रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : **V2(72)37/Ahd-III/2015-16/Appeal-I** 4776 to 4780

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-206-16-17**

दिनाँक Date : **23.01.2017** जारी करने की तारीख Date of Issue 2/2/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **87/Ref/Cex/APB/2015**Date: **07.04.2016** Issued by: Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Volant Steel PVt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS) AHMEDABAD अहमदाबाद

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेंदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) **धारा 11 डी के अंतर्गत निर्धारित रकम**

(ii) **सेनवैट जमा की ली गई गलत राशि**

(iii) **सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

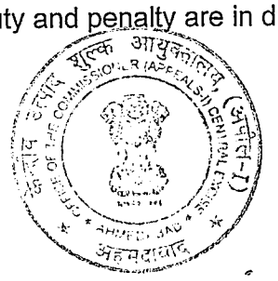
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) ,इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

This appeal has been filed by M/s Volant Steel Pvt Ltd, 2372, Volant Station Road, Talod, Dist. Sabarkantha, Gujarat (hereinafter referred to as "the appellant") against Order-in-Original No. 87/Ref/CEx/APB/2016 dated 07.04.2016 (hereinafter referred to as" the impugned order") passed by the Deputy Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as ("the adjudicating authority).

2. Facts of the case is that the appellant had filed a refund claim of Rs.5,54,318/-on 08.01.2016, in terms of Rule 5 of Cenvat Credit Rules, 2004 (CCR), before the adjudicating authority in respect of unutilized Cenvat credit lying in RG 23 A Part-II register at the time of closure of their unit. A query memo dated 29.02.2016 was issued to the appellant for denying the refund claim as there is no provisions in the CCR for refund of such unutilized credit due to closure of factory. The said refund claim was rejected vide impugned order on the said grounds.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that the they had no opportunity to utilize the Cenvat credit as all the goods manufactured were exported and the refund claim in dispute is for the unutilized credit due to closure of the unit; that the appellant had cited various case laws before the adjudicating authority, however, he had not considered and discussed in the impugned order. The appellant has relied on the decision in the case of M/s Solvak India Tradint Co. Ltd, reported at 2006 (205) ELT 956 (Tri.Ban) and 2006 (201)ELT 559 (Kar) which has been upheld by the Hon'ble Supreme Court at 2008 (223) ELT A 170; Cases reported at 2010 (256) ELT 253, 2015 (326) ELT A 86 to 87 and 2015 (322 ELT 73.

4. A personal hearing in the matter was held on 09.01.2017 and Shri D.U.Chauhan, Authorized Representative appeared for the same. He reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case, submissions made by the appellant in the appeal memorandum and at the time of personal hearing. The core issue to be decided in the instant case is whether the appellant is eligible for refund of unutilized Cenvat credit lying in balance at the time of closure of unit, under the provisions of Rule 5 of CCR.

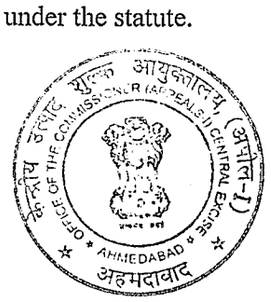
6. In the instant case, I observe that the refund claim was filed by the appellant, as they were not in position to utilize the credit due to closure of their unit. The contention of the adjudicating authority since there is no specific provision under Rule 5 for refund of unutilized Cenvat Credit due to closure of unit.

7. Amended Rule 5 of CCR with effect from 17.03.2012 stipulates that – "A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification.."

$$\text{Refund amount} = \frac{\text{(Export turnover of goods + Export turnover of services)}}{\text{Total turn over}} \times \text{Net Cenvat Credit}$$

8. Prior to 17.03.2012, the said Rule enumerates that where any input or input service used in the manufacture of final products/used in providing output service which is exported, the Cenvat credit in respect of input or input service so used shall be allowed to be utilized by the manufacture or provider of output service towards (i) duty of excise of any final products cleared for home consumption or for export on payment of duty; or (ii) service tax on output service, and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguard, conditions and limitation as specified.

9. From the above, it is very clear that the provisions of amended rule 5 *ibid* allows refund of Cenvat Credit when final/intermediate products cleared for export without payment of duty or output service exported without payment of service tax only. In other words, refund of Cenvat credit in any other circumstances mentioned therein the Rule *ibid* is not admissible. I further observe that prior to 17.03.2012, Rule 5 expressly allows refund only when "adjustment" is not possible to utilize Cenvat credit for clearing goods for home consumption or for export on payment of duty. However, after amendment, the said rule, only enumerates that refund of cenvat credit shall be allowed, where any input or input service used in the manufacture of final products/used in providing output service which is exported., Thus, the provisions of Rule 5 conveys only that refund of unutilized credit is only permissible in case of export of goods and not for any other reason. Further, I observe that under Rule 5, the refund of unutilized Cenvat credit allows subject to such safeguards, conditions and limitations as may be specified by the Central Government by Notification. Notification 5/2006-CE (NT) dated 14-3-2006, issued under Rule *ibid* prescribes the conditions and limitations for availing such refund. The basis of determining the refund amount is the export clearances of the final products as mentioned in the formula. The Notification provides for submission of various documents such as shipping bills etc. Rule 5 clearly states that refund shall be allowed subject to fulfilment of conditions prescribed. In the present case, the appellant has not filed the refund claim subject to conditions as prescribed; therefore, refund in such cases of closure of factory is not admissible as it is not provided under the statute.



10. The appellant has mainly argued that the issue involved in the instant case is decided by the Hon'ble High Court of Karnartaka in the case of M/s Stovec India Trading, reported at 2006(201) ELT 599, which was upheld by the Hon'ble Supreme Court of India-2008(223) ELT A 170 and also decided by Hon'ble Tribunal in the case of Century Rayon-Twisting unit, reported at 2015 (325) ELT 205; that in the judgments, it has been held that refund of untilized Cenvat credit in light of closure of factory is admissible.

8. I find that the decision of Hon'ble High Court of Karnataka has been distinguished in the judgments pronounced by Hon'ble Tribunal Delhi and Mumbai. In the case of M/s Modipon Ltd, reported at 2015 (324) ELT 718, it has been held by Delhi CESTAT that:

> *"6. We have considered the submissions from both the sides and perused the records. There is no dispute that the appellant's factory stopped production sometime in June, 2007 and at that time there was Cenvat credit balance of Rs. 2,35,86,612/- in their RG 23A Part-I and RT-23C pt. II account. In the appellants' application dated 27-11-2007, cash refund of the above Cenvat credit is sought by invoking Section 11B(2)(C). In our view, Section 11B is only for the refund of the duty paid either through cash or through Cenvat credit or of the Cenvat credit wrongly reversed which refund of duty paid either through cash or through Cenvat credit account is subject to the bar of unjust enrichment, the refund of wrongly reversed Cenvat credit is not subject to the bar or unjust enrichment. But this section cannot be invoked for cash refund of the unutilized Cenvat credit lying in the Cenvat credit account of a manufacturer at the time of closure of the factory. In fact, other than Rule 5 of the Cenvat Credit Rules, 2004, there is no provision either in Central Excise Act, 1944 or in any Rules made thereunder for cash refund of accumulated Cenvat Credit Rules, 2004. When a factory closes down, the Cenvat credit lying unutilized in its Cenvat credit account would lapse, unless the factory resumes production. In the event of the factory being taken over by another person, and resuming production, Rule 10 permits the transfer of Cenvat credit to the new owner subject to certain conditions. But there is no provision for cash refund of such unutilized credit.*
>
> *7. Rule 5 of the Cenvat credit rules permits cash refund of accumulated Cenvat credit only in the following circumstances :-*
>
> *(1) The Cenvat credit which has accumulated and whose cash refund is sought is in respect of inputs/input services used in the manufacture of finished goods which have been exported out of India under bond or letter of undertaking or used in intermediate products cleared for export.*
>
> *(2) The assessee is not in a position to utilize the Cenvat credit for payment of duty on finished goods cleared for home consumption or cleared for export under rebate claim.*
>
> *(3) The exports have not been made by claiming drawback or input duty rebate.*
>
> *8. In the present case, none of the above conditions are satisfied. Therefore, the Commissioner (Appeals) has rightly upheld the rejection of the cash refund of the accumulated credit. We are supported in our view of the Larger Bench judgment of the Tribunal in the case of Steel Strips (supra).*

9 By considering the said decision of M/s Solvak India Tradint Co. Ltd, the Hon'ble Tribunal, Mumbai in the case of M/s Phonix Industries Pvt, reported at 2015 (330) ELT 303 has held that:-

> *"7.1 The ld. Counsel states that Rule 5 enumerates 3 categories under which refund of unutilized Cenvat credit may be allowed i.e. (a) where the final product is exported, (b) where the final product is cleared for home consumption, (c) where for any reason such adjustments are not possible refund may also be allowed. Their case would be covered under (c) according to learned counsel.*
>
> *We do not agree with this reading of Rule 5. Rule 5 categorically states that where any*

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inputs are used in the final products which are cleared for export under bond or letter of undertaking, then the credit 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 Govt. by notification. The words "such adjustment" have to be read in context of the whole sentence. The words "where for any reason such adjustment is not possible" can only imply that refund in cash may be granted only when the Cenvat credit cannot be adjusted against duty on final products cleared for home consumption or for export on payment of duty. Any other interpretation would be against the scheme of Cenvat credit which is to prevent cascading in taxation. If the appellants' contention that refund may be granted on closure of factory is held to be valid, then there may be cases when the inputs are not even used in manufacture of the final product. Grant of refund in such cases would lead to an illogical result - that is, the duty paid on inputs is being refunded without their use in the manufacture of final products. This will amount to refund of Central Excise duty paid which has no basis in law.

7.2 The appellants have argued that there is no express provision in terms of Rule 5 which bars refund on closure of factory. We find that Rule 5 expressly allows refund only when "adjustment" is not possible to utilize Cenvat credit for clearing goods for home consumption or for export on payment of duty. There cannot be any other reasonable interpretation in the manner of reading this Rule. The Rule starts with the phrase "where any inputs are used in the final products which are cleared for export.." Thus the first condition is that the final products must be exported. The general principle of construction in canons of law is that a legislative instrument has to be read as a whole. The phrases in a sentence have to be read in their cognate sense. That is, Rule 5 has to be read as a 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."

10. The Hon'ble Tribunal in para 7.6 and 7.7 of above referred order further held that:

"7.6 We have also read the pronouncement of Hon'ble Supreme Court in the case of M/s. Jain Vanguard Polybutlene Ltd. in SLP 10805/2011 dated 12-7-2011. It reads "We find no reason to interfere in the impugned order in exercise of our jurisdiction under Act 136 of the Constitution. The Special Petition is accordingly, dismissed leaving the question of law open." Thus the judicial orders on the issue have not attained finality".

7.7 In Hariprasad Shivshankar Shukla v. A.D. Divikar - 2002-TIOL-447-SC-MISC-CB case the Hon'ble Supreme Court considered the use of the phrase for any reason whatsoever, occurring in Section 25 of the Industrial Disputes Act, 1947. The issue being considered was whether retrenchment compensation would have to be given on the termination of workman arising from the closure of the business. The Hon'ble Apex Court considered the definitions of retrenchment and the provisions of Section 25F ibid and came to the conclusion that compensation may not be granted in situation of bona fide closure of the business. It held that -

> *"In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondents. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."*

We may, therefore, with due respect to High Court's observation in the matter, in the case of the appellants and after detailed analysis have come to the conclusion that the refund claim does not have sanction of law."

11. In view of above discussion and applying ratio of the decisions cited in above para, I uphold the decision of the adjudicating authority. Therefore, I reject the appeal filed by the appellant. The appeal stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date: 23/01/2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad
By R.P.A.D.

To

M/s Volant Steel Pvt Ltd, 2372, Volant Station Road, Talod, Dist. Sabarkantha, Gujarat

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Mehsana, Ahmedabad-III
5. Guard file.
6. P.A (Commissioner-Appeals-I) file.