**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 52362 of 2018 –SM

(Arising out of order-in-appeal No. IND-EXCUS-000-APP-126-18-19 dated 28.05.2018 passed by the Commissioner (Appeals), Customs, Central Goods & Service Tax and Central Excise, Indore (M.P.).

M/s Gabriel India Limited **Appellant**
Plot No. 5, Industrial Area No. 3
A.B. Road, Dewas, M.P.

VERSUS

Commissioner, Central Goods & Service Tax and Central Excise **Respondent**
29, Bharatpuri, Administrative Area
Ujjain, M. P.

APPEARANCE:

None for the appellant

Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51212/2022

DATE OF HEARING/ DECISION: 20.12.2022

ANIL CHOUDHARY:

Brief facts of the case are that the appellant is engaged in manufacture of shock absorber falling under Chapter 87 of the Central Excise Tariff Act, 1985. The appellant in compliance of the Stay order dated 29.03.2012 of the Tribunal paid the amount of Rs. 6,60,016/- through cenvat and the interest and penalty of Rs. 5,31,799/- through e-challan. The appeal of the appellant was allowed by the Tribunal vide final order No. A/53129-53130/2017-SM (BR) dated 19.04.2017 and the demand confirmed vide order-in-original No. 8,10/ADC/ST/IND/2010-11 dated 21.03.2011 was set aside. Refund application filed by the appellant on 30.06.2017 and the adjudicating authority vide order-in-original dated 16.08.2017 sanctioned the refund of

Rs.6,60,016/- by way of re-credit in cenvat credit account as it was paid through cenvat and the amount of interest and penalty of Rs. 5,31,799/- was sanctioned in cash.

2. Aggrieved by the order passed by the Adjudicating Authority in respect of the claim of Rs. 6,60,016/-, the appellant has contended that w.e.f. 01.07.2017, the Government of India had introduced GST regime which has replaced earlier Cenvat Credit Rules, 2004 with transitional period of 30 days. Accordingly, after 30.07.2017, no assessee is permitted to avail credit in the cenvat credit account. As per provisions vide Section 142(6)(a) existing on the date of order, which clarified that if any amount of credit arising out of legacy issued is found admissible to an assessee, shall be refunded to the assessee in cash.

3. Accordingly, the appellant instead of filing the appeal before the Commissioner (Appeals), represented before the Adjudicating Authority highlighting change in provision including the transitional provision contained in Section 142 of CGST Act, which provide for grant of refund in cash with respect to any refund arising under the erstwhile Central Excise regime and accordingly represented vide letter dated 04.11.2017 to the Adjudicating Authority, followed by reminder dated 28.03.2018. The appellant received letter dated 09.04.2018 from the Adjudicating Authority stating that he has become functus officio and there is no provision in law to be considered to grant refund in cash. The appellant was further advised to take legal remedy before the Commissioner (Appeals) as available. Thereafter, the appellant filed appeal before the Commissioner (Appeals) on 13.04.2018 which was within thirty days from the date of communication from the Adjudicating Authority. However, the Commissioner (Appeals) have rejected the appeal as time barred.

4. Appellant is absent on call and filed an application for time, which is rejected.

5. Heard the ld. Authorised Representative for the Revenue and perused the records.

6. Having considered the rival contentions, I find that the Commissioner (Appeals) have erred in dismissing the appeal, as appellant was before the Adjudicating Authority for correction of mistake of law in the adjudication order. Thus, there is no deliberate delay and the appellant have filed appeal within thirty days from the date of receipt of communication dated 09.04.2018 of the Adjudicating Authority. Secondly, I find that the order of the Court below directing to take credit of Rs. 6,60,016/- in the cenvat account vide Order-in-original dated 16.08.2017, is directly in conflict with the transitional provision, particularly in Section 142(6)(a) of the CGST Act. Accordingly, I allow this appeal and modify the order of the Court below to the effect that the refund of the amount of Rs.6,60,016/-, which was a pre-deposit during pendency of appeal, be refunded in cash to the appellant-assessee alongwith interest from the date of deposit till the date of refund at the prescribed rate under Section 35FF of the Central Excise Act. I further direct grant of refund to the appellant within a period of 45 days from the date of receipt of this order.

7. Thus, the appeal is allowed with consequential benefits.

(Order pronounced and dictated in open Court).

ANIL CHOUDHARY
MEMBER (JUDICIAL)

Pant