CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 10669 OF 2022

[Arising out of OIA-KCH-EXCUS-000-APP-275-2021-22dated 11/03/2022 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

LAMBA TIMBER WORKS PVT LTD **Appellant**
Survey No. 205/4, Behind Gaytri Petrol Pump,
Village Chudva, Gandhidham
Kutch, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-KUTCH (GANDHIDHAM) **Respondent**
Central Excise & Service Tax Commissionerate,
Central Excise Bhavan Plot No. 82,
Sector 8, Gandhidham (Kutch)
Gujarat

Appearance:
Shri Amber, Kumrawat, Advocate for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11370/2025

Date of Hearing : 10/10/2025
Date of Decision : 26/11/2025

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order dated 11th March, 2022 passed by the learned Commissioner (Appeals) through which he rejected the appeal of the appellant and upheld the order passed by the Adjudicating Authority / Deputy Commissioner Central Goods and Service Tax, Gandhidham through which he confirmed the demand for recovery of inadmissible Cenvat Credit amounting to Rs. 15,65,517/- from the appellant along with interest and also imposed penalty of Rs. 15,65,517/- on the appellant under the provisions

of Rule 15 (2) of Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944.

1.2 The facts of the case in brief are that the appellant M/s. Lamba Timber Works Pvt Ltd is a registered assessee having Central Excise Registration with Kutch Commissionerate Central Excise Division Gandhidham for manufacturing of plywood and flush door. During the course of audit of the records of the appellant by the departmental officers, it was observed that the appellant had availed Cenvat Credit to the tune of Rs. 15,65,517/- comprising of additional duty of Customs of Rs. 12,10,801/- and special additional duty of Customs of Rs. 3,54,716/- on imported capital goods. It was further observed that the said capital goods were imported by them in the year 2007 under EPCG scheme by claiming exemption under Notification No. 49/2000-Customs dated 27th April, 2000, as amended. The appellant could not produce Export Obligation Discharge Certificate before the Competent Authority. It appeared to the Audit that since the Customs Duty, which was later on availed at Cenvat Credit, was paid by the appellant only after issuance of Show Cause Notice, therefore, the appellant was not eligible to avail the said Cenvat Credit in terms of exclusion provided in Rule 9 (1) (b) of the Cenvat Credit Rules, 2004.

1.3 Based on audit observations, Show Cause Notice dated 11th February, 2020 was issued to the appellant calling them to show cause as to why wrongly availed and utilized Cenvat Credit of Rs. 15,65,517/- should not be demanded and recovered from them under Rules 14 of Cenvat Credit Rules 2004 read with Section 11A (4) of the Central Excise Act, 1944 along with interest. Imposition of penalty was also proposed under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act. The Show Cause Notice was adjudicated by the Adjudicating Authority vide Order-in-Original dated 25.02.2021 who confirmed the demand for wrongly availed Cenvat Credit

amounting to Rs. 15,65,517/- along with interest and also imposed penalty of Rs. 15,65,517/- under Rule 15 of Cenvat Credit Rules read with Section 11AC of the Central Excise Act. Being aggrieved from the Order-in-Original dated 25th February, 2021 passed by the Adjudicating Authority, the appellant preferred appeal before the learned Commissioner (Appeals). The learned Commissioner (Appeals) vide impugned order dated 11.03.2022, upheld the Order-in-Original passed by the Adjudicating Authority and rejected the appeal. Feeling aggrieved from the impugned order dated 11th March, 2022 the present appeal has been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that the issue to be decided in the present appeal is whether the Cenvat Credit of additional duty of Customs and special additional duty of Customs totaling amounting to Rs. 15,65,517/- availed by the appellant was barred by exclusion provided under Rule 9 (1) (b) of Cenvat Credit Rules, 2004 or otherwise.

2.1 The learned Counsel for the appellant has further submitted that they had availed Cenvat Credit of Rs. 15,65,517/- on imported capital goods in terms of Cenvat Credit Rules, 2004. They had imported capital goods under EPCG scheme by claiming exemption benefit under Notification No. 49/2000-Customs dated 27th April, 2000 but due to unfortunate circumstances they failed to fulfill statutory obligation prescribed under Customs Act, 1962 and failed to pay customs duty within prescribed time period. However, there was no wilful mis-statement for evasion of customs duty.

2.2 The learned Counsel for the appellant has further submitted that the Show Cause Notice was issued to the appellant by invoking extended period of limitation on the ground of suppression of facts. However, they had shown the Cenvat Credit of the imported capital goods separately in the Cenvat Credit

table prescribed in ER-1 returns. Therefore, the department had full knowledge that they had availed the Cenvat Credit in respect of imported goods. Therefore, the allegation that they never informed the department about the availment of said credit is wrong and without any basis. Since the department failed to prove the malafide intention of the appellant to evade the customs duty payment, the extended period cannot be invoked in the present case and the whole demand issued for the period from November-2014 to June-2017 is hit by limitation. The learned Counsel for the appellant also argued that the penalty under Section 11 AC of the Central Excise Act, 1944 is not imposable and extended period of limitation cannot be invoked under Section 11A(4) of the Central Excise Act. He has argued that the impugned order passed by the learned Commissioner be set aside and the appeal may be allowed.

3. The learned Authorised Representative for the department submitted that the customs duty was paid by the appellant following detection and issuance of a Show Cause Notice by Customs for non-fulfilment of EPCG exports obligations. He has also submitted that the availment of Cenvat Credit is barred under Rule 9 (1) (b) of the Cenvat Credit Rules, 2004. The additional duty became recoverable not in the ordinary course but due to non-compliance detected by the authorities. As the penalty was also imposed upon the appellant under Section 117 of the Customs Act for such violation, the exclusion under Rule 9 (1) (b) of the Cenvat Credit Rules is applicable. The learned Authorised Representative also submitted that extended period under Section 11A (4) of the Central Excise Act was properly invoked since suppression of facts was established. In support of this argument, the learned Authorised Representative for the department relied on judicial pronouncement in **Rajasthan Spinning and Waiving Mills** and order passed by CESTAT in **Six Sigma Short Solution** case. The learned Authorised Representative submitted that the impugned

order passed by the learned Commissioner be upheld and the appeal may be rejected.

4. I have heard the learned Counsel for the appellant and the learned Authorised Representative for the department and perused the records.

4.1 The issue to be decided in the present appeal is whether the Cenvat Credit of additional duty of Customs and special additional duty of Customs amounting to Rs. 15,65,517/- availed by the appellant was barred by exclusion provided under Rule 9 (1) (b) of Cenvat Credit Rules, 2004 or otherwise. Rule 9(1)(b) of Cenvat Credit Rules, 2004 is being reproduced here which was as follows:-

"RULE 9. Documents and accounts

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) ……………………………………………..

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty. ***Explanation****. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act;"*

From the provisions of Rule 9 (1) (b) of the Central Credit Rules, 2004 it is clear that a person shall not be permitted to avail Cenvat Credit of additional amount of duty which became recoverable from the manufacturer or importer of inputs / all capital goods on account of any non-levy or short levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act or of the Customs Act, 1962 or the Rules made thereunder with intent to evade payment of duty.

4.2 I am of the view that the department could not prove that the non-levy of customs duty was by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Customs Act, 1962. It is pertinent to mention here that the appellant had shown the Cenvat Credit of the imported capital goods separately in the Cenvat Credit table prescribed in ER-1 returns. Therefore, the department had full knowledge that they had availed the Cenvat Credit in respect of imported goods. In these circumstances, it could not be claimed by the department that the appellant never informed the department about the availment of the said Cenvat Credit. It is well settled that department has to prove the malafide intention of the appellant to evade the payment of duty which could not be discharged by the department therefore, the provisions of Rule 9 (1)(b) of the Cenvat Credit Rules are not attracted in the facts of the case.

"Further Section 11A (4) of the Central Excise Act, 1994 provides as follows :-

Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –

(1) ....

(2) ....

(3) …………………………………………………..

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

(a) fraud; or

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

4.3 I am of the view that the provisions of Section 11A (4) are not attracted in the fact of the case. The learned Counsel for the appellant has submitted that the appellant had availed Cenvat Credit of Rs. 15,65,517/- on imported capital goods in terms of Cenvat Credit Rules, 2004. They had imported capital goods under EPCG scheme by claiming exemption benefit under Notification No. 49/2000-Customs dated 27th April, 2000 but due to unfortune circumstances, they failed to fulfil statutory obligations prescribed under the Customs Act, 1962 and failed to pay customs duty within prescribed time. However, there was no willful mis-statement for evasion of customs duty.

4.4 I am of the view that when all the facts were produced before the department in the form of ER-1 returns and it is not the case of the department that the facts mentioned in the ER-1 returns were wrong or false therefore, though the appellant failed to pay the customs duty in accordance with

provisions of Customs Act, but it cannot be said that it was done by malafide intention to evade the Customs Duty payment.

4.5 For the proposition that once the taking of the Cenvat Credit was disclosed in the ER-1 return, there cannot be any wilful misstatement or suppression on the part of the assessee, I rely on the decision of Hon'ble Gujarat High Court in case of **Dynamic Industries Ltd**. reported in 2014 (35) STR 674 (Guj.) wherein it is observed as under:-

> *"12. Accordingly, the substantial question of law raised in respect of the following three categories of services i.e. (i) Customs House Agents Services, (ii) Shipping Agents and Container Services and (iii) Services of Overseas Commission, is answered partly in favour of the assessee so far as aforesaid category Nos. (i) and (ii) are concerned. Insofar as category No. (iii) i.e. Services of Overseas Commission, is concerned, the same is answered in favour of the Revenue and against the assessee. So far as present appeal is concerned, after extending the period of limitation under the proviso to Sections 11A and 11AB of the Act, the show cause notice is issued by the Joint Commissioner, Central Excise, upon the respondent-assessee on the ground of contravention of provisions of Rules 2(1)(ii) and 9(2) read with Rule 3(1) of the Rules. Admittedly, the respondent-assessee had shown availment of Cenvat credit in Part IV and V of ER-1 returns filed by it. The appellant-Department has sought to justify its action by submitting that during the course of audit by the Office of the Accountant General, when a detailed examination of the material was done, it was realised that the respondent-assessee had availed Cenvat credit on the services of all the three categories. The respondent-assessee has rightly pointed out that all the service providers charge the service tax on all the three services and such services since*

were rendered at the port of export, which was the place of removal, the services were in relation to manufacturing activities as far as the first two services are concerned. However, insofar as the third service where this Court has held in favour of the Revenue and against the respondent-assessee, we are of the opinion that the extended period of limitation would not be available to the Revenue in absence of any material to indicate suppression on the part of the respondent-assessee. It is not in dispute that there was no suppression nor any misrepresentation in respect of Cenvat credit availed by the respondent-assessee in respect of these servies."

4.6 The facts of this appeal are identical to the facts of the above mentioned appeal **Dynamic Industries Ltd** decided by the Hon'ble Gujarat High Court. Therefore, I am of the view that extended period cannot be invoked in the present case and the whole demand issued by the department for the period from November-2014 to June-2017 is hit by limitation.

5. In view of the above discussion, I am of the view that the impugned order passed by the learned Commissioner is not sustainable. It is liable to be set aside and the appeal deserves to be allowed.

6. Consequently, the appeal is allowed and the impugned order passed by the learned Commissioner dated 11th March, 2022 is set aside.

(Order pronounced in the open Court on 26.11.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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