

## **CENVAT credit is a vested right and accumulated credit of cess is eligible for a refund– CESTAT Delhi**

5 May 2022



## Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Delhi has held that the Central Value Added Tax (CENVAT) credit is a vested right and thus allowed refund of cess balance after Goods and Services Tax (GST) introduction. The CESTAT noted that the plea of the appellant is not for adjustment of the credit on cess amount against payment of excise duty or service tax, but it is for a refund of credit accumulated on account of cess. The CESTAT stated that the policy decision taken by CBEC (not to allow utilisation of accumulated credit of cesses) is contrary to the decisions of HC and Tribunal, hence it cannot come to the aid of revenue. The CESTAT observed that the decision of the Karnataka HC in Slovak India was affirmed by the SC and thus, considered appropriate to follow the same view.

## Facts of the case

- The appellant<sup>1</sup> was engaged in the business of manufacture of clinker and cement. Before 01 March 2015, the appellant was liable to pay cesses in addition to excise duty. However, from 01 March 2015 onwards, the levy of cesses was exempted. The appellant could not utilise the cesses, hence, carried forward the same in the excise returns.
- Upon introduction of GST, instead of carrying forward such credit, the appellant has filed a refund application. However, the authorities issued SCN and rejected such a claim.
- The petitioner aggrieved of by such rejection, filed an appeal before Commissioner (Appeals) which was also rejected by placing reliance on Rajasthan High Court (HC) judgment<sup>2</sup>.

## CESTAT Delhi observations and ruling<sup>3</sup>:

- **Refund has to be granted on either closure of factory or assessee goes out of MODVAT:** It is clear from the decision rendered in Slovak India Trading that refund has to be granted when either there is a closure of the factory or when an assessee goes out of the MODVAT scheme. The decision of the Karnataka HC in Slovak India was affirmed by the SC. Thus, it would be appropriate to follow the same view.
- **Credits create a vested right:** The Tribunal placed reliance on the decisions of the SC<sup>4</sup> wherein it was held that CENVAT credit is a vested right. Similarly, in the case of BHEL<sup>5</sup>, it was examined that credits create a vested right and do not extinguish with the change in the law. Thus, a change of law cannot be a ground for divesting an assessee from this right. Therefore, the assessee is entitled to a refund of

<sup>1</sup> Emami Cement Limited

<sup>2</sup> Banswara Syntex Ltd.

<sup>3</sup> Excise appeal no. 52318 of 2019, order dated 28 Mar 2022

<sup>4</sup> Slovak India Trading Co. Pvt Ltd.

<sup>4</sup> in Eicher Motors and Samtel India.

<sup>5</sup> Bharat Heavy Electricals Ltd

unutilised credit of cess even after the introduction of GST.

### **Our comments**

Earlier, the Apex Court in the case of Eicher Motors and Samtel India had held that availing of CENVAT credit is a vested right.

Under the erstwhile regime, in the case of Slovak India Trading Co. Private Limited, it had been held that a refund has to be granted when either there is a closure of the factory or when an assessee goes out of the Modified Value Added Tax (MODVAT) scheme. The CESTAT Delhi considered it appropriate to follow the view taken by the Karnataka HC and the Punjab and Haryana HC in the present case.

This is a welcome ruling pronounced by the CESTAT Delhi, which will help provide relief to businesses at large which were earlier unable to claim refund refunds or carry forward the unutilised credit of cesses levied under the erstwhile indirect tax regime. The judgment is also likely to set precedence in similar matters and help clear the pendency of refund claims.

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