CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 10065 of 2022-SM

[Arising out of Order-in-Appeal No CCESA-SRT-APPEAL-PV-28-2021-22 dated 27.10.2021 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Krishak Bharati Co Operative Limited **.... Appellant**
Kribhco Finance & Accounts Department Administrative
Building PO:Kribhco Nagar Kawas Surat, HaziraRaod,
Surat, GUJARAT-394515.

VERSUS

Commissioner of Central Excise& S.T.,Surat-I **.... Respondent**
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat -395001

APPEARANCE :

Shri Purvin Y. Shah, Chartered Accountant for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

DATE OF HEARING: 30.09.2025
DATE OF DECISION: 24.10.2025

FINAL ORDER NO. 10869/2025

MS. BINU TAMTA:

The issue for consideration is whether the appellant is entitled for refund of unutilized credit balance of Secondary and Higher Education Cess appearing in ER – I for the month of June 2017.

2. Briefly stated, the appellant is engaged in the manufacture of urea and had filed refund claim for an amount of Rs.23,07,081/- towards Education Cess and Secondary and Higher Education Cess under section 11B of Central Excise Act, 1944, read with Section 140(1) of Central Goods and Service Tax

Act, 2017. The claim of the appellant is that the said amount was lying in balance as unutilised credit as on 30.06.2017 which was duly reflected in the ER-1 returns filed by the appellant for the month of June 2017. As per the provisions of Section 140(1) of the CGST Act, CENVAT Credit balance of Education Cess and Secondary and Higher Education Cess are not considered as eligible duties in taxes, and thus, these Cesses are not allowed to be transitioned to the GST regime. CENVAT Credit had not been reflected in the cost of production by the society at the material time since in pre–GST era these were inevitable duties and their credit was allowed to set off against output duty liabilities and therefore, the burden of such cesses of which CENVAT Credit was taken was not passed on to the customers. The appellant therefore filed a refund claim before the Assistant Commissioner, CGST & CE, Division IV, Surat on 18.01.2021.

3. Show cause notice dated 23.02.2021 was adjudicated and by order dated 16.04.2021, the claim was rejected. On appeal, the same has been confirmed by the impugned order dated 27.10.2021.

4. Heard both sides and perused the records of the case.

5. Shri Purvin Y Shah, learned Chartered Accountant submitted that the issue is no longer res-integra and has been considered in several decisions in favour of the assessee. Smt. Sunitha Menon, learned AR very fairly accepted the same.

6. Learned Counsel has referred to the decision of the Division Bench of the Tribunal in the case of **Bharat Heavy Electricals Limited versus Commissioner of CGST, CE CUS, Bhopal,** Final Order No. 51849/2019

dated 26.04.2019 where refund was claimed in respect of Education Cess and Secondary and Higher Education Cess. The Bench relied on the principle enunciated by the Apex Court in **Eicher Motors versus Union of India, 1999 (106) ELT 3 (SC)** that the right to credit becomes a vested and duly crystallized right in favour of the assessee, the moment input goods or services are received by virtue of paying the duty by reimbursing the said amount to the supplier of goods, allowed the refund claim, observing as under:

> " **5.** Rule 57F(4A) was introduced into the Rules pursuant to Budget for 1995-96 providing for lapsing of credit lying unutilised on 16-3-1995 with a manufacturer of tractors falling under Heading No. 87.01 or motor vehicles falling under Heading No. 87.02 and 87.04 or chassis of such tractors or such motor vehicles under Heading No. 87.06. However, credit taken on inputs which were lying in the factory on 16-3-1995 either as parts or contained in finished products lying in stock on 16-3-1995 was allowed. Prior to 1995-96 Budget, central excise/additional duty of customs paid on inputs was allowed as credit for payment of excise duty on the final products, in the manufacture of which such inputs were used. The condition required for the same was that the credit of duty paid on inputs could have been used for discharge of duty/liability only in respect of those final products in the manufacture of which such inputs were used. Thus it was claimed that there was a nexus between the inputs and the final products. In 1995-96 Budget Modvat scheme was liberalised/simplified and the credit earned on any input was allowed to be utilised for payment of duty on any final product manufactured within the same factory irrespective of whether such inputs were used in its manufacture or not. The experience showed that credit accrued on inputs is less than the duty liable to be paid on the final products and thus the credit of duty earned on inputs gets fully utilised and some amount has to be paid by the manufacturer by way of cash. Prior to 1995-96 Budget, the excise duty on inputs used in the manufacture of tractors, commercial vehicles varied from 15% to 25%, whereas the final products were attracted excise duty of 10% or 15% only. The value addition was also not of such a magnitude that the excise duty required to be paid on final products could have exceeded the total input credit allowed. Since the excess credit could not have been utilised for payment of the excise duty on any other product, the unutilised credit was getting accumulated. The stand of the assessees is that they have utilised the facility of paying excise duty on the inputs and carried the credit towards excise duty payable on the finished products. For the purpose of utilisation of the credit all vestitive facts or necessary incidents thereto have taken place prior to 16-3-1995 or utilisation of the finished products prior to 16-3-1995. Thus the assessees became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing scheme. Now by application of Rule 57F(4A) credit attributable to inputs already used in the manufacture of the final products and the final products which have already been cleared from the factory alone is sought to be lapsed, that is, the amount that is sought to be lapsed relates to the inputs already used in the manufacture of the final products but the final products have already been cleared from the factory before 16-3-1995. Thus the right to the

> credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate, that the scheme is merely being altered and, therefore, does not have any retrospective or retro-active effect, submitted on behalf of the State, does not appeal to us. As pointed out by us that when on the strength of the rules available certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of a scheme, is affected and, in particular, it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned. Therefore, the scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the basis of the earlier scheme necessarily the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said rule would result in affecting the rights of the assessees.**"**

Following the aforementioned decision, the learned Single Member in **Kirloskar Toyota Textile Machinery Private Limited versus Commissioner of Central Tax, Bengaluru, South GST Commissionerate 2022 (379) ELT 256 (Tri. Bang.),** considering all the decisions relied on by the appellant as well as by the Revenue, noted that with the introduction of GST, there is a restriction for these cesses to be transitioned into GST by virtue of Section 140(1)of the Act and therefore, the appellant did not transfer the said credit of cesses into GST and preferred to file the refund claim under section 11B of CEA, and observed as:

> **"6.1** Further, I find that the Karnataka High Court in the case of Slovak India Trading Company Private Limited has held that when the assessee has moved out of Modvat Scheme/Cenvat Scheme, portion of unutilised credit should be allowed as a refund……**".**

7. Similarly, the learned Single Member of the Ahmedabad Bench of the Tribunal in **Shalu Synthetics Pvt. Limited Versus Commissioner of CEX & ST, Vapi 2017 (346) ELT 413 (Tri. Ahd.)** has allowed the refund towards such cesses.

8. Thus, consistent view has been taken that refund can be granted of the Cesses, i.e. Education Cess and Secondary and Higher Education Cess which could not be transitioned into GST. The appellant is therefore entitled to claim the refund of the amount towards such cesses.

9. The impugned order is, therefore, unsustainable and is hereby set aside. The appeal is, accordingly allowed with all consequential relief.

(Order pronounced in the open court on 24th October, 2025)

(Ms. Binu Tamta)
Member (Judicial)

KL