

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 17.03.2025

Pronounced on: 04.04.2025

WP(C) No.2188/2022

J&K Cement Corporation through Mr. Sandeep Mittal,
Age 55 years Partner, 37 Industrial Extension Area Kathua, Kathua,
Jammu & Kashmir 184102

...Petitioners(s)

Through:- Mr. Jatin Mahajan, Advocate

Versus

1. Union of India through Secretary, Ministry of Commerce
(Department of Industrial Policy and Promotion)
Udyog Bhawan, New Delhi 110011
2. Commissioner Central Taxes
Union Territory of Jammu and Kashmir
OB-32, Rail Head Complex, Jammu
3. Deputy Commissioner-Central Goods and Services
Taxes Division, Ward No.5, Mandi Kotli, Samba OB-32,
Jammu
4. Commissioner State Taxes, Excise and Taxation Complex,
Rail Head, Jammu.
5. State Taxes Officer,
Kathua.

...Respondent(s)

Through:- Mr. Jagpaul Singh, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar "J"

1. The petitioner is an industrial unit engaged in the production
and supply of cement to various manufacturers and customers across

the country. The petitioner is aggrieved of the refund order dated 20th June, 2022 passed by the Deputy Commissioner, CGST Division, Samba [‘respondent No.3’] in terms of notification No.F.No.10(1)2017-DBA-II/NER dated 05.10.2017 and has challenged the same primarily on the ground that the rejection of refund claim by respondent No.3 in terms of the impugned order dated 20th June, 2022 is in violation of notification dated 05.10.2017 (supra) issued by the Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion.

2. Prior to the rolling out of GST regime on 01 July, 2017, the petitioner was entitled to refund of excise duty in terms of excise Exemption Notification No.56/2002-C.E. dated 14.11.2002 and Excise Notification No.1/2010-C.E. dated 06.02.2010. Both these excise exemption notifications came to be rescinded vide notification No.21/2017-C.E. dated 18.07.2017.

3. As a measure of goodwill and to provide financial support to the industrial units, which were availing the benefit of excise exemption/refund under the superseded excise Exemption Notifications, the Government of India took a policy decision to provide budgetary support to the existing eligible manufacturing units operating, *inter alia*, in the then State of Jammu & Kashmir for residual period for which each of the units was eligible. The new Scheme was offered as a measure of goodwill only to the units which

were eligible for drawing benefits under the earlier excise duty exemption/refund schemes. Pursuant to the aforesaid decision of the Government of India, Ministry of Commerce and Industry vide notification dated 05.10.2017 promulgated Scheme of budgetary support under CGST regime, *inter alia*, to the units located in the then State of Jammu & Kashmir.

4. The petitioner was the eligible unit to take the benefit of budgetary scheme, for it was availing the benefits under the rescinded excise exemption notification No.1/2010 for the period immediately preceding 01.07.2017, the petitioner filed refund application for the period July, 2021 to September, 2021 and January, 2022 to March, 2022. The refund claims were filed by the petitioner as per the procedure set out in the notification dated 05.10.2017 and the circular issued on the subject providing for refund of 58% of CGST paid on the inter-state supplies and 29% of IGST paid on intra-state supplies made by the petitioner.

5. The respondent No.3 vide order dated 22nd April, 2022 allowed the refund of Rs.6,64,181/- for the period from July, 2021 to September, 2021. However, the refund claim for the period January, 2022 to March, 2022 was accepted to the extent of Rs.4,41,919/- as against Rs.4,44,114/- claimed in the application. The refund claim to the extent of Rs.2,195/- for the period of January, 2022 to March, 2022 was rejected without indicating any reason.

6. The petitioner is, thus, aggrieved and has called in question the impugned order to the extent of rejection of part of refund claim on the grounds, which we have taken note of herein above. During the course of arguments, it was contended by the learned counsel for the petitioner that the petitioner-Unit had submitted refund claims for the indicated period strictly as per the budgetary support scheme promulgated by the Government of India, Ministry of Commerce and Industry in its notification dated 05.10.2017. It is submitted that the eligibility of the petitioner to the benefit of budgetary support by way of refund of CGST/IGST paid on its supplies is not disputed by respondent No.3. The respondent No.3 has rejected a part of the claim by adopting certain calculations, which have not been made known to the petitioner.

7. *Per contra*, the stand of the official respondents, as divulged in the objections filed by respondent Nos. 1 and 2, is that the amount of budgetary support envisaged under the Scheme for specified goods manufactured by eligible units is to the extent of 58% of the CGST and 29% of IGST paid through debit in the cash ledger account maintained by the Unit in terms of Subsection (1) of Section 49 of the CGST Act, 2017 and Section 20(i) of IGST Act, 2017, after utilization of the input tax credit of the central tax and integrated tax. It is not disputed that the petitioner-Unit had applied for refund for the above indicated period on account of budgetary support scheme promulgated in terms of notification dated 05.10.2017. The amount, which was found due to

the petitioner was sanctioned by the respondents and the claim of excess amount was rejected on the ground that it was not supported by the budgetary support scheme. The manner in which the calculations were made to work out the refund due to the petitioner is, however, not indicated in the objections.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the rejection of part of refund claim of the petitioner by respondent No.3 flies in the face of clear and unambiguous language of Notification dated 05.10.2017.

9. The claim of the petitioner that it is an eligible unit and is engaged in the manufacturing and supplying of specified goods is not disputed by the respondents. As a matter of fact, on the basis of aforesaid status of the petitioner, major part of refund claim of the petitioner has been accepted and sanctioned to be released in its favour by respondent No.3. The only dispute, which is raised before us is with regard to the mode and manner of determination of the amount of budgetary support.

10. Para 5 of the Budgetary Support Scheme, which deals with the determination of the amount of budgetary support, reads as under:-

“5. DETERMINATION OF THE AMOUNT OF BUDGETARY SUPPORT 5.1 The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of –

(i) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section(1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax.

(ii) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax. Provided where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount i.e. sum total of (i) & (ii) above shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs procured.

Explanation:-

Explanation-I

a	Sum total worked out under clause (i) & (ii)	Rs.200
b	Percentage value of inputs procured under Composition Scheme out of total value of inputs procured	20%
C	Admissible amount out of (a) above	Rs(200-20% of 200) = Rs.160

Explanation- II

(a) Calculation of (ii) shall be followed by calculation of (i)

(b) To avail benefit of this scheme, eligible unit shall first utilize input tax credit of Central tax and Integrated tax and balance of liability, if any, shall be paid in cash and where this condition is not fulfilled, the reimbursement sanctioning officer shall reduce the amount of budgetary support payable to the extent credit of Central tax and integrated tax, is not utilized for payment of tax.

5.2 The above 58% has been fixed taking into consideration that at present Central Government devolves 42% of the taxes on goods and services to the States as per the recommendation of the 14th Finance Commission.

5.3 Notwithstanding, the rescinding of the exemption notifications listed under para 2 above, the limitations, conditions and prohibitions under the respective notifications issued by Department of Revenue as they existed immediately before 01.07.2017 would continue to be applicable under this scheme. However, the provisions relating to facility of determination of special rate under the respective exemption notifications would not apply under this scheme.

5.4 Budgetary support under this scheme shall be worked out on quarterly basis for which claims shall be filed on a quarterly basis namely for January to March, April to June, July to September & October to December.

5.5 Any unit which is found on investigation to over-state its production or make any mis-declaration to claim budgetary support would be made ineligible for the residual period and be liable to recovery of excess budgetary support paid. Activity relating to concealment of input tax credit, purchase of inputs from unregistered suppliers (unless specifically exempt from GST registration) or routing of third party production or other activities aimed at enhancing the amount of budgetary support by mis-declaration would be treated as fraudulent activity and, without prejudice to any other action under law may invite denial of benefit under the scheme ab-initio. The units will have to declare total procurement of inputs from unregistered suppliers and from suppliers working under Composition Scheme under CGST Act, 2017.

5.6 The grant of budgetary support under the scheme shall be subject to compliance of provisions relating to any other law in force.

5.7 The manufacturer applying for benefit under this scheme for the first time shall also file the following documents:

(a) the copy of the option filed by the manufacturer with the jurisdictional Deputy Commissioner/ Assistant Commissioner of Central Excise officer at the relevant point of time, for availing the exemption notification issued by the Department of Revenue;

(b) document issued by the concerned Director of Industries evidencing the commencement of commercial production

(c) the copy of last monthly/quarterly return for production and removal of goods under exemption notification of the Department of Revenue.

(d) An Affidavit-cum-indemnity bond, as per Annexure A, to be submitted on one time basis, binding itself to pay the amount repayable under para 9 below. Any other document evidencing the details required in clause (a) to (c) may be accepted with the approval of the Commissioner.

5.8 For the purpose of this Scheme, “manufacture” means any change(s) in the physical object resulting in transformation of the object into a distinct article with a different name or bringing a new object into existence with a different chemical composition or integral structure. Where the Central Tax or Integrated Tax paid on value addition is higher than the Central Tax or Integrated Tax worked out on the value addition shown in column (4) of the table below, the unit may be taken up for verification of the value addition:

Serial No.	Chapter	Description of goods	Rate (%)	Description of inputs for manufacture of goods in column (3)
(1)	(2)	(3)	(4)	(5)
1.	17 or 35	Modified Starch or glucose	75	Maize, maize starch or tapioca starch
2.	18	Cocoa butter or powder	75	Cocoa beans
3.	25	Cement	75	Lime stone and gypsum
4.	25	Cement clinker	75	Lime stone
5.	29	All goods	29	Any goods
6.	29 or 38	Fatty acids or glycerin	75	Crude palm kernel, coconut, mustard or repeseed oil
7.	30	All goods	56	Any goods
8.	33	All goods	56	Any goods
9.	34	All goods	38	Any goods
10.	38	All goods	34	Any goods
11.	39	All goods	26	Any goods
12.	40	Tyres, tubes and flaps	41	Any goods
13.	72	Ferro alloys, namely, ferro chrome, ferro	75	Chronne ore or

		manganese or silico manganese		manganese ore
14.	72 or 73	All goods	39	Any goods, other than iron ore
15.	72 or 73	Iron and steel products	75	Iron ore
16.	74	All goods	15	Any goods
17.	76	All goods	36	Any goods
18.	85	Electric motors and generators, electric generating sets and parts thereof	31	Any goods
19	Any chapter	Goods other than those mentioned above in S. No.1 to 18	36	Any goods

Explanation: For calculation of the value addition the procedure specified in notification no.01/2010-CE dated 06.02.2010 of the Department of Revenue as amended from time to time shall apply mutatis-mutandis.”

11. From a careful reading of paragraph No.5 reproduced herein above, it becomes abundantly clear that an eligible unit manufacturing specified goods is entitled to budgetary support to be calculated at the rate of 58% of the central tax paid through debit in the cash ledger maintained under Section 49(1) of CGST Act, 2017 and 29% of IGST paid, after utilization of the input tax credit of the central tax and integrated tax. This is so provided in Clauses 5.1(i) and 5.1(ii).

12. Clause 5.8 reproduced herein above, prescribes in the form of table, the value addition for the purpose of payment of central tax or integrated tax. It is not disputed before us that so far as the petitioner is concerned, the value addition shall be calculated as per the notification No.01/2010-Central Excise dated 06.02.2010 issued by the revenue as

amended from time to time. Clause 5.3 clearly lays down that notwithstanding the rescinding of exemption notifications viz. notification No.56/2002-CE dated 14.11. and 01/2010-CE dated 06.02.2010, the limitation condition and prohibition under the respective notifications issued by the revenue department as they existed immediately before 01.07.2017 would continue to be applicable to the budgetary support scheme issued vide notification dated 05.10.2017. From a reading of notification dated 05.10.2017, in particular paragraph No.5 in its entirety, it clearly comes out that the amount of budgetary support to be released in favour of an eligible unit is required to be determined in the following manner:-

- i) 58% of CGST paid through debit in the cash ledger account provided such tax through debit in cash ledger is paid after utilization of the input tax credit of the central tax and integrated tax.
- (ii) 29% of IGST paid through debit in cash ledger account provided such amount in cash is paid after utilization of the input tax credit of central tax and integrated tax.
- iii) The CGST/IGST to be taken into account should be as paid on value addition prescribed in the rescinded exemption notifications.

- iv) That the refund claim on account of budgetary support under the notification dated 05.10.2017 shall not exceed the GST paid on value addition.

13. If we examine the refund claim submitted by the petitioner, which is partly rejected by respondent No.3, in light of our understanding of the notification dated 05.10.2017, we find that for the period from January, 2022 to March, 2022, the amount of total GST paid by the petitioner was Rs.22,77,395/-. After utilizing the input credit, the petitioner paid an amount of Rs.7,65,713/- by debit to the cash ledger.

14. As per the budgetary scheme, the amount which would be payable to the petitioner on account of budgetary support would be 58% of the amount of CGST paid in cash, which would come to Rs.4,44,114/.

15. In the instant case, the CGST on value addition would be 75% (Chapter 25 of Table of Excise Notification No.1/2010-C.E. dated 06.02.2010) of the total amount of CGST paid for the quarter January, 2022 to March, 2022, which, in any case, would be exceeding the refund claim. In view of the aforesaid, we see no error or mistake committed by the petitioner claiming a refund of Rs.4,44,114/-. We also find no good reason emerging from the impugned order passed by respondent No.3 to justify the rejection of claim of the petitioner for an amount of Rs.2195/-, which the respondent No.3 has held to be an

amount inadmissible on account of budgetary support. We could have better analyzed the problem posed before us had the respondents explained the manner in which the amount of budgetary support payable to the petitioner was calculated.

16. In view of the aforesaid, we are left with no option but to hold that the petitioner-Unit was entitled to refund of an amount of Rs.4,44,114/- on account of reimbursement of budgetary support for the CGST paid for the quarter January, 2022 to March, 2022 was permissible.

17. As a result, the rejection of claim of Rs.2195/- in respect of quarter January, 2022 to March, 2022 by respondent No.3 is held bad and contrary to the notification dated 05.10.2017. Respondent No.3 shall take steps for release of the amount held inadmissible by it in the sanction/rejection orders impugned in this petition passed in respect of CGST paid by the petitioner for quarter January, 2022 to March, 2022.

18. The writ petition shall stand disposed of in the above terms.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
04.04.2025
Vinod, PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No