

# Refund of unutilised CENVAT credit of Cesses allowed - CESTAT

16 June 2021



## Summary

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chandigarh observed that the appellant could not transfer the CENVAT credit of Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) to Goods and Services Tax (GST) account due to retrospective amendment in the GST law. Therefore, as they were lying unutilised in their CENVAT credit account on 30 June 2017, it held that the appellant is entitled to file a refund claim of such unutilised CENVAT credit account.

## Facts of the case

- The appellant<sup>1</sup> is engaged in providing various services. The credit of EC, SHEC and KKC were lying unutilised in their CENVAT credit account on 30 June 2017.
- With the GST Regime coming into force, the appellant took the unutilised credit to its GST Account. However, due to an amendment<sup>2</sup> which disallowed the carry forward of CENVAT credit in GST account with retrospective effect, the appellant had to reverse the credit. Thereafter, it filed a refund claim of such CENVAT credit.
- The matter was adjudicated and refund claim was rejected on the ground that

the appellant is not entitled to carry forward the CENVAT credit to the GST regime and, therefore, the refund claim is barred by limitation and has lapsed.

- Aggrieved, thereby, the appellant filed present appeal before the CESTAT.

## Chandigarh CESTAT observations<sup>3</sup>

- **No bar to carry forward CENVAT credit:**  
The new regime of GST came into force on 1 July 2017 and on that date, there existed no bar on carry forwarding the CENVAT credit to GST regime. Therefore, the appellant has taken the CENVAT credit under the GST law.
- **Retrospective amendment in GST law:**  
The relevant provision<sup>4</sup> under the GST

<sup>1</sup> Schlumberger Asia Services Ltd

<sup>2</sup> Made on 30 August 2018 in Section 140 of CGST Act, 2017

<sup>3</sup> Order No. 60844/2021 dated 24 May 2021

<sup>4</sup> Section 140 of the CGST Act, 2017

law was amended retrospectively on 30 August 2018, which provided that the assessee cannot carry forward the credit lying in their CENVAT credit account of EC, SHEC and KKC. Therefore, the appellant reversed the credit and filed a refund claim on 30 August 2019.

- **Contention that it is a GST credit not acceptable:** As the appellant has reversed the said amount in their GST account, the said amount shall remain lying unutilised in their CENVAT credit account as good as on 1 July 2017. Therefore, the contention of the respondent that it is a GST credit is not acceptable as the provision of law clearly states that the said credit cannot be transferred to the GST regime.

**Refund claim is not barred by limitation:**

Since amendment came after one year of the enforcement of GST, it became practically impossible to file a refund claim during the year, as no provision of law existed for the same. Thus, the relevant date for filing the refund claim shall be 30 August 2018 and within one year of the said date,

the refund claim had been filed. Therefore, the claim is not barred by limitation.

**Appellant entitled to refund:** The Tribunal observed that in another ruling, the Delhi Tribunal<sup>5</sup> had held that there is no provision in the GST law that such credits will lapse and, therefore, the assessee is eligible for the cash refund of the Cesses lying as CENVAT credit balance. Applying the same ratio, the Chandigarh CESTAT held that the appellant is entitled to refund and set aside the impugned order.

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<sup>5</sup> M/s Bharat Heavy Electricals Ltd

## Our comments

As the GST law restricts transition of accumulated credit of Cesses, the eligibility to claim refund of Cess balances has been a subject matter of dispute and extensive litigation.

The Delhi Tribunal<sup>6</sup> had held that there is no provision in the GST law that such credits would lapse and merely by a change of legislation, the appellants could not be put in a position to lose this valuable right. Therefore, the assessee is eligible for the cash refund of the Cesses lying as CENVAT credit balance. In another ruling pronounced by the Karnataka High Court<sup>7</sup>, it was observed that there is no express prohibition under the erstwhile law<sup>8</sup>. As there was a closure of the factory, the assessee was coming out of the MODVAT scheme and allowing refund was fully justified. Contrary to this, the Hyderabad Tribunal<sup>9</sup> had observed that there is no provision in the erstwhile laws<sup>10</sup> mandating refund of the impugned Cesses. Therefore, the transitional provisions under the GST law are not meant to cover the refund of the CENVAT credit, as it is not eligible for transition into the GST regime.

This is a welcome ruling by the Chandigarh CESTAT and will help provide relief to businesses at large which were unable to carry forward unutilised CENVAT credit of Cesses levied under the erstwhile indirect tax regime.

The judgment is likely to set precedence in similar matters and help clear pendency of refund claims for other businesses.

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<sup>6</sup> M/s Bharat Heavy Electricals Ltd

<sup>7</sup> Slovak India Trading Co. Pvt Ltd.

<sup>8</sup> in terms of Rule 5 of CENVAT Credit Rules, 2002

<sup>9</sup> M/s Mylan Laboratories Ltd.

<sup>10</sup> CENVAT Credit Rules, 2004 or Section 11B of the Central Excise Act, 1944,

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<b>CHENNAI</b> 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	<b>DEHRADUN</b> Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	<b>GURGAON</b> 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	<b>HYDERABAD</b> 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	<b>KOCHI</b> 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
<b>KOLKATA</b> 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	<b>MUMBAI</b> 16th Floor, Tower II One International Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	<b>MUMBAI</b> Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	<b>NOIDA</b> Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	<b>PUNE</b> 3rd Floor, Unit No 309-312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

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