CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

SERVICE TAX APPEAL NO. 11864 of 2019

[Arising out of OIA-AHM-EXCUS-002-APP-196-18-19 dated 10/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD]

GE POWER SYSTAMS INDIA PVT LTD **.....Appellant**
Plot No. Sm-37, Sanand-2, GIDC Industrial Estate II,
Sanand, Ahmedabad
Gujarat

VERSUS

C.S.T.-SERVICE TAX – AHMEDABAD **.....Respondent**
7th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad,
Gujarat-380015

APPEARANCE:
Shri Jigar Shah and Shri Amber Kumrawat, Advocates for the Appellant
Shri Rajesh K Agarwal, Superintendent for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

FINAL ORDER NO. 12406/2024

Date of Hearing: 12.07.2024
Date of Decision: 18.10.2024

RAMESH NAIR

M/s. GE Power Systems India Pvt Ltd. (hereinafter referred to as "the appellant") is a company incorporated under the provisions of the Companies Act, 1956 and was registered with the erstwhile Service Tax department. The appellant was earlier known as M/s. Alstom Bharat Forge Power Private Limited. The appellant was duly filing its Service Tax returns and discharging Service Tax liability. It was also availing and utilizing Cenvat Credit, in accordance with Cenvat Credit Rules, 2004. With effect from 1" July 2017, the appellant migrated to Goods and Service Tax regime and is now registered with GST department. The appellant had filed ST-3 return for the period from April 2017 to June 2017 on 15.08.2017, wherein closing balance of Cenvat Credit was reflecting as Rs. 8,95,87,781/-. Pursuant to the filing of ST-3 return, the appellant, in accordance with Section 140 of CGST ACT read with Rule 117 of CGST Rules, carried forward the aforesaid closing balance of Cenvat Credit to GST Electronics Credit Ledger by filing form GST TRANS-1 on 15.08.2017 itself and claimed the same as 'transitional credit'. Subsequently, the appellant, on realizing that Cenvat credit on few of the invoices pertaining to services such as intellectual property right services, rent-a-cab operator service, goods transport agency service and manpower recruitment/supply agency service was not shown in the ST-3 return, filed revised ST-3 return on 06.09.2017 claiming such credit. As a result, the closing balance of Cenvat credit in its ST-3 return was Rs. 10,07,25,547/-. Resultantly, the closing balance of Cenvat credit in respect of input services was enhanced by Rs. 1,11,37,766/- The said additional Cenvat credit of Rs. 1,11,37,766/- on aforesaid services claimed in the revised ST-3 return, pertained to Service Tax paid by the Appellant under reverse charge mechanism. However, this could not be carried forward as Form GST TRAN-1 was already filed prior to revision of the ST-3 return. Subsequent to above, the Appellant, in term of Section 142(9)(b) of the CGST Act, filed a refund claim in Form R along with necessary documents on 28.06.2018, for the differential Cenvat credit viz. Rs. 1,11,37,766/-, which was enhanced on account of filing of revised ST-3 return. A Show Cause Notice dated 09.07.2018 was issued to the Appellant, requiring it to show cause as to why the refund amount of Rs. 1,11,37,766/- should not be rejected on the ground that there is no enabling provision under the Excise Act, where refund of closing balance of Cenvat credit can be allowed in cash. Plain reading of Section 11B of Excise Act conveys that only duty of Excise and interest can be refunded under Section 11B, however, the Appellant has applied for refund of closing balance of Cenvat credit which has not been carried forward to GST. The aforesaid Show Cause Notice was adjudicated upon by the Ld. Assistant Commissioner vide Order-in-Original No. 14/Ref/V/18-19 dated 05.09.2018 wherein the Ld. Assistant Commissioner rejected the refund claim of the Appellant.

Being aggrieved by the OIO dated 05.09.2018, the appellant preferred an appeal before the Ld. Commissioner (Appeals) who vide order in Appeal No. AHM-EXCUSE-002-APP-196-18-19 dated 28.02.2019 upheld the order in original, therefore the present appeal filed by the appellant.

2. Shri Jigar Shah learned counsel appearing on behalf of the appellant made the following submissions:

A. <u>The Appellant submit that Section 11B of the Central Excise Act, 1944 must be read harmoniously with Section 142(9)(b) of the CGST Act, 2017.</u>

A1. The Appellant submits that the impugned Order has upheld rejection of refund merely on the ground that the Appellant, instead of carrying forward the balance of CENVAT credit in Form GST TRAN-1, has intentionally filed the refund application in order to encash the balance of CENVAT credit, by ignoring the statutory provisions A.2. The Appellant submits that as per provisions of Section 142(9)(b), in case of an additional claim of Cenvat credit arises upon revision of ST-3 return, the same should to be refunded to the assesse in cash. The transitional provisions of the CGST Act specifically provide for refund of such additional Cenvat credit in cash. It is in accordance with such specific provisions that the Appellant filed refund claim of the said additional Cenvat credit. It has not been disputed in the impugned proceedings that the Appellant was eligible to claim refund in terms of Section 142(9)(b) of the CGST Act.

A.3. Reliance is placed on decision of Hon'ble Calcutta High Court in S Venkatesan v. Nihal Chand Agarwala, 2000 (126) ELT 274 (Cal), wherein it was held that specific provisions prevail over the general provisions, and that where a general intention is expressed and the Act expresses also a particular intention, incompatible with the general intention, the particular intention is to be considered in the nature of an exception.

A.4. In the instant case, though provisions to revise Form GST Tran-1 have been provided under Rule 120A of the CGST Rules, Section 142(9)(b) of the CGST Act specifically provides for cash refund of the additional claim of Cenvat credit. The provisions of the Rules cannot override the provisions of the Act, particularly when such provisions of the Act have been specifically enacted for application in the given facts. The facts of the present case are specifically covered under the provisions of Section 142(9)(b) of the CGST Act, under which the Appellant can claim refund of the additional claim of Cenvat credit. Further, no such stipulation has been made in Section 142(9)(b), that the facility thereunder will be available only after expiry of time- period for filing/revision of Form GST Tran-1.

A.5. In such a case, the Appellant has rightly filed refund claim under Section 11B of the Excise Act read with Section 142(9)(b) of the CGST Act. It may also be noted that though such claim has been filed under Section 11B of the Excise Act, the enabling provision for such refund arises in terms of Section 142(9)(b) of the CGST Act, which overrides the provisions of the existing law, except Section 118(2) of the Excise Act.

A.6. The Appellant submit that a mere procedural lapse cannot take away a vested right to claim refund of Cenvat credit. It has been opined by this Hon'ble Tribunal in the case of M/s Gigamon Solutions Pvt Ltd vs. Commissioner of GST and Central Excise, Chennai, 2024-VIL-687-CESTAT-CHE-ST wherein it was held that Section 142(3) of CGST Act, 2017 provides that claim for refund under the erstwhile CENVAT Credit Rules or Central Excise Act, 1944 etc. must be disposed in accordance with the existing law and the amount has to be paid in cash.

A.7. Similar proposition has also been laid down in following case-laws:

- Welsuit Glass & Ceramics Pvt Ltd vs. Commissioner of C.E. & S.T.-Vadodara-1, 2024-VIL-518-CESTAT-AHM-ST;

- CAD Vision Engineers Pvt Ltd vs. Commissioner of Customs & Central Tax (Appeals-I), Hyderabad, 2024-VIL-447-CESTAT-HYD-ST.

A.8. In light of the above decisions, the Appellant submits that rejection of refund of Cenvat credit by the Department is unsustainable and liable to be set aside.

B. <u>The Appellant submit that all the procedures to claim refund of Cenvat credit has been duly followed.</u>

B. 1 The Appellant submit that one of the grounds for rejecting the refund of Cenvat credit by the Appellate authority was that it is the responsibility of the Appellant to follow the procedures prescribed under the relevant statute in respect of carrying forward the Cenvat credit. It further states that if all the assessees start claiming such cash refund of Cenvat credit by claiming that the credit has been left out of the Form GST Tran-1 inadvertently, then the option of carrying forward the credit through Form GST Tran-1 will lose its relevancy and every taxpayer will adopt this modus operandi and easy procedure to encash their Cenvat credit.

B. 2 It is submitted that the Appellant has duly followed the procedure given in legal provisions under CGST Act and Finance Act, by carrying forward the closing balance of Cenvat credit arising out of original ST-3 return, to GST regime, vide Form GST Tran-1 in accordance with Section 140(1) of CGST Act read with Rule 117 of CGST Rules. Further, the Appellant has correctly filed refund application of differential Cenvat credit arising out of revised ST-3 return, in accordance with Section 142(9)(b) of CGST Act. Thus, the aforestated finding of the Appellate Authority is not sustainable and deserves to be set aside.

B. 3. Further, it may be noted that when specific provisions have been enacted under Section 142(9)(b) of CGST Act, it cannot be said that by claiming refund thereunder, the provisions of Section 140(1) relating to carrying forward of credit through Form GST Tran-1 are rendered redundant. In fact, the Appellant carried forward the balance of Cenvat credit appearing in its original ST-3 return in terms of Section 140(1). It was only in respect of the additional Cenvat credit, which could not be claimed in the original ST-3 return, that the Appellant revised its ST-3 return and claimed refund under Section 142(9)(b) of CGST Act. It cannot be said that in such a case, the provisions of Section 140(1) have been rendered redundant

B. 4 The impugned order, thus, deserves to be quashed and set aside.

C. <u>The very basis of the impugned proceedings is legally incorrect. The findings in the OIO and the Impugned order are beyond the scope of SCN.</u>

C. 1 The Appellant submit that the very basis of the impugned proceedings is legally incorrect. Attention, in this regard, is invited to the SCN dated 09.07.2018, which was issued on the sole ground that there is no provision in the Excise Act regarding refund of balance Cenvat credit not carried forward in Form GST Tran-1.

C. 2 Before determining whether such allegation is legally correct, it may be noted that the same is the only allegation in the SCN, based on which it was proposed to reject the refund claim of the Appellant. There was no other allegation in the SCN.

C. 3 It is submitted that the said allegation in the SCN is legally incorrect. In this regard, attention is first invited to the refund application of the Appellant filed in prescribed Form- R. A perusal thereof makes it clear that the application was filed under Section 11B of the Excise Act to claim refund in terms of provisions of Section 142(9)(b) of the CGST Act. In other words, the right of the Appellant to claim refund arose from Section 142(9)(b) of the CGST Act and the application thereof was filed under Section 11B of the Excise Act.

C. 4 Attention is now invited to the SCN, the proposal wherein to reject refund claim was based on absence of any provisions in the Excise Act enabling such refund. It is submitted that the said proposal is in teeth of the express statutory provisions and the definite legislative intention and thus, such action on part of the department is liable to be deprecated.

C. 5 On a bare perusal of the refund application of the Appellant, it is clear that the claim of the Appellant arose from Section 142(9)(b) of the CGST Act. However, there is no reference to the said provision in the SCN. Section 142(9)(b) of the CGST Act is one of the provisions which enables claiming refund of the additional Cenvat credit arising as a result of revision of the ST-3 return. The Government, in its wisdom, has contemplated such a situation and rightly so, and provided for refund of such amount in cash. It was under such provisions of Section 142(9)(b) of the CGST Act, that the Appellant claimed refund of Rs. 1,11,37,766/-, being the amount of additional Cenvat credit arising as a result of revision of the ST-3 return.

C. 6 Further, Section 142(9)(b) of the CGST Act is notwithstanding any provisions to the contrary under the existing law, except Section 11B(2), Section 11B(2) pertains to the test of unjust enrichment and fulfilment of requirements thereunder is undisputed in the impugned proceedings. In such a case, reference to only Section 11B of the Excise Act in the SCN is a clear attempt to defeat the legislative intention, particularly when the Appellant clearly based its refund claim under Section 142(9)(b) of the CGST Act.

C. 7 The Appellant submit that in such a case, thus, the allegation made in the SCN was legally incorrect, as enabling provisions for refund were enacted vide Section 142(9)(b) of the CGST Act overriding the provisions of Section 11B of the Excise Act, except sub-section (2) thereof. When such enabling provisions were enacted under Section 142(9)(b) of the CGST Act, the proposal in the SCN to reject refund claim of the Appellant citing absence of enabling provision under Section 11B of the Excise Act was incorrect.

C. 8 In any case, it is submitted that the said finding in the OIO was without any basis. Whether any additional Cenvat credit was admissible to the Appellant, was to be decided on basis of the qualification of the subject services as "input service' under the Cenvat Credit Rules, 2004. To support its claim, the Appellant submitted copies of the relevant invoices, on which such credit was claimed, along with the challans, under which payment of Service Tax thereon was made under reverse charge mechanism.

C. 9 Thus, the refund claim of the Appellant could not have been validly rejected on basis of the sole allegation in the SCN and on this, ground alone, the demand become liable to be dropped.

D. <u>The Appellant is entitled to interest on refund amount.</u>

D. 1 The Appellant submits that in the light of the aforesaid submissions, the Impugned Order upholding rejection of refund claim filed by the Applicant is ex facie perverse and unsustainable, and the amount of refund claim is liable to be sanctioned to the Appellant along with interest at applicable rates in terms of Section 83 of Finance Act read with Section 11BB of Excise Act.

D. 2 It is submitted that Section 11BB of Excise Act provides for interest on delayed refund. On a bare perusal, it is clear that interest under Section 11BB becomes payable on the expiry of a period of three months from the date of receipt of refund application. In this regard, reliance is placed on Ranbaxy Laboratories Ltd, vs. Union of India, 2011 (273) ELT 3 (SC).

D. 3 In the instant case, the refund application was filed by the Appellant on 28.06.2018 and the period of three months therefrom has already expired. Thus, the Appellant is entitled to interest under Section 11BB from the expiry of three months from the date of application for refund claim.

E In view of the above, it is humbly submitted that the Impugned Orders passed by the Ld. Commissioner is erroneous in the eyes of law and is therefore, liable to be set aside.

3. Shri Rajesh K Agarwal learned superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute that the refund claim sought by the appellant is in respect of the amount of Cenvat credit which was already accrued as on 30th June, 2017. The only mistake on the part of the appellant is that due to inadvertent mistake that they could not carry forward part of the amount of Cenvat credit and therefore, for the same they claimed the refund. We find that even if the appellant could not declare the Cenvat credit in the ST-3 return for the period April 2017 To June 2002 but, subsequently they have revised the ST-3 return wherein the differential amount of Cenvat credit was incorporated and due to this reason the Cenvat credit of Rs. 1,11,37,766/- could not be carried forward as form GST TRAN-1 was already filed prior to revision of the ST-3 return. Only for this reason refund claim of admitted Cenvat credit accrued prior to

30.06.2017 cannot be rejected. The appellant is eligible for refund in terms of section 142 (3) of CGST ACT, 2017 which reads as under:-

142. Miscellaneous transitional provisions

(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.

(4) Every claim for refund filed after the appointed day for refund of any duty or lax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:
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.

From the plain reading of the above provision of Section 142 it can be seen that those amount of Cenvat credit which could not be transferred under GST after 01.07.2017, the same is refundable under the existing Act. In the present case due to non mention of part amount of Cenvat Credit in ST-3 return for April–June 2017 same could not be transferred to TRTRAN-1. In our view to deal with these eventualities the provision of Section 142(3) was enacted and therefore the refund cannot be rejected because the amount of Cenvat credit could not be transferred to TRAN-1 under GST. This issue has been considered in various judgments. Some judgments are as under:

- Gigamon Solutions Pvt Ltd Vs. CGST 2024 (6) TMI 1111-CESTAT Chennai

"This appeal is filed by M/s. Gigamon Solutions Pvt. Ltd. against Order in Appeal No. 174/2019 (CTA-I) dated 12.6.2019 passed by the Commissioner of GST & Central Excise (Appeals -1), Chennai.

2. Brief facts of the case are that the appellant is providing Information Technology Software Services. Technical Testing and Analysis Service etc. The appellant had received services from their associated enterprises located outside India in the year 2017-18, during the erstwhile service tax regime and also made a debit in their books of account during the service tax regime. However, the invoices for the said services were raised by the service provider during the GST regime and the payment for the same was made by the appellant during the GST regime. Inasmuch as the appellant had not paid any service tax on the import of such services received under reverse charge mechanism, they paid the service tax of Rs. 82.38,366/- with interest in June 2018. As there was no facility to file ST3 retums and avall credit of such service tax paid, due to transition to GST, the appellant fied a claim for refund of the same under Sec. 142(3) of the CGST Act, 2017 r/w sec. 11B of the Central Excise Act, 1944. After due process of law, the original authority rejected the refund claim. In appeal, the Commissioner (Appeals) upheld the same Hence the appellant is before this forum.

3. Learned CA Aditya Srinivasan appeared for the appellant and learned Assistant Commissioner Shri N. Satyanarayanan appeared for the respondent.

3.1 The learned Chartered Accountant appearing for the appellant submitted that the appellant inadvertently missed to pay the amount during the disputed period. However, on his own, the appellant paid the service tax under RCM along with appropriate interest during June 2018. Since the appellants were neither able to avail CENVAT Credit nor able to transition such amount paid as Input Tax Credit under GST, the appellant filed this refund claim under Section 118 of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017. Applicability of Section 118(2) of the Central Excise Act. 1944 in conjunction with Section 142(3) and Section 174(2) of the CGST Act, 2017. CENVAT Credit is nothing but a right accrued under the repealed act and hence is protected as per Section 174(2) of the CGST Act, 2017. Section 142(3) of the CGST Act, 2017 provides that any claim for refund of CENVAT Credit or any tax paid under the existing law shall be processed as per the existing law and disposed of as cash refund notwithstanding anything contrary contained under the provisions of existing law except for Section 118(2) of the Central Excise Act, 1944. Thus the very purpose of Section 142(3) is to provide for refund of CENVAT Credit/tax paid under existing law in transitional scenarios covering such situations which are not provided-for in the existing law. He referred to the judgment of the Larger Bench of this Tribunal in M/s Bosch Electric Drive India Pvt. Ltd. Vs. Commissioner of Central Tax (Interim Order No. 40021/2023 dated 21.12.2023) wherein it had been held that even if the service tax has been deposited by the appellant after 1.1.2017, nonetheless the refund of CENVAT credit could be claimed under sub-section (3) of Section 142 of the CGST Act before CESTAT. Hence the appellant is eligible for refund under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017. The OIO & DIA has travelled beyond the SCN since there was no allegation of suppression of facts with an intention to evade duty or contravention of Rule 9 of CENVAT Credit Rules, 2004 in the SCN. Further this is a case where the appellant has Suo-moto disclosed the transaction and deposited the tax along with interest without any audit/investigation and hence the question of suppression of facts with an intention to evade duty does not arise. Further, the OIO as well as OIA claims that separate action is being initiated for levy of penalty under Section 78 of the Finance Act, 1994, However, no such action has been taken till date. He prayed that the appeal may be allowed, with consequential relief.

3.2 Shri N. Satyanarayanan, learnd AR reiterated the findings in the impugned order. He stated that the appellant had sufficient time to pay the tax and transition into GST but failed to do so. Refund is not covered under Section 118 of the Central Excise Act, 1994. The appellant has suppressed facts and contravened provisions of the finance Act, 1994 with an intention to evade duty and hence is liable to pay penalty under Section 78 for which a separate action was supposedly initiated and hence appellant is not eligible to claim CENVAT Credit in terms of Rule 9(1)(iv)(bb) of the CENVAT Credit Rules, 2004. He prayed that the appeal may be rejected.

4. We have heard the rival submissions. In the light of the decision of a Larger Bench of this Tribunal in Bosch Electric (supra), we examine the issue on merits. We find that delayed payment of tax along with the applicable interest is permitted by the erstwhile Act. Further for better appreciation of the law involved section 142(3) of the CGST Act, 2017 is reproduced as under,

> *"Every claim for refund fled by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, lax, interest or any other amount paid under the existing law, shall be disposed of in accordance to the provisions of the 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)"*

Section 2(48) of CGST Act, 2017 states as under;

> *"Existing law means, any law, notification, order, rule or regulations relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by parliament or any authority or person having the power to make such law, notification, order, rule or regulation."*

5. Section 142(3) of CGST Act, 2017 hence provides that claim for refund under the erstwhile CENVAT Credit Rules or Central Excise Act, 1944 etc. must be disposed in accordance with the existing law and the amount has to be paid in cash. Section 2(48) of CGST Act, 2017 states that the existing law means any law, notification, order, rule or regulation etc. which is made or passed before the commencement of CGST Act, 2017.

6. Further Section 174 (2) (c) of CGST Act, 2017, talks about rights and liabilities which have accrued or have been incurred under the erstwhile legislations. Thus, when this section provides for the department to issue Show Cause Notice for any violations of the erstwhile law, reciprocally the assessee can file refund claims for the rights accrued under the erstwhile legislations under the provision of section 142(3) of CGST Act, 2017.

7. In the case of Adfert Technologies Pvt. Ltd. Vs. Union of India - 2020 (32) GSTL 726 (P&H), it is held that transitional credit being vested right cannot be taken away on procedural or technical ground. This decision was upheld by the Hon'ble Supreme Court as reported in 2020 (34) GSTL J138 (SC). Again, the jurisdictional Hon'ble High Court in the case of Tara Exports Vs. Union of India reported in 2019 (20) GSTL 321 (Mad.) has held that GST law contemplates seamless flow of tax credit on all eligible inputs. It is settled legal position that substantive credit cannot be denied on procedural grounds.

8. We find that the appellant has paid the tax under the erstwhile law. In the present case, the claim is only for refund and not proceedings for assessment or adjudication. In such a scenario, sub-section (3) of section 142 gets attracted. Rejection of the refund claim is not legally valid and merits to be set aside

9. For the reasons stated we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief as per law."

Similar view was taken by this Tribunal in the case of Welsuit Glass & Ceramics Pvt Ltd Vs. CCE wherein the Tribunal has considered the identical issue in favour of the assessee, the relevant order is as under:-

"4. I have carefully considered the submission made by both sides and perused the records. I find that the refund was rejected on the ground that the amount of service tax paid on the ocean freight is after 01.07.2017 when cenvat credit was not admissible. I find that even though the appellant have paid the service tax after 01.07.2017 but the same pertains to the period

prior to 01.07.2017 when the service tax paid on ocean freight was admissible as cenvat credit. Since the appellant is unable to take the credit after 01.07.2017, the mechanism of refund of such paid amount is provided under Section 142(3) of CGST Ac, 2017 and on the very same issue that if the amount paid after 01.07.217 whether the same is admissible for cenvat credit for the period prior to 01.07.2017 has been settled in various judgments cited by the appellant. Accordingly, the appellant is prima facie eligible for refund of cenvat credit on ocean freight. However except the issue on merit of this case, refund needs to undergo close scrutiny on various facts, hence matter of refund needs reconsideration."

In view of the above judgments the issue is no longer res-integra accordingly the appellant is legally entitled for the cash refund claim of the accumulated Cenvat credit along with interest in accordance with law.

5. The impugned order is set aside. Appeal is allowed with consequential relief.

(Order Pronounced in the open court on 18.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Dharmi