

CMI FPE LIMITED

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-25/2017-18/B-34

Dated 19.05.2018

Q Questions Before the Authority

- How to avail input tax credit for excise duty paid under Rule 3(5B) of the Cenvat Credit Rules?
- Whether we are eligible to avail input tax credit against unutilised cenvat credit such as Education cess, Secondary & Higher secondary Education cess & Krishi Kalyan cess lying in our books of Accounts?

F Facts

The applicant, a manufacturer, accumulated unutilised balances of Education Cess, Secondary & Higher Education Cess, and Krishi Kalyan Cess in its books of accounts prior to the GST rollout. It also sought clarification on transitioning CENVAT credit reversed under Rule 3(5B) of CENVAT Credit Rules, 2004 on account of slow-moving inventory provisions. At the preliminary hearing, the applicant withdrew its question relating to Rule 3(5B) credit, restricting the ruling to the transition of unutilised cesses.

H Ruling

ITC for excise duty under Rule 3(5B) of CENVAT Credit Rules, 2004	Not answered	Question withdrawn by the applicant
ITC against unutilised CENVAT credit of EC, SHEC, and KKC	Answered in the negative	Cesses do not qualify as eligible duties under Section 140

The Authority held that the applicant is **not eligible** to transition or avail input tax credit under GST against unutilised balances of Education Cess, Secondary & Higher Education Cess, and Krishi Kalyan Cess lying in its books of accounts. The question regarding Rule 3(5B) CENVAT credit was left unanswered as it was withdrawn during proceedings.

R Reasoning

The Authority held that Section 140(1) of the CGST Act, 2017 permits carry-forward of CENVAT credit strictly restricted to **eligible duties and taxes** specified in the explanations to Section 140. Education Cess, Secondary & Higher Education Cess, and Krishi Kalyan Cess are explicitly excluded from the scope of eligible duties under Section 140 and Rule 117 of the CGST Rules. The Authority relied on the decision of the Delhi High Court in Cellular Operators Association of India, which established that cross-utilization or carry-forward of unutilised cesses is not a vested right once the underlying levy is abolished. Furthermore, government circulars and FAQs expressly state that pre-GST cesses cannot be carried forward as transitional credit.

P Provisions Relied On

Section 97 of the CGST Act, 2017

Section 140 of the CGST Act, 2017

Rule 117 of the CGST Rules, 2017

Rule 3(5B) of the CENVAT Credit Rules, 2004

Rule 3(7)(b) of the CENVAT Credit Rules, 2004

Letter D.O. F. No. 267/8/2018-CX.8 dated 14th March, 2018

! For the Practitioner

This ruling reinforces that legacy cesses such as Education Cess, SHEC, and KKC **cannot be transitioned into GST** as input tax credit under Section 140. Taxpayers with unutilised pre-GST cess balances in their books cannot claim them in TRAN-1 as they fall outside the definition of eligible duties.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah aar 25 2017-18 b-34 cmi fpe limited.pdf

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