

Unutilised Cess Credits: Lapsing, Transition, and the Judicial Standpoint

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The [56th GST Council meeting](#), convened on September 3, 2025, in New Delhi, marked a defining milestone in the evolution of India's indirect tax regime. Led by the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman, the Council unveiled a series of transformative reforms aimed at fundamentally restructuring the GST framework.

However, the way **compensation cess is being merged into GST rates**, along with uncertainties around the treatment of existing credits, has posed significant challenges for businesses across industries.

Impact on Businesses

The merger of cess rates into GST rates has been presented as revenue-neutral, implying no additional burden on consumers. However, for traders and manufacturers who had accumulated compensation cess credits, the removal of the levy has created a serious challenge.

- **Automotive Sector:** The Federation of Automobile Dealers Associations (FADA) has estimated potential losses of around ₹2,500 crore, representing nearly 55 days of inventory for dealers.
- **Coal and Power Industries:** Coal traders and power companies holding large cess balances may now face stranded credits, translating into an estimated additional burden of about ₹400 per MT of coal.

Historical Precedents: What Happens When a Cess Ends?

The question of how unutilised cess balances should be treated is not new. Past experiences under excise and service tax provide useful guidance.

The Delhi High Court, in **Cellular Operators Association of India v. Union of India, 2018**, dealt with this issue when **Education Cess (EC)** and **Secondary & Higher Education Cess (SHEC)** were withdrawn in 2015 through **Notification Nos. 14/2015-CE and 15/2015-CE**. Telecom operators argued that their unused EC and SHEC balances should be allowed to pay excise duty or service tax, since the government had increased those rates around the same time. They claimed this meant the cesses had been “subsumed.”

The Court rejected this argument. It said EC and SHEC were **separate levies**, usable only against themselves as per the **CENVAT Credit Rules**. Once the levies ended, there was **no legal basis** to use the remaining credits. The Budget Speech or TRU clarification calling them “subsumed” had **no force of law**.

Later, in **Sutherland Global Services Pvt. Ltd. v. Asstt. Commr. of CGST, [TS-972-HC-2019(MAD)-NT] (Mad.)**, the Madras High Court (single judge) allowed the carry forward of EC, SHEC and **Krishi Kalyan Cess (KKC)** into GST under **Section 140 of the CGST Act, 2017**. The Court reasoned that unless the law clearly said credits would lapse, they should continue.

But this view was overturned in appeal by a Division Bench in **Assistant Commissioner of CGST v. Sutherland Global Services Pvt. Ltd., [TS-878-HC(MAD)-2020-NT] (Mad.)**. The higher court held that EC, SHEC and KKC were **never subsumed in GST**, and their credits had already become “dead” once the levies were abolished in 2015–16. It also pointed out that **Explanation 3 to Section 140 of the CGST Act** specifically excludes all cesses (unless named), so they cannot be carried forward. The matter is now pending before the Hon’ble Supreme court of India.

Similarly, in **Shabnam Petrofils Pvt. Ltd. v. Union of India, [TS-575-HC(GUJ)-2019-NT] (Guj.)**, the Gujarat High Court struck down **Notification No. 20/2018-CT (Rate) and Circular No. 56/30/2018-GST** to the extent they required lapsing of accumulated ITC for textile weavers. The Court held that Section 54(3)(ii) only allows the government to restrict refunds in inverted duty cases, not to lapse credits outright. It reaffirmed that ITC, once validly availed, is a vested and indefeasible right, echoing the Supreme Court’s rulings in Eicher Motors and Dai Ichi Karkaria.

From these cases, one clear rule emerges: **when a cess is abolished, its unused credits lapse unless the law specifically protects them**. Announcements in Budget Speeches or explanatory notes cannot by themselves save such credits.

Government’s Role in Saving Cess Credits

It is also worth noting that the government can preserve cess credits if it chooses to do so.

For example, **Circular No. 1/1/2017-Compensation Cess dated 26 July 2017** clarified that exporters could claim a refund of compensation cess paid on inputs, even though no cess was levied on their exports. This demonstrates that only an express statutory or administrative saving clause can safeguard such credits.

However today it seems like a well thought out plan of the Central Govt in order to finally compensate the states for revenue loss. The traders money will be used to compensate the states now as the actual collection of cess seems already been used and exhausted. So any balance left today shall be used to pay the State govt their share as also the cess was going to end from April 2026.

Conclusion

The jurisprudence around EC, SHEC and KKC makes one point abundantly clear: **unutilised cess credits do not automatically carry forward when a cess is abolished** . Courts have consistently held that unless the legislature or government issues a specific notification or saving provision, such balances lapse. As GST Compensation Cess moves toward its sunset in 2026, businesses should prepare for the likelihood that accumulated balances will lapse, unless a clear legislative or policy intervention is made. Without such safeguards, accumulated balances will simply become unusable — turning into a hidden cost of transition.