

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85447 of 2021

(Arising out of Order-in-Appeal No. DL/110/APPEALS THANE/MC/2020-21 dated 18.11.2020 passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai Zone, Mumbai)

Star India Private Limited

(Formerly Known as Fox Star Studios India Pvt. Limited
Prior to merger with Star India Pvt. Ltd.)
Star House, Urmi Estate,
95, Ganpatrao Kadam Marg
Lower Parel, Mumbai – 400 013.

.... Appellants

VERSUS

**Commissioner of CGST & Central Excise
Mumbai Central Commissionerate**

4th Floor, GST Bhavan,
115, M.K. Road, Church Gate
Mumbai – 400020.

.... Respondent

APPEARANCE:

Shri Vinay Jain, Advocate for the Appellants

Shri Aditya Pratap Singh Parihar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85176/2025

Date of Hearing: 16.10.2024

Date of Decision: 13.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Star India Private Limited [earlier Known as Fox Star Studios India Pvt. Limited prior to its merger with Star India Pvt. Ltd.], Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No. DL/110/APPEALS THANE/MC/2020-21 dated 18.11.2020 (referred to, as 'the impugned order') passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai Zone, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, *inter alia*, are engaged in the business of providing the services of granting theatrical and non-theatrical distribution rights in cinematographic films to various sub-distributors/ multiplexes. The appellants were registered under Service Tax authorities holding centralized Registration No. AAAC16386ASD002; and upon transition into GST regime are holding GSTN No. 27AAACN1335Q1Z8 with State Government of Maharashtra. The appellants avail CENVAT credit of duty/tax on inputs and input services used in provision of output services. The appellants have filed a refund application in the prescribed Form-R dated 28.06.2018 for refund of Rs.25,52,385/- being the closing balance of Education Cess and Secondary & Higher education cess lying as on 30.06.2017, which could not be transitioned as input credit under GST regime, on various grounds mentioned in their refund application. The said amount was initially carried forward by the appellants as transition credit under GST regime by filing TRAN-1 and also reflected in the ST-3 return filed for the period April, 2017-September, 2017 on 14.08.2017. Subsequently, on being made aware through the CGST (Amendment) Act, 2018 and Circular dated 02.01.2019 that the same is not permissible in GST regime, had reversed the credit of Rs.25,52,385/- by submitting revised TRAN-1 and filing revised ST-3 return on 29.09.2017. The appellants in support of their claim for refund under Section 11B of the Central Excise Act, 1944 as made applicable to service tax matter under Section 83 of the Finance Act, 1994 and had furnished requisite documents along with such refund application.

2.3 Upon receipt such refund application, the jurisdictional Assistance Commissioner (Refund), CGST & Central Excise, Mumbai Central Commissionerate had issued a deficiency memo dated 25.04.2019 seeking for certain details from the appellants and also offered personal hearing to them. In adjudication of the said refund claim, the Original authority had decided the refund claim preferred by the appellants as liable to be rejected vide Order-in-Original dated 19.07.2019.

2.4 In the appeal preferred by the appellants against the above Order-in-Original dated 19.07.2019, the learned Commissioner

(Appeals) vide impugned order dated 18.11.2020, had rejected such appeal by upholding the order of the original authority as follows:

"6...Further, under the GST Law, there is no levy of Krish Kalyan Cess and it had been clarified that Input Tax Credit of Krish Kalyan Cess could not be carried forwarded under the GST regime as 'CENVAT Credit' under Section 140(1) of the CGST Act, 2017 would not include the credit of Krish Kalyan Cess and therefore, credit of Krish Kalyan Cess was not admissible under the CGST Act, 2017.....From the above, it is observed that nowhere in the provisions of Rule 5 it provides for refund of any amount of Cenvat credit lying in balance or lying unutilized except in case of export of services, in the absence of any such provisions for refund of Krish Kalyan Cess lying in balance as on 30.06.2017 is therefore liable to be rejected.....

9. In view of above findings and following judicial discipline, I hold that the Appellant are not eligible to carry forward and set off of unutilized Krish Kalyan Cess with reference to Section 140 of the CGST Act, 2017 and therefore, they are not entitled to the refund of the same as per provisions of Section 11B of the Central Excise Act, 1944."

2.5 Being aggrieved with the above Order-in-Appeal dated 18.11.2020 being the impugned order herein, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted that they had closing balance of education Cess and Secondary Higher Education Cess as on 30th June, 2017, amounting to Rs.25,52,385/- and the same could not effectively be carried forward to GST regime, under transitional provisions, due to the objection raised by the department. Since the closing balance of Education Cess and SHE Cess could not be utilized and also not permitted to be transitioned to GST, the appellants had requested for refund of the same. However, their refund application was rejected by the authorities below.

3.2 Learned Advocate stated that the appellants had transitioned credit under Section 140(1) of the CGST Act, 2017; Explanations for 'Eligible Duties and Taxes' provided in Section 140 of the CGST Act 2017 which does not include credit of cess was made applicable for sub sections (3), (4), (5) and (6) of Section 140 of the CGST Act 2017. In the said explanations, it is specifically mentioned that these explanations are applicable for abovementioned sub-sections only.

Therefore, explanations for 'Eligible Duties and Taxes' provided in Section 140 of the CGST Act 2017 does not apply to carry forward of CENVAT credit under Section 140(1) of the CGST Act 2017. Thus, in terms of Section 140(1), the appellants are allowed to transfer the closing balance of CENVAT credit as on 30.06.2017 to GST regime through filing of TRAN-1 form. As per CENVAT Rules, the eligible CENVAT credit to be transitioned covered EC, SHEC and KKC. Accordingly, in the Form TRAN-1, the appellants had included the amount of KKC in the amount of Cenvat credit to be transferred. However, subsequently vide CGST (Amendment) Act, 2018, Section 140(1) of the CGST Act was amended retrospectively with effect from 1st July 2017. Further circular dated 2nd January 2019 clarified that in terms of amendment in section 140(1) of CGST Act, 2017 transition of cess credit is not allowed in the GST regime. Even after this amendment, the appellants were of the view that they are entitled for the transition of the credit of KKC. However, as an abundant caution, the appellants had reversed the credit of Rs. 25,52,385/- transitioned vide GST Form TRAN-1 pertaining to credit of KKC and also revised the ST-3 for April to June 2017.

3.3 Learned Advocate further submitted that that it is not in dispute that Education Cess & Secondary Higher Education Cess was leviable on taxable services, and the appellant had availed credit under the provisions of the CENVAT Credit Rules. With advent of GST, closing balance as on 30.06.2017, the appellants had an unutilized credit of Education Cess & Secondary Higher Education Cess of Rs. Rs.25,52,385/- as evidenced from ST-3 return for the of June-September, 2017. He further submitted that the refund cannot be denied on the allegation that there was no provision under Rule 5 of CCR, 2004 or CEA, 1944 for refund of unutilized CENVAT credit except Notification No. 27/2012-CE(NT) dated 18.06.2012. He further stated that it is pertinent to note that Section 142(9)(b) of CGST Act, 2017 squarely covers the refund application of the appellants wherein refund is sought for such amount of Cenvat credit which has been accrued additionally as a result of the revision of Service Tax return (ST-3).

3.4 In this regard, he cited the judgement of Hon'ble Supreme Court in the case of *Eicher Motors (2002-TIOL-149-SC-CX-LB)* and in *Samtel India Ltd. (2003-TIOL-40-SC-CX)* wherein it had been held that credit earned is vested right. In the cited case, he stated that the KKC credit is vested right which has been validly been earned by appellants and such right cannot be taken away with change in law unless specific provision which would debar from refund.

3.5 Further, learned Advocate also relied on the decision of the Tribunal in the case of Bharat Heavy Electricals Ltd (2020-TIOL-1341-CESTAT-DEL) wherein it was held that Education Cess and Secondary & Higher Education Cess cannot be transferred to GST account and as they were lying unutilized in their CENVAT credit account on 30.06.2017, the appellant in that case was held to be entitled to claim the refund thereof. He also cited the order of the Tribunal in the case of Emami Cement Ltd (2022-TIOL-280-CESTAT-DEL) wherein it was held that CENVAT credit is a vested right as held by the Hon'ble Supreme Court in *Eicher Motors Ltd. Vs. CCE 2002-TIOL-149-SC-CX-LB* and the decision in *Samtel India Ltd. (2003-TIOL-40-SC-CX)* and hence the appellant in that case was held to be eligible for refund of the balance amount of credit of Cess lying in CENVAT account. He had also relied upon the Final Order No.70111/2-22 dated 29.04.2022 of the Co-ordinate Bench of the Tribunal in the case of Dy. General Manager, BHEL Vs. Commissioner, CGST & CX, Kanpur. With the above submissions and those made in the grounds of appeal, learned Advocate prayed for allowing the appeal, with consequential relief.

3.6 Learned Authorized Representative (AR) appearing for Revenue, 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 Rule 5 of the CCR, the appeal for refund of CENVAT credit of Education Cess & Secondary Higher Education Cess in cash under Section 11B *ibid*, is not permissible. In this regard, he relied upon the order of the Hon'ble Bombay High Court in the case of *Gauri Plasticulture Vs. Commissioner of Central Excise, Indore-2019 (30) G.S.T.L. 224 (Bom.)*. Accordingly, he submitted that the impugned order is

sustainable in law and prayed for rejection of the appeal filed by the appellants.

3.7 Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused carefully.

4. The short issue for determination before the Tribunal is whether refund of CENVAT credit arising out of balance of Education Cess and Secondary & Higher Education Cess as per the revised ST-3 return for the month of June-September 2017, is refundable under sub-sections (3) and (9) of Section 142 of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944?

5.1 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 (CCR) 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.*

xxx xxx xxx xxx

(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:....."

5.2 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 are 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 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.

6. 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, in taking credit of input and had also complied with for payment of duty/CENVAT credit in their periodical returns, the relevant one, which was filed for the month of June, 2017 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.

7. 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 Sections 142(3) and 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 fulfillment of unjust enrichment angle in the case of the present refund, as the authorities below have not raised any objection with respect to these. Further, the appellants have also submitted that the amount claimed as refund has not been passed to any other person and the amount of Rs.25,52,385/- reversed has been shown in their books of accounts and the return filed with the department.

8.1 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.

8.2 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 GST scheme and the see whether such cash refund of CENVAT credit, duty etc., during its migration to GST regime as provided under Section 142 of the CGST Act, 2017 is proper and legally sustainable.

9.2 It is known very well that the taxation of goods and services in India has, hitherto, been characterized 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.

9.3 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.

9.4 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.

9.5 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."*

9.6 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.*

9.7 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 contained 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 assessee 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 the learned AR had argued 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 unutilized 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 fact of the present case before me is 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 states that 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

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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. I find that in these decisions the issues have not been examined in detail with respect to legislative provisions, as discussed herein above and hence those decisions are distinguishable to this extent with the present case.

10.7 I also find that the Co-ordinate Bench of this Tribunal in the Final Order No.70111/2022 dated 29.04.2022 in Excise Appeal No.70496 of 2019 had on the basis of decision in the case of *Emami Cement* (supra), have held that rejection of refund of accumulated balance amount of credit on education cess, secondary and higher education cess and Krishi Kalyan cess by original authority and upheld by the Commissioner (Appeals-Thane) cannot be legally sustained and set aside the impugned order of rejecting the appeal filed by the appellants in that case.

10.8 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) to the extent it has rejected the refund of excess CENVAT credit, which is contrary to the legal provisions of Section 142(3) and Section 142(9)(b) of the CGST Act, 2017 and thus, it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 18.11.2020, the appeal is allowed in favour of the appellants, with consequential relief, with respect to refund of excess CENVAT credit of Rs.25,52,385/- payable to the appellants.

12. In the result, the impugned order dated 18.11.2020 is set aside and the appeal filed by the appellants is allowed by way of refund of Rs.25,52,385/-, as per law.

(Order pronounced in the open court on 13.02.2025)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha