Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10402 of 2017- DB

(Arising out of OIO-SIL-EXCUS-000-COM-056-16-17 dated 07/12/2016 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Welspun Syntex Limited ....**Appellant**
Unit-ii, Survey No. 394, P
Village- Saily,
Silvassa, Dadara Nagar Haveli (UT)

VERSUS

Commissioner of C.E & S.T.-Silvasa ......**Respondent**
Commissioner Central Excise,
Customs & Service Tax, Silvassa,
4th floor, Adarsh Dham Building,
Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi, Gujarat

APPEARANCE:
Shri Prakash Shah, Shri D H Mehta 7 Shri Suyog Bhave, Advocate for the Appellant
Shri G Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11574/2024

DATE OF HEARING: 20.03.2024
DATE OF DECISION: 16.07.2024

RAMESH NAIR

The issue involved in the present case is that whether the denial of Cenvat credit availed on the strength of invoices which are dated prior to amendment of Rule 4 vide Notification No. 21/2014-CE (NT) dated 11.07.2014 is correct or otherwise.

2. Shri Prakash Shah, Learned Counsel with Shri D H Mehta & Shri Suyog Bhave, Advocates appearing on behalf of the appellant at the outset submits that the sole ground for denial of credit by the Adjudicating authority is that the appellant have availed the Cenvat credit in the month

of August/September-2014 on the invoices pertaining to the period 2013-14 which are 6months/1year old and invoking the amended Rule 4 vide Notification No. 21/2014-CE (NT) dated 11.07.2014 which prescribe the time limit of six month from the date of issue of invoice for taking the credit. He submits that the amendment of dated 11.07.2014 is applicable only in respect of those invoices which are issued after 11.07.2014. The Notification or amended Rule cannot be made applicable retrospectively. This issue is no longer res-Integra, in view of the following judgments:-

- Global Ceramics Pvt. Ltd. v. Principal Commissioner of C. Ex., Delhi-I, 2019 (26) GSTL 470 (Del.)
- Voss Exotech Automotive Pvt. Ltd. v. Commissioner of C. Ex., Pune-1, 2018 (363) ELT 1141 (Tri.- Mumbai)
- Vijay Kumar Shrivastaw and Alok Masterbatches Ltd. v. CCE & ST, Daman, 2021 (4) TMI 804 AHMEDABAD CESTAT
- N R Agarwal Industrial Ltd. v. CCE & ST, Surat-I, 2019 (9) TMI 1261 CESTAT AHMEDABAD
- N R Agarwal Industrial Ltd. v. CCE & ST, Surat-I, 2021 (11) TMI 243 CESTAT AHMEDABAD
- Essel Propack Ltd. v. Commissioner of C. Ex. & ST, Daman, 2022 (379) ELT 123 (Tri.- Ahmd.)
- Sanghvi Marmo Pvt. Ltd. v. Commissioner of CGST, Jodhpur, 2020 (33) GSTL 232 (Tri.- Del.)

3. Shri G Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that as per the facts of the present case though the appellant have availed the Cenvat credit belatedly in the month of August/September-2014, however, all the invoices related to such credit were issued before 11.07.2014. Therefore, in respect of those invoices, the amended Rule 4 vide Notification No. 21/2014-CE (NT) dated 11.07.2014 is not applicable and the credit could not have been denied on the ground of time bar. This issue has been considered in various judgments, some of the judgments are as under:-

- In the case of Voss Exotech Automotive Pvt. Ltd. (Supra) the Mumbai Tribunal has passed the following order:-

> ***"4.*** *On careful consideration of the submissions made by both the sides, I find that for denial of the credit, the Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 was invoked wherein six months period is available for taking credit. As per the facts of the case credit was taken in respect of the invoices issued in the month of March & April 2014 in November 2014. On going through the Notification No. 6/2015-C.E. (N.T.), dated 1-3-2015 the period available for taking credit is 1 year in terms of the notification, the invoices issued in the month of March and April 2014 become eligible for Cenvat credit. I also observed that the Notification No. 21/2014-S.T. (N.T.), dated 11-7-2014 should be applicable to those cases wherein the invoices were issued on or after 11-7-2014 for the reason that notification was not applicable to the invoices issued prior to the date of notification therefore at the time of issuance of the invoices no time limit was prescribed. Therefore in respect of those invoices the limitation of six months cannot be made applicable. Moreover for taking credit there is no statutory records prescribed the assessee's records were considered as account for Cenvat credit. Even though the credit was not entered in so-called RG-23A, Part-II, but it is recorded in the books of accounts, it will be considered as Cenvat credit was recorded. On this ground also it can be said that there is no delay in taking the credit. As per my above discussion, the appellant is entitled for the Cenvat credit hence the impugned order is set aside. The appeal is allowed."*

- In the case of Global Ceramics Pvt. Ltd (Supra), the Hon'ble Delhi High Court also expressed the same view that the amendment effective from 11.07.2014 cannot have retrospective effect, the relevant paragraph of the order is reproduced below:-

"15. In the present case, we are concerned with the amendment to the Rule 4 of the CCRs with effect from 11th July, 2014, which reads thus :

> *"Provided also that the manufacturer or the provider of output services shall not take Cenvat credit after 6 months of the date of issue of any of the documents in sub rule (1) of rule 9."*

16. It is in terms of this amendment that it was provided that the Cenvat Credit must be taken within one year of the issue of invoice for input goods or input services.

17. There is substance in the contention of the Learned Counsel for the Assesses in both the cases that the above amended provision cannot be given retrospective effect. As explained in Eicher Motors Ltd. v. Union of India (supra) the rule of lapse of credit lying with it unutilized on the date of amendment, cannot be applied to the goods manufactured prior to the date of the amendment. This is based on the principle that the right to adjustment of tax on final products accrues to an Assessee on the date when they paid the tax on the raw materials and that right would continue until the facility available thereto gets worked out. In fact, the judgment in Osram Surya (P) Ltd. v. Commissioner of Central Excise, Indore (supra) approvingly refers to the judgment in Eicher Motors Ltd. v. Union of India (supra).

18. In the present case, the credit accrued when CVD was paid on finished goods deemed to be cleared from home consumption when the dealers sold the goods at higher price by altering the MRP. The right to the Cenvat credit accrued on the very day when the inputs were received.

19. In Jayam & Co. v. Assistant Commissioner - (2016) 96 VST 1 (SC) = 2018 (19) G.S.T.L. 3 (S.C.), it was held that a provision introduced for the first time cannot be given retrospective effect. It is further held as under :

> *"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Volume 36 of the Laws of England (Third Edition) and reiterated in several decisions of this court as well as English Courts is that -*
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> *"all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."*

20. Likewise in Samtel India Ltd. v. CCE, Jaipur - 2003 (155) E.L.T. 14 (S.C.), it was held that the right to credit accrued to an Assessee on the date the tax on inputs was paid. Once the inputs were used, the Rule imposing a period of limitation, could not be given retrospective effect.

21. The Gujarat High Court in Filco Trade Centre Pvt. Ltd. v. Union of India (decision dated 5th September, 2018 in SCA No. 18433/2017) [2018 (17) G.S.T.L. 3 (Guj.)] followed the dictum of the Supreme Court in Jayam & Co. v. Assistant Commissioner (supra) and reiterated that the input tax credit could not be denied on the basis of an amendment, which is prospective. The question dealt with by the High Court was whether Section 140A(3)(iv) of the CGST Act, which declined the Cenvat credit in relation to goods *purchased prior to one year from the appointed date, could be given retrospective effect. In answering the question in the negative, the Gujarat High Court held as under :*

> *"30. To sum up we are of the opinion that the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of Sub-Section (3) of Section 140A such right has been taken away with retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of "in order to co-relate the goods or administrative convenience" prevailed even under the Central Excise Act and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year."*

22. Consequently, in the present case, the Court is satisfied that the Amendment to Rule 4(1) CCRs prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment and the deemed manufacture took place when the MRP was altered, which also happened prior to the amendment. In other words, the CVD paid by the BRCPL will have to be permitted to be adjusted against the CE duty settled as will the service tax paid on the input services."

- In the case of Vijay Kumar Shrivastaw & Alok Mastervatches Ltd (Supra), in this Tribunal taken the same view the relevant order is as under:-

"4. I have heard both the sides and perused the records. I find that the major issue to be decided is that the cenvat credit was availed after 01.09.2014, in respect of invoices issue prior to 01.09.2014. In the light of the amendment notification no 21/2014-CE(N.T.) whether the claim of cenvat credit is time barred. I find that though there are various decision on the issue however, the Division Bench in the case *of BHARAT ALUMINIUM COMPANY LTD. V/S. JOINT COMMISSIONER OF CENTRAL EXCISE, CENTRAL TAX GOODS AND SERVICE TAX. held that the limitation of 6 months provided as per notification no 21/2014-CE(N.T.) is not applicable in cases where the invoices were issued before the notification came into effect i.e. 01.09.2014. the Delhi bench in said* case *has relied upon the judgment of Delhi High Court in the* case *of GLOBAL CERAMICS PRIVATE LIMITED AND ORS.-2019-TIOL-1129-HC-DEL-CUS. The relevant para of said judgment of BHARAT ALUMINIUM COMPANY LTD. (Supra) is reproduced below.*

> *5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions; (i)* ***Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad****] (ii)* ***Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore]*** *(iii)* ***Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi]*** *(iv)* ***Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai]*** *4* ***E/53851-53852/2018-[DB] (v) Umesh Engineering Works vs. Commissioner of***

> ***Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore]*** *(vi)* ***Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi]*** *Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in* case *of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.*
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> *6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.*

4.1 In view of the above decision which is based in Delhi High Court judgment of GLOBAL CERAMICS PRIVATE LIMITED AND ORS (supra), I am of the view that the appellant is entitled for the Cenvat Credit since all the invoices on which cenvat credit was claimed were issued prior to 01.09.2014.

5. The revenue is at liberty to verify this fact, therefore the impugned order is not sustainable and the same is set aside. Since the entire demand is set aside. The personal penalty imposed on Shri Vijay Kumar Srivastaw will also not sustain the same is also set aside. Both the appeals are allowed with consequential relief, if any, in accordance with law".

- In another case of N R Agarwal Industrial Ltd (Supra) this Tribunal taking a consistence view passed the following order:-

"This appeal has been filed M/s. N R Agarwal Industries Ltd against denial of cenvat credit of invoices issue prior to dated 01.09.2014 on the ground that it was taken after the lapse a period of six months/one year. The issue under dispute relates to the applicability of Notification No. 21/2014-CE(NT) dated 11.07.2014 to the credit taken on invoices issued prior to 01.09.2014. Vide Notification No.21/2014-CE(NT) dated 11.07.2014 the following proviso was added In Sub rule (7) of Rule 4 Cenvat Credit Rules 2004.

> *"provided also that the manufacturer or the provider of output service shall not take cenvat credit after 6 months of the date of issue of any of the documents specified in sub- rule (1) of rule 9."*

2. An identical issue was examined by Hon'ble High court of Delhi in case *Global ceramics Pvt. Ltd. 2019-TIOL-1129- HC-Del-Cus. In the appellant's own* case *for a different unit Tribunal has passed the following order No. A/12391/2021.*

> *4. I have heard both the sides and perused the records. I find that the major issue to be decided is that the cenvat credit was availed after 01.09.2014, in respect of invoices issue prior to 01.09.2014. In*

the light of the amendment notification no 21/2014-CE(N.T.) whether the claim of cenvat credit is time barred. I find that though there are various decision on the issue however, the Division Bench in the case *of BHARAT ALUMINIUM COMPANY LTD. V/S. JOINT COMMISSIONER OF CENTRAL EXCISE, CENTRAL TAX GOODS AND SERVICE TAX. held that the limitation of 6 months provided as per notification no 21/2014-CE(N.T.) is not applicable in cases where the invoices were issued before the notification came into effect i.e. 01.09.2014. the Delhi bench in said* case *has relied upon the judgment of Delhi High Court in the* case *of GLOBAL CERAMICS PRIVATE LIMITED AND ORS.-2019-TIOL-1129-HC-DEL-CUS. The relevant para of said judgment of BHARAT ALUMINIUM COMPANY LTD. (Supra) is reproduced below.*

5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions; (i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad] (ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore] (iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi] (iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai] 4 E/53851-53852/2018-[DB] (v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158-CESTAT Bangalore] (vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi] Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case *of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.*

6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.

4.1 In view of the above decision which is based in Delhi High Court judgment of GLOBAL CERAMICS PRIVATE LIMITED AND ORS (supra), I am of the view that the appellant is entitled for the Cenvat Credit since all the invoices on which cenvat credit was claimed were issued prior to 01.09.2014.

3. Relying on the aforesaid decision the appeal is allowed."

In view of the above judgments, it is settled that the time limit prescribed under Notification No. 21/2014-CE (NT) dated 11.07.2014 has no application in respect of the invoices issued prior to date of the said amendment in Rule 4 of Cenvat Credit Rules, 2004.

5. Therefore, the impugned order is not sustainable. Hence the same is set aside. Appeal is allowed, with consequential relief.

(Pronounced in the open court on 16.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha