

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**EXCISE APPEAL No. 85756 of 2020**

[Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/187/19-20 dated 13.01.2020 passed by the Commissioner (Appeals), GST & Central Excise, Nashik]

**Lupin Limited**

Plot No.A-28/1, MIDC Chikal Thana  
Aurangabad  
Maharashtra – 431210.

**.... Appellant**

VERSUS

**Commissioner of GST & Central Tax,  
Aurangabad Commissionerate**

N-5, Town Centre  
CIDCO, Nashik  
Maharashtra– 431003.

**.... Respondent**

**APPEARANCE:**

Shri Gajendra Maheshwari, Advocate for the Appellant

Shri Vinod S. Chettiparambil, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85393/2024**

Date of Hearing: 09.05.2024

Date of Decision: 09.09.2024

**PER: M.M. PARTHIBAN**

This appeal has been filed by M/s Lupin Limited, Aurangabad (herein referred to as 'the appellants' for short) against Order-in-Appeal No. NSK/EXCUS/000/APPL/187/19-20 dated 13.01.2020 (referred to, as 'the impugned order') passed by the Commissioner (Appeals), GST & Central Excise, Nashik.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants herein, are *inter alia*, engaged in the manufacture of Pharmaceutical products falling under Chapter Heading 30 of the Central Excise Tariff Act, 1985 and for the purpose of compliance with the Central Excise laws they are registered with jurisdictional Central Excise authorities holding Registration Certificate No. AAACL1069KXM007. They have been filing periodical Central Excise returns as a manufacturer of excisable goods. The appellants also availed CENVAT credit of the duty paid on the inputs, capital goods and the tax paid on input services under the provisions of CENVAT Credit Rules, 2004 (CCR). Upon introduction of GST regime w.e.f. 01.07.2017, the appellants have duly taken the registration with jurisdictional GST authorities vide GSTIN 27AAACL1069K1ZF.

2.3 The appellants had filed original ER-1, a monthly return for production and removal of goods and other relevant particulars including CENVAT credit, for the month of June 2017 on 10.07.2017, indicating admissible CENVAT credit of Central Excise duty and Service Tax. Subsequently, the appellants had filed revised ER-1 for the month of June 2017 on 31.07.2017, indicating admissible CENVAT credit of Central Excise duty and Service Tax for an additional amount of Rs.30,52,536/- on input, capital goods and input services, which were not claimed in earlier pre-revised return filed by them. Further, the closing balance of CENVAT Credit in the ER-1 return for June-2017 has been transitioned as CGST credit in terms of Section 140(1) of the CGST Act, 2017 in the month of December 2017 only for an amount of Rs.24,51,34,252/- instead of eligible amount of Rs. 24,81,86,788/. Thus, they claim that the amount of Rs. 30,52,536/- is refundable to them, for which they had initially filed a refund claim application vide their letter dated 05.06.2018 with the office of the Deputy Commissioner, SGST, Mazagaon, Mumbai. Subsequently, they were informed that the SGST office is not the correct jurisdictional office for their GSTIN 27AAACL1069K1ZF; hence, they have withdrawn their refund claim from SGST office on 22.11.2018 and re-filed the same with the Additional Commissioner, Refund Headquarter, Central Tax, Andheri West, Mumbai on 29.11.2018. In response to their refund application, the Additional Commissioner, Refund Headquarter, Central Tax, Andheri West, Mumbai vide their letter dated 25.02.2019 had informed that the legacy issue of erstwhile Central Excise & Service Tax matters is being handled by erstwhile concerned Commissionerate office where the units were registered in pre-GST regime and refund application was returned by the

CGST office to file the same with concerned Commissionerate office. Hence, the appellants had stated that they had filed the refund claim of the additional CENVAT Credit of Rs. 30,52,536/- availed by Aurangabad unit in their revised return. An amount of Rs. 24,81,86,788/- was claimed by the appellants as CENVAT Credit in the Revised return filed by them for their Aurangabad unit on 31.07.2017. However, inadvertently, a sum of Rs. 24,51,34,252/- alone has been carried forward as CENVAT Credit, in TRAN-1 for the Aurangabad Unit in December 2017. Later on the appellants have realized that they had inadvertently not reported credit of certain eligible credits in FORM GST TRAN-1 which had been arising due to revised returns for the June-2017 filed on 31.07.2017. Since, the total additional CENVAT Credit of Rs. 30,52,536/- was not transitioned as CGST credit in FORM GST TRAN-1, they stated that they are eligible to claim refund under Section 142(9)(b) of CGST, Act, 2017.

2.4 On examination of the said refund claim, the Original authority had decided the same is liable to be rejected vide Order-in-Original dated 15.10.2019, on the following grounds:

- (i) The additional CENVAT credit should have been transitioned in Form GST TRAN-1 in accordance with provisions of Section 140 of CGST Act read with Rule 117, 120A, 120(1A) of CGST Rules, 2017;
- (ii) There is no provision to refund CENVAT credit claimed in the Revised return in the existing i.e. law under Section 11B of the Central Excise Act 1944;
- (iii) The Refund Claim is time-barred in terms of section 11B of Central Excise Act, 1944:

2.5 In the appeal preferred by the appellants against the above Order-in-Original dated 15.10.2019, the learned Commissioner (Appeals) vide impugned order dated 13.01.2020, had rejected such appeal by upholding the order of the original authority as follows:

- (i) Refund Claim should have been filed in accordance with Section 142(3) of CGST Act and not under 142(9)(b) of the CGST Act; and
- (ii) Revised FORM GST TRAN-1 was allowed to be filed up to 31 March 2019 as per Rule 120A of Rules, 2017 and the same should have been filed for transition of the CENVAT credit instead of seeking refund of the CENVAT credit under Section 142(9)(b) of the CGST Act.

2.6 Being aggrieved with the above Order-in-Appeal dated 13.01.2020, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants at the outset, had submitted that the issue of whether this Tribunal has jurisdiction to hear matters pertaining to Section 142(3) /142(9) of the CGST Act has been settled by the Larger Bench in the case of *Bosch Electrical Drive India Pot. Ltd.* [2023 (12) TMI 1145 - CESTAT Chennai - LB]. Hence, there is no bar for deciding the issue covered in this appeal by the Tribunal.

3.2 Learned Advocate submitted that in the present case, the refund is arising on account of eligible CENVAT credit not transitioned into GST regime and hence, the same is nothing but excess duty paid input credit available. Hence, there can be no dispute on the fact that the amount in respect of which refund is claimed is nothing but "duty" covered by Section 11B of the Central Excise Act, 1944. Further, he stated that clause (d) of the proviso to Section 11B(2) *ibid* provides for refund to be paid in cash to the assessee in case of excess duty paid, where the incidence thereof is proved to have not passed on. He further submitted, that there is no dispute on the fact that the incidence of duty is not passed on to any other person, and that they had submitted a certificate to this effect at the time of filing the refund claim and no dispute in this regard has been raised by the Revenue at any stage of the proceedings. Hence, he submitted that their case is squarely covered by clause (d) of Section 11B *ibid*.

3.3 In addition to the above, learned Advocate submitted that without prejudice to their above claim, he stated that if the argument of the Revenue that there exists no provision for refund of excess CENVAT credit eligible to them in cash, is taken at face value, it will render the phrase "CENVAT credit" in Section 142(3)/ 142(9)(b) of the CGST Act otiose. He further submitted that it is the case of the Revenue that refund of CENVAT credit is not provided for, except in case of exports under Rules 5 of the CCR. In this regard, he emphatically submitted that Section 142(3) /142(9)(b) of the CGST Act, 2017 specifically provides that refund of CENVAT credit will be paid in cash, notwithstanding anything to the contrary under any of the old laws. Thus, he claimed that the appellants are eligible for refund and prayed that their appeals be allowed.

3.4 He further submits that Section 142(9) of the CGST Act is a special provision that provides for transition of CENVAT credit in the case of

revision of any returns furnished under the existing law (i.e., including the Central Excise Act, 1944) after the appointed date (i.e., 1 July 2017, being the date when the CGST law became operational). The afore-mentioned provision provides for refund of CENVAT Credit in cash in case it is found to be admissible on account of filing of a revised return under the erstwhile law. In the present case, the CENVAT Credit of Rs. 30,52,536/- became admissible pursuant to the filing of a revised Central Excise return within time limit. Thus, the appellants should be entitled to claim refund of the CENVAT Credit on the basis of the afore-mentioned provision. Learned Advocate also submits that in the case of additional CENVAT credit found admissible on the basis of revised returns, the law does not envisage transition of such additional credit to the GST regime and provides for cash refund of such credit.

3.5 In this regard, the appellants placed reliance on the following judgments:

*(i) Punjab National Bank v. Commissioner of Central-Tax, Bangalore North - 2021 (52) G.S.T.L. 421 (Tri.-Bang.)*

*(ii) Commissioner, Central Tax, Goods & Services Tax, Delhi East vs. CH2M Hill (India) Pvt. Limited, Service Tax Appeal No. 51068 of 2022-SM dated 03 June 2022*

*(iii) Monochem Graphics Pvt. Ltd. v. Commissioner of Central Excise & CGST, Delhi West - 2022 (67) G.S.T.L. 249 (Tri.-Del.)*

*(iv) Commissioner, Central Tax, Goods & Services, Delhi East Vs. CH2M Hill (India) Pvt. Limited – Order dated 03.06.2022 in S.T. Appeal No. 51068 of 2022*

3.6 Learned Advocate also submitted in their additional written submission that the jurisdictional Hon'ble Bombay High Court had delivered a judgement dated 10.06.2024 in the case of *Combitic Global Caplet Pvt. Ltd. Vs. Union of India*, which has a direct bearing on the subject issue of the appellants before the Tribunal and hence the same may be taken in to account for deciding the appeal.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner (Appeals) in the impugned order and submitted that in view of the specific provisions for refund of CENVAT credit provided under Rules 5 of the CCR, the appeal for refund of excess CENVAT credit in cash under Section 11B *ibid*, is not permissible. Accordingly, he submitted

that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. Heard both sides and perused the records of the case. I have also considered the additional written submissions given in the form of paper books in the present case.

6. The short issue for determination before the Tribunal is whether refund of CENVAT credit arising out of upward revision as per the revised ER-1 for the month of June 2017, is refundable under Section 142(9) of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944?

7.1 In order to appreciate the issues under dispute, the specific legal provisions of the CGST Act, 2017, Central Excise Act, 1944 and CENVAT Credit Rules, 2004 relevant to the dispute are extracted and herein given below for ease of reference:

**Central Goods and Services Tax Act, 2017**

**"Miscellaneous transitional provisions.**

**Section 142.** (1) *Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:*

**Provided** *that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.*

(2) (a) *Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;*

(b) *where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such*

credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

**Provided** that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub- section (2) of [section 11B](#) of the Central Excise Act, 1944 (1 of 1944):

**Provided** that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

**Provided further** that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

xxx

xxx

xxx

xxx

(9) (a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

### **Repeal and saving.**

**Section 174.** (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed....."

### **Central Excise Act, 1944**

**"Claim for refund of duty and interest, if any, paid on such duty.**

**Section 11B.** (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of

*such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :*

**Provided** *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :*

**Provided further** *that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.*

*Explanation.— Omitted by the Finance (No. 2) Act, 1980.*

*(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:*

**Provided** *that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*

*(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;*

*(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Principal Commissioner of Central Excise or Commissioner of Central Excise;*

*(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;*

*(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*

*(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*

*(f) the duty of excise and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:.....”*

7.2 Before I proceed with the present case in hand, the competency of the Tribunal in handling the orders passed under Section 142(2) of the CGST Act, 2017 in appeal before them, has been dealt by the Larger Bench of the Tribunal, and the reference made therein have been clarified in the Interim Order No. 40021/2023 dated 21.12.2023 in the case of *Bosch Electrical Drive India Private Limited Vs. Commissioner of Central Tax, Chennai*. The relevant paragraphs of the said order is extracted and given below:

*"48. The Division Bench of the Tribunal, while referring the matter to the Larger Bench had observed in paragraph 14.1 that an appeal would lie under section 112 of the CGST Act to the Appellate Tribunal constituted under the provisions of the CGST Act against an order passed under sub-section (3) of section 142 of the CGST Act. As noticed above, an appeal would not lie before the Appellate Tribunal constituted under the provisions of the CGST Act because an appeal lies only against an order passed either under section 107 or section 108 of the CGST Act.*

*49. In the present case, the service tax was paid under the provisions of Chapter V of the Finance Act and refund was claimed under sub-section (3) of section 142 of the CGST Act, under which the claim was required to be disposed of in accordance with the provisions of the existing law. Therefore, even if the service tax had been deposited by the appellant after 01.01.2017, nonetheless the refund of any amount of the CENVAT credit could be claimed only under subsection (3) of section 142 of the CGST Act and against this order an appeal will lie to the Tribunal.*

*50. The reference is, accordingly, answered in the following manner: An appeal would lie to the Customs, Excise & Service Tax Appellate Tribunal against an order passed under section 142 of the Central Goods and Services Tax Act, 2017."*

Thus, it could be seen that the Larger Bench of the Tribunal has held that this Tribunal is the appropriate appellate forum for preferring an appeal against an order passed under Section 142 of the CGST Act, 2017.

8.1 From the facts of the case, it is seen that the appellants had duly followed the procedure and conditions prescribed in complying with the obligations under Cenvat Credit Rules, 2004, and had also complied with in filing revised returns with the department. In terms of legal provisions prescribing the procedure for transitional credit under Section 142(9)(b) of the CGST Act, 2017, when the same is unable to be utilized for further

payment of duty/tax, the appellants had applied for refund before the departmental authorities.

8.2 The main ground on which the refund application of the appellants was held as not entertainable in the impugned order is, that there exists no provision under Rule 5 of the CCR, for cash refund of excess CENVAT credit and therefore the refund in terms of proviso (c) to Section 11B(2) *ibid*, is not permissible in the case of the appellants. In this regard, I find that the provisions of Section 142(9)(b) of the CGST Act, is a transitional arrangement wherein it has been specifically provided that such provisions apply as a *non-obstanate* clause whereby such provisions will have overriding effect, if anything to the contrary is contained under the provisions of existing law i.e., Central Excise Act, 1944, except for the provisions of sub-section (2) of section 11B *ibid*. Thus, all the conditions of the requirements of Section 11B *ibid* as it remained under the existing law, other than those relating to Unjust Enrichment clause contained in Section 11B(2) *ibid* would apply, only if they are not contradictory to the provisions of Section 142(9)(b) of the CGST Act, 2017, in dealing with refund of 'CENVAT credit'. It is also on record, that there is no dispute with respect to fulfilment of unjust enrichment angle in the case of the present refund, as nothing contrary has been expressed by the authorities below with respect to eligibility of refund while examining the same.

8.3 Further, upon introduction of GST regime, the transitional arrangements have been provided under Section 142 of CGST Act, to enable the CENVAT credit, if refundable, to be paid in cash to the eligible persons, as there was no way that such excess CENVAT credit could be used by the assessee in payment of tax on output service or duty on final products. I also find that the proviso (c) to Section 11B(2) *ibid*, cannot be read to state that refund of such excess CENVAT credit has not been provided under Rule 5 of the CCR, as the entire arrangement of refund of excess CENVAT credit is arising as a transitional arrangement by moving from Excise duty/Service Tax regime to GST regime. The stand taken by the Commissioner (Appeals) is also illogical, as when the Central Excise Act, 1944 amongst other laws relating to old tax regime was repealed by Section 174 of the CGST Act, 2017 and that the CCR is also being superseded vide Notification No.20/2017-C.E. (N.T.) dated 30.06.2017, by the Central Government for smooth implementation of transfer to GST regime in indirect taxation, it is not feasible to make a specific provision in

CENVAT statute, for enabling cash refund of excess CENVAT credit relating to earlier regime while moving to the new GST regime.

8.4 Further, I also find merit in the argument of the learned Advocate for the appellants that they are eligible for refund of duty in cash under Section 11B(2)(d) *ibid*, inasmuch as the phrase 'duty of excise' used in Section 11B(2)(d) *ibid* refers to duties of excise leviable under Section 3 of the Central Excise Act, 1944 and it also includes CENVAT credit, which is nothing but such duty of excise paid on inputs or service tax paid on input services, which have been allowed for taking credit in terms of Rule 3 of the CCR. In view of the above discussions, I find that the impugned order is not legally sustainable and the appellants are eligible for refund of excess CENVAT credit paid by them, and specifically allowed to be refunded in terms of Section 142(9)(b) of the CGST Act, 2017.

9.1 As the issue is relating to transitional provisions in moving from Central Excise duty and Service Tax regime to GST regime, where both the taxes though remain by nature as indirect taxes, the whole concept of its levy, the power drawn from the Constitution of India, enabling legislation being different, it is also worthwhile to see the background of the CENVAT scheme and the see whether such cash refund during its migration to GST regime as provided under Section 142 of the CGST Act, 2017 is proper and legally sustainable.

9.2 If we turn the history of CENVAT scheme right from its beginning, it can be seen initially MODVAT was in operation. The Modified Value Added Tax (MODVAT) is the predecessor to Central Value Added Tax (CENVAT). The CENVAT credit scheme has its origin in India owing to the Indirect Taxation Enquiry Committee formed in 1976, popularly known as Jha Committee. The committee took serious note of the limitations and drawbacks of VAT system and suggested that under our administrative and other circumstances, we should be very cautious in adopting VAT system. The Jha committee recommended, experimental basis, in a phased manner extension of VAT system to a limited number of commodities. Though the name suggested by the Jha committee was manufacturing VAT 'Manvat', the government had adopted it is as 'MODVAT'. The Finance Minister in the Budget Speech on the Floor of the Parliament stated as detailed below, thus giving the background material which led to the development of MODVAT scheme. It also explains the intent and purpose of the credit

scheme. This it would be gainful to look into some of the paragraphs of such budget speech enunciating the policy of the government on the said the scheme of credit. The extract of the same is given below:

*SPEECH OF SHRI VISHWANATH PRATAP SINGH MINISTER OF FINANCE  
INTRODUCING THE BUDGET FOR THE YEAR 1986-87*

*"Sir, I rise to present the Budget for the year 1986-87.*

*xxx xxx xxx xxx*

*113. In excise taxation a vexatious question which has been often encountered is the taxation of inputs and the cascading effect of this on the value of the final product. The Long Term Fiscal Policy had stated that the best solution would be to extend the present system of proforma credit to all exciseable commodities with the exception of a few sectors with special problems like petroleum, tobacco and textiles. This scheme, which has been referred as Modified Value Added Tax (MODVAT) scheme - I shall stress MODVAT, not MADVAT - allows the manufacturer to obtain instant and complete reimbursement of the excise duty paid on the components and raw materials.*

*114. The MODVAT scheme provides a transparency which discloses the full taxation on the product and its introduction is an important measure of cost reduction. Amount of excise duty payable depends upon the value of the final product and the rate of duty. Introduction of MODVAT will decrease the cost of the final product considerably through the availability of instant credit of the duties paid on the inputs and consequential reduction of interest costs.*

*115. It would be noticed that the MODVAT scheme avoids the payment of duties on earlier duties paid. The payment of duty drawback will be swifter as the element of excise duty will be transparent It will, therefore, benefit both the consumers and exporters.*

*116. However, in view of the novelty of the scheme, we have to hasten slowly and implement the MODVAT scheme in stages. As a first measure, I propose to introduce MODVAT scheme for all goods covered by 37 specified chapters of the Central Excise Tariff Act, 1985. The Scheme as a result would cover products of chemical and allied industries, paints and packaging materials, plastics, glass and glassware, rubber products, base metals and articles of base metals, machinery and mechanical appliances including electrical equipments, motor vehicles and certain miscellaneous manufactured products. This would imply that as long as the input and the final product are covered by the specified 37 chapters and the final product bears some duty of excise, credit of duty on the inputs covered by these chapters will be available.*

*117. The proforma credit given will cover both excise duty and additional duty of customs also known as countervailing duty. Set off will also be available for packaging materials, consumables, paints though these are not strictly raw materials. Items outside these chapters availing proforma credit and benefits of set off under any erstwhile schemes would be allowed to continue to get the relief to the extent the revised tariff*

*headings permit. However, the MODVAT scheme and the erstwhile schemes to the extent they are continued, will be mutually exclusive.*

*118. The MODVAT scheme will be in force from 1st March, 1986. Manufacturers who fulfil the requirement will be able to avail of proforma credit in respect of the permissible goods which have suffered duty of excise from 1st February, 1986 and are either in the stocks or are received by the manufacturer on or after 1st March, 1986.*

*119. As stated earlier, the introduction of MODVAT scheme will result in considerable reduction in the cost of final product and, therefore, to retain the collection of excise duties at the earlier level, the rates of duties on the final product have been suitably adjusted. After accounting for the set off, the duty rates have been rounded to the nearest step in the new duty structure. While all care has been taken to work out the incidence of set off benefits, the scheme being a new one, Central Board of Excise and Customs would take corrective steps wherever anomalies are noted."*

9.3 In the Union budget of 2000-2001, MODVAT Scheme was the replaced with CENVAT credit scheme which was notified later through Notification No.27/2000-C.E. (N.T.) dated 31.03.2000. Hitherto, both MODVAT rules and CENVAT scheme rules were part of the Central Excise Rules, 1944. The CENVAT Credit Rules, 2001 brought a separate set of rules to govern the CENVAT credit scheme. Later this was superseded by CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002 was also introduced. Further, CENVAT Credit Rules, 2004 was introduced by replacing the two old rules of 2002. Therefore, the new rules i.e., CCR, 2004 provided a common governing provisions for taking of credit on inputs or input services by the manufacturers, by the service providers and by those for engaging both the activities. This has also been explained by the Finance Minister in his budget speech for the year 2000-2001.

*Budget 2000-2001*

*Speech of Shri Yashwant Sinha, Minister of Finance*

*29th February, 2000*

**"PART B**

*87. Let me now take up the MODVAT scheme and the changes that I plan to bring about. MODVAT scheme shall now be known as CENVAT scheme.*

*88. Over the years, disputes between the department and assesseees on the interpretation of MODVAT rules and procedures have plagued the system. I propose to put an end to this situation. With effect from 1st April 2000, the plethora of existing rules will be replaced by a small set of simple and transparent rules, which, I am sure, shall reduce disputes to a minimum.*

*89. I also propose to expand and rationalize the scope of the MODVAT scheme. All inputs and all capital goods are now included in the eligible*

*list of MODVAT scheme. The only exception will be High Speed Diesel Oil and Petrol. However, I propose that the availability of MODVAT credit on capital goods will be spread over a period of two years, with effect from 1st April 2000.*

*90. My proposals include full extension of MODVAT scheme to cigarettes for the first time, which should cheer the industry. However, the good news for the cigarette manufacturers ends here. I propose to enhance the rates of excise duty on all categories of cigarettes by 5 %.*

*91. At present, MODVAT credit of CVD paid on project imports is restricted to the extent of 75%. This has been an irritant. This credit shall now be available for 100% of the CVD. I have also decided to do away with the condition of installation as a pre-requisite for taking credit on capital goods."*

9.4 The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) in 2005 had recommended for introduction of a comprehensive tax on all goods and service replacing Central level VAT and State level VATs. It had recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of making of a product. Accordingly, in the Union budget 2006-2007, an announcement was also made of the intention of the government to move in such direction, as follows:

*Budget 2006-2007  
Speech of P. Chidambaram Minister of Finance  
February 28, 2006*

*"155. It is my sense that there is a large consensus that the country should move towards a national level Goods and Services Tax (GST) that should be shared between the Centre and the States. I propose that we set April 1, 2010 as the date for introducing GST. World over, goods and services attract the same rate of tax. That is the foundation of a GST. People must get used to the idea of a GST. Hence, we must progressively converge the service tax rate and the CENVAT rate. I propose to take one step this year and increase the service tax rate from 10 per cent to 12 per cent. Let me hasten to add that since service tax paid can be credited against service tax payable or excise duty payable, the net impact will be very small."*

9.5 From careful reading of the policy declaration over the years in the Union Budgets and introduction of various laws, it clearly transpires that the Government intended to bring in the value added taxation system, whereby the taxes suffered at the input stage of goods and/or services when used for providing final product and/or output services, are being allowed credit in the form of MODVAT/CENVAT credit etc., and the value added at the final product or output stage alone is taxed. In other words, the cascading effect on tax on tax i.e., tax suffered at multiple stages of

inputs are being taxed again at output stage, is eliminated in the Value Added Tax (VAT) regime, which had been introduced in the form of MODVAT/CENVAT by the Government in the past. Though the historic moment of the culmination of a fourteen-year long journey which began in December 2002, when the Kelkar Task Force on indirect taxation suggested a comprehensive Goods and Services Tax (GST) based on the Value Added Tax principle ended with the introduction of GST w.e.f. 01.07.2017, as seen from the above Budget Speech of the Finance Minister on 28.02.2006, the proposal to introduce GST was first mooted in the Budget Speech for the financial year 2006-07. GST is a destination based consumption tax. It has been designed in a manner so that tax is collected at every stage and the credit of tax paid at the previous stage is available to set off the tax to be paid at the next stage of transaction thereby eliminating cascading of taxes. This eradicates "tax on tax" and allows cross utilization of input tax credits which benefit the industry by making the entire supply chain tax neutral.

9.6 It is known very well that the taxation of goods and services in India has, hitherto, been characterised as a cascading and distortionary tax on production resulting in mis-allocation of resources and lower productivity and economic growth. It had also inhibited voluntary compliance. Therefore, it was necessary to replace the existing indirect tax system by a new regime which would foster the achievement of the following objectives viz., (a) The incidence of tax falls only on domestic consumption; (b) The efficiency and equity of the system is optimized; (c) There should be no export of taxes across taxing jurisdictions; (d) The Indian market should be integrated into a single common market; (e) It enhances the cause of cooperative federalism. Accordingly a well-designed 'value added tax' on all Goods and Services (GST) has been introduced as the most elegant method of eliminating distortions and taxing consumption. Under this GST structure, all different stages of production and distribution can be interpreted as a mere tax pass through, and the tax essentially 'sticks' on final consumption within the taxing jurisdiction. It is also of common knowledge that GST subsumes a number of existing indirect taxes which were earlier levied by the Centre and State Governments including Central Excise duty, Service Tax, VAT, Purchase Tax, Central Sales Tax, Entry Tax, Local Body Taxes, Octroi, Luxury Tax, etc.

9.7 It is also expected that GST will also make India's exports more competitive and also provide a level playing field to domestic industry to compete with imports. In the past due to cascading nature of taxes, India's exports carried some embedded taxes, making them less competitive. Similarly, the hidden effect of cascading means that the total tax incidence on domestic industry is not transparent. Under GST regime, the tax incidence will be transparent, enabling full removal of tax burden on exports and full incidence of domestic taxes on imports.

9.8 In the new GST regime, when Goods and Services Tax (GST) was introduced as a unified tax system, in the country, it would be least expected that the legislation intended that input stage credit which was validly available through erstwhile laws of Central Excise Act, 1944 and Finance Act, 1994, and permitted to be used for discharge of output tax liability through detailed CENVAT Credit Rules, 2004, would have to be foregone by not allowing the manufacturers and service providers, with such validly earned credit of input taxes. In fact when the legal provisions of Section 142 of the CGST Act, 2017 are read carefully, it transpires that sub-section (3) specifically provide for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law shall be paid in cash. Further, it is only such amount of CENVAT credit which is rejected, as not being eligible, that alone shall be allowed to lapse. Further, the transitional provisions under Section 142 of the CGST Act, 2017, for smooth transition from earlier indirect taxes of Central Excise Act, 1944 and Finance Act, 1994 to a new GST Act, 2017, providing refund of CENVAT credit in accordance with the provisions of existing law, cannot be interpreted to mean that the existing CENVAT Credit Rules, 2004 provided only for refund in specified situations as stated in Rule 5 *ibid*, and hence cash refund of CENVAT credit is not permissible, as it has been specifically enabled under Section 142 of the CGST Act. Such a narrow interpretation of transitional provision, in my view, is not correct interpretation of legal provisions of the law in the backdrop of above discussions on migration from earlier taxation regime to new GST regime, and the same is not proper and therefore denial of cash refund solely on the basis that there exists no provision under CENVAT statute for cash refund, is not legally sustainable.

9.9 I further find support for my above observations about the basis of CENVAT as input tax neutralisation scheme from the following judgements of the Hon'ble Supreme Court. The object of the input credit scheme had been explained by the Hon'ble Supreme Court in the case of *CCE Vs. Dai Ichi Karkaria Ltd.* 1999 (112) E.L.T. 353 (S.C.) as follows:

**"17.** *It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.*

**18.** *It is, therefore, that in the case of Eicher Motors Ltd. v. Union of India [1999 (106) E.L.T. 3] this Court said that a credit under the Modvat scheme was "as good as tax paid."*

9.10 Further, the procedural aspect of Modvat and its aim was explained by the Hon'ble Apex Court in the case of *Ichalkaranji Machine Centre Private Limited Vs. Collector of Central Excise, Pune - CCE* 2004 (174) E.L.T. 417 (S.C.) as follows:

**"9.** *Modvat is basically a duty-collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him. It was introduced w.e.f. 1-3-1986. The said scheme was regulated under rules 57A to 57J of Central Excise Rules, 1944. Rule 57A entitled a manufacturer to take instant credit of the central excise duty paid on the inputs used by him in the manufacture of the finished product, provided that the input and the finished product were excisable commodities and fell under any of the specified chapters in the tariff schedule. Under rule 57G, every manufacturer was required to file a declaration before the jurisdictional Assistant Collector, declaring his intention to take Modvat credit after paying duty on the inputs. The object behind rule 57A read with rule 57G and rule 57-I was utilization of credit allowed towards payment of duty on any of the final products in relation to manufacture of which such inputs were*

*intended to be used in accordance with the declaration under rule 57G. Rule 57-I referred to consequences of taking credit wrongly.*

**10.** *The object of the Modvat scheme was to reduce cost of final product by taking credit for the duty paid on the inputs.*

9.11 From the detailed discussions as above, it is reasonable to conclude that when the Central Excise Act, 1944 amongst other laws relating to old tax regime was repealed by Section 174 of the CGST Act, 2017 and that the CCR is also being superseded vide Notification No.20/2017-C.E. (N.T.) dated 30.06.2017, by the Central Government for smooth implementation of transfer to GST regime in indirect taxation, I find that the provisions of Section 142 of the CGST Act, 2017 are sufficient to provide for the tax administration for sanction of cash refund in circumstances stated therein, and I find that there is no need and it is not legally feasible to make any specific provision in CENVAT statute itself, for enabling cash refund of excess CENVAT credit relating to earlier regime while moving to the new GST regime.

10.1 I further find that the issue of reversal of excess CENVAT credit under the transitional arrangement as provided under Section 142 of CGST Act, 2017 has already been addressed by the Co-ordinate Bench of the Tribunal in the following cases, and it was held that cash refund of such excess CENVAT credit is permissible. The relevant paragraphs in the Final Order No. A/85964-2022 dated 18.10.2022 in the case of *M/s Clariant Chemicals India Limited Vs. Commissioner of Central Excise & Service Tax, Raigad* are extracted and given below:

*"8. Upon hearing the Counsels from both sides and after perusal of the case record, it is apparent that Appellant's eligibility to take credit of the duties paid as CENVAT Credit is undisputable and only because of procedural aberration occurred during transition to GST period, Appellant could not take the credits in its electronic ledger in the GST regime, for which it sought for refund such a contingency is perhaps foreseen by the legislature for which contingent provision is well enumerated in Clause 6(a) of Section 142 of the CGST Act that deals with claim for CENVAT Credit after the appointed date under the existing law. It reads:- "6(a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B*

*of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act: Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;" (Underlined to emphasise)*

*9. It is an admitted fact of the parties that the said CENVAT Credit balance was not carried forward to the Appellant's account on the appointed date since it was not due on the said day also. Therefore, in view of clear provision contain under Section 142(6)(a) of the CGST Act, Claimant/Appellant is eligible to get the refund of credit by E/87606/2019 cash except where unjust enrichment is alleged or established against the Appellant. The Appellant is also otherwise eligible to go for availment of transitional credit through filing required forms in Tran-I as per the order passed by the Hon'ble Supreme Court on 22nd July, 2022 but in view of the observation of this Tribunal read with Section 142(6)(a) of the CGST Act that such CENVAT Credit amount shall be paid to the Appellant in cash, it can't avail dual benefits once order of this Tribunal is duly complied by the Respondent Department by the closing date of the window.*

#### THE ORDER

*10. The appeal is allowed and the order passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh vide Order-in-Appeal No. MKK/466/RGD APP/2018-19 dated 07.02.2019 is hereby set aside and the Appellant is eligible to get refund of Rs.11,04,057/- paid against CVD and SAD which applicable interest, if any, within a period of two months of communication of this order."*

10.2 The relevant paragraphs in the Final Order No. 42467/2021 dated 16.12.2021 in the case of *M/s Circular Flow Technologies India Pvt. Limited Vs. Principal Commissioner of GST & Central Excise, Coimbatore* are extracted and given below:

*"11. Section 142 (3) of GST Act provides how to deal with claims of refund of service tax of tax and duty / credit under the erstwhile law. It is stated that therein that such claims have to be disposed in accordance with the provisions of existing law and any amount eventually accruing has to be paid in cash.*

*12. In the present case, there is no allegation that the credit is not eligible to the appellant. It is merely stated that tax has been paid voluntarily and therefore credit is not available under the GST regime. Though credit is not available as Input Tax Credit under GST law, the credit under the erstwhile Cenvat Credit Rules is eligible to the appellant. Such credit has to be processed under Section 142 (3) of GST Act, 2017 and refunded in cash to the assessee.*

*13. From the discussions made above, the principles laid down in the decisions cited above, I am of the view that rejection of refund claim*

*cannot be justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any."*

10.3 In the case of *Dhyan Networks and Technologies Pvt. Ltd. Vs. Commissioner of GST and Central Excise, Chennai* - (2023) 4 Centax 304 (Tri.-Mad), the Tribunal has held that cash refund is required to be given to the assessees in terms of Section 142 of the CGST Act, 2017. The relevant paragraphs of the said order are extracted and given below:

*"8. Further I find that this Tribunal in the case of Wave Mechanics Pvt. Ltd. [[2019 \(370\) E.L.T. 291 \(Tribunal\)](#)] cited supra has held that cash refund is not admissible under Rule 5 of Cenvat Credit Rules read with Notification No. 27/2012-C.E., dated 18-6-2012 in respect of clearances made by one EOU to another EOU on IUT basis. It was also held that the amounts in respect of cash refund has been claimed were debited in the Cenvat credit account at the time of filing the refund claim as required under the said notification and the appellant was entitled to take recredit of the Cenvat credit. Further after going through the sub-section (3) of Section 142 of CGST Act, I find that as per the said sub-section, every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944. Further it is very clear that as per sub-section (6)(a) of Section 142, every proceeding of appeal, review or reference relating to a claim for Cenvat credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944. Further I find that the appellant had already debited the entire amount in their Cenvat account and the said amount was debited under a bona fide belief that the cash refund would be sanctioned to them and the very fact that Cenvat credit was never disallowed, hence the Cenvat credit lying in the balance of Cenvat account are liable to be refunded in cash to the appellant as per the provisions of sub-section (3) or sub-section (6)(a) of Section 142 of CGST Act. This issue is no more res integra and has been held in favour of the appellant by various decisions cited supra. Hence, by following the ratio of the said decisions, I am of the considered view that the impugned order denying the cash refund is not sustainable in law and the appellant is entitled to cash refund as per sub-section (3) and sub-section (6)(a) of Section 142 of CGST Act. All the three appeals are accordingly allowed."*

*7. As the appellant has been allowed to take re-credit and is not able to do the same due to the introduction of G.S.T., I am of the view that he has to be given refund of the said amount in cash. From the discussions made above and also following the decision as cited above, I am of the view that the appellant is eligible for refund of the amount of Rs. 2,93,427/-."*

10.4 I further find that in the case of *Purvi Fabrico & Texturise (P) Ltd.* (supra), the Revenue has contended that except in the case of export of goods, in no other case refund of credit is permissible under the Cenvat rules in cash or by cheque; and that refund amount is to be given in RG23A, Part II account, if the same is in operation. In this regard, I find that the Co-ordinate Bench of the Tribunal had taken a contrary stand in this regard in the case of *Gauri Plasticulture P. Ltd. Vs. Commissioner of Central Excise, Indore* which was subsequently appealed against by the Revenue before the Hon'ble Bombay High Court, wherein it was held that cash refund in terms of clause (c) to the proviso to Section 11B(2) of the Central Excise Act, 1944 is not permissible when an assessee is unable to utilize credit on inputs. I find that the facts of the case in *Gauri Plasticulture* and the context in which the judgement of the Hon'ble Bombay High Court was delivered is denial of refund of unutilised Cenvat credit availed by the assessee on the ground that they had surrendered the Central Excise registration certificate and that the entire credit unutilised will lapse. Further, the dispute was regarding availability of small scale industries exemption under Notification dated 28.02.1993, which was denied by issue of Show Cause Notice; the demand was confirmed by the Order-in-Original by denying exemption on the ground that the assessee was manufacturing pipes bearing a mark 'Jain pipe', and in an appeal by the assessee, the learned Commissioner (Appeals) had held that this cannot be considered as a brand name. Consequent to this, the assessee had filed a refund claim. On careful perusal of the judgement dated 14.06.2019, I find that the facts of the present case before me are entirely different on account of the following reasons. Firstly, it is not the case of refund arising on account of denial of any exemption or setting aside of any demand in the SCN, but refund arising on account of the excess CENVAT credit paid by the appellants, which is in excess of the CENVAT credit that is required to be paid in terms of the Rule 6(3A) of the CCR and specifically allowed to be adjusted in terms of clause (f) of Rule 6(3A) of the CCR. Secondly, the transition provisions referred to therein are regarding credit earned by a manufacturer under the CENVAT Credit Rules, 2002 and how

they will be allowed to be utilised in accordance with CENVAT Credit Rules, 2004. In the present case, the existing indirect tax law relating to levy of Central Excise duty i.e., Central Excise Act, 1944 has been repealed and law relating Service Tax in Chapter V of the Finance Act, 1994 have been suitably amended to pave way for implementation of new GST regime. Hence, I find that the judgement in the case of *Gauri Plasticulture P. Ltd.* (*supra*) is not applicable to the present factual matrix of the case.

10.5 Further, I have also gone through the various case laws cited by both sides to support their respective stand. However, I find that the Hon'ble Bombay High Court had an occasion to examine identical issues in a similar matter before them, in the case of *Combitic Global Caplet Pvt. Ltd. Vs. Union of India* in Writ Petition No.729 of 2021 with W.P. No.1228 of 2021, and being jurisdictionally binding on this Regional Bench of the Tribunal, I would like to be guided by such judgement delivered recently. In the judgement delivered on 10.06.2024, the Hon'ble Bombay High Court have held that Sub-section (3) of Section 142 of the CGST Act very clearly says any amount eventually accruing shall be paid in cash and directed the departmental authorities/sanctioning authority for refunding the amount of duty refundable to the petitioner in cash instead of credit in CENVAT account. The relevant paragraphs of the said judgement of the Hon'ble Bombay High Court are extracted and given below:

*"8 It is these orders which are impugned in this petition and the stand taken by petitioner is that Section 142(3) of the Central Goods And Services Tax Act 2017 (the Act) clearly says, w.e.f 1st July 2017, in view of the effect of change in the regime, i.e., when the GST regime was introduced, any refund that was payable to petitioner has to be paid in cash. Mr. Sridharan submitted that since the CENVAT regime has come to an end, credit of amount payable to petitioner to the CENVAT account would make no sense because petitioner will not get the money or credit thereof under the GST regime. Mr. Sridharan states since the government cannot retain any amount which is not due to it, the amount so collected is allowed to be paid over in cash as provided in sub Section (3) of Section 142 of the Act.*

xxx

xxx

xxx

xxx

10 Section 142(3) of the Act reads as under:

"142:- Miscellaneous transitional provisions :-

(1) \*\*\*\*\*

(2)\*\*\*\*\*

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax,

*interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944): Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse: Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act. \*\*\*\*\*"*

*11 In our view, Section 142(3) of the Act is very clear in as much as, it says " every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law ..... and any amount eventually accruing ..... shall be paid in cash .....". It is very widely worded in as much as it uses the expression "CENVAT credit" and also "any other amount paid". Even if, we take it that petitioner has made voluntary deposit, that amount has to be shown as CENVAT credit in the account of petitioner. In the alternative, it would certainly come under the category "or any other amount paid". Therefore, either way the amount paid by petitioner, admittedly, has to be refunded. In fact, it is also admitted that an amount of Rs.10,48,11,737/- is refundable to petitioner.*

*The credit of refund is the only issue because Mr. Adik, as an officer of this court and in fairness, agreed that Government cannot retain any amount without any authority of law.*

*12 Sub-Section (3) of Section 142 of the Act very clearly says "any amount eventually accruing shall be paid in cash". In the circumstances, we are of the opinion that respondents ought to have directed the sanctioning authority to refund the amount of duty refundable to petitioner in cash instead of credit in CENVAT account, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.*

*13 Therefore, Rule made absolute in terms of prayer clauses (a) and (b) of both petitions, which are quoted above.*

*14 The amount shall be paid together with accumulated interest in accordance with law within four weeks of this order being uploaded."*

10.6 I am also aware that there have been few orders passed by the Co-ordinate Benches of the Tribunal on the above issue, which have taken contrary positions viz., the Chennai Bench of the Tribunal in the case of *Dhyan Networks and Technologies Pvt. Ltd. Vs. Commissioner of GST and Central Excise, Chennai* - (2023) 4 Centax 304 (Tri.-Mad.) had held that since the appellant has been allowed to take re-credit and is not able to do the same due to the introduction of G.S.T., refund of the said amount in cash is permissible. Whereas the Hyderabad Bench of the Tribunal in the

case of *C.A.D. Vision Engineers Pvt. Ltd. Vs. Commissioner of Customs & Central Tax (Appeals-I), Hyderabad* - (2024) 19 Centax 289 (Tri.-Hyd.) that when there is no provision in the law either under the Cenvat Credit Rules 2004 or in the Finance Act 1994 to allow cash refund, for accumulated CENVAT credit, Section 142(3), *per se*, cannot make it an eligible refund for effecting cash refund of CENVAT credit and thus the same is not admissible.

10.7 In this regard, I find that Hon'ble Supreme Court have held in the case of *Union of India Vs. Kamlakshi Finance Corporation Limited* - 1991 (55) E.L.T. 433 (S.C.) that judicial discipline is required to be followed in proper administration of tax laws. The relevant paragraph of the said order is as follows:

*"6.....The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."*

11. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals) as it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 13.01.2020, the appeal is allowed in favour of the appellants, with consequential relief, with respect to refund of excess CENVAT credit of Rs.30,52,536/- payable to the appellants.

12. In the result, the impugned order dated 13.01.2020 is set aside and the appeal is allowed in favour of the appellants, with consequential relief, as per law.

(Order pronounced in the open court on 09.09.2024)

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**