

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60189 of 2023

[Arising out of Order-in-Appeal No. 69/ST/CGST-APPEAL-GURUGRAM/SKS/2022-23 dated 11.01.2023 passed by the Commissioner (Appeals), Gurugram, Haryana-122001]

M/s SBI Cards And Payment Service Ltd

DLF Infinity Towers, 10th – 12th Floor, Tower C, Block-2
Building 3, DLF Phase-II, DLF Cyber City, Gurugram,
Haryana-122002

.....Appellant

VERSUS

Commissioner of CGST & CE, Gurugram

GST Bhawan Plot No. 36-37, Sector-32, Gurugram
Haryana-122001

.....Respondent

AND

Service Tax Appeal No. 60190 of 2023

[Arising out of Order-in-Appeal No. 69/ST/CGST-APPEAL-GURUGRAM/SKS/2022-23 dated 17.01.2023 passed by the Commissioner (Appeals), Gurugram, Haryana-122001]

**M/s SBI Business Process Management
Service Pvt Ltd**

DLF Infinity Towers, 10th – 12th Floor, Tower C, Block-2
Building 3, DLF Phase-II, DLF Cyber City, Gurugram,
Haryana-122002

.....Appellant

VERSUS

Commissioner of CGST & CE, Gurugram

GST Bhawan Plot No. 36-37, Sector-32, Gurugram
Haryana-122001

.....Respondent

APPEARANCE:

Present for the Appellant: Ms. Krati Singh and Shri Aman Singh, Advocates

Present for the Respondent: Shri Narinder Singh and Shri Yashpal Singh,

Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**FINAL ORDER NO. 60444 -60445/2024**

DATE OF HEARING: 15.07.2024
DATE OF DECISION: 26.07.2024

PER S. S. GARG

These two appeals (ST/60189/2023 & ST/60190/2023) are directed against the impugned order dated 11.01.2023 and 17.01.2023 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the refund of unutilized Krishi Kalyan Cess ("KKC") amounting to Rs. 10,49,283/- and Rs. 5,53,903/- respectively. Since, the issue involved in both the appeals is identical therefore both the appeals are taken up together for the purpose of discussion and disposal.

1.2 It is pertinent to mention that the Revenue has also filed an appeal no. ST/60267/2023 from the impugned order dated 11.01.2023 passed by the Commissioner (Appeals) against grant of interest on refund, but at the time of argument, Ld. DR submits that in the Department's appeal if the interest amount which is claimed by the respondent is to be calculated than the amount of interest would be more than Rs. 50 lakhs and therefore, the appeal should be decided by the Division Bench. The Ld. Counsel for the respondent in the Department's appeal submits that since the amount of interest in the Department's appeal has not been quantified and therefore the Single Member Bench can hear and decide the issue.

1.3 After considering the submissions of both the parties in departmental appeal, I am of the view that as the amount of interest on the refund granted by the Commissioner would be more than 50 lakhs, therefore, the Department's appeal is segregated from the parties' appeals and let the Department's appeal be listed before the Division Bench in due course.

1.4 Presently, two appeals filed by the M/s SBI Cards And Payment Services Limited and M/s SBI Business Process Management Service Pvt Ltd are taken up for disposal.

2. Briefly the facts of the present case are that the appellants are a subsidiary of the State Bank of India and is engaged in providing various financial services. The appellants were registered under the erstwhile service tax regime and subsequently obtained GST registration under the present goods and services tax regime. The appellants had filed the Service Tax return in Form ST-3, for the period April 2017 to June 2017, on 11.08.2017. The closing balance in the above-mentioned ST-3 return was carried forward under GST through Form GST TRAN-1 and was claimed as 'transitional credit' in terms of Section 140 of the CGST Act. Subsequently, the the appellants realised that the CENVAT credit in respect of certain service invoices was not claimed in the original ST-3 return filed on 11.08.2017 and hence filed a revised ST-3 return for the period April

2017 to June 2017 on 23.09.2017. The said revision led to enhancement of Cenvat credit of Service Tax as well as KKC credit.

The differential increase of KKC in both the appeals was as under:

Appeal No.	KKC amount
ST/60189/2023	10,49,283/-
ST/60190/2023	5,53,903/-

The appellant has given the list of events which led to the passing of the impugned order and is stated below:

Particular	Date
Application filed by the Assessee-Appellants for refund of Service tax and KKC under Transitional Credit as per Section 142(9)(b) of the Central Goods and Services Tax Act, 2017 ("CGST Act").	23.02.2018
Deficiency memo cum Show cause notice was issued seeking following clarifications from the Assessee-Appellant: <ul style="list-style-type: none"> • Eligibility of carry forwarding of KKC in the Tran-1 as per Section 140 of CGST Act. • Eligibility of refund of Cenvat credit in cash. • Copy of Cenvat credit register for the period April-June 2017 along with payment details and copy of invoices. • Declaration that no Cenvat credit has been 	31.07.2018

availed/utilised in respect of the invoices which are availed in revised return along with auditors certificate.	
The Assessee-Appellant filed a reply to deficiency memo cum SCN and submitted requisite details/documents sought.	18.09.2018
Ld. Adjudicating Authority rejected the refund application on the basis of non-submission of requisite documents, without considering the submissions made by the Assessee-Appellant.	19.09.2018
Ld. Commissioner (Appeals), remanded back matter to Adjudicating Authority for considering the submission made by the Assessee-Appellant and scrutiny of refund.	19.02.2019
Deputy Commissioner issued SCN demanding an explanation of the eligibility of refund of the Cenvat Credit vis a vis carry forward in GST Tran-1 as per applicable GST provisions.	05.03.2020
Adjudicating authority by the OIO issued the refund Cenvat credit of Service tax, however, refund of the KKC was denied.	29.03.2022
The Assessee-Appellant preferred an appeal against the OIO(s) dt. 29.03.2022, for allowing the refund for KKC and granting interest on the refund of service tax granted.	24.05.2022

<p>Ld. Commissioner (Appeals) allowed the interest on the refund of the service tax granted from three months from date of expiry of filing the original refund application. Further, Ld. Commissioner (Appeals) refused to issue refund of Cenvat of KKC and upheld the OIO to this extent.</p>	<p>11.01.2023 & 17.01.2023</p>
<p>The Assessee-Appellants have filed the appeal no. ST/60189/2023 and ST/60190/2023 against the Impugned orders which is prejudicial to the interest of the Assessee-Appellants.</p>	
<p>Department has preferred the appeal no. ST/60267/2023 against the OIA/Impugned order dated 11.01.2023.</p>	

3. Heard both the parties and perused material on record.

4.1 Ld. Counsel for the appellant submits that the impugned order denying the refund of unutilized credit of KKC in cash under Section 142(9)(b) of the CGST Act, 2017 is not sustainable in law. She further submits that the accumulated Cenvat credit of service tax is a legitimately accumulated balance in view of the fact that the cess was paid on inputs and input services used in the provision of output service. This fact is not disputed by the department either in the Impugned order, Order-in-Original or the show cause notice. Further,

it is not disputed by the department that the credit accumulated with the assessee-appellants was admissible credit.

4.2 She further submits that Section 142(9)(b) squarely covers the refund application of the Assessee-Appellants wherein refund is sought by the Assessee-Appellants for such amount of Cenvat credit which has been accrued additionally as a result of the revision of Service Tax return (ST-3). She further submits that as per Rule 3 of the Cenvat Credit Rules, 2004 KKC finds mention in Rule 3(1a) of the Credit Rules, and therefore, it was entitled to carry forward the Cenvat credit which included KKC. She further relied upon the following decisions to buttress her argument that the appellant is entitled to file the cash refund of KKC after the advent of GST regime.

In support of this, she relied upon the following decisions:

- *Capgemini Solutions Pvt Ltd Versus Commissioner of Central Tax, Bangalore 2019 (11) TMI 384 - CESTAT Bangalore.*
- *Punjab National Bank Versus Commissioner of Central Tax, Bangalore North 2021 (7) TMI 326 - CESTAT Bangalore.*
- *Bharat*
- *Heavy Electricals Ltd. (Excise & Taxation Division) Versus Commissioner Central Goods Service Tax, Central Excise & Customs, Bhopal (Madhya Pradesh) 2019 (4) TMI 1896 - CESTAT NEW DELHI*

- *Kirloskar Toyota Textile Machinery Pvt. Ltd. vs Commissioner of Central Tax, Bengaluru South GST Commissionerate 2021 (8) TMI 818 - CESTAT BANGALORE*
- *Emami Cement Limited, Nu Vista Limited vs Commissioner (Appeals), CGST, Central Excise, Raipur 2022 (3) TMI 1254 - CESTAT NEW DELHI*
- *Aia Engeneering Ltd vs. C.C.E. -Ahmedabad-I 2023 (6) TMI 1055 - CESTAT AHMEDABAD*
- *Indo Tooling Pvt. Ltd. vs Commissioner, Central Goods and Service Tax & Central Excise, Indore (M.P) 2022 (3) TMI 1100 - CESTAT NEW DELHI*
- *Atul Limited vs C.C.E. & S.T. -Vadodara-II 2021 (11) TMI 423 - CESTAT AHMEDABAD*
- *Hindustan Equipments Private Limited Versus Commissioner of CGST& Central Excise, Indore2024 (6) TMI 245 - CESTAT NEW DELHI*
- *Kobe Suspension Co Pvt Ltd Versus Commissioner Of Central Excise, Goods & Service Tax, Faridabad2024 (6) TMI 180 - CESTAT CHANDIGARH*
- *Virgo Polymers India Pvt. Ltd. Versus Commissioner of GST andCentral Excise Chennai 2023 (12) TMI 843 - CESTAT CHENNAI*

4.3 She further submits that credit of KKC can only be utilized to set off the liability against KKC. The levy of KKC was abolished w.e.f. 01.07.2017. However, there was no provision to lapse the credit of KKC and the KKC credit was lying unutilised in the CENVAT account of

the appellants. She further submits that it is settled law that accumulated credit is the indefensible and vested right of the assessee. She further submits that it is settled by various judicial forums that refund of the unutilized Cenvat credit on account of closure of manufacturing unit or when the assessee moves out of the modvat scheme shall be allowed.

- *Hindustan Zinc Ltd vs. Commissioner, Central Excise & CGST- UDAIPUR 2022 (2) TMI 246 - CESTAT New Delhi*
- *ATC Tyres Pvt. Ltd. vs Commissioner of GST & Central Excise, Tirunelveli 2021 (3) TMI 681 - CESTAT Chennai*
- *USV Private Limited vs. Commissioner of Central Excise & ST, Daman 2023 (2) TMI 230 - CESTAT AHMEDABAD*
- *NU Vista Ltd (Supra)*
- *The Commissioner, Goods and Service Tax Commissionerate. vs. Shree Krishna Paper Mills and Industries Ltd. and Ors. 2019 (12) TMI 1348 (P&H)*
- *Welcure Drugs & Pharmaceuticals Ltd. vs. CCE, 2018 (15) G. S. T. L. 257 (Raj.)*
- *CCE vs. Jain Vanguard Polybutlene Ltd.-2010 (256) ELT 523 (Bom.)*
- *CST vs. Apex Drugs and Intermediaries- 2015 (322) E.L.T. 834 (A.P.)*
- *Bangalore Cables P. Ltd. vs. CCE – 2017 (347) E.L.T. 100 (Tri. - Bang.)*
- *Rama Industries vs. CCE, Chandigarh-2009-TIOL-100-HC-P&H*

- *Slovak India Trading Co.Pvt.Ltd.-2008 (10) STR 101 [maintained in Supreme Court at 2008 (223) E.L.T. A170 (S.C.)]*

4.4 She further submits that grant of refund as per the decision of the Bharat Heavy Electricals Ltd. cited (Supra) has been stayed by the Hon'ble Madhya Pradesh High Court reported in 2021 (3) TMI 1318 – Madhya Pradesh High Court. She Further submits that grant of stay by the higher forum does not undermine the precedential value of the judgment and further the grant of stay by the High Court does not amount to “any declaration of law” and is only binding upon the parties to the said proceedings. For this regard, she relied upon the following decisions:

- *Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, 1992 (3) SCC 1*
- *Niranjan Chatterjee vs. State of West Bengal, 2007 SCC Online Cal 283*
- *Institute of Aeronautics & Engineering Versus C.C.E., Bhopal - 2017 (12) TMI 1378 - CESTAT NEW DELHI*

5.1 On the other hand, Ld. DR reiterates the findings of the impugned order and submits that as per the Larger Bench Order dated 03.06.2024 in the case of M/s G4S Secure Solutions (India) Pvt. Ltd, it is clear that the refund has to be processed in accordance with the existing law and the existing law in this case was Chapter V of the Finance Act. He further submits that as per the Larger Bench, refund of only that element of Cenvat is admissible to be refunded in

cash as per the provisions of Section 142 of CGST Act, 2017 and which was permissible to be refunded under the existing law. Further, as per para 7.8 of the impugned order there is no provision in the existing law to refund the Krishi Kalyan Cess in cash. The Ld. DR further submits that the Division Bench of this Tribunal in the case of M/s Lupin Ltd. Versus Commissioner of Central Tax & Cus. (Appeals), Guntur reported as 2023 (385) E.L.T. 242 (Tri.-Hyd.) has decided the issue of refund of Krishi Kalyan Cess accumulated prior to 01.07.2017 and has held that the assessee is not entitled to refund of non utilized portion of Cenvat Credit of KKC in cash. The Ld. DR further submits that the case laws relied upon by the appellant are distinguishable as not directly related to refund of KKC.

5.2 He further submits that the decisions of Bharat Heavy Electricals Ltd. (cited Supra) the Hon'ble High Court of Madhya Pradesh has stayed the execution of the said order; he further submits that the decision of Division Bench in the case of Lupin Ltd. (cited Supra) is binding on the Tribunal as it is directly on the point in issue as involved in the present case.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the only issue involved in the present case is whether the appellants are entitled to get the refund of KKC under Section 142(9)(b) of CGST Act, 2017. The relevant section is reproduced here in below:

“(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such

revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act:

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act"

7. Further, I find that this Tribunal in the case of Bharat Heavy Electricals Ltd (cited Supra) has held by relying the judgment in the case of Slovak India Trading Co. Pvt. Ltd. that assessee is eligible for cash refund of cesses lying as Cenvat credit balance as on 30.06.2017 in their accounts; but this judgment was appealed against by the department before the Hon'ble Madhya Pradesh High Court and the Hon'ble Madhya Pradesh High Court admitted the appeal on the following substantial question of law:

"Whether the unutilized CENVAT credit balances of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess as on 1.7.2017 which were not allowed to be carried forward in Tran-1 under section 140 of CGST Act, 2017 were liable to be refunded to the respondent in cash under the provisions of section 142(3) of the Central Goods & Services Tax, 2017 read with section 11B of the Central Excise Act, 1944 ?"

8. Further, the Hon'ble High Court in the meantime has directed that the refund granted by the Tribunal shall remain stayed till the final output of the appeal.

9. Further, I find that the Division Bench of this Tribunal in the case of Lupin Ltd. cited (Supra) has decided the issue of refund of KKC accumulated prior to 01.07.2017 and the relevant part of the order is reproduced here in below:

"The issue in this appeal relates to rejection of refund claims. The appellant had claimed the following refunds which have been decided by the Court below:

(A)(1) Krishi Kalyan Cess paid on services received for manufacture of goods, namely transportation of goods, Manpower supply-recruitment, maintenance and repair service, technical testing analysis service totalling Rs. 5,46,759/-.

8. Having considered the rival contentions, we reject the amount of refund for KKC RS 5.46,759/-, following the ruling of Larger Bench in the case of Gauri Plasticulture Pvt. Ltd [2019-TIOL-1248-HC-Mumbai-C.Ex-LB-2019 (30) G.ST.L. 224 (Bom)] wherein it was held that a non-utilised portion of Cenvat credit cannot be claimed as refund in cash, distinguishing the ruling in Union of India v. Slovok India Trading Company [2006 (201)

E.L.T. 559 (Kar.) = 2008 (10) S.T.R. 101 (Kar.)], as not a declaration of law under Article 141 of the Constitution."

10. Since, the Division Bench of this Tribunal in case of refund of KKC has decided in favour of Revenue, therefore, by following the ratio of the said decisions I am of the considered view that the appellants are not entitled to the refund of the KKC and hence, I dismiss both the appeals of the appellant.

(Order pronounced in the open court on 26.07.2024)

(S. S. GARG)
MEMBER (JUDICIAL)