



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.540 OF 2024

Sukraft Recycling Private Limited,
a company incorporated under the
Companies] Act,1956 and having
its head office at Plot No.26,
Phase-I, Honda Industrial Estate]
Sattari, North Goa,- 403 530,
Hereby represented by its Director
(the authorised signatory of the
Petitioner in the matter herein)
Mr. Ketan Bharatkumar Patel, by
virtue of Board Resolution
dated:22/04/2024.

... Petitioner

Versus

1. Union of India through,
The Joint Secretary,
Department of Revenue,
Ministry of Finance having its
office at Udyog Bhavan,
New Delhi-110 001
2. Assistant Commissioner of
Central GST, Division-I, Goa
Commissionerate having its
office at 6th Floor, GST Bhavan
EDC Complex, Plot No.6, Patto
Plaza, Panaji, Goa
3. Additional Commissioner
(Appeals) Central Tax, Goa,
having its office at 6th Floor, GST
Bhavan, EDC Complex, Plot
No.6, Patto Patto, Panaji, Goa.

... Respondents.

Mr Prithviraj Chaudhari, Advocate with **Ms Cijoni Matilda Dias, Advocate** *for the Petitioners.*

Ms Asha Desai, Central Government Standing Counsel for
Respondents No.2 and 3.

**CORAM : BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED : 21st AUGUST, 2025.

ORAL JUDGMENT: (Per. BHARATI DANGRE, J.)

1. The Writ Petition seeking refund for the financial year 2021-2022 involve the interpretation of Section 16(3) of the Central Government Goods and Services Tax, Act, 2017 (CGST Act, 2017) to be read along with Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017.

We have heard Mr Prithviraj Chaudhari, the learned Counsel for the Petitioner and Ms Asha Desai, learned Standing Counsel representing the Respondent Authorities.

By consent of parties, we deem it appropriate to issue Rule which is made returnable forthwith.

2. The Petitioner, a private limited Company, is a manufacturer of Kraft Paper and is registered under the regime of the Goods and Services Tax Act, 2017. In the manufacturing process, the Petitioner uses raw material which include coal, which is used in boiler for generation of steam, on which the compensation cess is paid to the supplier in terms of the provisions of the Goods and Services Tax (Compensation to States) Act, 2017 while selling the product under export. The Petitioner is making export on payment of IGST @ 12% while utilizing the Input Tax Credit corresponding to compensation cess payment of CGST, IGST, SGST on the raw material.

It is the specific submission of the learned Counsel for the Petitioner that the raw material coal is subjected to two type of levies, one is the CGST and IGST, and the other is the compensation cess.

As far as the claim for refund in respect of the IGST and CGST is concerned, the Petitioner faced no difficulty as the same was allowed and the Petitioner availed the option contemplated in Clause (b) of Section 16(3) of the Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017), as after making payment of the tax, it claimed refund.

The Petitioner, however, faced issue in respect of the refund of the compensation cess claimed, which, according to the Petitioner, for the financial year 2021-2022, is approximated at Rs.36 lakhs.

It is this claim which is denied to it and on reading of the impugned order, it is found that the rejection is on the ground that Section 16(3) of the IGST Act, 2017 has permitted the exercise of the option stipulated therein by use of the word, 'either' and 'or' and the provision allowed the tax payer to claim refund only through one of the two modes. The impugned order contain a reason that the tax payer has sought refund of integrated tax paid on zero rated supply of Kraft Paper and at the same time, is claiming refund on the unutilized input tax credit of GST compensation cess on zero rated supply made on payment of integrated tax and therefore, the Petitioner should resort to the same mechanism, i.e., avail the procedure under Clause (b).

3. We find the justification offered to refuse the benefit to the Petitioner, to be completely lacking logic, and we say so, since we find that the two components, i.e. the component of input tax credit availed under CGST/IGST are different from that by way of compensation cess.

Worth to note that the mechanism prescribed under Section 16 of the IGST Act, 2017, in order to claim refund for making zero rated supply, is restricted to the CGST and IGST and this is evident from the definition of the term, 'input tax credit' under the CGST Act, as it do not include the compensation cess.

Section 2(62) has defined Input Tax to mean Central Tax, State Tax, Integrated Tax or Union Territory Tax charged on any supply of goods or services or both and include the following:

- “(a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.”

4. In contrast, when we look at the provisions contained in the Goods and Services Tax (Compensation to States) Act, 2017, an Act to provide for compensation to the States for loss of revenue arising on account of implementation of Goods and Services Tax in pursuance to the amendment introduced in the Constitution, for levying the Goods and Services Tax, we find the definition of Input Tax Credit in Section 2(g) to mean:

- “(i) cess charged on any supply of goods or services or both made to him;
- (ii) cess charged on import of goods and includes the cess payable on reverse charge basis. The term ‘Cess’ is defined in Section 2(c) to mean the goods and services tax compensation cess levied under Section 8.”

5. Section 8 clearly stipulate that there shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-

State supplies of goods or services or both as provided for in Section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed by the Council.

Section 9 is the relevant provision pertaining to the returns, payments and refunds and it is necessary to reproduce the provision which read thus:

“Section 9. Returns, payments and refunds.

(1) Every taxable person, making a taxable supply of goods or services or both, shall-

- (a) pay the amount of cess as payable under this Act in such manner;
- (b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and
- (c) apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made there under, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply about the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.”

6. Section 11, which is a provision as regards the implementation of Section 8 and 9, categorically stipulate that the provisions of the Central Goods and Services Tax Act, and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under Section 8 on the intra-State supply of goods and

services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the Act. Similarly, by virtue of sub-Section (2), it is clarified that the provisions of the Integrated Goods and Services Tax Act, and the rules made there under, relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-State supply of goods and services, as the case may be.

7. It can thus be seen that as far as the procedural aspect of claiming input tax credit as well as the other matters like interest, appeals, offences and penalties, by incorporation, the statute has incorporated the provision of CGST Act while dealing with the levy and collection of cess on the intra-State supply of goods and services, and also the provisions of IGST Act in so dealing with inter-State supply of goods and services. It is a clear-cut situation of statute by incorporation, and therefore, when an application is made for refund of compensation cess by the applicant, it is an application under Section 11 (2) read with Section 16(3) of the IGST Act, 2017.

What the Department is attempting to suggest, or rather has suggested is, if the Petitioner has adopted the mechanism prescribed in Clause (b) of Section 16(3) for the purpose of CGST/IGST, then the same mechanism must be followed while it claims refund in respect of compensation cess.

8. In our considered opinion, the said logic appear to be flawed and this is clear from their own Circular issued by the Government of India, Ministry of Finance dated 30.05.2018, which is in the form of guidelines issued to the clarifications on refund related issues addressed to the Principal Chief Commissioners as well as Commissioners of Central Tax

and all concerned and when we have a careful reading of the Circular which included Clause 5, which pertain to the refund of unutilised input tax credit of compensation cess availed on inputs in case where the final product is not subject to the levy of compensation cess, is the actual situation which the Petitioner find itself.

As far as the final product of the Petitioner, i.e. Kraft Paper, it is not subjected to compensation cess although the raw material coal, is subjected to compensation cess.

In this peculiar situation, it has supplied the final output without payment of the compensation cess and is now claiming refund of the unutilized input tax credit.

What the Department is trying to suggest is to adopt the mechanism provided in Clause (b), which in any case, cannot be availed by it as there is no compensation cess levied on the final product/output.

9. We must only observe that it is completely illogical in stating that the Petitioner must avail only option (b) when, in fact, there is no compensation cess which is levied on the final product, i.e. the Kraft paper. The only reasoning adopted in the impugned order is that if, in respect of the final product, i.e. the Kraft paper, while claiming the refund of IGST/CGST, it has resorted to mechanism adopted in Clause (b) of Section 16(3) of the IGST Act, 2017, it must restrict its claim in the same fashion by adopting the same mechanism.

The difficulty which the Petitioner is faced with is that he has not made supply of the goods under the bond or Letter of Undertaking but according to us, Clause (a) where the supply is made without payment of integrated tax and refund is claimed of the unutilized input tax credit, the requirement of an Undertaking or bond is to ensure that the supply is actually effected, but, in this case, we do not find any difficulty on that

count also as it is not disputed that the Petitioner has made the export of the final product and this is evident from the fact that he has been allowed to claim refund of IGST/CGST on the product.

Therefore, merely because his application for refund is not backed with a bond or Letter of Undertaking, he cannot be restrained from availing the methodology prescribed in Clause (a) of Section 16(3) while he claimed refund of the unutilized compensation cess as an input tax credit. Learned Counsel for the Petitioner would also rely upon the decision of the High Court of Gujarat at Ahmedabad in the case of **Patson Papers Pvt. Ltd. v/s. Union of India**¹, where a similar issue has been dealt with and a similar conclusion has been arrived at, and we find the conclusion recorded in the said decision in the following words:

“21. On a conjoint reading of above provisions of the GST Act, IGST ACT and the GST (Compensation to State) Act, 2017 (for short 'the Cess Act') as well as para-5 of the Circular No.45/19/2018 and para-42 of Circular No.125/44/2019, the respondent authority appears to have misinterpreted the circulars while rejecting the refund claim applications filed by the petitioner for refund of input tax credit of cess paid by the petitioner for purchase of coal utilized for manufacture of the goods which are exported. As per the provision of Section 54(3) of the GST Act read with Section 16(3) of the IGST Act and Section 11(2) of the Cess Act, the petitioner can claim the refund of unutilized input tax credit for purchase of coal used for manufacture of goods exported being zero rated supply. The petitioner has paid IGST on the goods exported by it, however, the petitioner was not required to pay any compensation cess as the goods manufactured by the petitioner are exempted from the levy of compensation cess. Therefore, while applying the above provisions, admittedly the compensation cess was not paid at the time of export of goods by the petitioner, the petitioner, therefore, is entitled to refund of input tax credit of the compensation cess paid on purchase of the coal utilized for the purpose of manufacture of the goods which are exported as zero rated supply on payment of IGST by the petitioner. Therefore, reliance placed by the respondent on para-42 of the Circular No.125/44/2019 dated 18/11/2019 is misplaced because the said circular was issued clarifying the eligibility to claim refund of unutilized input tax credit of compensation cess paid on input, where the zero rated

¹ (2025) 29 Centax 457 (Guj.)

final product is not leviable with compensation cess. However, the circular refers to the provision of Section 16(2) of the IGST Act that the registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. The circular further clarifies that when the registered person make a zero rated supply of product on payment of integrated tax, they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to Section 11(2) of the Cess Act, as the said proviso allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. However, when the petitioner has paid the IGST under Section 16(3) of the IGST Act on the zero rated supply and refund is claimed by the payment of such IGST, the petitioner admittedly would not be able to utilize input tax credit of cess as cess is not payable on the zero rated supply. Therefore, proviso to Section 11(2) of the Act would not be applicable in the facts of the case and the petitioner would be entitled to refund of the unutilized input tax credit on cess paid on purchase of coal utilized for the purpose of manufacture of goods which are exported.”

10. In wake of the above, the Writ Petition is made absolute.

The Revenue is directed to refund the credit available to the Petitioner by way of compensation cess within a period of four weeks from today, along with interest, if at all admissible, on the said amount.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.