e.f. 01.03.2015. Similarly, vide Notification no. 14/2015ST dated 19.05.2015, rate of service tax was increased w.e.f from 01.06.2015 and EC & SHEC was subsumed in revised rate of service tax. Therefore, as on 01.03.2015 & 01.06.2015 respectively for goods & services, the CENVAT credit of EC and SHEC availed validly and lying in the books could not be utilized for payment of any output tax liability. It is submitted that there was no substantive provision which was enacted to either in the Central Excise Act, 1944 nor in CGST Act, 2017 to lapse the said credit pertaining to EC and SHEC.
- (iv) In view of Hon'ble Madras High Court in case of Sutherland Global Services Pvt. Ltd vs. Assistant Commissioner of CGST & Central excise (2019(30) GSTL 628) the appellant is entitled to carry forward unutilized balance of EC and SHEC and eligible to refund of CENVAT credit of EC and SHEC carry forwarded in GST and subsequently reversed under protest.
- (v) The refund of Cess(s) balance reversed 'under protest' is correctly file, which is duly supported by provision of section 140(1) of the CGST Act. The appellant is



eligible to claim refund of EC and SHEC.

4. Personal hearing in the matter was held on 23.12.2020 through virtual mode. Shri Mukesh Dokania, representative appeared on behalf of the appellant for hearing and reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and oral submissions made by the appellant at the time of hearing. As the personal hearing granted at this juncture, the grievances of appellant regarding passed the order without providing the opportunity of being heard is over at this juncture. Now the case take up for decision by me on merits and as per submission made by the appellant.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum. The limited issue which requires to be decide in the case is whether the appellant is eligible for refund of CENVAT credit of EC and SHEC amounting to Rs.1,87,72,936/- carry forwarded in GST and which is subsequently reversed under protest.

7.1 In order to analyze the issue in proper perspective, it is relevant to go through the legal provisions. The provisions contained amendment in section 140 of the CGST Act, 2017. The amended Section 140 of CGST Act,2017 reads as follows:-

Section 140 of CGST Act,2017 – Transitional arrangements for input tax credit

140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Explanation 1.—For the purposes of sub-sections (1), (3), (4) and (6), the expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the **Additional Duties of Excise (Goods of Special Importance) Act, 1957**;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the **Customs Tariff Act, 1975**;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the **Customs Tariff Act, 1975**;
- (iv) the additional duty of excise leviable under section 3 of the **Additional Duties of Excise (Textile and Textile Articles) Act, 1978**;

7.2. It is clear from above that, Sec 140(1) of the CGST Act does not allow ITC of Ed. & SHSE Cess and KKS. Further in view of decision of the Hon'ble High Court of Madras in the case of *Sutherland Global Services Pvt. Ltd.*, reported in (2019-TIOL-



2516-HC-MAD-GST) appellant has filed the refund application to seek refund of CENVAT credit of EC and SHEC amounting of Rs. 18772963/- which was carry forwarded in GST.

8.1 In this regard, I find that, Revenue has challenged the above said Hon'ble Madras High Court order of Single Judge reported I n (2019 (30) G.S.T..L 628(Mad.)) allowing ITC of unutilized credit of Education Cess and Secondary and Higher Education Cess on transition To GST. The said challenge is on the ground that these cesses stood deleted way back in year 2015 whereas GST law was introduced in 2017. ITC was disallowed by authorities in absence of any provision in GST law allowing such credit. It was also pleaded that in similar case, Hon'ble High Court of Delhi reported in [2018(14)G.S.T. L 522(Del)] has disallowed credit.

8.2. Further, I also find any "cess" is not covered under the category of "eligible duties" as per the Explanation-1 to the Section 140 of the CGST Act which provides transitional arrangement for input tax credit.

9.1. It is further observed that the Larger Bench of the Hon'ble High Court of Bombay has considered the issue of refund of accumulated cenvat credit in case of Gouri Plasticulture Pvt. Ltd. Vs. CCE Indore reported in [2019-TIOL-1248-HC-Mum-CX-LB] when the Division Bench of the Hon'ble High Court at Bombay had referred the matter to it after framing the questions of law as under:

- "(a) Whether cash refund is permissible in terms of clause (c) to the proviso to section 11B(2) of the Central Excise Act, 1944 where an assessee is unable to utilize credit on inputs?*
- (b) Whether by exercising power under Section 11B of the said Act of 1944, a refund of un-utilised amount of Cenvat Credit on account of the closure of manufacturing activities can be granted?*
- (c) Whether what is observed in the order dated 25th January 2007 passed by the Apex Court in Petition for Special Leave to Appeal (Civil) No. CC 467 of 2007 (Union of India vs Slovak India Trading Company Pvt Ltd.) can be read as a declaration of law under Article 141 of the Constitution of India?"*

9.2. After analysing the entire issue in detail, the Hon'ble High Court have answered the questions of law as under:

"40. As a result of the above discussion, we answer the questions of law framed above as (a) and (b) in the negative. They have to be answered against the assessee and in favour of the Revenue. Questions (a) and (b) having been answered accordingly, needless to state that the order of the Hon'ble Supreme Court in the case of Slovak India (supra) cannot be read as a declaration of law under Article 141 of the Constitution of India."

10. Further, I find that the Hon'ble CESTAT, Regional Bench at Hyderabad in case of M/s. Mylan Laboratories Ltd. Vs. Commissioner of C.Excise & Customs, Guntur in Central Excise Appeal No. 30591 of 2019 also relied upon the above mentioned



judgement while considering the identical issue and text of the Final Order No. 30689/2020 dated 25.02.2020 issued is re-produced as below:

*"Respectfully following the ratio of the judgement of the larger bench of Hon'ble High Court of Mumbai, this Bench had, on an identical matter, in Final Order No. A/31159/2019 dated 23/12/2019 in service tax appeal No. 30525/2019 in case of BHEL **has held that there is no legal provision under which the said refund could be given.** I find no reason to take a different view in this case. Accordingly, following the judgement of the Hon'ble High Court of Bombay (Larger Bench), I find that the appeal filed by the appellant cannot be allowed and the impugned order is correct and calls for no interference."*

11. On careful consideration of the relevant legal provisions and the judicial pronouncements of the Hon'ble High Court, I find that the appeal filed by the appellant is not legally maintainable on merits and is liable to be rejected.

12. In view of the above, I do not find any merit in the contention of the appellant so as to interfere in the order issued by the adjudicating authority. Accordingly, I uphold the impugned Order-in-Original and the appeal is accordingly rejected.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed of in above terms.

(Mukesh Rathore)
Joint Commissioner(Appeals)
संयुक्त आयुक्त(अपील्स)
Dated:28.01.2021

Attested

(Atul Amin)
Superintendent(Appeals),
Central Tax, Ahmedabad



By Regd. Post A. D
M/s. Tata Motors Ltd.,
Plot No. A-1, Tata Motors,
Village North Kotpura, Sanand,
Ahmedabad, Gujarat-382170

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
4. The Commissioner of Central Tax, Ahmedabad-North.
5. The Assistant Commissioner, CGST Division-II, Ahmedabad-North.
6. Guard File.
7. P.A. File