## IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH AT MUMBAI

**APPEAL NOS: E/86452 & 86453/2017**

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/628-629/16-17 dated 28/02/107 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Commissioner of Customs, Central Excise& Service Tax
Aurangabad …***Appellant***

*versus*

Veer Gurjar Alluminium Industries Pvt Ltd ***…Respondent***

*Appearance:*

Shri M.R. Melvin, Superintendent (AR) Advocate for appellant

None for respondent

**CORAM:**

**Hon'ble Shri M V Ravindran, Member (Judicial)**

**Date of hearing: 12/03/2018**
**Date of decision: 12/03/2018**

**ORDER NO: A/85655-85656/2018**

These two appeals are filed by Revenue against Order-in-Appeal No: NGP/EXCUS/000/APPL/628-629/16-17 dated 28/02/107 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.

2. None appeared on behalf of respondent despite notice. Since the issue involved in this case falls in a very narrow compass, the appeals are taken up for disposal even in the absence of any representation from the respondent.

3. Heard Learned Authorised Representative.

4. The relevant facts that arise for consideration in these appeals are that the respondent herein had, in the proceedings initiated against them by Revenue, debited an amount of ₹ 17,37,610/- and ₹ 20 lakhs by debit in the RG-23A Part II i.e. CENVAT credit amount consequent to the judgment culmination of the proceedings on this issue in their favour. The respondent filed an application for the refund of the said amounts. The said refund claim was processed and were sanctioned by way of final order which directed the respondent to avail the CENVAT credit in their CENVAT account. The respondent aggrieved by the said order of sanctioning of the refund amount of ₹ 19,06,384/- and ₹17,73,856/- by way of CENVAT credit in CENVAT account, contested the matter before the first appellate authority for granting of the said amount in cash as their factory is closed. The first appellate authority after following due process of law accepted the contentions of the respondent counsel and directed the lower authority to refund an amount of ₹ 19,06,384/-, an amount of ₹ 17,73,856/- in cash.

5. Revenue is aggrieved by the said order.

6. In the grounds of appeal it is stated that there are no provisions in the CENVAT Credit Rules, more specifically Rule 5, for refund of CENVAT credit in cash; the said Rule 5 provides for refund of the CENVAT credit in cash only in respect of exports and not in the case of the factory being closed. That the reliance placed by the first appellate authority in the case of in *Slovak India Trading Company Pvt Ltd. v. Commissioner of Central Excise* other decisions is incorrect.

7. Learned Authorised Representative would also rely upon the judgment of the Larger Bench of the Tribunal in the case of *Steel Strips v. Commissioner of Central Excise, Ludhiana* [ 2011 (269) ELT 257], *Modipon Ltd v. Commissioner of Central Excise, Ghaziabad* [2015 (324) ELT 718 (Tri.Del.)] and *Phoenix Industries Pvt Ltd. v. Commissioner of Central Excise, Raigad* [2015 (330) ELT 303 (Tri.Mumbai)] for the proposition that there being no provision for refund of CENVAT credit in cash to the assessee, the impugned order is incorrect.

8. On consideration of the submissions by Learned Authorised Representative and on perusal of the records, I find that the issue, as stated by the Learned Authorised Representative, is correct and the issue is only regarding refund of an amount debited in CENVAT

credit account during the proceedings before the lower authorities whether refund can be granted in cash when the assessee unit is closed or otherwise.

9. I find that the issue is no more *res integra* as the Hon'ble High Court of Rajasthan in the case of *Luv Kush Textiles v. Commissioner of Central Excise, Jaipur – II* [2017 (353) ELT 417 (Raj.)] was considering an identical issue and held that there are no express provisions of Rule 5 in debarring refund of such amount in cash. Their Lordships in paragraph No. 2 has recorded as facts which are as under:

> "2. Briefly the facts in the case are that the appellant is a manufacturer of ACSR Conductors of Aluminium falling under the Chapter 76 of the Central Excise Tariff Act, 1985. In pursuance of a show cause notice dated 29-8-2003, a demand of Rs. 2,04,554/- was raised against the appellant, out of which Rs. 1,76,516 was confirmed vide order dated 13-3-2005. During the process, the appellant debited an amount of Rs. 63,001/- under protest on 9-3-2005 in their RG-23A Part-II register which was appropriated in the adjudication order stated above. The appeal against the said order was also rejected by the Commissioner (Appeals). Thereafter, a further appeal before the Tribunal was preferred by the appellant and the same was allowed vide order dated 1-12-2005."

10. Subsequently after recording the arguments made by both sides and reproducing the provisions of Rule 5 in paragraph No. 13 their

Lordships in paragraph 15 has recorded following *ratio* which is applicable in the case in in hand.

> “15**.** The order of the Karnataka High Court has further been confirmed by the Hon’ble Supreme Court in the SLP mentioned in the above paragraph. Taking into consideration, the Rule 5 of the Cenvat Credit Rules, 2002, we are of the view that the Tribunal was not correct while relying upon the judgment of the Larger Bench in *Gauri Plasticulture (P) Ltd.* as Rule 5 in no way prohibits the payment of the refund amount in cash and more particularly when after a proper adjudication of matter an amount of Rs. 63,001/- is said to have been sanctioned in favour of assessee (appellant) and the factum of their manufacturing unit having been closed, we are of the considered opinion that the present appeal deserves acceptance, the same is, therefore, allowed. The refund amount due to the appellant is required to be paid in cash by the Revenue. The respondents are directed to pay the same within a period of two months from today.”

11. In view of the foregoing, I find that the impugned orders are correct and legal and does not require any interference.

12. The appeal stand rejected.

*(Dictated in Court)*

**(M V Ravindran)**
***Member (Judicial)***

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