

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI  
REGIONAL BENCH, COURT NO. 2**

**SERVICE TAX APPEAL NO.86377 OF 2022**

[Arising out of Order-in-Appeal No.SM/CGST/A-I/MUM/84/21-22 dated 28.02.2022 passed by the Commissioner of GST & Central Excise(Appeals-I), Mumbai, 9<sup>th</sup> Floor, Piramal Chambers, Jjibhoy Lane, Lalbaug, Parel, Mumbai-400012]

**TATA SONS PVT LTD**

Bombay House, 24, Homy Modi Street,  
Mumbai-Fort, Mumbai-400001

**Appellant**

Vs.

**THE COMMISSIONER OF CGST & CENTRAL  
EXCISE –MUMBAI SOUTH**

**Respondent**

Appearance:

Present for the Appellant: Shri Parth Parikh, Advocate

Present for the Respondent: Shri Aditya Singh Parihar, Supdt. (AR)

**CORAM:**

**HON'BLE MR. AJAY SHARMA, MEMBER ( JUDICIAL )**

**FINAL ORDER NO.86116/2025**

Date of Hearing: 04.04.2025

Date of Decision: 23.07.2025

PER:AJAY SHARMA

The instant appeal has been filed by the appellant assailing the impugned Order-in-Appeal dated 28.02.2022 passed by the Commissioner of GST & Central Excise(Appeals-I), Mumbai by which the learned Commissioner (Appeals) rejected the appeal filed by the appellant while upholding the Order-in-Original of Assistant Commissioner, Mumbai.

2. The issue involved herein whether there is any bar for refund of the unutilized Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) in terms of section 140

(1) CGST Act, 2017 after the retrospective insertion of Explanation 3 to Section 140 ibid?

3. The facts leading to filing of appeal are in brief as follows. The appellants were engaged in providing various taxable services and were availing Cenvat Credit of Education Cess, Secondary & Higher Education Cess and Krish Kalyan Cess on input services in accordance with provisions of Cenvat Credit Rules, 2004. Their closing balance of unutilized cenvat credit of aforesaid cesses as on 30.06.2017 was Rs.46,44,542/- which transitioned into GST as CGST credit by virtue of erstwhile section 140 (1) of CGST Act through Form GST TRAN-1.

4. Subsequently, on 30.08.2018 an amendment has been made in the CGST Act, 2017 retrospectively by virtue of section 28 of the Central Goods & Service Tax Act, 2018 inserting Explanation 3 in Section 140 ibid w.e.f.1.7.2017. Amendments were also made in Explanations 1 and 2 to section 140(1) ibid by the said section 28 ibid. A clarification was issued subsequently on 1.2.2019 regarding the retrospective amendment in section 140, compelling the appellant to reverse the transitional credit of Education Cess, Secondary & Higher Education Cess and Krish Kalyan Cess balances under protest vide DRC-03 on 22.03.2019.

5. Thereafter, the appellant filed a refund claim of Rs.46,44,542/- of the aforesaid cesses asserting that they are not in a position to utilize it in future in the absence of any such provision in the CGST Act, 2017.

6. The said refund claim was rejected by the Adjudicating Authority vide Order-in-Original dated 19.01.2021. Aggrieved, the appellant filed appeal before the Commissioner (Appeals) which was

dismissed by the learned Commissioner (Appeals) vide impugned order dated 28.02.2022.

7. I have heard learned Counsel for the appellant and learned Authorised Representative on behalf of Revenue and have also perused the case records including the written submissions and case laws placed on record by the respective sides. The primary basis for the rejection of Appeal, as seen from the impugned order, is the introduction of amendments in Section 140 *ibid*. The said amended Section 140 *ibid* reads as under: -

**"140. Transitional arrangements for input tax credit.** - (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 <sup>1</sup>[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.

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**Explanation 1.** - For the purposes of <sup>2</sup>[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) [.....] (*Omitted ibid*)
- (v) the duty of excise specified in the First Schedule to the *Central Excise Tariff Act, 1985 (5 of 1986)*;
- (vi) the duty of excise specified in the Second Schedule to the *Central Excise Tariff Act, 1985*; and
- (vii) the *National Calamity Contingent Duty leviable* under section 136 of the *Finance Act, 2001 (14 of 2001)*,

in respect of *inputs held in stock and inputs contained in semi-finished or finished goods* held in stock on the appointed day.

**Explanation 2.** - For the purposes of <sup>3</sup>[sub-sections (1) and (5)], the expression "*eligible duties and taxes*" 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) [...]

(v) the duty of excise specified in the First Schedule to the *Central Excise Tariff Act, 1985*;

(vi) the duty of excise specified in the Second Schedule to the *Central Excise Tariff Act, 1985*;

(vii) the *National Calamity Contingent Duty* leviable under section 136 of the *Finance Act, 2001*; and

(viii) the service tax leviable under section 66B of the *Finance Act, 1994*,

in respect of *inputs and input services* received on or after the appointed day.

<sup>4</sup> **[Explanation 3.** - For removal of doubts, it is hereby clarified that the expression "*eligible duties and taxes*" *excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)*]

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2. Substituted for "sub-sections (3), (4)" by the Central Goods and Services Tax (Amendment) Act, 2018, with effect from a date yet to be notified.

3. Substituted for "sub-section (5)" by the Central Goods and Services Tax (Amendment) Act, 2018, with effect from a date yet to be notified.

4. Inserted by CGST (Amdt.) Act, 2018 (31 of 2018), dated 30-8-2018, w.r.e.f. 1-7-2017."

The aforesaid amendment has also been reiterated in Board's circular dated 2.1.2019, for information of traders, wherein it was specifically clarified that it has been decided not to notify the clause (i) of sub-section (b) of section 28 and clause (i) of sub-section (c) of section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1)[Emphasis supplied]. It further mentioned that no transition of credit of cesses, including cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, would be allowed in terms of Explanation 3 to section 140, inserted vide sub-section (d) of section 28 of CGST Amendment Act, 2018 which shall become effective retrospectively.

8. It is interesting to note that Explanation 3 although has been inserted in section 140 ibid retrospectively by virtue of section 28 of Central Goods and Services Tax (Amendment) Act, 2018 which specifically referred to Explanation 1 and 2 and the said Explanation 1 and 2, as per the amendment, included therein sub-section (1) of section 140 while elaborating the meaning of 'eligible duties' and 'eligible duties and taxes', but the said amendment introduced in Explanations 1 and 2 to section 140(1) ibid have been kept in abeyance and have not yet been notified.

9. This Explanation 3 inserted through Amendment Act, 2018 was relied upon to contend that cesses such as Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess, which are not specified in Explanations 1 and 2, are excluded from the transitional credit. However, critical aspect to note is that, while Explanation 3 refers to the amended Explanations 1 and 2, the amendments to Explanations 1 and 2 themselves have not yet been notified. Without the notification of the amended Explanations 1 and 2, Explanation 3 cannot be invoked. It is settled principle that amendments are effective only upon proper notification and promulgation. In the absence of such notification, the statutory scheme as it existed prior to amendment has to be applied.

10. In the instant case, Explanation 3 is intended to clarify the exclusion of cesses, however, since the amended Explanations 1 and 2 are not notified, Explanation 3 is not suffice to reject the claim and to contend that cess is not included in 'eligible duties and taxes' as the said Explanation 3 refers to amended Explanations 1 and 2, which in turn refer to Section 140(1) ibid. Explanation 3 as such does not have any application to Section 140 (1) ibid, but without looking into

this aspect the claim of the appellant was rejected. Thus the rejection of the appellant's refund claim on the basis of Explanation 3 is not legally sustainable.

11. Recently this Tribunal in *Tata Telecommunications Transformation Services Ltd. vs. Commissioner of CGST & C.Ex., Mumbai Centra*;2024 (80) G.S.T.L.104 (Tri.-Mumbai) on somewhat similar issue, after taking into consideration decisions of the various High Courts and Tribunal viz. *Brand Equity Treaties Ltd. vs. Union of India*;2020 (38) G.S.T.L.10 (Del.), *Gauri Plasticulture (P) Ltd. vs. Commissioner of Central Excise, Indore*;2019 (30) G.S.T.L.224 (Bom.), *International Seaport Dredging Pvt.Ltd. vs. Commissioner of GST & Central Excise (Appeals-I), Chennai*; (2022) 140 taxmann.com 207 (Chennai-CESTAT), *Mylan Laboratories Ltd. vs. Central Tax and Customs, Guntur*;2020-TIOL-576-CESTAT-HYD, *Nu Vista Ltd. vs. Commissioner (Appeals), CGST, Central Excise, Raipur*;2022 (381) ELT 681 (Tri.-Del.), *Rungta Mines Ltd. vs. Commissioner of Central Goods and Services Tax and Central Excise, Jamshedpur*;2022 (67) G.S.T.L.180 (Jhar.); *Schlumberger Asia Services Ltd. vs. Commissioner of Central Excise and Service Tax, Gurgaon-I*; (2021) 127 taxmann.com 509 (Chd.-CESTAT) and *Sutherland Global Services Pvt.Ltd. vs. Union of India*-2019 (30) G.S.T.L.628 (Mad.), set aside the orders of lower authorities rejecting claim for monetization of cess and remanded the matter back to the original authority for re-determination.

12. In the light of the discussions made hereinabove, the answer to the issue referred to in paragraph 2 is in negative. Accordingly, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide the refund claim afresh in

accordance with law after verifying the supporting documents and also after giving proper opportunity of hearing to the appellant. The appeal is therefore allowed by way of remand.

(Pronounced in open Court on 23.07.2025)

**(Ajay Sharma)**  
**Member (Judicial)**

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