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Supreme Court Dismisses Revenue's SLP on Refund of Compensation Cess on Coal Used for Exports

The Hon'ble Supreme Court in ***Commissioner of State Tax & Ors. v. Mehali Papers Private Limited & Ors. [SLP (C) Diary No. 56367/2026 dated October 12, 2026]*** dismissed the Special Leave Petition filed by the Revenue, both on the ground of delay of 324 days and on merits, thereby leaving undisturbed the judgment of the Hon'ble Gujarat High Court which directed refund of unutilised input tax credit of compensation cess paid on coal used in manufacture of goods exported as zero-rated supplies on payment of IGST.

Facts:

The Hon'ble Gujarat High Court disposed of two connected writ petitions by a common judgment, taking Atul Limited (the assessee) as the lead matter. The present SLP arises out of the connected Special Civil Application No. 19949 of 2022, in which Mehali Papers Private Limited is a respondent.

The assessee is a manufacturer of chemical products, supplying goods to SEZ units and exporting them outside India. For its manufacturing operations, it generated captive power by purchasing coal from the open market, on which compensation cess was levied under the Goods and Services Tax (Compensation to States) Act, 2017 (the Cess Act) and credit of the same was availed.

The finished goods were exported as zero-rated supplies on payment of IGST, but without payment of compensation cess, since the finished goods were not leviable to cess. For FY 2019-20, the assessee had availed cess credit of Rs. 13,46,38,852 on coal and filed a refund application in Form RFD-01 for Rs. 3,39,02,063, being the cumulative cess credit proportionate to such zero-rated supplies, under Section 11 of the Cess Act read with Section 16(3) of the IGST Act, Section 54(3) of the CGST Act and Rule 89(4) of the CGST Rules.

The Revenue issued a show cause notice in Form RFD-08 dated February 25, 2021, proposing to reject the claim on the ground that refund of cumulative cess credit is available only where zero-rated supplies are made without payment of IGST. The refund was rejected by an order in Form RFD-06 dated April 08, 2021, and the appeal under Section 107(1) of the CGST Act was also dismissed vide order dated May 19, 2022. Aggrieved, the assessee approached the High Court, also seeking a declaration that para 5 of Circular No. 45/19/2018-GST dated May 30, 2018 and para 42 of Circular No. 125/44/2019-GST dated November 18, 2019 are contrary to Section 11 of the Cess Act.

Contentions: The assessee argued that Sections 9 and 11 of the Cess Act apply the provisions of the GST law mutatis mutandis to the levy, input tax credit and refund of cess, that Section 16(1) of the CGST Act entitles it to credit of cess on coal used in the course of furtherance of business, and that the issue was covered by the earlier decision of the same Court in ***Patson Papers Pvt. Ltd. v. Union of India [R/Special Civil Application No. 26250 of 2022].*** The Revenue conceded before the High Court that the issue was no longer res integra in view of *Patson Papers*.

The High Court allowed the writ petitions on July 24, 2025. The Revenue then filed the present SLP before the Hon'ble Supreme Court, with a delay of 324 days, along with an application for condonation of delay. No appearance is recorded for the respondents.

Issues:

1. Whether the SLP filed by the Revenue, which is barred by 324 days and for which no cogent explanation is offered, deserves to be entertained, when an SLP against the common impugned judgment had already been dismissed?

2. Whether a registered person is entitled to refund of unutilised input tax credit of compensation cess paid on coal used in the manufacture of goods exported on payment of IGST, where such goods are not leviable to compensation cess, under

Section 54(3) of the CGST Act read with Section 16 of the IGST Act and Section 11(2) of the Cess Act?

3. Whether Circular No. 45/19/2018-GST and Circular No. 125/44/2019-GST can be relied upon by the Revenue to deny such refund?

The judgment of the Hon'ble Gujarat High Court in ***Atul Limited & Anr. v. Union of India & Ors. [R/Special Civil Application No. 20038 of 2022 with R/Special Civil Application No. 19949 of 2022 dated July 24, 2025]***, which now stands undisturbed, had held as under:

- Observed that, the Revenue had misinterpreted the Circulars, which only provide that cess credit cannot be utilised for payment of IGST and do not bar refund of cess credit that remains unutilised because cess is not payable on the zero-rated output.
- Noted that, the assessee paid IGST on exports, but was not required to pay compensation cess as the exported goods are exempt from the levy, and the credit is fully attributable to zero-rated supplies.
- Held that, the assessee is entitled to refund of unutilised input tax credit of cess paid on coal under Section 54(3) of the CGST Act read with Section 16 of the IGST Act and Section 11(2) of the Cess Act, and the proviso to Section 11(2) is not applicable on these facts. The facts being identical, *Patson Papers* squarely applies.
- Directed that, the refund applications be processed and the cess amount claimed be sanctioned, and the impugned orders were quashed and set aside.

Held by Hon'ble:

The Hon'ble Supreme Court in ***SLP (C) Diary No. 56367/2026*** held as under:

- Observed that, the SLP is reported to be beyond time by 324 days.

- Noted that, an SLP against the common impugned order has already been dismissed by the Court vide order dated February 13, 2026.
- Held that, there is no cogent explanation for the delay and the SLP is dismissed both on the ground of delay as well as on merits.
- Directed that, pending applications, if any, shall stand disposed of.

Our Comments:

Provisions invoked: The controversy arises from the interplay of three provisions. Section 54(3) of the CGST Act allows refund of unutilised input tax credit at the end of a tax period, but its first proviso restricts the refund to zero-rated supplies made without payment of tax and to inverted duty structure cases. Section 16 of the IGST Act treats exports as zero-rated supplies, which can be made either under bond or Letter of Undertaking without payment of IGST, or on payment of IGST with refund of the tax so paid. Section 11(2) of the Cess Act applies the IGST Act and Rules mutatis mutandis to cess on inter-State supplies, but its proviso permits utilisation of cess credit only towards payment of cess on outward supplies.

Stand of the Revenue: Relying on para 5 of Circular No. 45/19/2018-GST and para 42 of Circular No. 125/44/2019-GST, the Revenue contended that where goods are exported on payment of IGST, cess credit cannot be used to pay that IGST in view of the proviso to Section 11(2), and hence no refund of cess credit is admissible. The Circulars do clarify that the exporter under bond or LUT can claim refund of cess credit on coal and that, on payment of IGST, cess credit cannot be utilised for the IGST.

Reasoning of the High Court: The Court drew a distinction between utilisation and refund. The assessee never sought to utilise cess credit towards payment of IGST. Since no cess is payable on the exported goods, the cess credit on coal remains stranded, and the proviso to Section

11(2) is not even attracted. Refund of the IGST paid on exports and refund of the unutilised cess credit are separate entitlements, and the Circulars cannot curtail the latter.

Effect of the Supreme Court order: The order dismisses the SLP on delay as well as on merits, but does not contain a detailed discussion of the law. In terms of *Kunhayammed & Ors. v. State of Kerala & Anr.* [(2000) 6 SCC 359], a dismissal of an SLP by a non-speaking order does not amount to a declaration of law under Article 141 of the Constitution, and the doctrine of merger is not attracted. Therefore, strictly speaking, the law continues to rest on the Gujarat High Court judgments in *Patson Papers* and *Atul Limited*, which bind authorities in Gujarat and are of strong persuasive value elsewhere. That said, the Revenue has now failed at the Supreme Court stage repeatedly on this issue, and the Court's refusal to condone a delay of 324 days is consistent with *Postmaster General v. Living Media India Ltd.* [(2012) 3 SCC 563], where it was held that Government departments are not entitled to any special treatment on limitation.

Related judgments: The foundation of this line is *Patson Papers Pvt. Ltd. v. Union of India* [R/Special Civil Application No. 26250 of 2022] (Gujarat High Court), where it was held that refund of unutilised cess credit on coal is admissible even where the exports are on payment of IGST, provided the exported goods are exempt from cess. The Revenue's SLP against this judgment was also reported to have been dismissed by the Supreme Court. The Gujarat High Court has followed the same view in other cases involving coal cess refunds where reliance on Circular No. 125/44/2019-GST was held to be misplaced.

Contrary and cautionary view: The Revenue may seek to rely on *Union of India v. VKC Footsteps India Pvt. Ltd.* [Civil Appeal No. 4810 of 2021 dated September 13, 2021], where the Hon'ble Supreme Court held that the provisos to Section 54(3) are substantive restrictions on refund of unutilised ITC and not mere conditions of eligibility. Since the first proviso speaks of zero-rated supplies made "without payment of tax", an argument can be advanced that refund is unavailable on exports with payment of IGST. In our view, *VKC Footsteps* dealt with inverted

duty structure and refund on input services under Rule 89(5), whereas here the claim is of cess credit attributable to zero-rated supplies on which no cess is leviable, and the High Court has read Section 54(3) together with Section 16 of the IGST Act and Section 11(2) of the Cess Act. The point is therefore likely to be raised again outside Gujarat.

Practical takeaways: Exporters in coal-intensive sectors, such as chemicals, paper, steel and aluminium, who have accumulated compensation cess credit on coal and exported on payment of IGST, should evaluate fresh refund claims within the limitation period under Section 54(1) of the CGST Act, and review refund claims already rejected on the basis of the Circulars for appeal or writ remedies. Such claims should clearly show that the cess credit is attributable to zero-rated supplies, that the output is not leviable to cess, and that no part of the cess credit has been utilised towards IGST. The Supreme Court's strict view on delay is also a reminder that timelines for appeals and writs must be adhered to.

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