

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (T) No. 4061 of 2019

Atibir Industries Co. Ltd., having its office at Tundi Road, Mahjhladih, Gadi Srirampur, P.O. and P.S. Giridih, District Giridih, PIN 835102; through its Director Sandeep Kumar Sarawgi, aged about 50 years, son of Shri Santosh Sarawgi, resident of Sarawgi Sadan, Dumri Road, P.O. and P.S. Giridih, District Giridih.

... .. **Petitioner**

-Versus-

1. The Union of India,

through its Principal Secretary, Ministry of Finance, Department of Revenue, New Delhi, P.O. and P.S. New Delhi, District New Delhi 110001.

2. Central Board of Indirect Taxes and Customs,

through its Chairman, GST Policy Wing, Department of Revenue, Ministry of Finance, Government of India, New Delhi, P.O. and P.S. New Delhi, District New Delhi.

3. Goods and Services Tax Council,

through its Secretary, having its office at Tower No. 2, 5th Floor, Jeevan Bharti Complex, Janpath, Connaught Place, New Delhi P.O. and P.S. New Delhi, District New Delhi. PIN 110001.

4. Goods and Service Tax Network (GSTN),

through its Chief Executive Officer, East Wing, Worldmark-I, 5th Floor, Tower-B, Aerocity, Indira Gandhi International Airport, New Delhi, P.O. and P.S. New Delhi, District New Delhi, PIN 110037.

5. State of Jharkhand,

through the Commissioner of State Tax, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, Ranchi 834 004, District Ranchi.

6. Deputy Commissioner of State Tax,

Giridih Circle, P.O. and P.S. Giridih, District Giridih.

... .. **Respondents**

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Sumeet Gadodia, Advocate

For the Respondent Nos. 1-4: Mr. Ratnesh Kumar, Advocate

For the Respondent-State : Mr. Rajiv Ranjan, Advocate General

: Mr. P.A.S. Patti, S.C.-IV

Through Video Conferencing

C.A.V. on 13/10/2020

Pronounced on 04/01/2021

Mrs. Anubha Rawat Choudhary, J.

1. Heard Mr. Sumeet Gadodia, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Ratnesh Kumar, learned counsel appearing on behalf of Respondent Nos.1 to 4.
3. Heard Mr. Rajiv Ranjan, learned Advocate General, Jharkhand appearing on behalf of the Respondent-State along with Mr. P.A.S. Patti, S.C.-IV.
4. This writ petition has been filed seeking a mandamus upon the respondents to either open GSTN Portal enabling the Petitioner to file its application for refund in Form GST RFD-01, or to manually accept the refund application of the Petitioner pertaining to the periods 2017-18 and 2018-19 in respect of its claim for refund of unutilized Input Tax Credit (hereinafter referred to as 'ITC') pertaining to compensation cess, which the Petitioner claims to be entitled under law. A further prayer has been made seeking a direction upon the respondent-authorities to process and determine the claim of refund of the petitioner pursuant to acceptance of refund application of the said periods.

Arguments of the petitioner

5. The petitioner is primarily engaged in manufacture of Sponge Iron falling within the jurisdiction of Respondent no. 6. The petitioner requires 'Coal' as raw material from within the country through one or the other subsidiaries of Coal India Ltd. and also imports Coal from outside the country.
6. *Goods and Services Tax (for short 'GST') Act, 2017* as well as *The Goods and Services Tax (Compensation of States) Act, 2017 (for short 'Compensation Act')*, have been made effective from 1st July, 2017. *Compensation Act, inter alia*, provides for levy of "Compensation Cess" in respect of certain specified commodities and coal is one of

such commodities, on which compensation cess is leviable even on imported Coal by virtue of Reverse Charge Mechanism. As per the provision of Section 16 the Central Goods and Services Act, 2017 and/or the Jharkhand State Goods and Service Tax Act, 2017, excess ITC available at the hands of the petitioner could have been claimed by the petitioner as refund under the said Acts.

7. Section 11 of the Compensation Act provides that the compensation cess payable on inputs would be adjusted against the liability of Compensation Cess only. Accordingly, in case, compensation cess accumulated as ITC was not utilized for payment of outward liability of compensation cess, the same would have remained as ITC at the hands of the dealer, which is not adjustable against the liability of Central GST, State GST and Integrated GST.

8. The petitioner being manufacturer of Sponge Iron regularly exports goods outside the country without payment of export duty in terms of "Letter of Undertaking" issued in favour of the petitioner by the competent authority. As there is no liability of compensation cess on sponge iron, the entire amount of compensation cess paid by the petitioner on purchase of coal remained as unutilized ITC at the hands of the petitioner and the petitioner was entitled for refund of the said amount.

9. There was a widespread confusion among dealers as to whether compensation cess, which has been levied under the Compensation Act, being a separate enactment than that of the CGST Act, would be available as ITC under the CGST Act or not. In case ITC is available, then what would happen where the product of the manufacturer is not subjected to Compensation Cess and what would happen to the unutilized ITC of GST/Compensation Cess.

10. In such circumstances, a circular dated 31st December, 2018 (Annexure-5) was issued by Central Board of Indirect Taxes & Customs (Respondent No.-2), *inter alia*, providing that a dealer, who has used inputs on which compensation cess was leviable and

exported goods on which there was no levy of compensation cess and where such exports have been made under Letters of Undertaking/Bonds, the said dealer would be entitled to claim refund of compensation cess by filing application in that regard in terms of the provision of Section 16 of the CGST/SGST Act and the procedure for refund, as governed under the CGST Act and corresponding Rules would be applicable.

11. However, the petitioner claimed ITC of compensation cess in GSTR-3B Return for the month of December, 2018, wherein the entire compensation cess paid by it for the period 1st July, 2017 to December 2018 was claimed as ITC.

12. At this stage, by virtue of the Circular dated 31st December, 2018, it was clarified by Respondent No.-2 that compensation cess can be claimed as ITC and unutilized compensation cess can be claimed as refund, the petitioner, on 4th March, 2019, logged in on GSTN Portal for claiming refund by filing statutory Form GST RFD-01 towards unutilized ITC at the hands of the petitioner on account of compensation cess for the financial year 2017-18.

13. It is the specific case of the petitioner that when the petitioner logged in on GSTN Portal and filed GST RFD-01 Form for refund, even the claim of refund of the petitioner was computed in terms of Section 54(3) of the CGST/SGST Act, 2017 read with Rule 89 of the CGST/SGST Rules and a sum of Rs. 1,78,38,970/- was determined as refundable to the petitioner for the financial year 2017-18 and the petitioner has stated that refund application in GST RFD-01 Form could not be submitted online by the petitioner on GSTN Portal, as the option of 'Save', 'Review' and 'Submit' as occurring on GSTN Portal did not get "Active". In support of the aforesaid submission, the petitioner has annexed the PDF Screenshot of the Refund Application of the petitioner as Annexure-8 to this writ petition.

14. When the Petitioner was unable to upload its application on 4th March, 2019, the Petitioner, on the same day itself, made a complaint

in the Helpdesk of GSTN Portal and the Petitioner was allotted Ticket No. 201903045258658 dated 4th March, 2019. It is the specific case of the petitioner that in spite of allocation of said Ticket Number, no response was received by the Petitioner from the Helpdesk intimating the reason as to why the application for refund for the financial year 2017-18 was not being accepted on GSTN Portal.

15. Under the said circumstances, the Petitioner filed a detailed representation before the Respondent-Commissioner of State Tax on 14th March, 2019 (Annexure-10) and also before the Deputy Commissioner of State Tax (Respondent No. 6) bringing the aforesaid fact to the knowledge of the said authorities to resolve the problem so that refund application of the Petitioner can be uploaded on GSTN Portal and/or the claim of refund of the Petitioner of its unutilized ITC towards compensation cess can be processed.

16. It is the further case of the petitioner that for the financial year 2017-18, the petitioner was having an accrued balance of compensation cess of Rs.2,62,33,789/-, which the petitioner is entitled to refund.

17. Since the application for refund of the petitioner for the year 2017-18 was not accepted in the Online Portal due to aforesaid glitches in GSTN Portal, the petitioner, on 7th March, 2019, itself, sent an E-mail to Goods and Service Tax Council i.e. Respondent No.-3 requesting the said Council to intervene in the matter, but the petitioner did not receive any response.

18. When the application for refund for the financial year 2017-18 was not being accepted online on GSTN Portal, the petitioner also attempted to file its application for refund for the period 2018-19 up to January, 2019 on 6th March, 2019, in view of the fact that the petitioner was having accumulated unutilized ITC for the period April, 2018 to January, 2019 of Rs. 4,09,80,367/- showing in its

Electronic Credit Ledger and the petitioner was further entitled to claim refund of the same.

When the petitioner attempted to upload statutory GST RFD-01 Form for refund, the said application for refund was not even processed on GSTN Portal and a message was displayed to the petitioner, namely, "*File GST RFD-01 for the period 2017-18*". It has been stated by the petitioner that due to inadvertence, the screenshot of such application filed by the petitioner was not saved relating to the period 2018-19 and that the respondents have necessary tracking system in the software of GSTN Portal from where such fact can be verified.

19. The grievance of the petitioner is that on one hand the application for refund of the Petitioner for the financial year 2017-18 was not being accepted on GSTN Portal due to technical glitches and, on the other hand, even subsequent application for the period 2018-19 was not being accepted on GSTN Portal with a message directing the Petitioner to first file application for refund for the period 2017-18. The further grievance of the petitioner is that while filing application for refund for the period 2018-19, the petitioner could have also claimed the amount of unutilized ITC towards compensation cess as refund pertaining to the financial year 2017-18, as the same was within the period of limitation, but the Petitioner was even prevented from doing so on the GSTN Portal in view of the message that the Petitioner is first required to submit its application for refund for the financial year 2017-18.

20. The Petitioner filed reminder representations before the Respondent-authorities including the Respondent Nos. 5 and 6 vide its reminder representations dated 31st March, 2019, 24th April, 2019, 7th June, 2019 and 8th July, 2019, but in spite of said reminder representations, the issue regarding filing of refund application of the Petitioner pertaining to the financial year 2017-18 was not resolved. The Petitioner once again filed application raising its

grievances in Grievance Redressal Cell on GSTN Portal on 18th July, 2019.

21. When the refund application of the Petitioner for the financial year 2018-19 towards unutilized IGST was accepted on common Portal, the Petitioner once again attempted to file its application for refund towards unutilized ITC of GST/Compensation Cess on the common Portal, but a message was displayed on the Portal that "Refund has already been applied till March 2018-19. Please update selection to exclude already filed periods."

22. The Petitioner once again filed representation dated 25.07.2019 (Annexure- 15) before the Deputy Commissioner of State Tax as well as Commissioner of State Tax bringing the aforesaid fact to the notice of the Respondent-authorities and requesting the said authorities to facilitate the Petitioner for filing its application for refund of unutilized ITC towards Compensation Cess/GST Cess, but no action was taken by the Respondent authorities.

23. The learned counsel for the petitioner further stated that the said grievance dated 18.07.2019 registered by the petitioner in Grievance Redressal Cell was given Docket No. 201907196495038, but the petitioner on the one hand did not receive any communication from GSTN Portal in respect of the said grievance and on the other hand, on 24th July, 2019 the petitioner received mails after mails within a short intervals of less than two hours, wherein petitioner was directed to reply on certain queries of the Grievance Redressal Cell and without even giving adequate opportunity to the petitioner to reply to the said queries, on 24th July, 2019 itself the grievance raised by the Petitioner was closed by intimating, *inter alia*, that the petitioner was given three reminder e-mails regarding the queries of the Grievance Redressal Cell, but since the petitioner failed to reply to the said reminders, the grievance of the petitioner stands closed. The Screenshot of e-mails all dated 24th July, 2019 have been annexed as Annexure-17 series.

24. It is submitted by the learned counsel for the petitioner that under the aforesaid circumstances, the petitioner has been forced to file the present writ petition.

Arguments of the Respondents

25. In the present case, two counter-affidavits have been filed by the respondents; one by the respondent nos. 1 to 4 and another by respondent no. 6.

26. The learned counsel appearing for the Respondent nos. 1 to 4 has referred to para nos. 5, 8 and 9 of the affidavit filed on behalf of the said respondents and submits that the averment of the petitioner that the form RFD-01A i.e. refund application could not be filed on GST portal as the option 'Save', 'Review' and 'Submit' as occurring on GST portal did not get activated, is wrong and misconceived and as per the application process, the application gets ready for filing only when after entering all the data in the application, the bank account is selected, the supporting documents are uploaded, the declaration box is checked, the undertaking box is checked and the information regarding Bond/LUT is indicated online in the application form and only after that application can be submitted and filed on the GST portal. It is further the case of the respondent nos. 1 to 4 that Annexure- 8 indicates that the aforesaid action was not taken by the petitioner and therefore, the application could not be filed and accordingly, it is contended that the non-filing of refund application is due to non-adherence to the filing process by the petitioner and not due to any glitch in the GST portal.

27. Further, in reply to para 27 of the writ petition, it is the specific case of the respondent nos. 1 to 4 that the ticket allotted to the petitioner was closed on 25.03.2019 with the following resolution comment: -

"Dear tax payer, kindly delete the existing sheet and download the offline utility freshly from the portal as it is updated. Please try

opening the utility with the latest version (recommended: 2016) of Microsoft Office. If you are copying from another Excel, it will implicitly convert to MM/DD/YYYY format. So kindly do not copy paste dates directly. Kindly copy /paste dates to notepad and then paste it in offline utility. Please try filing again and report back if any errors are observed with screenshot"

The counsel for the respondent nos. 1 to 4 has argued that the petitioner did not follow the resolution comment after closure of the ticket on 25.03.2019 and therefore, there is no question of allowing the petitioner to submit its refund application regarding compensation cess.

28. The other counter-affidavit has been filed by respondent no. 6. The learned Advocate General, by referring to the counter-affidavit, has submitted that the petitioner did not file any refund application according to the GST Council norms and therefore, the refund application of the petitioner has been rejected. In support of the rejection, Annexure-A has been filed. It is also the stand of the respondent no. 6 that the rejection order no. 19 dated 24.08.2019 was served upon the petitioner, but they have not chosen to challenge the same. It is also the case of respondent no. 6 that the petitioner has not even removed the objection pointed out in the refund rejection order nor has made a fresh application removing the discrepancies pointed out.

29. The learned Advocate General has also referred to the Circulars dated 13.03.2018 and 15.03.2018 issued by CBIC to submits that refund application of the petitioner was not as per the Circulars. The respondent no. 6 has not chosen to give any para wise comment to the writ petition and their specific stand is that the refund application of the petitioner had already been rejected which has not been challenged by the petitioner.

30. The learned Advocate-General appearing for the respondent no. 6 has also relied upon the following judgements:

- (i) (2016) 15 SCC 125 (Jayam and Company Vs. Assistant Commissioner and Another)
- (ii) 2020 SCC OnLine Bom 437 (Nelco Limited Vs. Union of India and Others)
- (iii) 2020 SCC OnLine Raj 381 (Shree Motors Vs. Union of India and Ors. with analogous case)
- (iv) 2018 (19) GSTL 228 (Willowood Chemicals Pvt. Ltd. Vs. Union of India)

Rejoinder of the petitioner

31. A rejoinder has been filed to the counter-affidavit filed by respondent nos. 1 to 4 and the allegation that the petitioner did not adhere to the filing process has been denied and it has also been stated that the resolution comment which has been quoted in para 8 of the counter affidavit was never communicated to the petitioner.

It is further the case that even if for the sake of argument, it is presumed that the petitioner did not click/check the mandatory fields in the refund application due to which its application for refund was not being accepted, the resolution comments would have indicated the petitioner the said lacuna. On the contrary, the resolution comments do not whisper a word regarding non-checking of the requisite fields in the refund application and the petitioner has been advised to delete the existing sheet and download the offline utility freshly from the portal as the portal was updated. The petitioner has reiterated that if the said resolution comments would have been communicated to the petitioner, the petitioner would have followed the said procedure and would have resubmitted its application for refund.

32. During the course of argument, the learned counsel for the petitioner has referred to the subsequent letters issued by the petitioner which also mention about non-resolution of the problem

being faced by the petitioner. The learned counsel for the petitioner has submitted that had the resolution been communicated to the petitioner, there was no reason as to why the petitioner would not have adhered to it and applied afresh as per the advice of the resolution, but the same having not been communicated to the petitioner, the petitioner has been highly prejudiced due to non-action on the part of the respondents in communicating the resolution. He has submitted that although the resolution has been quoted in the counter-affidavit, but neither the mode of its communication nor the date of its communication has been mentioned although it was the specific plea of the petitioner in the writ petition itself that in spite of raising the grievance in connection with resolution of the problem for which a docket number was also generated, the petitioner had not received any communication or resolution and the matter was pending for resolution before the respondents.

33. So far as the counter-affidavit filed by the respondent no. 6 is concerned, another rejoinder has been filed by the petitioner to submit that the respondent no. 6 has not addressed the issue at all, in as much as, the rejection order dated 24.08.2019 which has been marked as Annexure- A to the counter-affidavit filed by respondent no. 6 is in respect of refund application pertaining to refund of excess IGST for the financial year 2018-19 and has got no bearing in this case. This case relates to refund of excess ITC of compensation cess for the period 2017-18 to 2018-19 and accordingly, there was no occasion for the petitioner to challenge the said rejection order dated 24.08.2019 before this Court. The petitioner has also submitted that similar relief of refund of compensation cess for subsequent period of the year 2019-20 has been allowed and the amount vide payment advice dated 23.07.2020 has already been credited in the account of the petitioner.

34. The learned counsel for the petitioner has submitted that the resolution of problem as quoted in the counter-affidavit filed by

respondent no. 4, having not been communicated to the petitioner, the petitioner cannot be put to any disadvantageous position on account of non-adherence to the directions contained therein. It has been reiterated that had the said resolution been communicated to the petitioner, the petitioner could have availed of the opportunity and the said communication has been communicated to the petitioner for the first time only through the counter-affidavit. It is submitted that in such circumstances, the respondents be directed to allow the petitioner to file refund application for the period 2017-18 and 2018-19 in connection with refund of compensation cess.

Findings of this Court

35. After having heard the learned counsel for the parties and after considering the materials on record, this court finds that the present matter relates to claim of refund of Compensation Cess paid by the petitioner for the financial year 2017-18 and 2018-19 under the provisions of The Goods and Services Tax (Compensation of States) Act, 2017 which remained unutilized by the petitioner. As per the case of the petitioner, the compensation cess was payable by the petitioner on coal purchased as raw material for manufacture of sponge iron but no compensation cess was payable on the sponge iron so produced and exported under letter of undertaking. Further it is not in dispute that under section 11 of The Goods and Services Tax (Compensation of States) Act, 2017 the compensation cess paid can be adjusted only against the liability of compensation cess and cannot be adjusted against liability of CGST, SGST or IGST.

36. The Goods and Services Tax Compensation Cess Rules , 2017 were also framed and made effective from 01.07.2017 wherein the Central Goods and Services Tax Rules, 2017 were adapted as follows:-

“2. Adaptation of Central Goods and Services Tax Rules, 2017-

(1) *The Central Goods and Services Tax Rules, 2017 shall, mutatis mutandis, apply, subject to the following modifications, namely-*

(a) *in rule 1, -*

(i) *for the words and figures "Central Goods and Services Tax Rules, 2017", the words and figures, "Goods and Services Tax Compensation Cess Rules, 2017" shall be substituted;*

(b) *rule 3 to 7 shall be omitted,*

(c) *rule 117 to 120 shall be omitted."*

37. It is further not in dispute that Several representations were received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero - rated supplies made under Bond/Letter of Undertaking and accordingly Circular No. 79/53/2018-GST/ F. No. CBEC - 20/16/04/2018-GST was issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi, Dated the 31st December, 2018 and addressed to The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)/The Principal Directors General/ Directors General (All)/ The Principal Chief Controller of Accounts (CBIC) as contained in annexure -5 of the writ petition , whose relevant portion is quoted as under:-

"Subject: Clarification on refund related issues- Reg.

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

.....
.....

Issues related to refund of accumulated Input Tax Credit of Compensation Cess:

9. *Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of*

compensation cess on account of zero – rated supplies made under Bond/Letter of Undertaking. These issues have been examined and are clarified as below:

a) **Issue:** A registered person uses inputs on which compensation cess is leviable (E.g. coal) to export goods on which there is no levy of compensation cess (E.g. aluminum). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. Vide Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in **FORM GSTR-3B**) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course of furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

c) **Issue:** A registered person avails ITC of compensation cess (say, of Rs. 100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. Rs. 50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the **FORM GSTR-3B** filed for the month as a result of which an amount of Rs. 50/- only is credited in the electronic credit ledger. The reversed amount (Rs. 50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares Rs. 100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be Rs. 50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50/- (assuming that no other debits/credits have happened), the system will proceed to debit Rs. 50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50/- as the refund amount or Rs. 25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed."

38. It is the specific case of the petitioner that the petitioner claimed paid amount of compensation cess for the period 1st July, 2017 to December 2018 as ITC in GSTR-3B Return for the month of December, 2018, and thereafter pursuant to aforesaid Circular dated

31st December, 2018, the petitioner, on 4th March, 2019, logged in on GSTN Portal for claiming refund by filing statutory Form GST RFD-01 towards unutilized ITC on account of compensation cess for the financial year 2017-18 but could not upload the refund application due to technical glitches. On the same day the petitioner made a complaint in the Helpdesk of GSTN Portal and the Petitioner was allotted Ticket No. 201903045258658 dated 4th March, 2019. It is the specific case of the petitioner that in spite of allocation of said Ticket Number, no response was received by the Petitioner from the Helpdesk intimating the reason as to why the application for refund for the financial year 2017-18 was not being accepted on GSTN Portal.

Specific statement to this effect has been made in para 27 of the writ petition which is quoted as under:-

“27. That it is stated that when the Petitioner was unable to upload its application on 04th March, 2019, the Petitioner, on the same day itself, made a complaint in the Helpdesk of GSTN Portal and the Petitioner was allotted Ticket No. 201903045258658 dated 4th March, 2019. It is stated that in spite of the fact that the Petitioner was allotted said Ticket Number, no response was received by the Petitioner from the Helpdesk intimating the reason as to why the application for refund for the financial year 2017-18 is not being accepted on GSTN Portal. Under the said circumstances, the Petitioner filed a detailed representation before the Respondent-Commissioner of State Tax on 14th March, 2019 and also filed a detailed representation before the Deputy Commissioner of State Tax (Respondent No. 6) bringing the aforesaid fact to the knowledge of the said authorities to resolve the problem so that the refund application of the Petitioner can be uploaded on GSTN Portal and/or the claim of refund of the Petitioner of its unutilized ITC towards compensation cess can be processed.”

It is further case of the petitioner that as the refund application of compensation cess as ITC for the period 2017-18 could not be uploaded, the refund application for compensation cess as ITC for the next financial year 2018-19 also could not be uploaded.

When the petitioner attempted to upload statutory GST RFD-01 Form for refund for the next financial year 2018-19, the said application for refund was not even processed on GSTN Portal and a message was displayed to the petitioner, namely, "File GST RFD-01 for the period 2017-18". This has been mentioned in para 25 of the writ petition but has not been denied in the counter affidavit and it has been stated that the refund application could not be filed due to non-adherence of filing procedure for 2017-18.

Para 25 of the writ petition is quoted as under:-

"25. That, at this stage, it is stated that the Petitioner immediately, when its application for refund for the financial year 2017-18 was not being accepted online on GSTN Portal, also attempted to file its application for refund for the period 2018-19 up to January, 2019 on 6th March, 2019, in view of the fact that the Petitioner was having accumulated unutilized ITC for the period April, 2018 to January, 2019 of Rs. 4,09,80,367/- showing in its Electronic Credit Ledger and the Petitioner was further entitled under law to claim such refund in terms of Section 16(4) read with Section 54 of the CGST/SGST Act. However, when the Petitioner attempted to upload statutory GST RFD-01 Form for refund, the said application for refund was not even processed on GSTN Portal and a message was displayed to the Petitioner, namely, "File GST RFD-01 for the period 2017-18". It is stated that due to inadvertence, the screenshot of such application filed by the Petitioner was not saved by it. However, the Respondents have necessary tracking system in the software of GSTN Portal from where such fact can be verified."

The Petitioner had also filed a detailed representation before the Respondent-Commissioner of State Tax on 14th March, 2019 (Annexure-10) and also before the Deputy Commissioner of State Tax (Respondent No. 6) bringing the aforesaid fact to the knowledge of the said authorities to resolve the problem so that refund application of the Petitioner can be uploaded on GSTN Portal and/or the claim of refund of the Petitioner of its unutilized ITC towards compensation cess can be processed.

39. This Court finds that the allegation regarding non resolution of the problem pursuant to complaint in help-desk of GSTN portal on

04.03.2019, for which the petitioner was allocated ticket no. 201903045258658, was also raised in the representation dated 14.03.2019 (Annexure-10) addressed to the Commissioner of State Tax, wherein Problem being faced by the petitioner in filing Application for Refund of GST Cess in form GST RFD-01 against Export of Sponge Iron on the basis of LUT/Bond was narrated as follows:-

“Kind attention of your honour is drawn towards the following facts, figures and problems being faced by us:-

- (1) During the GST period July, 2017 to March 2018 (2017-18) and also for the subsequent period 2018-19 we were eligible for ITC of GST Compensation Cess on purchase of coal used in manufacture of Sponge Iron. As per the Provisions of GST law ITC of Cess can be utilized only against liability of GST Cess.*
- (2) Since Sponge Iron do not attract GST compensation Cess hence we were of the considered view that there would be no occasion for utilization of Credit of GST Cess hence we did not claim ITC in the GSTR 3B return from July, 2017 to November, 2018.*
- (3) Recently we noted down the contents of Circular No. 79/53/2018-GST dated 31st December, 2018 and came to understand that the taxpayers can claim of refund of accumulated ITC of compensation Cess against export of goods without on the basis of LUT/Bond vide Para 9, 10 & 11 at page 6 to 9 and also refers Circular No. 45/19/2018-GST dated 30.05.2018 for this purpose and accordingly we availed ITC of GST Cess and reflected in the GSTR 3B Return for the Month of December, 2018 and January, 2019 for Total ITC of Rs. 6,72,14,156.00 (2017-18 Rs. 2,62,33,789/- and 2018-19 upto January, 2019 Rs. 4,09,80,367.00). Electronic Credit Ledger of Jan, 2019 shows Credit balance of this ITC and GSTR-1 shows Export of goods.*
- (4) It is needless to mention here that section 16(4) of the CGST Act, restrict availment of ITC of later period upto the date of filing GSTR-3B for the month of September or Annual Return of the last year which ever is earlier however the GST council vide Press Note dated 22.12.2018 has extended the last date of availing ITC of 2017-18 upto March, 2019. Hence in the present case Availment of ITC is in accordance with the provisions of the GST law and entitled to get refund of unutilized GST Cess against Export of Sponge Iron for the period 2017-18 and 2018-19.*

(5) *We are trying again and again to file Refund claim in form GST RFD-01 for the period 2017-18, some steps were correctly followed but thereafter the option of SAVE/REVIEW/SUBMIT is not activated.*

(6) *We registered complain in the Help lime bearing Ticket number-201903045258658 dated 4th March, 2019 but they are unable to resolve the problem.*

(7) *Then we our self-proceeded to file Refund Application for the period 2018-19 (upto Jan, 2019) with a view to file the Refund Application for 2017-18 as and when the problem is resolved but a message is delivered "file GST RFD 01 for the period 2017-18". If we file 'NIL' refund claim for the period 2017-18 only then claim of 2018-19 may be completed.*

And hence your honour is requested to solve the problem so that Refund Claim could be filed at the earliest."

40. In sum and substance, the argument of the learned Advocate General appearing on behalf of respondent no. 6 is that in order to avail Input Tax Credit or to avail refund of compensation cess, the procedure prescribed is required to be followed and the petitioner having not followed the procedure prescribed, it is not entitled to any relief. Further, the application of the petitioner was already rejected which is not under challenge.

41. So far as not challenging the rejection order as contained in the counter affidavit filed by the respondent no. 6 is concerned , the same has no bearing and nothing to do with the present case as argued by the learned counsel of the petitioner as the same does not relate to refund of compensation cess but it relates to ITC of IGST (Integrated Goods and Service Tax)

42. The specific case of the respondent nos. 1 to 4 is that the petitioner did not follow the procedure and there was no technical glitch. Further, a resolution of problem was also issued, but the petitioner did not abide by the direction given in the resolution and hence, the petitioner is not entitled to any relief.

43. Said paragraph 27 of the writ petition has not been specifically responded to by respondent no. 6. It has been specifically responded to by respondent nos. 1 to 4 vide para 8 of the counter-affidavit, which reads as follows:

“8. That in reply to the statements made in paragraph 27 of the writ petition it is humbly stated and submitted that the ticket allotted to the petitioner was closed on 25/03/2019 with following Resolution Comments:

“Dear Taxpayer, kindly delete the existing sheet and download the offline utility freshly from the portal as it is updated. Please try opening the utility with a latest version (Recommended: 2016) of Microsoft office. If you are copying from another excel, it will implicitly convert to MM/DD/YYYY format. So kindly do not copy/paste dates directly. Kindly copy/paste dates to notepad and then paste it in offline utility. Please try filing again and report back if any errors are observed with screenshots.”

44. In response to para 8 of the counter-affidavit, the petitioner has again raised the grievance in its rejoinder stating therein that the said resolution comment was never communicated to the petitioner. The petitioner has also stated that if the said resolution comments had been communicated to the petitioner, the petitioner would have followed the said procedure and would have re-submitted its application for refund. Admittedly, neither the date of communication of resolution comments nor the mode of communication of the resolution comments is mentioned in the counter affidavit although a specific plea was raised by the petitioner in the writ petition that the petitioner did not receive any response to the complaint in help-desk of GSTN portal on 04.03.2019 for which the petitioner was allotted ticket no. 201903045258658 and also to the representation dated 14.03.2019 (Annexure-10) and subsequent communications. There is no dispute that the last date

for submission of refund application was 31.03.2019 and as per para 8 of the counter-affidavit filed by the Respondent nos. 1 to 4, the ticket allotted to the petitioner was closed on 25.03.2019 with the aforesaid resolution comments quoted in the said counter affidavit.

45. This court is of the considered view that mere resolution comment is not sufficient, it was also required to be communicated to the petitioner so that the petitioner could have complied with the directions issued in the resolution comments in order to claim its refund. It is not in dispute that if the petitioner could adhere to the directions mentioned in the resolution comment, the petitioner could have filed the application for refund of compensation cess for the periods involved in this case i.e 2017-18 and also for 2018-19. Though the respondents have mentioned about the resolution comment and quoted in the counter affidavit but have failed to bring any material on record, and there is not even a statement in the counter affidavits, that the resolution comment was communicated to the petitioner, although the specific case of the petitioner in the writ petition itself was that in spite of generation of the complaint in help-desk of GSTN portal on 04.03.2019, for which the petitioner was allotted ticket no. 201903045258658 and also to the representation dated 14.03.2019 (Annexure-10) and subsequent communications, the petitioner did not receive any response.

46. In the aforesaid factual matrix, this court is of the considered view that the petitioner cannot be made to suffer on account of laches on the part of the respondents in not communicating the resolution comment to the petitioner and accordingly this is a fit case for exercise of power under Article 226 of the Constitution of India for the redressal of the grievance of the petitioner which the petitioner has suffered due to non-communication of the resolution comment.

47. At this stage it would be relevant to consider the judgements relied upon by the respondents which are as follows.

A. With regards to the nature of Input Tax Credit, the respondents have heavily relied upon the judgement passed by the Hon'ble supreme court reported in **(2016) 15 SCC 125 (supra)**. The respondents have submitted that the Input Tax Credit is in the nature of concession and accordingly in order to avail the concession, the procedure has to be strictly followed.

The respondents have relied upon para 11 and 12 of the judgement passed by the Hon'ble supreme court reported in **(2016) 15 SCC 125 (Supra)** dealing with nature of claim of Input Tax Credit as under:

"11. From the aforesaid scheme of Section 19 following significant aspects emerge:

(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.

12. It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the

price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect de hors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above."

It is the specific case of the respondents that the petitioner did not follow the prescribed procedure for availing refund of Compensation cess, firstly, by not filling the columns properly and secondly, by not adhering to the directions contained in the resolution of the problem as quoted above.

There is no doubt in the legal position that Input Tax Credit is a form of concession and whenever concession is given by statute or notification, the conditions thereof are to be strictly complied in order to avail such concession. However, this Court is of the considered view that the said judgement does not help the respondents in any manner. Even if it is accepted that the petitioner did not follow the prescribed procedure for availing refund of Compensation cess by not filling the columns properly, the fact remains that the respondents have claimed to have generated a resolution comment to solve the problem faced by the petitioner with a solution to apply afresh but the resolution comment was not communicated to the petitioner and accordingly the petitioner could not avail of the opportunity. The present case is required to be decided on the narrow point as to

"whether the respondents, having made a resolution comment in connection with complaint in help-desk of GSTN portal on 04.03.2019 (for which the petitioner was allocated ticket no.

201903045258658) asking the petitioner to apply afresh, can the petitioner be deprived of such opportunity to apply afresh by not communicating the resolution comment to the petitioner?"

As already held above, the said resolution was not communicated to the petitioner and accordingly this court has already held above that the petitioner cannot suffer due to non-communication of the resolution comment. Further the relief which can be given to the petitioner is that the petitioner be granted some time to adhere to the directions mentioned in the resolution comment which has been communicated to the petitioner for the first time only through the counter affidavit filed by the Respondent nos. 1 to 4 and there is no question of giving any relaxation to the procedure required under law to file application for refund of compensation cess for the periods involved in the present case considering the legal position that Input Tax Credit (ITC) is a form of concession and whenever concession is given by statute or notification, the conditions thereof are to be strictly complied in order to avail such concession.

B. The other judgement which has been relied upon by the State - respondent no. 6 is reported in **2020 SCC OnLine Bom 437** (Supra). The said judgement was dealing with the validity of Rule 117 of Central Goods and Services Tax Rules, 2017 and the validity of the said Rule 117 has been upheld by tracing the power to frame such rule to the power conferred under Section 164(2) of the Central Goods and Services Tax Rules, 2017. It was also held that time limitation stipulated therein was in consonance with the transitional nature of the enactment and was neither arbitrary nor unreasonable. It was also held that availment of Input Tax Credit under Section 140(1) of Central Goods and Services Tax Act was a concession attached with the condition of its exercise within the time limit. The matter

related to filing of form known as GST TRAN-1 for availing Input Tax Credit accumulated under earlier tax laws upon certain conditions. Rule 117(1) states that the person entitled to take credit of Input Tax under Section 140 would file a declaration electronically in a form known as GST TRAN-1 within 90 days and the period could be extended on the recommendation of the Council for a further period not exceeding 90 days.

In the present case, there is no dispute about the aforesaid legal proposition.

However, in the said case reported in **2020 SCC OnLine Bom 437** (Supra), there was another fact. The writ petitioner of the said case also had a grievance that the communication which was made by the petitioner of the said case requesting the respondents to permit filing TRAN-1 form was not answered and there was no option of manually filing TRAN-1 form.

This aspect of the matter was also dealt with by the Hon'ble Bombay High Court and it was found that in the GST council meeting held on 10.03.2018, a grievance redressal mechanism was set-up to address the issue regarding uploading of TRAN-1 and the mechanism was called IT Grievance Redressal Cell which consisted of three members and was of the view that as per the provision , if as per GST system log, there is no evidence of submission/filing of TRAN-1 form on the common portal, it has to be concluded that the taxpayer did not try for saving/submitting or filing TRAN-1 form before the due date and not entitled to the benefit of the extended period under Rule 117(1A). The Hon'ble Court found that a reply affidavit was filed in the said case wherein it was stated that no details of technical difficulties were stated in the representation e-mailed nor any proof was provided and it was stated that the petitioner sent an e-mail on 27.12.2017 which was the final date

for filing TRAN-1 form. It was also stated that the problem of the petitioner was discussed by IT Redressal Cell in its meeting on 27.08.2018 and as per the GST system log, no evidence was available and the decision was communicated to the petitioner on 10.07.2018. In response, the petitioner had filed a rejoinder giving the browser history indicating that the portal was accessed on 27.12.2017 and the history was extracted in March 2019. The said plea of the petitioner was rejected by the Hon'ble Bombay High Court by stating that the existence of technical difficulties as seen from the system logs at the common portal is a cogent proof and in the absence thereof, the adjudication will be in the realm of subjectivity and the system log on the common portal did not support the case of the petitioner which was communicated to the petitioner. Therefore, no direction could be issued to the respondents to treat the case of the petitioner as falling within the ambit of Rule 117(1A). The Hon'ble Bombay high Court ultimately held as under:

“86. To conclude, the time limit stipulated under Rule 117 of the Rules is not ultra vires of the Act. This Rule is traceable to the power conferred under section 164(2) of the Act. The time limit stipulated in Rule 117 is in consonance with the transitional nature of the enactment, and it is neither arbitrary nor unreasonable. Availment of input tax credit under section 140(1) is a concession attached with conditions of its exercise within the time limit. The IT Grievance Redressal Cell is set up by the GST Council to examine the existence of technical difficulties on the common portal. Sufficient guidance is provided in the definition of technical difficulty in Rule 117(1A). Examining the system log to ascertain the existence of technical difficulties on the common portal for registered persons, is not arbitrary, nor does it lead to a fettering of discretion by the authorities. Those registered persons who could

not submit the declaration by the due date because of technical difficulties on the common portal as can be evidenced from the system logs are given an extension on the recommendation of the Council. Where no such evidence is forthcoming, no recommendation is made. In the Petitioner's case, no such proof emerges and, therefore, no direction as sought for can be issued."

This Court finds that the Hon'ble Bombay High Court in the judgement reported in **2020 SCC OnLine Bom 437** (Supra) had entertained the plea of the petitioner regarding no response to communication regarding grievance of the petitioner, but the same was rejected considering the peculiar facts of the case. There is no doubt that the validity of Rule 117 of the Rules has been upheld and the resolution of technical difficulty by granting further concession as per Rule 117(1A) was also considered and clearly held that no direction could be issued to the respondents in the facts of the said case to treat the case of the petitioner as falling within the ambit of Rule 117 (1A) as the existence of technical difficulty was not found when logged on to the common portal and this was also communicated to the petitioner.

The said judgement also does not apply to the present case particularly in view of the fact that the grievance raised by the petitioner was duly considered and responded to by the department favorably, but the same was never communicated to the petitioner. The resolution comment, as quoted in the counter affidavit, does not indicate any laches on the part of the petitioner and the respondents have raised a plea of non-adherence of procedure by the petitioner for the first time in the counter affidavit. As held above, the petitioner was denied the opportunity to adhere to the directions contained in the resolution comment by applying afresh as the same was never communicated to the petitioner.

C. In judgement passed by Hon'ble Rajasthan High Court reported in **2020 SCC OnLine Raj. 381** (Supra) as well as in the judgement passed by the Hon'ble Gujarat High Court reported in **2018 (19) GSTL 228 (Supra)**, the validity of Rule 117 of Central Goods and Services Tax Rules has been upheld.

In the present case, the validity of Rule 117 of Central Goods and Services Tax Rules is not under challenge and the entire case rests on the prejudice caused to the petitioner due to non-communication of resolution comment to the petitioner.

48. As a cumulative effect of the aforesaid findings of non-communication of resolution comment to the petitioner, which has been communicated to the petitioner for the first time through the counter affidavit filed by the respondent no. 4, the petitioner is held to be entitled to take steps in compliance of the directions contained in the resolution comment quoted above. Consequently, the respondents are directed either to open GSTN portal enabling the petitioner to file its application for refund in GST RFD-01 or to manually accept the application for refund of the petitioner pertaining to the period 2017-18 and 2018-19 in respect of its claim for refund of unutilized Input Tax Credit pertaining to compensation cess within a period of one month from the date of communication of this judgement. The respondents are directed to communicate the petitioner through e-mail as to whether they would open the GSTN portal or would accept the refund applications manually and upon such communication, the petitioner will be entitled to avail of the opportunity to file applications for refund of compensation cess for the financial years 2017-18 and 2018-19 within a period of 15 days from such communication.

49. It is made clear that this Court has not gone into the entitlement or otherwise of the petitioner in connection with the claim of refund of compensation cess and it will certainly be left to the authorities to deal with the applications for refund in accordance

with law. It is also made clear that this court has not relaxed any of the procedural requirements for claiming refund for the periods involved in this case except to the extent indicated above in the peculiar facts and circumstances of this case.

50. This writ petition is accordingly allowed.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Mukul/Pankaj