dhruva
A Ryan LLC Affiliate

Dimensions

Indirect Taxes Bulletin

December 2025

Judgements and Rulings

Refund cannot be denied to the actual exporter of goods on inputs qualifying as 'deemed export' supplies | Gujarat High Court | Shah Paperplast Industries Ltd.[1]

Issue for consideration

- Whether paragraph 2.2 of Circular No. 172/04/2022-GST, which excludes input tax credit (ITC) on deemed export supplies from the computation of unutilised ITC for refund under Rule 89, can validly be invoked to deny refund to an actual exporter.

Facts

- Petitioner, a 100% EOU[2], purchased GST-paid raw materials from the registered suppliers, utilised for the manufacturing of exported finished products.
- Petitioner filed an undertaking that the inputs were purchased on payment of tax under the deemed export provisions[3], and suppliers had not claimed the refund of such tax[4].
- Petitioner filed a refund claim of unutilised ITC under Section 54(3) read with Rule 89(4) for zero-rated supplies made without payment of tax and was granted a provisional refund.
- CBIC[5] issued Circular No. 172/04/2022-GST dated July 06, 2022, providing that in deemed export cases, tax paid would not be considered as ITC, for calculating refund under Rule 89(4)/ Rule 89(5) of CGST Rules.
- Revenue refused the refund granted on the ground that the tax paid on deemed exports would not be considered as ITC and that the refund application should be filed under Rule 89(4A)[6], not under Rule 89(4).
- Petitioner argued that the Circular, not in force at the time of export, cannot be given a retrospective effect.

Findings of the Court

- Petitioner is the actual exporter and has not claimed an ITC refund on the deemed export supply. It claimed a refund of unutilised ITC as a 100% EOU of zero-rated supply without payment of tax as per the provisions of Section 54(3) read with Rule 89(4).
- All the inward supplies to the Petitioners are made with payment of GST charged by the suppliers.
- Supplier of goods to Petitioner has neither shown such supplies as deemed export (the supplies have been shown as regular B2B supplies), nor followed the **Circular No.14/14/2017** procedure[7].
- When the Petitioner is not the deemed export supplier, Rule 89(4A)[8] would also not be applicable.

Conclusion

- As the Petitioner is the exporter of the goods and has never claimed the ITC as a deemed exporter, Circular No.172/04/2022-GST is not applicable.
- Petitioner is entitled to a refund claim of the ITC under Rule 89(1)/89(4) of the CGST Rules as the goods are exported without payment of tax.

Dhruva Comments

The judgment relieves the exporting community of upstream taxes and underscores the principle that a genuine exporter has a statutory right to an IGST refund on zero-rated exports and that such refunds cannot be denied based on administrative Circulars inconsistent with the statutory provisions.

Demand from the Company sold as 'going concern' in liquidation is invalid | Calcutta High Court | Rabirun Vinimay Pvt. Ltd[9]

Issue for consideration

- Whether tax demand can be raised against the Petitioner, sold as a going concern in liquidation?

[1] TS-945-HC(GUJ)-2025-GST
[2] Export Oriented Undertaking
[3] Notification No.48/2017 and Circular No.14/2017
[4] Supplies by registered person to 100% EOU (Petitioner) qualifies as deemed exports on which refund could be claimed either by the supplier or by the recipient as per Rule 89(1) of CGST Rules, 2017
[5] The Central Board of Indirect Taxes and Customs
[6] Rule 89(4A) applies to ces where the suppliers have taken benefit of deemed export Notification No.48/2017
[7] Procedure regarding procurement of deemed export supplies from DTA by EOU
[8] Omitted from October 08, 2024 vide Central Goods and Services Tax (Second Amendment) Rules, 2024
[9] TS-938-HC(CAL)-2025-GST

Facts

- Corporate Insolvency Resolution Process ('CIRP') was initiated against the Petitioner after a bank filed an application under the Insolvency and Bankruptcy Code, 2016 ('IBC'), which was admitted by the National Company Law Tribunal ('NCLT').
- Since CIRP failed to result in a viable resolution Plan, the Petitioner was admitted into liquidation by NCLT order and thereafter sold as a going-concern.
- Demand was raised against the Petitioner for the past dues, which were challenged on the ground that the Petitioner was sold in liquidation as a going concern.
- Petitioner submitted that the "clean state" principle applicable to corporate debtors having undergone successful CIRP would apply in the instant facts too.

Findings of the Court

- Promotion of corporate revival is the avowed object of IBC, and a buyer of a corporate debtor as a going concern should not be saddled with past dues.
- Well-settled position that upon successful completion of a CIRP or a corporate debtor sold in liquidation as a going-concern on a "clean slate" basis, all the past dues stand extinguished.
- Creditors would be entitled to their dues only in terms of the waterfall mechanism contemplated under Section 53 of the IBC.
- Court found no reason to take a divergent view from the one taken by it in ***Kashvi Power Steel P. Ltd.*** [10]

Conclusion

- The proceedings by the authorities could not have been initiated at all in respect of the past dues, and the demand order was set aside.

Dhruva Comments

The Court's ruling reinforces the 'clean slate' doctrine and is consistent with earlier decisions of various High Courts and NCLT, which have held that once a resolution plan is approved, all prior liabilities stand extinguished unless specifically provided for in the plan.

The judgment reiterates the core objective of IBC, which is to ensure the revival of distressed companies.

Interest due on refund of IGST paid on Ocean freight | Bombay High Court | West India Continental Oils Fats Pvt. Ltd.[11]

Issue for consideration

- Whether interest due on refund of IGST paid on ocean freight is available?

Facts

- The Petitioner-Importer had paid IGST on ocean freight under RCM for goods imported at the ports.
- Following the Supreme Court decision in ***Mohit Minerals Pvt. Ltd.***[12], the Court[13] in Petitioner's own case had held the Notifications[14] seeking to levy IGST on ocean freight, as unconstitutional and directed the Revenue to refund the IGST amount paid along with interest.
- Pursuant to the Court's direction, Revenue sanctioned the refund; however, it rejected the claim towards interest on the ground that the refund was paid within the time limit of 60 days as prescribed[15].
- Petitioner contended that Section 54 is applicable only to claim a refund of tax paid under the provisions of the CGST Act, and the amount paid under RCM on ocean freight cannot be considered as tax.

Findings of the Court

- The Supreme Court decision held that a separate IGST levy on the component of ocean freight was in violation of Section 8 of the CGST Act and the overall scheme of the GST legislation.
- The amount of IGST collected from the Petitioner (now refunded) was not payable at all in law because such tax payment is based on the Notifications struck down by the Supreme Court, followed by this Court's decision in the Petitioner's own case.
- Thus, the liability to pay tax imposed on the Petitioner under RCM has no legs in law to stand on.
- Revenue cannot shirk the statutory obligation to pay interest within the timeline of 60 days as stipulated under Section 54, read with Section 56.
- The Supreme Court in various cases[16] relating to the interpretation of Section 11BB of the erstwhile

[10] Kashvi Power and Steel P. Ltd. vs. West Bengal State Electricity Distribution Co. Ltd. [2022 SCC OnLine Cal 4617

[11] TS-870-HC(BOM)-2025-GST]

[12] Mohit Minerals Pvt. Ltd. [TS-246-SC-2022-GST]

[13] Writ Petition No.8318 of 2019 dated August 10, 2022

[14] Notification No.8 of 2017-Integrated Tax (Rate) read with Notification No.10/2017-Integrated Tax (Rate) and corrigendum dated June 30, 2017

[15] Section 54 read with Section 56 of the CGST Act.

[16] Ranbaxy Laboratories Ltd. [(2011) 273 E.L.T. 3 (SC)] and Hamdard (WAQF) Laboratories [2016 (333) E.L.T. 193 (SC)]

Central Excise Act, 1994 recognized Revenue's obligation to pay statutory interest within 3 months.

- The Court in another case[17] pertaining to interest on the delayed GST refund, which relied on a Supreme Court decision[18], it was held that interest u/s 56 is payable from the expiry of 60 days from the original refund application.
- Section 54 is only applicable for claiming a refund of tax paid under the CGST Act and not where Revenue has no authority to collect the IGST. A similar observation has been made by the **Gujarat High Court**[19].
- Denial of refund would violate the constitutional mandate under Article 26, as the Petitioner is legally entitled to claim interest on such refunded amount of tax paid without the authority of law.
- One cannot enrich oneself illegally and is bound to return the amount wrongfully paid without legal authority[20].

Conclusion

- Petitioner is legally entitled to claim interest on the refund of IGST paid on ocean freight without the applicability of any limitation period under Section 54.

Dhruva Comments

High Courts[21] have consistently ruled that no limitation period is applicable to the refund of IGST on Ocean Freight pursuant to the Supreme Court judgment in Mohit Minerals, and also directed a refund along with interest[22]. Importers who have paid IGST on ocean freight and not yet received interest can pursue their claim based on this ruling.

Service apartments classifiable as commercial and not residential buildings | SRIPSK Developers LLP | West Bengal Authority for Advance Ruling[23]

Issue for consideration

- Whether the construction of a service apartment would fall under the construction services of multi-storied residential or commercial buildings, and be taxed accordingly?

Facts

- Applicant constructs a multi-storied apartment under the development agreement with the landowner.
- Phase-1 comprised the service apartment and the multi-level car parking, and Phase-2 comprised the hotel. Both together constitute the "complex".
- The Applicant has sought an advance ruling on the taxability of the project 'Palladina' (the proposed B+G+31 storey), which was sanctioned as "service apartments" by Kolkata Municipal Corporation (KMC) and a residential project by WBRERA[24] authorities.

Findings of the Court

- Under the development agreement, the landowner has given the development right of the land to the applicant (developer) for the construction of three building blocks.
- A service apartment in a real estate project refers to a fully furnished apartment providing hotel-like amenities and services within the rental cost.
- KMC has imposed restrictions on construction, providing that the said property shall be used for setting up the hotel cum convention centre and other commercial ventures/enterprises (excluding residential units).
- When KMC has sanctioned the plan specifically for "service apartments building", the apartment in the project is not a residential apartment.
- Commercial apartment means an apartment other than a residential apartment[25]. On this count, "Palladina" should be considered as a project for the construction of a commercial apartment.
- The provisions of the Calcutta Municipal Corporation Act, 1980 as amended, clearly indicate that KMC fits into the definition of "competent authority" as per Section 2(p) of the Real Estate (Regulation and Development) Act, 2016.

---

[17] Altisource Business Solutions India Pvt. Ltd. [TS-848-HC(BOM)-2025-GST]

[18] Ranbaxy Laboratories Ltd. [(2011) 273 E.L.T. 3 (SC)]

[19] Comsol Energy Private Limited vs. State of Gujarat [TS-1241-HC(GUJ)-2020-GST]

[20] Mafatlal Industries Vs. Union of India [1997 (5 SCC 536) SC]

[21] Louis Dreyfus Company Private Limited vs. UOI & Ors. [TS-720-HC(AP)-2025-GST], Comsol Energy Private Limited vs. State of Gujarat [TS-1241-HC(GUJ)-2020-GST]

[22] Louis Dreyfus Company India Pvt Ltd. vs. Union of India [TS-385-HC(GUJ)-2022-GST]

[23] 2025 (10) TMI 1020

[24] West Bengal Real Estate Regulatory Authority

[25] Notification No. 11/2017 – Central Tax (Rate) read with Notification No. 03/2019 - Central Tax (Rate),

- WBRERA's classification of a service apartment as a residential apartment will not render 'redundant' the nature and purpose of the project nor the classification by KMC as a 'competent authority'.

Conclusion

- Service apartments are classifiable as a commercial construction project and not a residential project.

Dhruva Comments

This advance ruling addresses an interesting issue of conflict in the classification of a project by various regulators.

ITC ineligible on annual lease rentals paid for setting car-battery cell factory | Gujarat Authority for Advance Ruling | Gujarat Agratas Energy Storage Solutions Pvt. Ltd.[26]

Issue for consideration

- Whether ITC is available on the annual rent paid towards the lease of land:
  - On which the factory building would be constructed;
  - For the period prior to and after the construction;
  - For repairs and maintenance activities; and
  - With respect to the vacant portion of land (land on which no immovable property is constructed for environmental and other purposes)?

Facts

- Applicant, a wholly owned subsidiary of Tata Sons, manufacturing motor-vehicle battery cells, was granted leasehold rights from the Gujarat Industrial Development Corporation (GIDC) for 50 years.
- An advance ruling was sought before the Gujarat Authority for Advance Ruling (GAAR) on the eligibility of ITC of GST paid under RCM (reverse charge mechanism) on annual lease rental paid to GIDC.
- Applicant made the following submissions:
  - The differential treatment based on the manner/periodicity of payment, i.e. upfront premium[27] and annual lease may lead to an inequitable outcome.
  - The term 'for' used in Section 17(5)(d) does not apply to indirect/remote supplies but only to goods and services directly used in the construction. **Supreme Court**[28] has put a restrictive meaning on the word 'for' and distinguished it from the usage of the term 'in relation to'.
  - 'Functionality test' formulated by the Supreme Court in the **Safari Retreats' case**[29] has not been considered.

Findings of the GAAR

- Upfront payments and annual lease rentals are not the same and have been treated differently by the Government.
- While no exemption has been provided for lease rentals, Notification No. 12/2017- CT-(Rate) dated June 28, 2017 specifically exempts the upfront amount paid for granting a long-term lease. This reflects a conscious Government decision to promote industrial parks.
- The GST Council is aware of this position[30] and the Supreme Court in an Income Tax case[31] has held the same.
- The expression 'for' does not restrict the scope of Section 17(5)(d) to materials having a direct nexus to construction but enlarges it. **Supreme Court**[32] has explained the scope of the expression 'for'.
- Both clauses (c) and (d) of Section 17(5) deal with different situations and are independent. While clause (c) deals with work-contract service, clause (d) deals with goods or services used for immovable property construction.
- This Authority has denied ITC in various cases[33] basis the Section 17(5)(d) restriction. In the case of **Bayer Vapi**, the appeal filed was rejected by the Appellate Authority for Advance Ruling (AAAR)[34].
- Applicant's submission that the advance ruling in **Bayer Vapi** related to ITC eligibility on leasehold rights in industrial land would not make any

[26] TS-933-AAR(GUJ)-2025-GST
[27] Premium, salami, development charges etc
[28] Collector of Central Excise, Pune Vs Tata Engineering and Locomotives Co. Ltd [2003 (158) ELT 130 (SC)]
[29] Chief Commissioner of Central Goods and Service Tax vs M/s Safari Retreats Private Limited [TS-622-SC-2024-GST]
[30] Agenda for the 37th GST Council meeting.
[31] Commissioner of Income Tax, Assam Vs The Panbari Tea Co. Ltd. [1965 AIR 1871]
[32] Oblum Electrical Industries Pvt Ltd. [(1997 (94) ELT 449)]
[33] Bayer Vapi Pvt. Ltd. (2023-VIL-177-AAR), GACL-NALCO Alkalies and Chemicals Pvt Ltd. (2021-VIL-432-AAR)
[34] 2025-VIL-08-AAAR

difference, as in both cases, the services relate to the land used for immovable property construction.

- **Gujarat High Court**[35] has recently held that the assignment of leasehold rights by the lessee-assignor to the assignee qualifies as a transfer of immovable property and not 'supply of service'.
- Subsequent to **Safari Retreats'** judgment, the Legislature[36] amended Section 17(5)(d) and substituted the words 'Plant or Machinery' with the words 'Plant and Machinery' with effect from July 01, 2017.

Conclusion

- Applicant is not eligible for ITC of the GST paid under RCM on the lease rental.
- The eligibility of ITC is not contingent on whether it pertains to pre or post-construction activity, as the land has been given on lease specifically for the construction of the factory.
- Any land kept vacant for meeting the mandatory environmental guidelines would be a part of the industry constructed on the leased land. Hence, ITC is not available on the vacant portion of the land.
- ITC would not be available on repairs and maintenance activities since the expression 'construction' includes reconstruction, renovation, addition or alterations or repairs[37].

Dhruva Comments

The ruling denies ITC on long-term lease rentals on the basis that the lease is linked to the construction of a factory building, which constitutes immovable property. In doing so, the advance ruling has rendered an interesting yet debatable interpretation of Section 17(5)(d) of the CGST Act.

This ruling may have material implications for real estate developers and manufacturing entities, as lease rentals would add to the cost of operations.

The approach adopted is consistent with earlier decisions, including **Bayer Vapi** and **GACL–NALCO**.

Under the erstwhile IDT regime, CESTAT in various cases[38] allowed credit on the input service of leasing of land used in setting up a factory. CESTAT interpreted the definition of "input service" w.e.f. April 1, 2011, to derive that definition is wide enough to include the services "in relation to" setting up of a factory.

Land development activities by a developer are not taxable as "real-estate agent" service | Elegant Developer | Supreme Court[39]

Issue for consideration

- Whether the land development activities rendered by a developer are taxable as "real-estate agent" service?

Facts

- Assessee entered into an MoU[40] with Sahara India Commercial Corporation Ltd. (SICCL) for the acquisition, development and management of land parcels for SICCL's real estate project.
- Assessee was responsible for purchasing the land in contiguous blocks, demarcating the entire land into blocks of 20 to 30 acres and furnishing title papers.
- Assessee was obligated to effect the registration of the said land in the name of SICCL, after disbursing the requisite payments to the respective landowners.
- The Directorate General concluded that the Assessee squarely fell within the purview of a 'real-estate agent' as defined under the Finance Act, 1994.
- Revenue is in appeal against the CESTAT ruling, which held that the MOUs did not specify any fixed remuneration in the form of commission, etc., for land acquisition and both parties acted as principals in the transaction, rather than as principal and agent.
- Assessee contested that:
  - Its dealing was confined to the purchase and sale of land and were not a real estate service.
  - It undertook land development activities prior to the sale deed execution.
  - It acted as an intervening trader, bearing the procurement risk and earning or losing on the spread.

Findings of the Court

- There has to be a contract of agency for a person to qualify as a real estate agent. Likewise, 'real-estate

[35] GCCI & Othrs Vs UOI [2025 (1) TMI 516-HC-GST-2025-VIL-21-GUJ]

[36] Section 124 of the Finance Act, 2025

[37] The Explanation under Section 17

[38] Pepsico India Holdings Pvt. Ltd. [2021 (7) TMI 1094-CESTAT Hyderabad], Kellogs India Pvt., Ltd. [2020 (7)-TMI-414 CESTAT Hyderabad, Zuari Cement Limited (Central Excise Appeal No. 20591 of 2022), Kellogs India Pvt., Ltd. [2020 (7)-TMI-414 CESTAT Hyderabad,

[39] TS-722-SC-2025

[40] Memorandum of understanding

consultant' is a person who renders services in the form of advice, consultancy or technical assistance.

- While 'real estate' encompasses land, buildings, and associated development works and connected commercial activities, the definition of 'real estate agent'[41] is service-centric.
- The terms of the MoU do not indicate that there existed any principal and agent relationship between SICCL and the assessee, but simply refer to a fixed rate per plot payable by SICCL for every chunk of the land.
- There was no element of any service or consultancy charges levied on such sale transactions.
- The transaction is covered within the exception enumerated in the definition of 'service'[42] i.e. an activity which constitutes merely a transfer of title in goods or immovable property.
- Assessee's profitability was contingent upon the rate at which land was procured from the sellers.
- There existed a probability of the Assessee suffering losses in the transaction if the value of the land exceeded the fixed price agreed upon in the MoUs, which is not possible in a service contract.
- The extended period of limitation is not invokable in the absence of any element of concealment or suppression since all transactions were through banking channels.

Conclusion

- Assessee acted neither as a real estate agent nor a consultant under the MoUs; the activities undertaken did not amount to service but were incidental to the sale of immovable property, and so, land development activity is not a taxable service.

Dhruva Comments

The Supreme Court has reaffirmed the settled legal position that land aggregation and development arrangements structured on a principal-to-principal basis constitute a transfer of an immovable property and are not taxable as a service.

The ruling upholds the principle that the contractual relationship between parties is a decisive factor in determining the taxability.

This judgment will serve as a significant precedent for disputes in the real-estate sector, not only under the erstwhile Finance Act, 1994, but also the GST regime.

Payment to sub-contractor excludible from Principal contractor's taxable turnover | Skyline Construction and Housing Pvt. Ltd. | Supreme Court[43]

Issue for consideration

- Whether the principal/main contractor is entitled to reduce the amount paid to the sub-contractor from the total consideration while calculating the VAT liability.

Facts

- Assessee filed an application before the 'Authority for Clarification and Advance Rulings' ('Authority') on the question as to whether the amounts paid to the sub-contractor were includible in its consideration.
- The Authority[44] held that there was no specific provision till March 31, 2006, in the Karnataka Value Added Tax Act, 2003 (KVAT Act) for providing a deduction of such payment for the purpose of determining VAT liability of the main contractor.
- **High Court**[45] allowed the assessee's appeal against the order passed by the Authority and held that:
  - Since the sub-contractor was liable to VAT, the payment made by the main contractor to the sub-contractor was not includible in the taxable consideration of the main contractor, as this would lead to double taxation.
  - Deduction would be admissible provided such sub-contractors were registered and paid tax.
- An appeal has been filed by Revenue against the judgment of the Karnataka High Court, submitting that the reliance placed on this Court's decision in **Larsen & Toubro Ltd.**[46] (L&T) is misconceived.

Findings of the Court

- The reasoning assigned by the High Court in its impugned judgment is absolutely in consonance with the judgment of this Court in L&T.
- In the L&T case, this Court held that, in a works contract, sales take place on the principle of

[41] Section 65(88) of the Finance Act, 1994
[42] Section 65B(44)(a)(i) of the Finance Act, 1994
[43] TS-713-SC-2025-VAT
[44] AR.CLR.CR.480/06-07
[45] Karnataka High Court order dated November 17, 2009 in STA No.24 of 2006
[46] 2008 (17) VST 1

accretion directly from the sub-contractor to the contractee, despite no contractual relationship subsisting between the sub-contractor and the contractee.

- While the State legislatures have the competence to impose sales tax on the works contracts after the 46th constitutional amendment, the principle of accretion remains unchanged.
- This Court's judgment in Builders Association of India[47] has no applicability as the controversy in said case was whether the State can formulate an alternative scheme of composition.
- Deduction of payment made to the sub-contractor cannot be equated with ITC, as argued by the State, as in the case of sub-contractor, the value goes out of the charging provision itself.

Conclusion

- It cannot be said that the works contract was executed by the main contractor to the extent of the contract executed through subcontractors.
- The total consideration for the works contract executed by the main contractor shall exclude the payments made to the sub-contractors.

Dhruva Comments

The Supreme Court has reiterated the law governing accretion and single-point taxation in works contracts. The court has endorsed the view that double taxation in works contracts, which operate on the accretion doctrine, is impermissible.

This ruling would aid in the interpretation of multi-layered sub-contracting arrangements under GST, given that the principle of accretion and double taxation avoidance shall apply to works-contract.

Blocked cesses cannot be transitioned into GST; Refund not permissible | Kei Industries Ltd. | CESTAT (Larger Bench)[48]

Issue for consideration

- Whether the credit of Education Cess abolished in 2015 could be transitioned to the GST regime?
- Whether the filing of a refund claim after 2017 is barred by limitation?

Facts

- Assessee carried the balance of Education Cess and Secondary & Higher Education Cess and Krishi Kalyan Cess (collectively referred to as Cesses), in their last filed returns [ER-1/ST-3] for the month of June 2017.
- These amounts were initially transitioned to GST by way of the TRAN-1 form, but the Assessee reversed the amount on the Department's insistence and filed a refund claim.
- Contrary decisions of Division Benches in Nu Vista[49] *vis-à-vis* NMDC[50] (both Delhi Bench) under Section 142 (3) of the CGST Act 2017 [2024] resulted in the constitution of the present larger bench (LB) to resolve the issue.

Findings of the Court

- Assessee have not brought any case law for consideration which provides that prior to July 1, 2017, cesses were eligible for a refund.
- The Madras High Court decision in the case of Sutherland Global Services[51] (which disallowed transition of cesses into GST) It is the most comprehensive decision on the very issue. The said case is most apposite and squarely applicable to the present facts.
- Explanation 3 to Section 140 (1) of the CGST Act, clearly excludes cesses from the ambit of "eligible duties and taxes" Further, transition of cesses is not permitted as per the Board's Circulars[52].
- Explanation 1 and 2 have clearly specified the "inclusive list of duties and taxes" that can be transitioned. Exclusion of cesses under these Explanations is sufficient to move them from the ambit of "eligible duties and taxes", without any need for determining whether the exclusion in terms of Explanation 3 for Section 140 (5) was notified or not.
- A harmonious reading of Section 140(1) and the Explanations 1 to 3, read with the two Circulars and the format of ER-1 return and clause 5 (a) of the

47 State of Kerala & Anr. Vs. Builders Association of India & Ors. [(1997) 2 SCC 183]

48 TS-744-CESTAT-2025(DEL)-EXC)

49 Excise appeal no. 52318 of 2019

50 2024 (5) TMI 192

51 Assistant Commissioner of CGST and Central Excise and Ors. vs. Sutherland Global Services Pvt. Ltd. & 2 Ors. [TS-878-HC(MAD)-2020-NT]

52 Circular No. 267/8/2018-CX8 dated March 14, 2018 and Circular No. 87/06/2019-GST dated January 2, 2019

TRAN-1 would clarify that the TRAN-1 has only one column for CENVAT credit.

- With the exemption of cesses on goods from March 1, 2015, and on services from June 1, 2015, the closing balance got fully blocked on account of the prohibition on their cross-utilization with the normal excise duty and service tax credit.
- The "vested right", if any, was conferred on March 1, 2015, and June 1, 2015. However, the Assessee did not press for the refund of such blocked credits but simply carried forward the same in their returns.
- Even prior to July 1, 2017, the blocked cesses were held as lapsed in view of Delhi[53] and Rajasthan[54] High Court judgement.
- In view of these decisions, there was no provision under Cenvat Credit Rules, 2004 (CCR) either to merge the blocked cesses with excise duty/service tax or to claim them as refund under Section 11B.
- Hence, there did not exist any "vested" right even prior to GST introduction.
- Assessee's reliance placed on the Karnataka High Court[55]decision (affirmed by the Supreme Court[56]) which pertains to the cash refund of the CENVAT credit of the closed unit, will not come to their rescue as the same has been distinguished and overruled by the 3-judge bench of the Bombay High Court[57].
- Once the assessee did not utilize the normal avenue within the framework of CCR, they cannot take recourse to the new regime's law to claim immunity from the time bar. This is thoroughly misconceived, and the refund claim is "hopelessly time-barred".
- Thus, when the refund is not eligible ab-initio, the question of granting them under the provisions of the CGST Act 2017 cannot arise.

Conclusion

- In view of the Madras High Court decision in the Sutherland case, cesses have become a dead CENVAT credit on March 1, 2015 and June 1, 2015. Hence, the refund is not permissible.
- Filing of the refund would be time-barred by March 1, 2016 and June 1, 2016.

Dhruva Comments

The Larger Bench ruling aligns with the settled jurisprudence on denial of transition/refund of cess credit.

It reinforces the view that such credits stood extinguished upon their abolition in 2015 and cannot be resurrected or transitioned into the GST regime.

That said, the insertion of the Explanation to Section 140, introduced in 2020 with retrospective effect, may be challenged.

The matter is pending consideration before the Supreme Court in the case of Sutherland[58] which will conclusively determine the fate of pre-GST cess balances.

53 Cellular Operators Association of India [2018 (14) G.S.T.L. 522 (Del.)]
54 Banswara Syntex Ltd. v. Commissioner of Central Excise and Service Tax [2019 (365) E.L.T. 773 (Raj.)]
55 U.O.I. vs Slovak India Training Co Pvt Ltd. [ELT-559(Kar)]
56 U.O.I. Vs Slovak India Trading Co Pvt Ltd. [2008(223) ELT A 170(SC)]
57 Gauri Plasticulture Vs CCE 2019(30) GSTL 224 (BOM)
58 Petition(s) for Special Leave to Appeal (C) No. 7780/2021

Regulatory Updates

GSTN Advisory | Introduction of 'Import of Goods' section in IMS

- A new section, "Import of Goods", has been introduced in IMS[59] wherein the Bill of Entry (BoE) filed for import of goods, including import from SEZ, will be made available in IMS for taking allowed action on individual BoE.
- Recipient taxpayers will have the option to either accept or keep a BoE pending. If no action is taken on an individual BoE, it will be treated as deemed accepted.
- The action taken can be changed after the generation of draft GSTR-2B till the filing of the corresponding GSTR-3B.

Customs and FTP

Customs Circular | CBIC operationalises the ICEGATE 2.0 module for MOOWR and MOOSWR permissions[60]

- A dedicated online module on ICEGATE 2.0 is now operational to streamline and simplify applications for permissions under Section 65, covering both **MOOWR**[61] and **MOOSWR**[62].
- A detailed user manual providing a clear, stepwise Instructions with screenshots of the module interface, and users have been advised to acquaint themselves with the same.

FTP Notification | DGFT restricts import of jewellery and parts till April 2026[63]

- DGFT imposed immediate restrictions on the import of unstudded platinum and silver jewellery.

FTP Notification | Restriction on import of silver jewellery not applicable to SEZ/EOU/AA/DFIA imports[64]

- Import by 100% EOU/SEZ unit or under Advance Authorization (AA)/Duty Free Import Authorization Scheme (DFIA) is not subject to the restriction imposed on import of silver jewellery.

DGFT Trade Notice[65] | Pilot launch of Bharat Aayat Niryat Lab Setu

- DGFT proposes initiating the pilot of Bharat Aayat Niryat Lab Setu, a digital platform for integrating testing and inspection agencies across the country under a single window.
- During the pilot process, exporters/importers may continue to obtain test reports through the existing processes in parallel.

CBIC Notification[66] | 31 notifications merged into a single comprehensive notification

- 31 standalone customs notifications, including principal notification (No. 50/2017-Customs), have been superseded and merged into a single comprehensive notification.
- The notification, effective from November 1, 2025, consolidated the exemptions/concessional rates contained in 31 notifications in a single notification.
- Effective customs duty, IGST and compensation cess rates have been prescribed for goods imported into India.

CBIC FAQs on consolidated notification and advisory to Department officers

- CBIC issues FAQs on the newly consolidated Customs Notification No. 45/2025 describing the change, effective date, etc.
- Explains that the notification has been issued as "a trade-friendly measure" to avoid referring to 31 separate notifications.
- Also, CBIC (GST Policy Wing) has issued an advisory to field formations to ensure uniformity in implementing the Notification.

[59] Invoice Management System
[60] Circular No. 28/2025-Customs dated November 15, 2025.
[61] Manufacture and Other Operations in Warehouse Regulations, 2019
[62] Manufacture and Other Operations in Special Warehouse Regulations, 2020
[63] DGFT Notification No. 34/2025 and 48/2025-26 dated November 17, 2025
[64] DGFT Policy Circular No. 6/2025 dated Oct. 27, 2025
[65] DGFT Trade Notice No. 14/2025-26 dated October 27, 2025
[66] Notification No. 45/2025-Customs dated October 24, 2025

ADDRESSES

Mumbai
1101, One World Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai – 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad
402, 4th Floor, Venus Atlantis, 100 Feet Road, Prahlad Nagar,
Ahmedabad – 380 015
Tel: +91 79 6134 3434

Bengaluru
67/1B, Lavelle Road,
4th Cross, Bengaluru,
Karnataka – 560001
Tel: +91 90510 48715

Delhi / NCR
305-307, Emaar Capital Tower-1,
MG Road, Sector 26, Gurugram
Haryana – 122 002
Tel: +91 124 668 7000

New Delhi
1007-1008, 10th Floor, Kailash Building, KG Marg, Connaught Place,
New Delhi – 110001
Tel: +91 11 4471 9513

GIFT City
Dhruva Advisor IFSC LLP
510, 5th Floor, Pragya II,
Zone-1, GIFT SEZ, GIFT City,
Gandhinagar – 382050, Gujarat.
Tel: +91 7878577277

Pune
406, 4th Floor, Godrej Millennium,
Koregaon Park,
Pune - 411001,
Tel: +91 20 6730 1000

Kolkata
4th Floor, Camac Square,
Unit No. 403 & 404B,
Camac Street,
Kolkata - 700016, West Bengal
Tel: +91-33-66371000

Singapore
Dhruva Advisors Pte. Ltd.
#16-04, 20 Collyer Quay,
Singapore – 049 319
Tel: +65 9144 6415

Abu Dhabi
Dhruva Consultants
1905 Addax Tower,
City of Lights, Al Reem Island,
Abu Dhabi, UAE
Tel: +971 2 678 0054

Dubai
Dhruva Consultants
Emaar Square Building 4,
2nd Floor, Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

Saudi Arabia
Dhruva Consultants
308, 7775 King Fahd Rd,
Al Olaya, 2970,
Riyadh 12212, Saudi Arabia

KEY CONTACTS

Dinesh Kanabar
Chairman & CEO
dinesh.kanabar@dhruvaadvisors.com

Ranjeet Mahtani
Partner
ranjeet.mahtani@dhruvaadvisors.com

Jignesh Ghelani
Partner
jignesh.ghelani@dhruvaadvisors.com

Kulraj Ashpnani
Partner
kulraj.ashpnani@dhruvaadvisors.com