CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Single Member Bench
Excise Appeal No. 30215 of 2024
(Arising out of **Order-in-Appeal** No. HYD-SVTAX-MD-AP2-08-2023-24, dated 20.11.2023 passed by Commissioner of Customs & Central Tax (Appeals-II), Guntur)

M/s Hammond Power Solutions Private Ltd., .. **APPELLANT**
Plot No.6A, IDA,
Pashamylaram,
Patancheru Mandal,
Sangareddy,
Telangana – 502 307.

VERSUS

Commissioner of Central Tax Medchal - GST .. **RESPONDENT**
Medchal Commissionerate,
H.No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Ashwani Pahwa, CA for the Appellant.
Shri K Sreenivasa Reddy, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30133/2025

Date of Hearing:19.02.2025
Date of Decision:24.04.2025

M/s Hammond Power Solutions Private Ltd., (hereinafter referred to as Appellant) has filed this appeal against the Order-in-Appeal No. HYD-SVTAX-MD-AP2-08-2023-24, dated 20.11.2023 passed by the Commissioner of Customs & Central Tax (Appeals-II) by which Appellate Authority dismissed appeal filed by appellant and upheld Adjudicating Authority Order-in-Original No. 05/2023-24-Refund-CE-Sangareddy Division dated 12.06.2023 for rejection of refund of Education Cess, Secondary Higher Education Cess and Krishi Kalyan Cess.

2. Brief facts of the case are that the appellant was registered under the erstwhile Central Excise Act and the erstwhile Finance Act, 1994 as a manufacturer of various excisable goods under the Chapter heading 8S and

provider of taxable services. Appellant had a closing balance of Rs. 14,56,075/- consisting of Education Cess, Secondary Higher Education Cess and Krishi Kalyan Cess in the ER-1 returns filed by them for the month of June 2017 and Service Tax Returns filed for the period of April to June 2017. The break-up of the Cess amount is as follows:

Education Cess (EC)	INR	7,36,372
Secondary Higher Education Cess (SHEC)	INR	3,67,396
Krishi Kalyan Cess (KKC)	INR	3,52,307
Total	INR	14,56,075

The credit of cess was carried forward to the GST regime through form GST Tran–1 in view of guidance note on CGST Transitional Credit issued by CBFC dated 19.03.2018. Subsequently, vide CGST (Amendment) Act, 2018 notified on 01.02.2019 an amendment was made inserting explanation on that the "eligible duties" allowed to be transitioned does not include Cess by amending Section 140(1)a of CGST Act, 2017 retrospectively with effect from 17.07.2017. The appellant had filed a refund application in Form-R for claiming the refund of Cess.

3. Learned CA for the appellant have reiterated the grounds of appeal. The impugned order has been passed without considering the submissions of the appellant. Thus, the order under challenge has wrongly denied eligibility of appellant for the impugned refund. Order is accordingly prayed to be set aside and appeal is prayed to be allowed. He has relied on the following case laws:

i) Granules India Ltd., Vs Commissioner of Central Tax, Hyderabad [2024 (2) TMI 1375 – CESTAT, Hyderabad]

ii) Orient Cement Ltd., Vs Commissioner of CGST & Central Excise, Nashik in Appeal No. E/85323/2022, Final Order No. A/85182/2025 dated 17.02.2025, CESTAT, Mumbai.

4. Learned AR for the Department submitted that the appellant has availed the aforesaid credit in the ER-1 for the month of June, 2017 on 19.07.2017 and the said credit has been carry forward n the GST Tran-1 as prescribed under Section 140(1) of the CGST Act. Subsequently, CGST (Amendment) Act effective from 01.02.2019 has denied the credit of education cess and secondary higher education cess by amending Section 140(1)(a) of CGST Act. However, Education Cess & Secondary Higher Education Cess were dropped and deleted by Notification No. 14 and 15/2015-CE, New Delhi dated 01.03.2015. He has relied on the following case laws to support his argument:

i) Rungta Mines Ltd., Vs CCE, Commisssioner (Appeals), Jharkhand [2022 (2) TMI 934 – Jharkhand HC]
ii) CCE, Cus & ST, Tirupati Vs Rani Plastic Pipe Industries [2020 (6) TMI 356 – CESTAT, Hyderabad]
iii) Banswara Syntex Ltd., Vs CCE & ST, Udaipur [2018 (10) TMI 1064 – Rajasthan HC]
iv) Cellular Operators Association of India & Others Vs Union of India & Another [2018 (2) TMI 1264 – Delhi HC]
v) NMDC Ltd., Vs CGST, Raipur [2024 (5) TMI 192 – CESTAT, New Delhi]
vi) Bharat Heavy Electricals Ltd., Vs CCE, Secunderabad, GST [2020 (1) TMI 188 – CESTAT, Hyderabad]
vii) Nelco Ltd., Vs Union of India [2020 (36) GSTL 24 (Bom)]

5. Heard Learned CA for the appellant Shri Ashwani Pahwa and Learned AR for the Department Shri K. Sreenivasa Reddy and perused the records.

6. In this regard, findings of the impugned Order-in-Appeal are reiterated:

> "19. Section 142(3) allows claim of refund filed by any person, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of the existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to

> the contrary contained under the provisions of existing law other than provisions of Section 11B(2) of Cenral Excise Act, 1944. The said section has two provisos. The first proviso states that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall laps. Cesses are not eligible duty to carry forward for transitioned to GST. Accordingly, the right to claim the same as refund would not also allowed."

7. The Central Goods & Services Tax Act, 2017 Section 140 provides transitional arrangement for input tax credit in which provided that

> (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 [1][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 [2][within such time and] in such manner as may be prescribed:

The word eligible duties explained by explanation 1 & 2 of the Section 140 but any Cess excluded by explanation 3 of the Section 140 which is as thus:

> **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).

8. Definition of "eligible duties and taxes" as per the explanation 3 under Section 140 of the CGST Act was amended with retrospective effect from 01.07.2017 whereby it is specified that Cesses are excluded from the definition of eligible duties and taxes. Thus, the credit is ab initio not available for utilization for GST. In view of the above, Cesses are not be transmitted through Tran -1 as per the transitional provisions specified under CGST Act. As the amount of Cenvat Credit balance of Education Cess & Secondary Higher Education Cess was included in the carried forward amount by the appellant as on the appointed day i.e 01.07.2017 in terms of Section 142(3) of CGST Act, 2017 refund of the same is not admissible to the appellant.

9. Learned AR cited Hon'ble Jharkhand High Court, Division Bench decision in the case of Rungta Mines Ltd., supra, in which Hon'ble High Court held as under

> "45. The provision of section 142(3) does not entitle a person to seek refund who has no such right under the existing law or where the right under the existing law has extinguished or where right under the new CGST regime with respect to such claim has not been exercised in terms of the provision of CGST, Act and the rules framed and notifications issued. Meaning thereby, section 142(3) does not confer a new right which never existed under the old regime except to the manner of giving relief by refund in cash if the person is found entitled under the existing law in terms of the existing law. Section 142(3) does not create any new right on any person but it saves the existing right which existed on the appointed day and provides the modalities for refund in cash if found entitled under the existing law as the entire claim is mandated to be dealt with as per the existing law. It neither revive any right which stood extinguished in terms of the existing law nor does it create a new right by virtue of coming into force of CGST, Act.

In the case of CCE, Cus & ST, Tirupati Vs Rani Plastic Pipe Industries, supra, CESTAT, Hyderabad Division Bench held as follows:

> "In view of the above, we find that the ratio of the judgement of the Larger Bench of the Hon'ble High Court of Bombay is binding and prevails and accordingly no refund of Modvat/Cenvat credit can be sanctioned to the respondent. We also find that the law has now been laid down by the constitutional bench of the Hon'ble Supreme Court in the case of Dilip Kumar and Company & other [2018 (361) ELT 577 (SC)] and it is held that the fiscal laws must be interpreted as they are, without any intendment, regardless of the consequences. As per the ratio of this judgment also we cannot sanction a refund against the explicit provisions. In view of the above, the appeal filed by the Revenue is allowed and the impugned order is set aside."

In the case of Banswara Syntex Ltd., Vs CCE & ST, Udaipur, supra, Rajasthan High Court held as follows:

> "The Act of 1944 does not contain any provision for refund of the Excise Duty or other levies payable under the Act, until and unless the same are proved to have been erroneously paid or recovered with a further proof that its burden has not been passed on to the customers."
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> "Since the CENVAT Credit Rules, the repository of rights of an assessee to avail credit of the duty or other sums paid on inputs does not entail or even envisage refund of such credit in cash and encashment cannot be claimed as a matter of course. It can also not be asserted that an assessee is entitled to or has an ingrained or vested right to claim refund of Education Cess and Secondary and Higher Education Cess or any other duty paid in accordance with the law dehors the CENVAT Credit Rules, 2004."
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> "In view of the discussion foregoing, we are of the considered opinion that the Tribunal has committed no error of law in holding that the appellant cannot

claim cash refund or encashment of the unutilized and unavailed amount of Education Cess and Secondary and Higher Education Cess, lying in its credit."
"We, therefore, dismiss the appeal." (last para of the said order)

In the case of Cellular Operators Association of India & Others Vs Union of India & Another, supra, Delhi High Court held as under:

"It is an accepted and admitted case that benefit of Ed.Cess and S & H Ed. Cess on inputs, etc could not have been utilized for payment of excise duty or service tax on the output, i.e., manufactured goods or taxable service. Thus, cross utilization of Ed. Cess and S & H Ed. Cess towards excise duty or service tax was impermissible and not permitted." (para 3). The Division Bench also held that "Omission of a provision signifies deletion of that provision and is normally not treated as different from repeal. The repeal/omission in the present case was not made retrospectively, but applied prospectively. Manufacturers and output service providers were entitled to take benefit of Ed. Cess and S & H Ed. Cess on the Ed. Cess and S & H Ed. Cess payable on manufactured goods and output services on or before the cut off date, i.e. 1st March, 2015 in case of manufactured goods and 1st June, 2015 in case of taxable services. They have not been allowed to take credit after the said two dates for the simple reason that Ed. Cess and S & H Ed. Cess ceased to be appliable and were no longer payable after the said dates."

In the case of NMDC Ltd., Vs CGST, Raipur, supra, CESTAT, New Delhi held as under:

The CESTAT Division Bench New Delhi was dealing with refund claim of Cenvat credit pertaining to Ed. Cess and S&H Education Cess. The CESTAT after examination of various provision including Cenvat Credit Rules (CCR) Section 11B, Section 142 (3) of CGST Act held as follows:
"5.8. As the amount of Cenvat credit balance of E. Cess & SHE Cess was included in the carried forward amount by the appellant as on the appointed day i.e. 01.07.2017, in terms of Section 142(3) of the CGST Act 2017, refund of the same is not admissible to the appellant. Thus, it is clear that "taking" of the input credit in respect of Education Cess and Secondary and Higher Education Cess in the Electronic Ledger after 2015, after the levy of Cess itself ceased and stopped, does not even permit it to be called an input Cenvat credit and therefore, mere such accounting entry will not give any vested right to the Assessee to claim refund of the said amount. If one carefully compares all Sub-sections of Section 140, one can discern that while all other Sub-sections talk of "entitled to take credit", Sub-section (8) uses the word "allowed to take". The utilisation of such credit, even if taken in Electronic Ledger and notified in Form TRAN-1, does not guarantee any such right of utilisation independent of other parts of Section 140 specially ignoring Explanation 3.

In the case of Bharat Heavy Electricals Ltd., Vs CCE, Secunderabad, GST, supra, CESTAT, Hyderabad held as follows:

> The CESTAT Single Member held that accumulated and unutlised credit on account on Education Cess (EC), Secondary & Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) could not be refunded, as there is no scheme under which Cenvat credit can be refunded to appellant in cash except under Rule 5 of Cenvat Credit Rules, 2004. The Rule 5 of Cenvat Credit Rules deals with Cenvat credit utilsed in manufacture of exported goods or exported services. Otherwise there is no provision under which Cenvat credit can be refunded in cash. (para-3)

In the case of Nelco Ltd., Vs Union of India, supra, Bombay High Court cited the decision of Hon'ble Supreme Court in the case of Jayram and Company Vs Assistant Commissioner & Anr [(2016) 15 SCC 125 = 2018 (19) G.S.T.L. 3 (S.C.)], Supreme Court decision in Eicher Motors Ltd. v. Union of India [1999 (106) E.L.T. 3 (S.C.)], Supreme Court decision in Osram Surya (P) Ltd. v. Commissioner of Central Excise, Indore [2002 (142) E.L.T. 5 (S.C.)], Samtel India Ltd. v. Commissioner of Central Excise, Jaipur [2003 (155) E.L.T. 14 (S.C.)] and concluded by observing thus :

> "56. To our mind, therefore, the Learned Additional Solicitor General is right in his contention that CENVAT credit is a mere concession and it cannot be claimed as a matter of right. If the CENVAT Credit Rules under the existing legislation themselves stipulate and provide for conditions for availment of that credit, then, that credit on inputs under the existing law itself is not a absolute but a restricted or conditional right. It is subject to fulfilment or satisfaction of certain requirements and conditions that the right can be availed of. It is in these circumstances that we are unable to agree with the Counsel appearing for the petitioners that the impugned condition defeats any accrued or vested right. It was never vesting in them in such absolute terms, as is argued before us. If the existing law itself imposes condition for its enjoyment or availment, then, it is not possible to agree with the Counsel that such rights under the existing law could have been enjoyed and availed of irrespective of the period or time provided therein.

10. Learned CA for the appellant relied on Granules India Ltd., supra, which was decided by this Hyderabad Bench. In that case, it was decided by the Division Bench that assessee is entitled to claim refund of CVD and SAD paid after the appointed day under the existing law. This appeal is not

related to CVD and SAD. Therefore, it is not applicable in this matter. He further cited Orient Cement Ltd., supra, it is considered by the Bombay High Court in the case of Nelco Ltd., supra and finally observed as mentioned in Nelco Ltd., decision.

11. As discussed above, the Cesses are excluded by adding explanation 3 in the Section of the 140 of The Central Goods and Services Tax Act, 2017 from definition "eligible duties and taxes". The credit is not available as refund. Hon'ble Supreme Court, different Hon'ble High Courts and CESTAT Benches including this Bench held that Education Cess and Secondary Higher Education cess is not refundable as discussed supra. Therefore, I do not find any legal or factual infirmity in the Order-in-Appeal.

12. In the light of entire above discussion, I hold that there is no error in the order of the Commissioner (Appeals). Therefore, appeal is liable to be dismissed.

13. Appeal dismissed.

(Pronounced in open court on 24.04.2025)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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