



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 4133/2020

Jay Ushin Limited, G.P. 14, HSIIDC INDL., Estate, Sector-18,  
Gurgaon-122001, Haryana (India) Through Its Authorized  
Signatory Amit Kithania Sr. Manager Finance And Company  
Secretary.

----Petitioner

Versus

1. Union Of India, Through Secretary, Ministry Of Finance  
North Block, New Delhi.

2. Commissioner Of Central Goods And Service Tax,  
Presently Nomenclatured As Commissioner Of CGST,  
Jaipur (Raj.)

----Respondents



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For Petitioner(s) : Mr. Alok Yadav, Advocate with Ms.  
Archana, Advocate

For Respondent(s) : Mr. Kinshuk Jain, Senior Standing  
Counsel for CGST Department  
through video conferencing  
Mr. R.D. Rastogi, Additional Solicitor  
General with Mr. Devesh Yadav,  
Advocate through video conferencing

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**HON'BLE MRS. JUSTICE SABINA  
HON'BLE MR. JUSTICE MANOJ KUMAR VYAS**

**Order**

**03/02/2021**

Petitioner has filed the petition under Article 226 of the  
Constitution of India seeking a writ in the nature of mandamus for  
credit of Cess Rs. 2,78,322/-.

Learned Additional Solicitor General on the very outset  
has pointed out that issue raised in the present writ petition has  
been adjudicated by Division Bench of Madras High Court vide  
order dated 16.10.2020 passed in the case of **Assistant**



**Commissioner of CGST and Central Excise & Ors. vs. Sutherland Global Services Pvt. Ltd., Writ Appeal No. 53/2020.**

Learned counsel for the petitioner has failed to controvert the submissions made by the learned Additional Solicitor General.

Operative part of the order dated 16.10.2020 referred above reads as under:-

“60. Obviously, the transition of unutilised Input Tax Credit could be allowed only in respect of taxes and duties which were subsumed in the new GST Law. Admittedly, the three types of Cess involved before us, namely Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess were not subsumed in the new GST Laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST Regime and giving them credit under against Output GST Liability cannot arise. The plain scheme and object of GST Law cannot be defeated or interjected by allowing such Input Credits in respect of Cess, whether collected as Tax or Duty under the then existing laws and therefore, such set off cannot be allowed.

61. For these reasons also, in our opinion, the learned Single Judge, with great respect, erred in allowing the claim of the Assessee under Section 140 of the CGST Act. The main pitfalls in the reasoning given by the learned Single Judge are (a) the character of levy in the form of Cess like Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess, was distinct and stand alone levies and their input credit even under the Cenvat Rules which were applicable *mutatis mutandis* did not permit any such cross Input Tax Credit, much less conferred a vested right, especially after the levy of these Cesses itself was dropped; (b) Explanation 3 to Section 140 could not be applied in a restricted manner only to the specified Sub-sections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act and since it excluded the Cess of any kind for the purpose of Section 140 of the Act, which is not specified therein, the transition, carry forward or adjustment of unutilised Cess of any kind other than specified Cess, viz. National Calamity Contingent Duty (NCCD), against Output GST liability could not arise.



62. For the aforesaid reasons, we are inclined to allow the appeal of the Revenue and with all due respect for the learned Single Judge, set aside the judgment of the learned Single Judge dated 05.09.2019 and we hold that the Assessee was not entitled to carry forward and set off of unutilised Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the GST Output Liability with reference to Section 140 of the CGST Act, 2017. The appeal of the Revenue is allowed. CMP No. 690 of 2020 is closed. Costs easy.”

Accordingly, this petition is dismissed in view of the decision given by Madras High Court in the case of **Assistant Commissioner of CGST and Central Excise & Ors. vs. Sutherland Global Services Pvt. Ltd., Writ Appeal No. 53/2020** vide order dated 16.10.2020.

**(MANOJ KUMAR VYAS),J**

**(SABINA),J**

Anil Makwana/65

