



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/504/2023 / 3260-6A
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-258/23-24 and 28.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.03.2024
(ङ)	Arising out of Order-In-Original No. 04/AC/Refund/2023-24/AM dated 12.5.2023 passed by The Assistant Commissioner, CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dishman Carbogen Amcis Ltd. Survey No. 47, Palki Sub Plot-1, Bavla Sanand Road, Village-Lodariyalang Ta. Sanand, Ahmedabad-382220

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



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।

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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।

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.

(2) 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 दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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. Registrar of a branch of any 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 आदेश 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 है ।



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 notwithstanding 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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 a court fee stamp of Rs.6.50 paise 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 is 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (46) खंड (Section) 11D के तहत निर्धारित राशि;
- (47) लिया गलत सेनवैट क्रेडिट की राशि;
- (48) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xlvi) amount determined under Section 11 D;
- (xlvii) amount of erroneous Cenvat Credit taken;
- (xlviii) amount payable under Rule 6 of the Cenvat Credit Rules.

(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।

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

The present appeal has been filed by M/s.Dishman Carbogen Amcis Ltd (earlier known as Dishman Pharmaceuticals & Chemicals Ltd.), Survey No.47/1, Nr. Sola Bridge, Village-Lodariyal, Taluka-Sanand, Ahmedabad-382220 (hereinafter referred to as 'the appellant') against the OIO No. 04/AC/Refund/2023-24/AM dated 12.05.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North (in short '*the adjudicating authority*').

2. The appellant has filed arefund claim of **Rs. 9,45,008/-** (Rs. 7,65,407/- for EOU Unit and Rs.1,79,601/- for DTA Unit) vide letter dated 27.02.2023 in respect of unutilized credit of Education Cess and Secondary & Higher Education Cess lying in balance in Cenvat Credit register/ ER-1/ER-2 for their EOU Unit and DTA Unit having Central ExciseRegistration No. AADCC1254EEM001 & AADCC1254EEM002 respectively. During the GST regime both these registrations were subsumed to GST registration No. GSTIN 24AADCC1254E1Z9 and having principal place of business at Dishman Corporate House, Iscon-Bopal Road, Ambli, Ahmedabad-380058. Later, M/s. Dishman Pharmaceuticals & Chemical Limited was amalgamated with M/s. Carbogen Amcis (India) Ltd vide Hon'ble High Court of Gujarat Order dtd 16.12.2016 on company petition no. 421 of 2016 and further changed to M/s. Dishman Carbogen Amcis Limited vide RoC Ahmedabad Certificate dated 27.03.2017.

2.1 The appellant filed the refund application in pursuance of CESTAT Order No. A/10198/2023 dated 06.02.2023 passed in case of M/s. USV Private Limited Vs. Commissioner of Central Excise & ST Daman, wherein Hon'ble CESTAT allowed the refund of accumulated and unutilized Cenvat Credit of Education Cess and Secondary and Higher Education Cess as per Rule 3 of Cenvat Credit Rules, 2004, as such credit could not be utilised due to introduction of Goods and Services Tax.

2.2 On verification of the details submitted by the appellant, it was observed that the appellant has submitted the copy of ER-1 for the Month of June-2017 for the Registration No. AAACD4164DEM009 and ER-1 for the Month of June-2017 for Registration No. AADCC1254EEM002 for which they have claimed the refund of unutilized Education Cess and Secondary & Higher Education Cess. On verification of the documents submitted, it was noticed that the appellant was registered in erstwhile regime with Central Excise Registration No. AADCC1254EEM002 with the name M/s. Dishman Pharmaceuticals & Chemicals Limited and filed ER-1 for Month of June-2017. However, in pursuant to Hon'ble High Court of Gujarat order dated 16.12.2016 and after their amalgamation M/s. Carbogen Amcis (India) Ltd they obtained the registration no. AADCC1254EEM002 and filed ER-1 for the Month of June-2017. As the registration No. AAACD4164DEM009 has been changed to AADCC1254EEM002, the appellant transferred the balance amount of Cenvat Credit including the total amount of Rs.1,19,736/- of Education Cess and Rs. 59,865/- of Secondary & Higher Education Cess. Further, for the registration No. AADCC1254EEM001 (EOU Unit) the closing balance was found to be Rs. 5,10,283/- for Education Cess and Rs.2,55,124/- for Secondary & Higher Education Cess respectively.



2.3 The Education Cess was levied under Section 91 read with Section 93 of the Finance Act, 2004 and Secondary & Higher Education Cess was leviable under Section 136 read with Section 138 of the Finance Act, 2007. The Education Cess levied under Section 91 read with Section 93 of the Finance Act, 2004 on excise duty was exempted on all goods falling under First Schedule to the Central Excise Tariff Act, 1985 vide Notification no. 14/2015-CE dated 01.03.2015. Similarly, Secondary and Higher Education Cess was leviable under Section 136 read with Section 138 of the Finance Act, 2007 on excise duty was also exempted vide Notification no. 15/2015-CE dated 01.03.2015. Accordingly, Education Cess and Secondary & Higher Education Cess were not leviable on goods with effect from 01.03.2015. Further, under Service Tax, Education Cess and Secondary Higher Education Cess were subsumed in the revised Service Tax rate when enhanced to 14% vide Finance Bill 2015 and as clarified under Circular No. 183/02/2015-S.T. dated 10.04.2015. Also, vide Notification No. 26/2015-CE & Notification No. 27/2015-CE dated 30.04.2015, exemption from Education Cess and Secondary & Higher Education Cess contained therein was also applied to DTA clearances of excisable goods from 100% EOU. Vide Notification No 12/2015-CE (NT) dated 30.04.15, third proviso was added to clause (b) of sub-rule (7) of Rule 3 of Cenvat Credit Rules, 2004 which reads as:

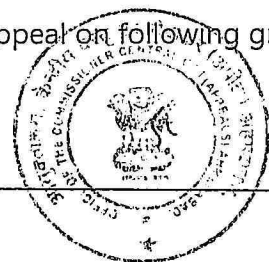
"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act"

2.4 It, therefore, appeared that the credit of Education Cess and Secondary & Higher Education Cess availed on and after 01.03.2015 on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 were available to be utilized for the payment of duty. And credit lying in balance as on 28.02.2015 cannot be refunded as the same are phased out. Even under the GST regime in terms of Explanation 3 of Section 140 of the CGST Act, 2017, there is no provision to carry forward any type of Cess. Thus, it appeared that the refund amount of Rs. 9,45,008/- (Rs. 7,65,407/- for EOU Unit and Rs 1,79,601/- for DTA Unit) claimed in respect of the balance credit of Education Cess and Secondary and Higher Education Cess lying unutilized, is not admissible.

2.5 A Show Cause Notice No. V/27-57/Refund/Dishman/2022-23 dated 19.04.2023 was issued to the appellant proposing rejection of the refund amount of Rs. 9,45,008/- in terms of Notification 14/2015-CE & Notification No. 15/2015-CE dated, 01.03.2015 and Notification No. 26/2015-CE & Notification No. 27/2015-CE dated 30.04.2015, read with Section 140 of the CGST Act, 2017.

3. The said SCN was adjudicated by the adjudicating authority vide the impugned order wherein the refund claim was rejected on the grounds of limitation as well as on merits.

4. Aggrieved by the impugned order, the appellant is in appeal on following ground;



- The appellant submitted a statement showing the TRAN-1 credit availed wherein it is clearly displayed that they haven't availed credit of Education Cess and Secondary Higher Education Cess through Tran-1 which was lying in balance as on 30-6-2017. The pass over of credit balances of E. Cess and SHE Cess was not allowed through the Tran-1, in terms of the Section 140 of the CGST Act, 2017. Hence, the appellant was unable to utilize the said credit lying in balance, and therefore, entitled for cash refund. Further accumulated balance of cesses lying unutilized as on 30.06.2017 is vested right of assessee and will not extinguish either with the change of law or in absence of any specific provisions of lapsing such balances.
- After scrutiny of the refund application, the sanctioning authority has observed that the period for which claim relates is in the month of June' 2017 and date of filing of refund claim is 24.02.23, and therefore, the refund claim is hit by the period of limitation of one year as prescribed under Section 11B of the Central Excise Act, 1944, read with clause 6 of Appendix of the Notification No.05/2006-C.E.(N.T.) dated 14.03.2006 and Section 83 of Finance Act, 1994. In this regard, the appellant places reliance on the judgement of the Hon'ble CESTAT in the case of USV Private Limited vs Commissioner of Central Excise & ST, Daman - 2023 (2) TMI 230 - CESTAT Ahmedabad, wherein in identical case, the Hon'ble Tribunal has set aside the order of the Revenue Department denying refund of Cenvat credit to the assessee. It is held that, "the assessee is legally entitled for cash refund of accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess as per Rule 3 of the Cenvat Credit Rules, 2004, as such credit could not be utilised due to the introduction of Goods and Service Tax. Further held that, such refund is not time barred. Also is the case of M/s. USV Private Limited (appellant) Hon'ble CESTAT, Ahmedabad, held that:
- *Observed that, the Appellant were not in a position to utilize Cenvat credit of Education Cess and Secondary and Higher Education Cess due to introduction of GST and further that, as per to Rule 3(1) clause (vi) and (via) of the Cenvat Credit Rules, the credit of Education Cess and Secondary and Higher Education Cess is clearly allowed.*
 - *That, the Appellant is legally entitled for Cenvat of Education Cess and Secondary and Higher Education Cess.*
 - *That, the Hon'ble High Courts in various cases have considered limitation and held that in case of refund of accumulated unutilized credit, limitation shall not apply.*
 - *Relied on the judgment of the Hon'ble Karnataka High Court in the matter of Union of India vs Slovak India Trading Co Pvt Ltd - 2006 (7) TMI 9- Karnataka High Court wherein it was held that the assessee can claim refund of unutilized credit when there was no manufacture in the light of closure of factory and limitation shall not apply.*
 - *Held that, the Appellant is entitled for cash refund of accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess and such refund is not time-barred and*
 - *Set aside the Impugned Order.*



- Once such credit is availed, and lying in balance, which is unable to be utilized for payment of any taxes or duties, due to onset of GST regime from 1-7-2017, then such education cess and Secondary and Higher education cess are required to be refunded in terms of the transitional provisions under Section 140 of the CGST Act, 2017, read with Section 11B of the Central Excise Act, 1944.
- The appellant therefore requested to sanction the refund claim, in view of above submissions.

4. Personal hearing in the matter was held on 15.02.2024 through virtual mode. Shri R. Subramanya, Advocate appeared on behalf of the appellant and reiterated the contents of the written submission. He also relied on Ahmedabad Tribunal's judgment in the case of USV Private Limited Vs CCE&ST, Daman and requested to allow the appeal in view of above decision.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the documents available on record. The issue to be decided in the present appeal is whether the appellant is entitled for cash refund of the accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess of Rs.9,45,008/-, lying in balance in Cenvat Credit register?

5.1 The appellant filed refund of Rs.9,45,008/- on 28.02.2023 which was rejected by the adjudicating authority on limitation as well as on merits. On merits, the adjudicating authority held that there has been no such provision under Section 11B of the Central Excise Act, 1944 or under Rule 5 of the Cenvat Credit Rules, 2004 to provide refund of unutilized credit amount of Education Cess and Secondary & Higher Education Cess which resulted due to exemption provided under various Notifications and which were not transitioned to GST regime as per Section 140 of the CGST Act, 2017.

5.2 It is observed that Rule 3(1) of the CCR, 2004 allows the credit of Cenvat Credit of Education Cess (EC) and Secondary Higher Education Cess (SHEC). Relevant provision is reproduced below;

Rule 3(1) of the Cenvat Credit Rules: "CENVAT credit-

(1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of – ...

(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);"

From the above Rule, under clause (vi) and (via), the credit of Education Cess and Secondary and Higher Education Cess is clearly allowed. However, the appellant could not utilize the CENVAT credit of EC & SHEC, as the levy of Education Cess & SHEC on goods and services discontinued w.e.f. 01.03.2015 and under GST regime there is no



provision to carry forward any cess under Section 140 of the CGST Act, 2017, hence, the appellant filed a claim seeking refund of such unutilized credit of EC & SHEC lying in balance.

5.3 The revenue rejected the claim on the grounds that vide Notification No.12/2015-CE(NT) dated 30.04.2015, third proviso was added to clause (b) of sub-rule (7) of Rule 3 of the CCR, 2004, as a result the credit lying in balance availed on or after 01.03.2015 can be utilized for payment of duty and the credit which remained un-utilized as on 28.02.2015 cannot be refunded as the same was phased out. The relevant provision is re-produced below;

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act"

From the above wordings, it is clear that the credit of EC & SHEC is available for payment of excise duty but there is no mention that the remaining credit is not available as refund as the same gets phased out. So, the interpretation that above provision disallows the refund is not correct.

5.4 Another ground for denying the refund was that Rule 5 of the CCR, 2004 and Section 11B of the CEA, 1994 does not prescribed for refund of EC and SHEC. Similarly, in Section 140 of the CGST, Act, 2017 there is no provision to carry forward any type of cess, therefore, the balance of such cess shall lapse. It is observed that Rule 5 and Section 11B prescribes for refund of excise duties/service tax only. In the instant case, the appellant had accumulated credits of Cess and showed the same in ER-1/ER-2 but could not carry forward such credit after transition into Goods and Services Tax (GST) regime due to specific restriction under Section 140(1) of the CGST Act. They therefore had to resort to the option of refund under existing law to avoid lapsing of credit. They heavily relied on the decision passed in the case of **USV Pvt. Ltd Vs CCE&ST, Daman- 2023(2) TMI 230 -CESTAT Ahmedabad** and decisions passed in the case of **Slovak India Trading Co. Pvt Ltd- 2006(205) ELT 956 (Tri-Bang)** wherein such refund was allowed.

5.5 It is observed that in the case of USV Pvt. Ltd, Hon'ble Ahmedabad Tribunal by relying on the decision of Hon'ble High Court of Karnataka in the case of Sloval India Trading Co. Pvt Ltd and the decision of Tribunal passed in the case of Shalu Synthetics Pvt. Ltd.-2017(346) ELT 413 (Tri-Ahmd) held that as the appellant is legally entitled for Cenvat Credit of EC and SHEC, hence on this count they are eligible for cash refund of accumulated and unutilized Cenvat credit of EC & SHEC. It is observed that similar view was taken by Hon'ble High Court of Karnataka in the case of Sloval India Trading Co. Pvt Ltd, wherein it was held that when the assessee has moved out of Modvat Scheme/Cenvat Scheme, portion of unutilized credit should be allowed as refund. This decision was upheld by the Hon'ble Apex Court – 2008 (223) ELT A170 (SC). After considering the decision of the Apex Court as well as the High Court of Karnataka in the case of Slovak India Trading Co. Pvt. Ltd., Hon'ble Ahmedabad Tribunal in the case of USV Pvt. Ltd. held that the assessee is entitled to refund of an unutilized credit of Education Cess and Higher Education Cess after the introduction of GST.



5.6 I place my reliance on the views taken by the Tribunal in the case of **Bharat Heavy Electricals Ltd-** 2020 (41) G.S.T.L. 465 (Tri.-Hyd.) wherein the findings contained in para 4 & 5 is reproduced herein below:

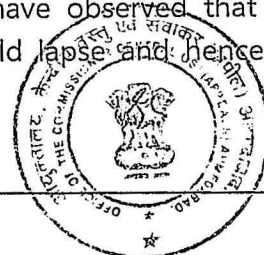
"4. We have carefully gone through the rival arguments. There is no dispute that on 01/07/2017, the cesses credit validly stood in the accounts of the assessee and very much utilizable under the existing provisions. The appellants could not carry over the same under the GST regime. Thus the appellants were in a position where they could not utilize the same. We agree with learned Counsel of the appellant that the credits earned were a vested right in terms of the Hon'ble Apex Court judgment in Eicher Motors case and will not extinguish with the change of law unless there was a specific provision which would debar such refund. It is also not rebutted by the revenue that the appellants had earned these credits and could not utilize the same due to substantial physical or deemed exports where no Central Excise duty was payable and under the existing provisions, had the appellants chosen to do so they could have availed refunds/rebates under the existing provisions. There is no provision in the newly enacted law that such credits would lapse. Thus, merely by change of legislation suddenly the appellants could not be put in a position to lose this valuable right. Thus, we find that the ratio of Apex courts judgment is applicable as decided in cases where the assessee could not utilize the credit due to closure of factory or shifting of factory to a non dutiable area where it became impossibility to use these credits. Accordingly the ratio of such cases would be squarely applicable to the appellant's case. Following the judgment of Hon'ble Karnataka High Court in the case of 2006(201) E.L.T. 559 (Kar) in the case of Slovak India Trading Co. Pvt. Ltd. =2006-TIOL-469-KAR-CX and similar other judgments/decisions cited supra, we hold that the assessee is eligible for the cash refund of the cesses lying as cenvat credit balance as on 30/06/2017 in their accounts. The decision of the larger bench in the case of Steel Strips cited by the learned Departmental Representative could not be applicable in view of the contradictory decisions of High Courts on the same issue.

5. Accordingly we hold that impugned order-in-appeal is without any merit and thus we set aside the same. The appeal is accordingly allowed."

5.7 The Delhi Tribunal in the case of M/s. Bharat Heavy Electricals Ltd. Vs. Commissioner of CGST after relying upon the decisions of the Apex Court in case of Eicher Motors Vs. UOI reported in 1999 (106) E.L.T. 3 (S.C) and Apex Court decision in Samtel India Vs. CCE reported in 2003 (155) E.L.T. 14 (S.C) and also the decision of the Karnataka High Court in the case of Slovak India Trading Co. Pvt. Ltd. reported in 2006 (201) E.L.T. 559 (kar.) has allowed the appeal of the assessee relating to refund of cesses under the existing law.

6. Further, the adjudicating authority held that the decision passed in the case of USV Pvt. Ltd Vs CCE&ST, Daman- 2023(2) TMI 230 -CESTAT Ahmedabad and M/s. Sloval India Trading Co. Pvt Ltd is distinguishable on facts. However, for rejecting the claim on limitation he relied on the same case laws. On limitation, I find that the order is silent as no specific finding is recorded as to how the present claim is time barred. In the absence of any specific findings, rejection of claim on limitation is not sustainable.

7. Thus, from the above judicial pronouncements, it is clear that where the assessee could neither carry over the cesses under GST regime and nor were in a position to utilise the same, since the credit of cesses were a vested right such credit cannot be extinguished with the change of law unless there was a specific provision which would debar such refund. Various High Courts & Tribunals have observed that there is no provision in newly enacted law that such credits would lapse and hence, the vested



rights cannot be taken away because of change in law. Accordingly, it was held that assessee would be eligible for claim of refund of such cesses.

8. In view of the above, it is observed that the issue is no longer res-integra. Thus, by following the above judicial pronouncements and the decision passed by jurisdictional Ahmedabad Tribunal's in the case of USV Pvt. Ltd, I find that the appellant shall be entitled for cash refund of the accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess of Rs.9,45,008/-, lying in balance in Cenvat Credit register.

9. The impugned order is set-aside and the appeal is allowed with consequential relief.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 28.02.2024

Attested



Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s.Dishman Carbogen Amcis Ltd
Survey No.47/1, Nr. Sola Bridge,
Village-Lodariyal,
Taluka-Sanand,
Ahmedabad-382220

Appellant

The Assistant Commissioner
CGST, Division-IV
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Appeal, Ahmedabad., (For uploading the OIA)
4. Guard File.

