**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**Appeal No. E/85939/2018**

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-833-2017-18 dt 16.12.2017 passed by the Commissioner (Appeals-I Central Tax. Pune )

**M/s. Steel Fab Engineering & Mfg. Co.** : **Appellant**

**VS**

**Commissioner of Central Excise, Pune-I** : **Respondent**

**Appearance**

Shri Vikram G. Khade, Advocate for Appellant

Shri S.J. Sahu, Asstt. Commr. (A.R) for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**

**Date of hearing : 06/07/2018**
**Date of decision: 06/07/2018**

**ORDER NO. A/86861/2018**

***Per : Dr. D.M. Misra***

This is an appeal filed against the Order-in-Appeal No. PUN-EXCUS-001-APP-833-2017-18 dt. 16.12.2017 passed by the Commissioner (Appeals-I Central Tax. Pune.

2. Briefly stated the facts of the case are that the appellant had filed cash refund of accumulated cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004, for an amount of Rs.3,43,000/-. The

refund claim sanctioned to them on 18.5.2016. Later it came to the notice of the department that in respect of one of the shipping Bill No. 7673278 dt. 7.2.2015, the amount of refund of Rs.64,087/- was erroneous inasmuch as it was filed beyond the time limit prescribed for refund under the said provision. Consequently, the appellant had deposited the amount of Rs. 64,087/- along with interest and requested to allow them to take credit of the said refund amount in their cenvat credit amount. However, they were issued with a demand notice on 28.2.2017 for appropriation of the said amount along with proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the Commissioner (Appeals), who in turn, modified the impugned order by setting aside the penalty, but rejected their request for crediting the cenvat credit in their account.

3. Ld. Advocate for the appellant submits that initially inadvertently they have filed cash refund of Rs.64,087/- of accumulated cenvat credit availed on inputs used in providing export of parts of boiler beyond the time limit prescribed for claiming refund under Rule 5 of the Cenvat Credit Rules, 2004. Later, on being pointed out by the department, they paid the said amount of Rs.64,087/- with interest and requested to re-credit their cenvat credit account. It is his contention that in the event cash refund of accumulated cenvat credit is not admissible for whatsoever reason, the amount should be allowed to be credited again to their cenvat credit account.

4. I find that the short issue involved in the present appeal is whether the appellant are entitled to take credit of Rs.64,087/-, which was initially claimed as cash refund of accumulated cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. It is not in dispute that the accumulated cenvat credit refunded as cash was again deposited to the Government treasury with interest. In these circumstances, I do not find any reason not to allow credit of the amount of Rs.64,087/- to the appellant. Consequently, the impugned order is set aside to the extent of not allowing re-credit of the amount of Rs.64,087/- in their cenvat credit account and the appeal is allowed to the said extent.

(Pronounced in court)

***(Dr. D.M. Misra)***
***Member (Judicial)***

*SM.*