

Credit admissible under erstwhile laws available as refund under GST regime - CESTAT

30 September 2021



Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) observed that the appellant had paid the Countervailing Duty (CVD) and Special Additional Duty (SAD) and it was eligible to avail credit of the same under the erstwhile laws. However, as GST law was introduced by that, the appellant could not avail credit of the duty paid and filed a refund claim in relation thereto. Further, the CESTAT observed that the GST law provides that refund claim filed before, on, or after the introduction of GST law for any amount paid under the existing law, shall be disposed in accordance with the existing law and any amount eventually accruing shall be paid in cash. Considering the said provision, the CESTAT held that denying the said entitlement, on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate. Accordingly, the CESTAT set aside the order rejecting the sanction of refund of creditable duties (CVD and SAD) duty paid by the appellant.

Facts of the case

- The appellant¹ is engaged in the manufacture of excisable goods. It was granted advance license for duty free imports.
- As certain conditions of the license were not fulfilled by the appellant, it had approached the appropriate authority for redemption of Export Obligation (EO) under Export Obligation Period (EOP) of the said licence.
- The appellant was directed to pay applicable custom duties (BCD+CVD+SAD etc) which were foregone due to the advance license, along with interest and penalty.
- The appellant was eligible to take credit of CVD and SAD paid on the said imports². However, as GST law was introduced by that time, the appellant couldn't avail credit of the duty paid. Therefore, it filed an application seeking refund of the duty paid³ which has been made permissible even under new GST regime⁴.

- The appellant was granted refund against which the Department had filed an appeal before the first appellate authority. The said appeal of the department was allowed. Being aggrieved the appellant filed present appeal before the CESTAT.

CESTAT Delhi observations and ruling⁵:

- **Entire duty was paid by the appellant:** The entire customs duty with respect to the inputs imported by the appellant stands fully deposited by the appellant not only along with interest but also with the penalty as was directed to be paid while seeking the said redemption.
- **Appellant was entitled to avail credits:** These admitted facts are sufficient to hold that the appellant became entitled to avail CENVAT credit of the CVD/SAD paid on the imported inputs⁶.
- **Admissible credit to be refunded:** The credit of duty paid by the appellant could not be availed due to the erstwhile law i.e.,

¹ Flexi Caps and Polymers Pvt Ltd

² as per erstwhile CENVAT Credit Rules, 2004

³ In terms of Section 11B of Central Excise Act, 1944

⁴ Section 142(8)(b) of CGST Act, 2017

⁵ Final order No. 51825/2021 dated 15 September 2021

⁶ in terms of Rule 3 of CENVAT Credit Rules, 2004

Central Excise Act, 1944 being taken over by the new GST law. Further, the GST law provides that the refund claim filed before on or after the introduction of GST law for any amount paid under the existing law, shall be disposed in accordance with the existing law and any amount eventually accruing shall be paid in cash⁷.

- **Denying entitlement not appropriate:** In view of the provisions, denying the said entitlement, on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate. As the requisite duty stands paid in full by the appellant, it entitles the appellant to have credit thereof though in the form of cash in terms of the provisions of the new law.
- **Rejection of refund is beyond intention of legislature:** The view formed by Commissioner (Appeals) while rejecting the refund is not appropriate and is beyond the intention of the Legislature. Further, the appeal before Commissioner (Appeals) was not maintainable under GST Act for a refund application which was filed under the erstwhile law. The appeal as such was not

maintainable therefore, the order under challenge cannot sustain and needs to be set aside.

Our comments

The Apex Court in the case of Eicher Motors had held that credits earned by the appellant were a vested right and will not extinguish with the change of law unless there was a specific provision which would debar such refund. Further, on similar issue in the case of M/s Bharat Heavy Electricals Ltd, the Delhi bench of CESTAT had held that there is no provision in the GST law that such credits would lapse and therefore a taxpayer is eligible for the cash refund of the cesses lying as CENVAT credit balance.

This is a welcome ruling by the CESTAT and will help provide relief to businesses at large which are proceeding to redeem their licenses upon payment of duty. Further, the judgment is also likely to set precedence in similar matters.

⁷ Section 142(3) of the CGST Act, 2017

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