

**GIB/DL/Bharat Heavy /26.04.2019/OTHERS-12**

**Others Category :** CESTAT

**State :** Delhi

**Order No.:** GIB/DL/Bharat Heavy /26.04.2019/OTHERS-12

**Name of Entry :**

Bharat Heavy Electricals Ltd. Vs Commissioner CGST, Central Excise & Customs

**Date :** 26-04-2019

**Breif Issue :**

**Facts & Issues of Case:**

The appellant is engaged in the manufacture of Electrical and Mechanical Equipment, besides transmission, utilization, conservation and generation of power and as such are supplying equipment for generation at and transmission of electrical energy ex-Thermal, Hydro, and Nuclear Power Stations.

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 judgement 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.

**Decision of Advance Ruling Authority :**

**Decision:**

Following the judgement 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. and similar other judgements/decisions cited supra, we hold that the assessee is eligible for the cash refund of the cessess 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.

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