



Tax alert: Refund of unutilized input tax credit of compensation cess allowed in case of export of goods with payment of IGST

30 September 2025

The Bombay High Court at Goa (HC) has held that the taxpayer is entitled to claim refund of unutilized input tax credit (ITC) of compensation cess on export of goods undertaken with payment of IGST.

In a nutshell



The HC held that, for the goods exported on payment of IGST, the petitioner is not barred from claiming refund of unutilized ITC of compensation cess under Section 16(3)(a), read with Section 11(2) of the Goods and Services Tax (compensation to states) Act, 2017.



Revenue's reasoning that the petitioner must follow the same refund mechanism i.e., export with payment of IGST for claiming refund in respect of compensation cess, is flawed when in fact there is no compensation cess levied on the final product/output.



Compensation cess is governed by separate statutory framework, and its refund is not restricted by the choice made to export with or without payment of IGST.

The HC allowed refund of unutilized ITC of compensation cess on the export undertaken with payment of IGST even though it was not backed with a bond or a letter of undertaking (LUT); as exports are undisputed.



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Background:

- The taxpayer is engaged in the manufacture of kraft paper. In its manufacturing process, the taxpayer utilizes raw materials, including coal, which is used in boilers for the generation of steam. Apart from CGST and SGST/ IGST, compensation cess is paid on the procurement of coal in accordance with the provisions of the GST (Compensation to States) Act, 2017 (GST Compensation Cess Act).
- For the export of final products with payment of tax, the taxpayer did not face any difficulty in claiming rebate of IGST paid.
- However, the refund claimed for the unutilized ITC of compensation cess was denied.
- The authorities were of the view that the taxpayer is permitted to claim refund through one of the two mechanisms provided under section 16(3) of IGST Act. It was mentioned that the use of the word “either” in Section 16(3) implies that only one route of refund is permissible.
- In other words, it was noted that the same mechanism of export of goods with payment of tax should also have been adopted for claiming a refund of the compensation cess.
- Aggrieved, a writ petition was filed by the taxpayer seeking refund of the unutilized ITC of compensation cess.

High Court judgement¹

- The Honorable High Court observed that the grounds for refusal of refund by the authorities completely lacks logic. Also, it is completely illogical in stating that the taxpayer must have adopted the option of export of goods with payment of tax when, in fact, there is no compensation cess which is levied on the final product.
- As far as the procedural aspect of claiming ITC as well as other matters such as interest, appeals, offences and penalties, the ‘statute by incorporation’ has incorporated the provision of CGST Act and IGST Act while dealing with the levy and collection of compensation cess on the intra-state and inter-state supply of goods and services respectively. Therefore, when a taxpayer applies for refund of compensation cess, such an application is to be considered under Section 11(2) of GST Goods and Services Tax (compensation to states) Act, read with Section 16(3) of the IGST Act.
- Clause 5 of Circular No: 45/19/2018-GST dated 30.05.2018 clearly supports the taxpayer’s case as the final product i.e. kraft paper, is not subjected to compensation cess although the raw material coal, is subjected to compensation cess. In this peculiar situation, it has supplied the final product without payment of the compensation cess and is now claiming refund of the unutilized input tax credit.
- Merely because the taxpayer’s application for refund is not backed with a bond or LUT, he cannot be restrained from availing the methodology of claiming refund of unutilized ITC of compensation cess. Also, the requirement of an LUT or bond is to ensure that the supply is actually effected, but, in this case, it is not disputed that the taxpayer has made the export of the final product which is evident from the fact that he has been allowed to claim refund of IGST/CGST on the product.
- Reliance was also placed on the Gujarat High Court judgement in the case of Patson Papers Pvt. Ltd.² wherein on a similar issue, it was held that taxpayer is entitled to refund of unutilized ITC on cess paid on purchase of coal utilized for the purpose of manufacture of goods which are exported.
- Finally, the Court directed the Revenue authorities to refund the credit of compensation cess along with

¹ Sukraft Recycling Private Ltd. v. UOI 2025-VIL-911-BOM

² Patson Papers Pvt. Ltd. v/s. Union of India [(2025) 29 Centax 457 (Guj.) - 2025-VIL-403-GUJ]

admissible interest, if any.

Deloitte Comments:

The HC has reiterated the principles laid down by the Gujarat HC in the case of Atul Limited³ wherein it has been consistently held that input tax credit of compensation cess paid on raw materials, such as coal, is refundable, even if the final product that is exported, is not subject to compensation cess. Authorities cannot force exporters to stick to same method for both CGST / IGST and compensation cess refunds. The observation of the HC that LUT/ bond is to ensure that the supply is actually effected, may be helpful in cases where due to procedural lapse the LUT/ bond could not be filed but the export transaction was genuinely undertaken. The taxability of the refund of input tax credit may need to be examined from an income tax perspective. Typically, the refund may not be taxed if not claimed as an expense earlier.

³ Atul Limited & Anr. Versus Union Of India & Ors. - 2025 (7) TMI 1768 – Gujarat High Court

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