(2023) 03 CESTAT CK 0020

Customs, Excise And Service Tax Appellate, Hyderabad

Case No: Excise Appeal No. 30041 Of 2022

M/S. Tecumseh Products India Private Limited	APPELLANT
Vs	
Commissioner Of Central Tax	RESPONDENT

Date of Decision: March 17, 2023

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 3, 3(1), 3(vii), 5
- Central Goods And Service Tax Act, 2017 - Section 81, 92, 93, 94, 140, 140(1), 140(1)(a), 140(3), 140(5), 142(3), 140(8), 142(9)
- Central Excise Act, 1944 - Section 2(12), 11B, 11B(2)
- Finance Act, 2007 - Section 91, 93, 126, 128, 136, 138

Hon'ble Judges: Dr. Rachna Gupta, Member (J)

Bench: Single Bench

Advocate: Siva Rajan, V.R. Pavan Kumar

Final Decision: Dismissed

Judgement

Dr. Rachna Gupta, J

1. The appellant in the present case is engaged in manufacture of compressors. On implementation of Central Goods and Service Tax (GST) regime, while migrating thereto the appellant carry forward Rs.18,20,555/- as the available balance of excise duty, Service Tax, Education Cess (EC) and Secondary Higher Education Cess (SHEC) vide GST Tran-1 as prescribed under section 140 (1) of Central Goods and Service Tax Act, 2017 (CGST Act) on 26.12.2017. It was clarified to the appellant that the eligible duties allowed to be transitioned does not include Cess by amending section 140 (1) (a) of CGST Act retrospectively. The appellant reversed the aforesaid balance/credit under protest and later filed the refund application date 27.06.2020 for the aforesaid amount of Rs.18,20,555/- (the amount of Cess). The said refund claim was proposed to be rejected vide Show Cause Notice No.18/03/2020 dated 03.08.2020 on the ground that there is no provision in Cenvat Credit Rules, 2004 (CCR 2004) nor under the provisions of Section 11B of Central Excise Act, 1944 (CEA 1944) mandating cash refund of the Cess in respect of which the balance in Cenvat Credit could not be utilized. The said proposal was initially confirmed vide Order-in-Original No.02/2020-21 dated 07.09.2020 on the grounds that there is no provision for refund of Cenvat Credit except under Rule 5 of CCR 2004 nor the present case is covered under section 142 (9) of CGST Act, 2017 and that the refund claim was held to be barred by time. The appeal thereof has been rejected by Commissioner (Appeals) vide Order-in-Appeal No.020-21-22 dated 15.12.2021 being aggrieved the appellant is before this Tribunal.

2. I have heard Mr. Siva Rajan, ld. Counsel for the appellant and Mr. V.R. Pavan Kumar, ld. Authorised Representative for the Revenue.

3. Ld. Counsel for the appellant has mentioned that amount in question is the amount of Cenvat Credit of EC & SHEC which was lying unutilized from 01.03.2015 onwards. It is mentioned that vide Notification No.15/2015 dated 1st March, 2015 the goods were made exempted from the payment of EC & SHEC w.e.f. 1. 03.2015 and services were made exempted with effect from 01.06.2015 vide Finance Act, 2015 due to which the aforesaid amount was lying unutilized since then. Ld. Counsel impressed upon that the provisions of limitation Act are not applicable to the case in hand. The decision of Hon'ble Apex Court in the case of Hongo India (P) Ltd. reported in 2009 (236) ELT 417 (SC) is impressed upon. It is further submitted that otherwise also the relevant date in terms of Section 11 B of CEA 1944 would have been 30th August, 2018 on which date Section 140 of CGST Act was amended with retrospective effect. It is further submitted that since EC & SHEC were lapsed way-back in 2015 itself, there was no provision for the cross-utilization of these Cesses in pre-GST era and the same were also not liable for refund. However, the authority has erred in holding the carrying forward of the amount to GST era for the reason that the refund under section 142 (3) of CGST Act cannot be claimed for Cenvat Credits of duty for it to not to be an eligible duty. It is submitted that the adjudicating authorities below have incorrectly understood the provisions of law and the order under challenge is passed without the proper application of mind. Ld. Counsel further submitted that Section 142 (3) of CGST Act covers the case of appellant as the CESS balance is always the part of Cenvat Credit. There is no denial that the balance in question for the period upto 30th June, 2017 was duly carried forward in the in the statutory returns. Merely because CESS cannot be transitioned to GST for utilization, the refund of same cannot be rejected.
3.1 The appellant has relied on the following judgments:-

(a) M/s Jain Vanguard Polybutene Ltd Central Excise Appeal No. 45/2010 decided on 28 June 2010 by Bombay High Court affirmed by Supreme Court in SLP 10805/2011 dated 12.7.2011.

(b) Union of India v Slovak India Co. Pvt. Ltd. -2006 (201) ELT 559 (Kar).

(c) Union of India v. Slovak India Co. Pvt. Ltd. -2008 (223) ELT A170 (SC)

(d) Rama Industries Ltd. v. Commissioner of Central Excise, Chandigarh passed by Hon'ble High Court of Punjab & Haryana in Commissioner of Customs Appeal No. 15 of 2009 dated 10.02.2009.

The main contention of the learned Counsel of the appellant is that Rule 5 of CCR, 2004 allows refund in cases where for any reason adjustment of accumulated credit is not possible against duty on final products cleared for home consumption. The closure of their factory is well covered by the phrase "for any reason". The Counsel stressed that the above judgments of the Tribunal and High Courts have allowed refund of unutilized CENVAT Credit in similar cases. In the case of Slovak India Co. Pvt. Ltd. (supra), the decision of the Karnataka High Court was even affirmed by the Hon'ble Apex Court and the department's SLP was dismissed and, therefore, the sub-ordinate courts have to interpret the law as is held by the Hon'ble Apex Court. The appellants have also stated that the purchaser of their factory i.e. M/s. New Age Fire Protection Industries Pvt. Ltd. issued a letter stating that all benefits, entitlements and liabilities arising prior to 28.12.2010 shall be solely to the account of appellants only.

4. It is finally submitted that the cash refund of Cenvat credit is allowable despite absence of any specific provision for refund under the erstwhile law as the same is

covered by the transitional provision in Section 142 (3) of CGST Act. Learned Counsel submitted that Adjudicating Authority has wrongly relied upon the decision of M/s. Gauri Plasticulture Pvt. Ltd. vs. Commissioner of Central Excise, Indore reported in 2019 (6) TMI 820 [2019 (30) GSTL 224 (Bom.)]. With these submissions the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

5. While rebutting these submissions, ld. D.R. has mentioned that in terms of section 142 (3) of CGST Act, 2017 the amount claimed as refund should be an amount eventually accruing to the assessee and the refund claim has to be disposed of in accordance with the provisions of the existing law i.e. the CEA 1944, section

11 B(2) thereof. Hence, there is no independent right to claim refund of any unutilized Cenvat under section 142 (3) of CGST Act without fulfillment of conditions prescribed under CEA 1944. It is further submitted that present, otherwise, is a case of refund of unutilized CESS, EC & SHEC for which there is no provision in section 142(3) of CGST Act or in CEA 1944 or even in CCR 2004.

6. Ld. D.R. further impressed upon that the claim has been hopelessly barred by time. EC & SHEC extinguished with effect from 01.03.2015 but the appellant remained silent for claiming the refund thereof since then and the claim in question dated 27. 06.2020 is the one as is filed after five and a half years of the aforesaid date. There seems no reason for the extension of relevant date from 01.03.2015 to 30.08.2018. All the decisions relied upon by the appellant are impressed upon to be not applicable to the facts and circumstances in present appeal. The distinguished fact being the claim of refund of unutilized credit of such CESS (EC & SHEC) which extinguished from 01.05.2015. With these submissions, no infirmity in the order under challenge is impressed upon and the appeal is accordingly, prayed to be dismissed.

7. Having heard the rival contentions of the parties.

8. The moot question to be adjudicated in the present case is: “Whether the cash refund of Cenvat credit of Cess in the form of Education Cess (EC) and Secondary Higher Education Cess (SHEC) is permissible as the assessee was unable to utilize the said credit.”

For the purpose, foremost, I observe that Cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing suggested by the name of the cess. In the present case, it is related to education. Cess is generally for such levy which is for some special administrative expense as shall be suggested by the name of the cess. Education cess was levied by virtue of Finance Act No. 2 of 2004 in Section 92 to 94 thereof to be charged as a duty of excise with an objective to fulfill commitment of the government to provide a finance universalized quality basic education. Section 93 thereof reads as follows:

93. Education Cess on Excisable Goods

(1) The Education Cess levied under Section 81, in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), being goods manufactured or produced, shall be a duty of excise (in this section referred to as the Education Cess on excisable goods), at the rate of two per cent, calculated on the aggregate of all duties of excise (including special duty of 43 excise or any other duty of excise but excluding Education Cess on excisable goods) which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under the provisions of the Central Excise Act, 1944 (1 of 1944) or under any other law for the time being in force.

(2) The Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 or the rules, as the case may be.”

(emphasis supplied)

9. The Central Government introduced the secondary and higher education cess at the rate of 1 per cent of the total excise duty under Sections 126 and 128 of the Finance Act, 2007, which are reproduced hereunder:

"126. (1) Without prejudice to the provisions of subsection (12) of section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Secondary and Higher Education Cess, to fulfil the commitment of the Government to provide and finance secondary and higher education.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilize, such sums of money of the Secondary and Higher Education Cess levied under subsection (12) of section 2 and this Chapter for the purposes specified in subsection (1) as it may consider necessary. X

XXXXX XXXXXX XXXXXX XXXXXX

128. (1) The Secondary and Higher Education Cess levied under section 126, in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985, being goods manufactured or produced, shall be a duty of excise (in this section referred to as the Secondary and Higher Education Cess on excisable goods), at the rate of one per cent., calculated on the aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess chargeable under section 93 of the Finance (No. 2) Act, 2004 and Secondary and Higher Education Cess on excisable goods) which are levied and collected by the Central Government in the Ministry of Finance 44 (Department of Revenue), under the provisions of the Central Excise Act, 1944 or under any other law for the time being in force.

(2) The Secondary and Higher Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods, under the Central Excise Act, 1944 or any other law for the time being in force and the Education Cess chargeable under section 93 of the Finance (No. 2) Act, 1944.

(3) The provisions of the Central Excise Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Secondary and Higher Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 or the rules made thereunder, as the case may be."

Thus, no doubt the Cess are the part of the excise duty.

I observe that the levy of EC and SHEC was however dropped and deleted by the Finance Act, 2015.

10. The second question which arises is as to whether the cess are cenvitable. The only provision permitting Cenvat credit of excise duty paid is Rule 3 of Cenvat Credit Rules:

Rule 3 of the CENVAT Credit Rules, 2004 (CCR, 2004), provides that a manufacturer or a purchaser of final products or a provider of output service shall be allowed to take Cenvat credit of the duties specified in said Rule 3 of CCR, 2004. Sub-clause (vi) and (via) of the Rule 3(1) of CCR, 2004 reads as follows:

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) xxxxxx

(v) xxxxxx

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) xxxxxx

(viia) xxxxxx

(viii) xxxxxx

(ix) xxxxxx (ixa) xxxxxx (ixb) xxxxxx

(x) xxxxxx (xa) xxxxxx

(xi) xxxxxx

Thus, it is clear that statute makes Education Cess and Secondary and Higher Education Cess as Cenvatable.

11. I further observe that sub-rule (vii) of Rule 3 of CENVAT Credit Rules, 2004, specifically provided that CENVAT Credit in respect of Education Cess and Secondary and Higher Education Cess shall be utilised only towards the payment of Education Cess leviable on the taxable services only and not against the normal excise duty. Thus CENVAT Rules, 2004 clearly restricted the utilisation of Education Cess and Higher and Secondary Education Cess on the output tax on goods and services and not against the normal excise duty or service tax liability. It is not disputed even before me that cross utilisation of CENVAT Credit in the form of Education Cess and Secondary and Higher Education Cess against normal service tax and excise duty liability was not allowed.

12. The controversial part in the present case is that the unutilized part of EC and SHEC lying to the credit of the appellant in his ledger continued even after the levies were omitted by the Finance Act, 2015 w.e.f. 01.03.2015 that too up to 13.06.2017 and thereafter the appellant had transferred the same through GST TRAN-1 to the GST regime w.e.f. 01.07.2017. Though on being pointed out by the department, the appellant reversed the same, however, claimed the refund thereof. It is observed that education cess and secondary and higher education cess are to be taken and utilized for the purpose of payment, respectively, of the said cesses, only. Since Education Cesses are not levied under the GST Act, the same is not meant to be transitioned to the electronic credit register in the GSTN.

13. Further, I observe that the definition of 'eligible duties and taxes' as per the explanation 3 under Section 140 of the CGST Act, 2017 was amended with retrospective effect from 01.07.2017 whereby it is specified that cesses are excluded from the definition of 'eligible duties and taxes', Thus, the credit is ab initio not available for utilization for GST. In view of the above, cesses are not be transitioned through TRAN-1, as per the transitional provisions specified under CGST Act, the credit balances not transitioned to GST regime shall lapse, and, as such, the argument of the appellant the impugned credits never lapse, as there is no provision retaining the same is not sustainable. The appellant cannot circumvent the said legal provision through the route of 142 (3) of the CGST Act. This section reads as follows:

"(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 an 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"

The perusal of this provision makes it clear that any claim of refund even under CGST has to be dealt with in terms of the provisions of Central Excise Act, specifically Section 11B(2) thereof. The provision reads as follows:

(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 current account 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:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

A bare perusal of this provision denotes that instead of crediting the amount of refund to the fund, it can be paid to the applicant seeking refund, if such amount is relatable, inter alia to 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 The word refund is defined in the Explanation and it says that it includes rebate of duty of excise on excisable goods. Thus this section also do not talk about refund of cess after the cess stands omitted.

14. In addition to Section 11B, the only other provision for refunds in existing laws had been Rule 5 of CCR, 2004. To my understanding the interpretation of Rule 5 of CCR, 2004 is that where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification. Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty.

15. I am of the opinion that there cannot be any other reasonable interpretation in the manner of reading this rule. The rules starts with the phrase “where any inputs are used in final products which are clear for export”, thus the first condition is that the final products must be exported. Admittedly the same is not the fact for the present case. It is the settled principle of interpretation that the legislative instrument has to be read as a whole. The phrases in the sentences have to be read in their cogent sense, thus, Rule 5 also has to be read as whole and not in parts. The whole conveys only one sense i.e. refund of unutilized credit is only permissible in case of export of goods and not for any other reason. I draw my support from the decision of Hon’ble Apex Court in the case of Union of India and Ors. Vs. Ind-Swift Laboratories Limited reported as 2011 (265) E.L.T. 3 (S.C.)wherein the Hon’ble Apex Court summarized the legal position as follows:

“20. A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in CST v. Modi Sugar Mills Ltd. wherein this Court at AIR para 11 has observed as follows:

“11. .....In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed, it cannot import provisions in the statutes so as to supply any assumed deficiency."

16. This Tribunal also in the case of Steel Strips Ltd. Vs. Commissioner of Central Excise, Ludhiana reported as 2011 (269) E.L.T. 257 (Tri.) has held that no equity or good conscience influence fiscal codes without the same being embodied to statutory

provisions. The Larger Bench of this Tribunal also held that the plea of injustice or hardship cannot be raised to claim a refund in the absence of statutory mandate. This decision was dealt with by Hon'ble High Court of Mumbai in the case of Gauri Plasticulture Pvt Ltd. (supra) wherein it was held that Rule 5 of CCR, 2004 is related to manufacture in the sense that where any input or input service is used in the manufacture of final product which is cleared for export or used in intermediate product cleared for export or used for providing output service which is exported, then only the Cenvat credit in respect of input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of duty of excise on any final product cleared for home consumption or for export on payment of duty or service tax on output service. If for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by Central Government by way of a notification.

17. In the present case Notification No. 14 and 15 of 2015 exempted all goods and services from the levy of EC and SHEC from 01.03.2015 and 01.06.2015 respectively. Both these notifications were challenged before Hon'ble High Court of Delhi in the case of Cellular Operators Association of India and Ors. Vs. Union of India and Another reported as 2018 (14) G.S.T.L. 522 (Del.), while upholding both the notifications Hon'ble High Court held that the Cenvat credit of EC and SHEC which could have been availed till the cutoff date had lapse to the Government and thus, cannot be cross utilized as against the excise duty and service tax. The levy having been withdrawn in the Year 2015, the availed credit could neither be utilized post 2015 nor can it be transitioned into Goods and Service Tax Act, 2017 regime. Hon'ble Apex Court in the case of Union of India v. Uttam Steels Ltd., (2015) 13 SCC 209 has held that w.e.f. 01.07.2017 the onset of CGST Act cannot be treated as revival or extension of limitation when claim itself becomes a dead claim. Though the appellant had placed reliance upon the decision of Eicher Motors Ltd. Vs. Union of India 1999 (106) ELT 3 (S.C.) but the said decision has been distinguished by Hon'ble Delhi High Court in Cellular Operators Association of India (supra) case by holding that with the levy of EC and SHEC being taken away in the year 2015 itself, it amounts to the facility for working out the earned credit to have been taken away and hence, the possibility of continuing the right is also held to have seized. Thus I hold that the balance of EC and SHEC credit available on inputs lying before 01.03.2015 cannot be utilized for payment of excise duty. Though Notification No. 12/2015 dated 30.04.2015 the Cenvat has taken on or after 01.03.2015 of EC @ 2% and SHEC @ 1% to be utilized for payment of duty of excise. But in the present case the Cenvat of Cess paid prior March, 2015 was never taken till the onset of CGST Act on 01.07.2017.

18. Coming to the transitional provisions of CGST Act, 2017 much emphasized by the appellant, I observe that transitional arrangement for input tax credit is given under Section 140 of CGST Act. This section comprises of 10 sub-sections and explanations 1, 2 and 3 thereafter.

19. The Explanation 1 refers to Sub- sections (1), (3), (4) and (6), because these four Sub-sections use and employ the term "Eligible Duties" and Explanation 1 confines "Eligible Duties" to 7 specified duties under that Explanation 1, namely Additional Excise Duty under Additional Duties of Excise (Goods of Special Importance) Act, 1957, Additional Duty under Custom and Tariff Act, 1975, Additional Custom Duty on Taxable Articles, Duty of Excise in the First Schedule to the Central Excise Tariff Act, 1985 and National Calamity Contingency Duty under Section 136 of the Finance Act, 2001, etc. Therefore, only the seven specified duties in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the appointed date ie. 1.

07.2017 are held eligible to be carried forward and adjusted against GST Output Tax Liability with reference to Explanation 1. Apparently, Education Cess and Secondary and Higher Education Cess or Krishi Kalyan Cess are absent from said seven categories in this Explanation. Therefore, the plain meaning is that Cesses in question are not covered under Explanation 1 of Section 140 of CGST, the transitional provision, to cover the Cesses for being carried forward with GST.

20. Similarly, Explanation 2 refers to Sub-sections (1) and (5) of Section 140 even though the words "Eligible Duties and Taxes" jointly are not used in Sub-section (1) of Section 140, but are used only in Sub-section (5) of Section 140, and again the eight specified "Eligible Duties and Taxes", first seven are repeat of Explanation 1 "Duties and the eighth one is Service Tax, eligible to be set off and carry forward under CGST Act, 2017. Referring to Sub-section (5), which uses the terms "Eligible Duties and Taxes" will make this purpose of inserting Explanation 2 in Section 140 clear because Sub-section (5) only permits such credit to be taken even after such input services are paid before the appointed date of 01.07.2017, but invoices in respect of them are received after the said appointed day of 01.07.2017 for which a time period of 30 days is prescribed and the said period can still be extended by another 30 days for reasons to be recorded by the Commissioner.

21. Therefore, the Legislature has very carefully specified the duties and taxes in respect of stocks held for which requisite declaration in Form TRAN-1 to be submitted as on 30th June 2017 and also the service tax in respect of services which are input services received before 30th June 2017 of which invoices may not have been received before that date and therefore, a relaxation of 30 days is provided for them. Therefore, the Court by any intendment or implication cannot include the aforesaid three types of Cesses, as are in question, in the terms of "Eligible Duties and Taxes" or "Eligible Duties" with reference to Explanation 1 and Explanation 2 to be carried forward and transitioned under Section 140 of the Act.

22. The Legislature took further care by inserting Explanation 3 which is couched in negative terms and for removal of any doubt, it further clarified that such eligible duties and taxes will exclude any Cess which has not been specified in Explanations 1 and 2. But, as noted above, the imposition or levy of Education Cess and Secondary and Higher Education Cess and Krishi Kalyan Cess did not operate after 01.07.2017. Explanation 3, in our opinion, specifying that any kind of Cess will be excluded for the purpose of Section 140, makes the intention of the Legislature very clear and Sub-section (8) of Section 140, which was emphasized by the learned counsel for the appellant, is not excluded from the effect and operation of Explanation 3 of Section 140 of GST, Education Cess and Secondary and Higher Education Cess and Krishi Kalyan Cess are not included in Explanations 1 and 2 at all. The Departmental Circular dated 02.01.2019 with respect to clarifications regarding Section 140(1) of CGST Act, 2017, has rightly clarified this position with reference to Explanation 3 to Section 140 of the Act.

23. The above discussion is sufficient to hold that transitioning in the Electronic Credit Ledger, the amount of such Education Cess and Secondary and Higher Education Cess, does not entitle appellant/assess to utilize the said unutilised amount of Education Cess and Secondary and Higher Education Cess against the Output GST Liability. The "taking" of the input credit in respect of Education Cess and Secondary and Higher Education Cess in the Electronic Ledger after 2015, after the levy of Cess itself ceased and stopped, does not even permit it to be called an input CENVAT Credit and therefore, mere such accounting entry will not give any vested right to the Assessee to claim such transition and set off against such Output GST Liability after 01.07.2017. Sub- section (8) of Section 140 and for that other matter, any of the Sub-sections of

Section 140 are not the provisions in watertight compartments and do not operate in silos and a harmonious reading of various Sub- sections of Section 140, together with the three Explanations at the end of Section 140, so as to give a purposeful meaning for transition of the Input Tax Credit, against Output GST Liability. The different Sub-sections of Section 140 only identify the class of Assessee; but a common thread of entitlement to carry forward and set off runs through them, of course, subject to Explanations 1, 2 and 3 appended to Section 140 of the Act. If one carefully compares all Sub-sections of Section 140, one can discern that while all other Sub-sections talk of "entitled to take credit", Sub-section (8) uses the word "allowed to take". The utilisation of such credit, even if taken in Electronic Ledger and notified in Form TRAN-1, does not guarantee any such right of utilisation independent of other parts of Section 140 specially ignoring Explanation 3.

24. I found considerable force in the contention raised on behalf of the Revenue before us that credit of such Education Cess and Secondary and Higher Education Cess which could not be utilised against the Output Education Cess and Secondary and Higher Education Cess Liability, while the said impost was in force prior to Finance Act, 2015, became a dead claim in the year 2015 itself and therefore, there was no question of allowing a carry forward and set off after a gap of two years against the Output GST Liability with effect from 01.07.2017.

25. As far as the Section 142(3) of CGST Act is concerned as already appreciated above that the refund has to be dealt with in accordance of Section 11B as already explained above that refund of EC and SHEC, in the given circumstance, shall not be available under Section 11B of Central Excise Act, 2002 nor even under Rule 5 of CCR, 2004 (as already discussed above). No question of any kind of eligibility of the appellant to claim the refund of such credit which is nothing more than a dead claim, at all arises. I rely upon the decision of this Tribunal in the case of Commissioner of Central Excise & Service Tax, Tirupati Vs. Rani Plastic Pipe Industries reported as 2020 (6) TMI 356 – CESTAT, Hyderabad, wherein, while relying upon the earlier decision of this Tribunal in the case of Pheonix Industries Pvt. Ltd. reported as 2015 (330) ELT 303 (Tri.-Mum.), it was held that there is no provision in the statute for refund of Cenvat credit if the assessee is not able to utilize it for any other purpose. The decision of Hon'ble High Court of Karnataka in the case of Slovak India Trading Company Pvt. Ltd., reported as 2006 (201) ELT 559 (Kar.) was distinguished. The another decision of this Tribunal by Hyderabad Bench in the case of M/s. Mylan Laboratories Ltd. Vs. Commissioner of Central Tax and Customs as was decided on 25.02.2020 vide Final Order No. 30689/2020 wherein the decision in the case of Gauri Plasticulture Pvt. Ltd. (supra) was relied upon and it was held that the cash refund is not permissible to assessee in terms of Section 11B(2) Central Excise Act where the said assesses was unable to utilize the credit on inputs, at the relevant time.

26. In the light of entire above discussion, I do not find any reason to differ from those decisions. As a result thereof, I do not find any infirmity in the order under challenge vide which the refund claim for the amount of Cenvat credit of EC and SHEC, paid prior March 2015, has been denied to the appellant as was filed under the garb of transitional provisions of CGST Act, 2017. Consequent thereto, the order is upheld and the appeal stands dismissed.