

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, ODISHA, CUTTACK

No. 4825/CT, Dated 29.03.18
POL-56/3/2017-Policy

To
The DCCT/ACCT in charge of Circles

Sub: Clarification on refund of compensation cess to exporters and suppliers to SEZs

Madam/Sir,

It is learnt that some manufacturer- exporters have claimed refund of accumulated credit of compensation cess along with ITC of IGST, CGST and SGST. They purchase coal as input on payment of appropriate GST and cess. Their output (finished products) does not attract levy of cess. As a result, cess paid on input keeps accumulating in the absence of any scope for utilization against output cess liability. They export a portion of the output without payment of IGST and apply for refund of accumulated input tax credit u/s 54(3) (i) of the CGST Act and OGST Act read with Section 16 (3) (a) and Section 20 (xiii) of the IGST Act.

Section 54 (3) of the CGST/OGST Act provides for refund of unutilized input tax credit at the end of any tax period by a registered person making zero rated supplies without payment of tax. Section 16 (3) (a) of the IGST Act permits export of goods under bond or LUT without payment of IGST with further permission to claim refund of unutilized input tax credit. Thus, Section 54 (3) of the CGST/OGST Act and 16 (3) (a) of the IGST Act provide for refund of unutilized input tax credit only to the registered persons making zero rated supplies without payment of tax.

Input tax credit is defined in Section 2(63) of the CGST/OGST Act as credit of input tax. Further, in Section 2 (62) input tax is defined as tax charged on any supply of goods or services or both made to a registered person which includes IGST paid on import of goods, tax payable under sub-section (3) and (4) of Section 9 of the CGST/OGST Act and sub-section (3) and (4) of Section 5 of the IGST Act. In other words, input tax credit means credit of IGST, CGST and SGST accrued through inward supply, both through forward charge as well as reverse charge. It does not refer to the accumulated cess in balance.

Section 9(2) of the GST (Compensation to States) Act, 2017 provides for applicability of the provisions in the CGST Act for the purpose of claiming refunds of cess. Similarly, proviso to sub-section (2) of Section 11 of the GST (Compensation to States) Act, provides for utilization of input tax credit of cess towards payment of output cess liability only. Thus, there is no scope for cross-utilization of cess credit for payment of other output liability such as IGST, CGST or SGST.

- Section 16 (3) of the IGST Act permits a registered person making zero rated supplies-
- (a) to supply without payment of IGST under bond or LUT and claim refund of unutilized input tax credit; or
 - (b) to supply on payment of IGST and to claim refund of the IGST paid on such supply.

It may so happen that the goods involved in the zero rated supply may attract levy of cess as well and in that case, the registered person making the supply on payment of IGST will be required to pay cess as well. In that case, the registered person will be entitled for refund of IGST paid u/s 16 (3) (b) of the IGST Act, and also the cess paid on such supply. Conversely, when the said item is supplied without payment of IGST as provided u/s 16 (3) (a), the registered person will seek refund of the accumulated credit of IGST/CGST/SGST as well as credit of cess in relation to that supply. Thus, refund of cess is permissible only if the goods involved in a zero rated supply is subject to levy of cess as well.

The goods involved in the zero rated supply may not be attracting levy of cess. In that case, if the zero rated supply is made on payment of IGST as provided in Section 16 (3) (b) of the IGST Act, the registered person will make payment of IGST only and will, thus, be entitled for refund of the IGST paid only. Similarly, if the zero rated supply is made without payment of IGST as provided in Section 16 (3) (a) of the IGST Act, the registered person making the supply will be entitled for refund of input tax credit as defined in Section 2 (63) read with Section 2 (62) of the CGST/OGST Act. He will not be entitled for refund of accumulated credit of cess. For example, the Metal Industries purchase coal as input on payment of GST and cess. Their output does not attract levy of cess. Therefore, even if the output is supplied against zero rate, there will be no levy of cess even when supplied on payment of IGST as provided in Section 16 (3) (b) of the IGST Act. In that case, the supplier will not be entitled for refund of accumulated credit of cess (paid on coal purchase) as provided in Section 16(3)(b). For the sake of parity, when the said zero rated supply is made without payment of IGST, there will be no entitlement for refund of cess credit as in case of supply on payment of IGST.

In view of the above, as the law stands today, there is no entitlement for refund of accumulated cess credit if the goods supplied against zero rate does not attract levy of cess. On the other hand, if the goods supplied against zero rate attract levy of cess, then there will be requirement for payment of cess along with IGST and also there will be entitlement for refund of cess. The officers deciding refund claims are, hereby, advised to take due note of the above clarification while sanctioning refund of cess.

Yours faithfully



Commissioner of Commercial Taxes
(Odisha)

Memo No. 4826 /CT.,

Dated 24/03/2018

Copy to Chief Commissioner of Central Tax, Customs and Excise, (Bhubaneswar)/
Commissioner Central Tax, Customs and Excise, Bhubaneswar Zone, Bhubaneswar/
Commissioner Central Tax, Excise and Service Tax, ~~Rourkela Zone~~, Rourkela for kind
information.


24/03/18

Additional Commissioner of Commercial Taxes
(Policy)

Memo No. 4827 /CT.,

Dated 24/03/2018

Copy forwarded to all Special CCTs/Additional CCTs/ JCCTs in charge of Territorial
Ranges & Enforcement Ranges for information and necessary action.


24/03/18

Additional Commissioner of Commercial Taxes
(Policy)