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**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 20038 of 2022**

**With**
**R/SPECIAL CIVIL APPLICATION NO. 19949 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**and**
**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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| Approved for Reporting | Yes | No |
|---|---|---|
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ATUL LIMITED & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
MR ABHAY Y DESAI(12861) for the Petitioner(s) No. 1
MR D K TRIVEDI(5283) for the Petitioner(s) No. 2
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2,3,4,5,6

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

**Date : 24/07/2025**
**ORAL JUDGMENT**
**(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)**

1 Both the writ petitions preferred under Articles 226/227 of the Constitution of India have common issues, and therefore, are disposed by way of a common order. The facts of Special Civil Application No. 20038 of 2022 are taken as lead matter.



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2 Heard Mr.Abhay Desai, learned advocate for the petitioner and Ms.Hetvi Sancheti, learned advocate for the respondent.

2.1 The present writ petition is preferred seeking the following reliefs:

> *"A. Your Lordships may be pleased to declare that paragraph no. 5 of Circular No. 45/19/2018-GST dated 30.05.2018 as well as paragraph no. 42 of Circular No. 125/44/2019-GST dated 18.11.2019 being contrary to Sec. 11 of the Goods and Services Tax (Compensation to States) Act, 2017 is wholly without jurisdiction, manifestly arbitrary and violating Article 14 of the Constitution of India,*
>
> *B. Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction quashing and setting aside (a) paragraph 5 of Circular No. 45/19/2018-GST dtd. 30/05/2018, (b) paragraph no. 42 of Circular No. 125/44/2019-GST dated 18.11.2019 (c) Show-cause Notice annexed at Annexure D above, (d) Order in Form RFD-06 dtd. 08/04/2021 rejecting refund claim (Annexure E hereinabove) and (e) Order dtd. 19/05/2022 (Annexure F hereinabove) as being wholly without jurisdiction, arbitrary and illegal,*
>
> *C. Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of*


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*mandamus or any other writ, order or direction quashing and setting aside (a) Show-cause Notice annexed at Annexure D above, (b) Order in Form RFD-06 dtd. 08/04/2021 rejecting refund claim (Annexure E hereinabove) and (c) Order dtd. 19/05/2022 (Annexure F hereinabove) as being wholly contrary to the provisions of the law,"*

3 The facts culminating into filing of the present writ petitions are as under:

3.1 The petitioner is a public limited company, engaged in manufacture and sale of various chemical products. The petitoner is indulged in activity of supply of the products to Special Economic Zone Units as well as for exports outside India. The petitioner is registered under the provisions of Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act' for short) as well as under the provisions of Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as 'the IGST Act' for short).


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3.2 It is the case of the petitioner that in order to manufacture the finish product for exports, there is a requirement of power in form of electricity. To satisfy such requirement, petitioner purchased coal from the market and generated its own captive power via captive power plant. Purchase of coal led to levy of CESS on the supply of coal. Vendors supplying coal to the petitioner charged levy and collected CESS from the petitioner.

3.3 It is the case of the petitioner that the levy of CESS resulted into availment of Input Tax Credit on the inward supplies of coal. It is the case of the petitioner that the manufacturing of the chemical products led to zero-rated supply with payment of IGST, but without payment of CESS. In view of the same, for the Financial Year 2019-20 the petitioner availed CESS credit amounting to Rs.13,46,38,852/- on inward supplies of coal. Accordingly, a refund


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application under Sec.11 of the Goods & Service Tax (Compensation to States) Act, 2017, (hereinafter referred to as “the CESS Act” for short) read with Sec.16(3) of the IGST Act, 2017 as well as Sec.54(3) of the IGST Act read with Rule 89(4) of the CGST Rule in Form RFD-01 came to be filed by the petitioner seeking refund of cumulative cess amounting to Rs.3,39,02,063/-. It was the case of the petitioner that such an amount was in proportion to the zero-rated supply made with payment of IGST but without payment of CESS.

3.4 Pursuant to the refund application, the Office of the Assistant Commissioner, Central Goods & Services Tax, Central Excise Division-VIII (Valsad) (hereinafter referred to as ‘the respondent’ for short), issued a show-cause notice in Form RFD-08 seeking to reject the refund claim on the ground that refund of cumulative cess credit group claim was available


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only in respect of zero-rated supplies made without payment of IGST.

3.5 The respondent, further clarified that since the zero-rated supply done by the petitioner have been made with payment of IGST, the refund of cumulative cess credit shall not be admissible and cannot be permitted. Against the show-cause notice dated 25.02.2021, the petitioner responded by way of filing reply. The respondent, by way of an order dated 08.04.2021 in Form RFD-06, rejected the refund claim of the petitioner. Being aggrieved by the order dated 08.04.2021 rejecting the refund claim, the petitioner preferred an appeal under the provisions of Sec.107(1) of the CGST Act. The appeal came to be rejected vide order dated 19.05.2022 which has culminated into filing of the present writ petitions. The Order in Appeal as well as the Order-in-Original are subject matter of challenge in the present writ


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petitions.

4 Mr.Abhay Desai, learned advocate for the petitioner, relying on secs. 9 and 11 of the Cess Act, submitted that the said sections seeks to apply the provisions of the the GST Act, including the GST Rules *mutatis mutandis* in relation to the levy and collection of the cess as well as claim of input tax credits of such cess and refunds thereof.

4.1 Mr.Desai, further submitted that, the provisions related to the availment of the tax credits contained u/s 16 of the CGST Act, 2017 as well as provisions reltated to the refunds of the accumulated credits contained u/s 16 of the IGST Act, 2017 read with Sec.54 of the CGST Act, 2017 as well as Rule 89 of the CGST Rules, 2017, shall apply mutatis mutandis to the claiming of the tax credits of the cess as well as claiming of the refunds of the accumulated credits of


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the said cess.

4.2 Mr.Desai, would further submit that Sec.16(1) of the CGST Act, 2017 provides for the entitlement of the tax credit in respect of all the inward supplies used or intended to be used in the course of furtherance of business. He further submitted that the aforesaid provisions applied in the context of the Cess Act by virtue of Sec.11 of the said Act shall entail that the taxpayer is entitled to the credit of the cess charged on inward supplies used in the course of furtherance of business and the petitioner, therefore, is undisputedly entitled to the credit of the cess paid on the inward supplies of the coal since the same is used by the petitioner in the course of manufacture and sale of finished products.

4.3 It was further submitted by learned advocate Mr.Abhay Desai that the issue is now no more *res*


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*integra* in view of the decision of this Court in the case of ***Patson Papers Pvt Ltd vs. Union of India.,*** rendered in **Special Civil Application No. 26250 of 2022.**

5 Per contra, learned advocate Ms.Hetvi Sancheti for the respondent, conceded to the fact that the issue is now no more *res integra* pursuant to the decision of this Court in **Patson Papers (supra)** and therefore, appropriate orders may be passed.

6 Having heard the learned advocates appearing for the respective parties and having perused the material on record, it is not in dispute that this Hon'ble Court has categorically held that the respondent has rejected the refund claim in a wrong manner by misinterpreting the Circular No. 45/19/18 dated 30.05.2018 and Circular No. 125/44/19 dated 18.11.2019. It is further held that the petitioner in


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such cases can claim for purchase of coal used for manufacturing of goods exported being zero-rated supplies. It was further held that the petitioner may have paid the 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 tax.

6.1 This Hon'ble court in paras 6,7,8,18,19,20 and 21 of the said decision has held as under:

> *"6 The petitioner is a public limited company engaged in the business of manufacture and sale of dyes, dye intermediate, chemicals etc. The petitioner purchased coal for use in its manufacturing process. The petitioner also paid Cess under the Cess Act in addition to the GST for purchase of the coal. It is the case of the petitioner that while coal purchased by the petitioner is liable to Cess, however, the finished goods manufactured by the petitioners are not liable to GST compensation Cess under the Cess Act. Therefore, when the finished goods manufactured by the petitioner are exported outside the country on payment of IGST as permitted by Section 16 of the IGST Act, the petitioner is entitled to the refund of such IGST, however, the petitioner is not required to pay*


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*Cess at the time of export of the goods and as the exports being zero rated supply and unutilized input tax credit being fully attributable to exports of the petitioner, the petitioner claimed refund of unutilized input tax credit comprising of the GST compensation Cess which was initially granted to the petitioner by the respondent-authorities*

*7. However, subsequently, the show cause notices were issued proposing to reject the refund applications on the basis of the Circular No. 125/44/2019 dated 18/11/2019 read with para-5 of Circular No 45/19/2018 dated 30/05/2018 wherein it is stated that the refund of unutilized Input Tax Credit qua Cess will be available only if the export is without payment of tax and as the petitioner has paid IGST on the goods which were exported, the refund of Cess as well as the relatable to the inputs utilized for production of the goods which are exported was held to be inadmissible. The petitioner in the reply clarified that the petitioner has not paid any GST compensation Cess on the goods exported and as such goods being zero rated supply, the petitioner is entitled to the refund of Cess as the provisions of the Cess Act shall apply mutatis mutandis as the same would be applicable in case of the GST. Respondent no 3 also issued notices proposing to withdraw the refund of Cess already granted to the petitioner*

*8. Being aggrieved, the petitioner has challenged such show cause notice proposing to recover the refund already sanctioned as well as rejecting the refund applications filed by the petitioners for refund of the Cess paid while purchasing the coal which was utilized for manufacture of the*


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*goods which are exported by the petitioner.*

*XXX XXX XXX*

*18. Having heard the learned advocates appearing for both the parties and considering the facts and material available on the record, following undisputed facts emerge.*

*(1) The petitioners have purchased the coal on payment of Cess and as such the petitioner is entitled to the Input Tax Credit on such Cess amount. The petitioner has utilized the coal purchased for manufacture of the goods which are exported.*

*(2) The petitioner paid the IGST at the time of export of the goods which was refunded by the Custom Authorities as per the provision of Section 54(3) read with Section 16 of the IGST Act being a zero rated supply.*

*(3) The petitioner therefore filed the refund claim application to claim the Input Tax Credit of the Cess amount which was paid by the petitioner while purchasing the coal and as such coal was utilized for manufacture of exported goods*

*19. In view of the above, it would be germane to refer to the relevant provisions of the CGST Act and the IGST Act as well as the Cess Act.*

*19.1. Section 54(3) of the CGST Act reads as under*

"*Section 54 - Refund of tax-*



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*(1).....*
*(2).....*
*(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

*PROVIDED that no refund of unutilised input tax credit shall be allowed in cases other than*

*(i) zero rated supplies made without payment of tax;*

*(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

*PROVIDED also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.*"

*19.2. Section 16 of the IGST Act reads as under*

"*Section 16. Zero rated supply.-*

*(1) "zero rated supply means any of the following supplies of goods or services or both, namely:-*

*(a) export of goods or services or both; or*

*(b) supply of goods or services or both [for*



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*authorised operations) to a Special Economic Zone developer or a Special Economic Zone unit.*

*(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*

*[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed*

*PROVIDED that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed*

*(4) The Government may, on the recommendation of the Council, and subject to such conditions. safeguards and procedures, by notification, specify*



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*(1) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid [in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder].*

*(ii) a class of goods or services (or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder]]*

*[(5) Notwithstanding anything contained in sub sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty]*

*19.3. Section 11(2) of the Cess Act reads as under*

"*Section 11 Other provisions relating to cess*

*(1)*

*(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder. including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandıs, 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 they apply in relation to the levy and collection of integrated*



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*tax on such inter-State supplies under the said Act or the rules made thereunder*

*PROVIDED that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section*

*20. The relevant paragraphs of the circulars relied upon by the respondents also reads as under*

*20.1. Para-5 of Circular No.45/19/2018 dated 30/05/2018 reads as under*

*"5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:*

*51 Doubts have been raised whether an exporter iS eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products*

*5. 2 In this regard, section 16(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies Further, as per section 8 of the Goods and Services Tax (Compensation to*



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*States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act, and vide section 11 (2) of the Cess Act, section 16 of the IGST Act is mutatis mutandis made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the CGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a 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.*

*5.3 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but 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, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.*"

*20.2. Para-42 of Circular No.125/44/2019 dated 18/11/2019*

*reads as under:*

"*Guidelines for claims of refund of Compensation Cess*



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*42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products. whereas cess is not levied on aluminium products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the "IGST Act") which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, section 16 of the IGST Act has been mutatis mutandis made applicable to inter-State supplies under the Cess Act vide section 11 (2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall be available. Accordingly, it is clarified that a registered person making zero rated supply of aluminium products under bond or LUT may claim ref refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminium products on payment of Integrated tax but 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, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.*"

*21. On a conjoint reading of above provisions of*



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*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 final product is not leviable with compensation cess. However, the circular*



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*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 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."*

7 The facts and law enumerated in the case of **Patson Papers (supra),** would be squarely applicable to the facts of the present case. In **Patson Papers(supra),** the company was engaged in the business of manufacturing of dyes and there was


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purchased of coal for the manufacturing process. The Company was involved in production of finished goods, which was not liable to GST. Finished goods were exported being zero rated supply. Therefore, the petitioner in the case of **Patson Papers(supra),** had applied for refund of compensation cess on purchase of coal for manufacturing of the finished goods.

7.1 In the instant case, the Company is also engaged in manufacturing and sale of various chemical products on supply to SEZ as well as for export and for the production of the same, coal was purchased from open market and generated its own captive power via captive power plant. Therefore, cess charge invoice supplies were demanded by way of refund case, the same was rejected by relying on Circular No. 45/19/2018-GST dated 30.05.2018 as well as Circular No. 125/44/2019-GST dated 18.11.2019.


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7.2 Therefore, the facts of the present case and that being in the case of **Patson Papers(supra),** are absolutely identical and the law envisaged therein would be squarely applicable to the facts of the present case.

8 In view of the decision and law laid down by this Court in the case of **Patson Papers (supra),** the present petitions stands allowed. The respondent is directed to process refund application of the petitioner to sanction the refund of the CESS amount claimed on unutilized tax credit. The impugned orders in both writ petitions passed by the respondent are quashed and set aside. Rule is made absolute to the aforesaid extent.

**(BHARGAV D. KARIA, J)**

**(PRANAV TRIVEDI,J)**

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