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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 11<sup>th</sup> December, 2025*

*Uploaded on: 12<sup>th</sup> December, 2025*

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**W.P.(C) 14644/2022**

M/S JK (INDIA) FABS

.....Petitioner

Through: Mr. Sourabh Kapoor, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Anushree Narain, SSC and Mr.  
Yamit Jetley, Adv.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUSTICE SHAIL JAIN**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking directions to the Respondent No. 3 to re-assess the Bill of Entries Nos. 4482323 dated 7th March, 2016 and 6836085 dated 23rd September, 2016 in order to enable the Respondent No. 4 to grant refund of the amounts of Customs Duties paid in excess towards 'Infra Cess' to the Petitioner.
3. The Petitioner's grievance is that the Petitioner had imported golf carts which were exempted from payment of 'Infra Cess' in terms of ***Notification 1/2016-Infrastructure Cess*** dated 1<sup>st</sup> March, 2016. The said notification grants an exemption in the following terms:

*"G.S.R. (E). In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1*



*of 1944) read with sub-clause (3) of clause 159 of the Finance Bill, 2016, which clause has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the table below and falling under heading of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in the corresponding entry in column (2) of the said table from so much of the Infrastructure Cess leviable thereon under sub-clause (1) of clause 159 of the said Finance Bill, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the table aforesaid:*

Sl. No.	Heading	Description of excisable goods	Rate	Condition No.
4	8703	Electrically operated vehicles, including three wheeled electric motor vehicles <b>Explanation.</b> – For the purpose of this entry, “electrically operated vehicles” mean vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include electric motor-assisted cycle rickshaws driven by rechargeable solar batteries, also know as “soleckshaw”	Nil	-

”

4. The case of the Petitioner is that the Petitioner had imported two consignments of golf carts and had filed two Bill of Entries Nos. 4482323 6836085 and 263656 dated 7<sup>th</sup> March, 2016 and 23<sup>rd</sup> September, 2016



respectively. When the Petitioner was to file the Bill of Entries on the EDI system, since there was a technical glitch on the EDI system, the exemption could not be claimed. Instead of the Customs Duty payable to the tune of Rs. 2,95,426.71/-, the Petitioner had to pay Rs.3,51,303/-. The reason for the same has been explained in its letter dated 22<sup>nd</sup> May, 2017 which reads as under:

*“This has reference to captioned subject, we wish to inform you that we had paid customs duty @ Rs. 351303.00 vide TR6 Challan No. 2016165823/23.09.2016 instead of actual customs duty @ Rs. 295426.71 pertaining to captioned bill of entry. We further wish to state that the actual customs duty was Rs. 295426.71 but due to technical problems in edi systems the duty assessed as Rs. 351303.00 and we had tried many times by way of re-assessment but the infra cess duty from item no 1 to 4 was not corrected due to some technical error in edi systems. As the goods were required urgent basis and we were told that we pay higher customs duty and file refund of excess customs duty later paid by us. We had submitted required documents for the refund of excess duty paid @ Rs. 55876.29 by us on 26.12.2016 (copy enclosed).*

*We further wish to inform you that now the refund of our excess duty will be refunded only after re-assessment of our BE No. 6836085/23.09.2016 and you are requested to please re-assess the captioned BE in order to get refund of excess duty paid by us due to systems technical problems as infra cess exemption notification no. 001/2016, serial no. 4 was not accepted at the time of assessment. We also wish to inform you that our item is Golf Car electrically operated and in exempted from infra cess vide notification no 001/2016, serial no. 4. We are also enclosed catalogue of our imported item for your kind consideration please.*

*In view of above, you are requested to please re-assess our BE No. 6836085/23.09.2016 and enable us to get the refund of excess duty paid by us towards infra cess @ Rs. 55876.29*



*at your earlient and obliged.”*

5. The grievance of the Petitioner is that despite repeated letters, the refund has not been given to the Petitioner. The only reason given by the Department is in its communication dated 12<sup>th</sup> January, 2017 wherein the Department states as under:

*“In this regard, it is informed that the claim is pre-mature as the bill of entry under claim ha been finally assessed and duty has been paid by you as per assessment. As you are not satisfied with the assessment, you are required lodge the protest challenging the assessment before the Assessing Officer and request for re-assessment or file an appeal before Commissioner (A) against the assessment. In view of above, the refund claim, in original, is returned herewith.”*

6. Ld. Counsel for the Petitioner submits that the refund has still not been paid and the Petitioner’s representations have not been fruitful and hence, it is prayed that the refund be given. The Department has again on 1<sup>st</sup> February, 2019 also stated that the bill of entries would have to be re-assessed and refund cannot be given without that.

7. The Court has heard Mr. Saurabh Kapoor and Ms. AnushreeNarain, ld. Counsel for the parties. In the decision of ***M/s ITC Ltd. vs. C.C.E. Kolkata-IV***, the Supreme Court has categorially held that the refund cannot be directly issued but can only be done after the re-assessment is completed. The relevant portion of the said judgment is set out below:

*47. When we consider the overall effect of the provisions prior to amendment and post-amendment under the Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-*



*assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.*

8. In the counter affidavit, the Court notes that there is no response to the allegation that there was a technical glitch in the EDI system.
9. Under such circumstances, when clearly the Petitioner's goods were covered by the exemption, the benefit of the notification ought to have been extended and the amount cannot be held back.
10. For the said purpose, let the Bill of Entries be re-assessed within two months and after completing re-assessment, in terms of the ***Notification 1/2016-Infrastructure Cess*** dated 1<sup>st</sup> March, 2016, the refund be issued to the Petitioner.
11. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**SHAIL JAIN  
JUDGE**

**DECEMBER 11, 2025/kp/ck**