

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

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 10960 of 2017- DB
(E/CROSS/10520/2017)

(Arising out of OIO-SIL-EXCUS-000-COM-063-068-16-17 dated 30/12/2016 passed by Commissioner, Central Excise, Customs and Service Tax-SILVASA)

**COMMISSIONER OF CGST &
CENTRAL EXCISE – Daman**

GST Bhavan, RCP Compound Vapi-Daman Road,
Vapi -396191

.....Appellant

VERSUS

Filatex India Limited

Survey No. 274, Demni Road,
Dadra, Dadra Nagar Haveli (UT)

.....Respondent

With

Excise Appeal No. 10961 of 2017- DB
(E/CROSS/10521/2017)

(Arising out of OIO-SIL-EXCUS-000-COM-063-068-16-17 dated 30/12/2016 passed by Commissioner, Central Excise, Customs and Service Tax-SILVASA)

**COMMISSIONER OF CGST &
CENTRAL EXCISE – Daman**

GST Bhavan, RCP Compound Vapi-Daman Road,
Vapi -396191

.....Appellant

VERSUS

Filatex India Limited

Survey No. 274, Demni Road,
Dadra, Dadra Nagar Haveli (UT)

.....Respondent

And

Excise Appeal No. 10962 of 2017- DB
(E/CROSS/10522/2017)

(Arising out of OIO-SIL-EXCUS-000-COM-063-068-16-17 dated 30/12/2016 passed by Commissioner, Central Excise, Customs and Service Tax-SILVASA)

**COMMISSIONER OF CGST &
CENTRAL EXCISE – Daman**

GST Bhavan, RCP Compound Vapi-Daman Road,
Vapi -396191

.....Appellant

VERSUS

Filatex India Limited

Survey No. 274, Demni Road,
Dadra, Dadra Nagar Haveli (UT)

.....Respondent

APPEARANCE:

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Appellant

Shri Prakash Shah, Sr. Advocate, Shri Mohit Raval, Advocate for the
Respondent

CORAM:**HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA****HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH****Final Order No. 10297-10299/2026**

DATE OF HEARING: 18.12.2025

DATE OF DECISION: 22.04.2026

SATENDRA VIKRAM SINGH

1. In the present matter, appeals have been filed by Revenue against impugned order dated 30.12.2016 passed by learned Commissioner, Silvassa Commissionerate.

1.1 The facts of the case are that M/s. Filatex India Ltd., Dadra (U.T.) are engaged in the manufacture of Polyester Oriented Yarn (POY) & Yarn Waste falling under CTH 54024200 and 55051000 respectively of the Central Excise Tariff Act, 1985. Their final product POY, in addition to basic excise duty, also attracts National Calamity Contingent Duty (NCCD) @ 1%. The respondent is availing Cenvat Credit of basic excise duty on various inputs viz. Polyester Chips falling under Chapter 39 which they have used for payment of NCCD on POY which according to revenue, was not admissible. Accordingly, three show cause notices dated 06.02.2007, 14.08.2007 and 18.02.2008 were issued to the respondent for disallowing utilisation of Cenvat Credit for payment of NCCD and its recovery from the account current under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AB (now 11AA) of the said Act and penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the said Act. The total amount involved in three show cause notices is Rs.4,53,12,025/-. The above issue was decided by the learned Commissioner vide impugned order wherein, she dropped the proceedings initiated against the party.

2 Revenue has taken the following grounds in their appeal:-

- National Calamity Contingent Duty was imposed @ 1% vide Section 136 of the Finance Act, 2001. The Adjudicating Authority has dropped the department's case by relying on the decision of CESTAT Kolkata in the case of Prag Bosimi Synthetics Limited Vs. CCE Dibrugarh reported in 2007 (216) ELT 254 wherein, it was held that NCCD is duty of excise and there can be no objection to the appellants utilising the credit of basic duty of excise for payment of NCCD. The said decision of Kolkata Tribunal was upheld by Hon'ble High Court of Gauhati as reported by 2013(295) ELT 682 (Gau).
- Hon'ble Sikkim High Court in the case of M/s. Unicorn Industries Vs. Union of India in Writ Petition (C) No. 24 of 2007 and Writ Petition (C) No. 7 of 2009, though relating to scope of exemption from payment of NCCD as duty of excise after having taken into consideration the provisions of law as contained in Section 3 of the Central Excise Act, 1944. Vide order dated 11.05.2012 reported at 2015 (324) ELT 498 (Sikkim) held that NCCD is not duty of excise and therefore, Notification which grants exemption to basic excise duty shall not be applicable for grant of exemption to NCCD. The decision of Hon'ble Sikkim High Court further been upheld by Hon'ble Supreme Court as reported at 2019 (370) ELT 3 (SC).
- On the above reasoning, revenue has pleaded that the decision in Prag Bosimi Synthetics Limited is not correct interpretation of law and therefore, charges made in the show cause notices against the respondent M/s. Filatex India Ltd. may be upheld by setting aside the order of Learned Commissioner.

3. During arguments, learned AR highlighted the grounds taken by the revenue for disallowing utilisation of Cenvat Credit of BED for payment of NCCD and recovery of NCCD amount from the respondent in cash. He highlighted that every legislation has profound object and purpose. The

legislative intent and purpose may be clearly evident from the preamble of an Act and in absence of the same, from the various provisions contained in the Act. The object and purpose to levy NCCD is to create fund for any National calamity or disaster. Similarly, Education cess and Secondary and Higher Education cess have been levied to meet the commitment to finance the education in the Country. On the basis of this philosophy, learned AR pleads that the Adjudicating Authority has wrongly allowed utilisation of Cenvat Credit of BED for payment of NCCD by the respondent. He further argues that in the light of decision of Hon'ble High Court of Sikkim in *uniworth case* (cited *supra*), the decision cited by Learned Commissioner is not proper and therefore, he prayed that the impugned order be set aside and the department's allegation made in the show cause notice be upheld. He also relied on the decision of Hon'ble Supreme Court in the case of *Union of India and Others Vs. Modi Rubber Limited and Others* reported in 1986 (25) E.L.T. 849 (S.C.), *Rita Textiles P. Limited and Others Vs. Union of India and Others* reported in 1988 (35) E.L.T. 611 (S.C.) and the decision of Hon'ble Madras High Court in the case of *M/s. Gemini Edibles and Fats India Pvt. Ltd. Vs. Union of India and Others* reported in 2020 (1) TMI 212 – Madras.

4. Countering the arguments, learned Advocate mentioned that the scheme of Cenvat Credit was introduced with objective of avoiding cascading effect of duties. Rule 3(4) of the Cenvat Credit Rules (hereinafter referred to as CCR), 2004 provide for the manner in which credit availed under Rule 3(1) of the CCR can be utilised. As during the material time, rule 3(4) did not provide for any restriction, therefore, Cenvat Credit availed under Rule 3(1) by manufacturer/ service provider can be utilised for payment of any duty of excise on any final product. Rule 3(7) of the CCR however puts a restriction that Cenvat Credit of NCCD shall be utilised only for payment of NCCD but no reverse restriction has been prescribed and therefore, Cenvat Credit of basic excise duty can be utilised for payment of other duties or cesses. The

restriction was imposed only vide Notification No.10/2008- CE (NT) dated 01.03.2008 by inserting 5th Proviso to Rule 3(4) of CCR to provide that credit of inputs or capital goods of other duties of excise cannot be utilised for payment of NCCD leviable on goods falling under CTH 85171210 and 85171290 which deal with mobile phones. Absolute restriction of utilisation of credit of any duty specified in sub rule 1, except NCCD, was brought only by Notification No.13/2016-CE (NT) dated 01.03.2016. In view of the above, he pleads that the order of learned Commissioner is legal and proper and therefore, it may be upheld by setting aside the appeal of the department which does not have any merit. He also pleads that the issue in the above appeals is no longer res-integra and settled in respondent's favour by following decision:-

- i. C.C.E. & S.T -Silvasa and C.C.E. & S.T. -Daman Versus Welspun Syntex Ltd and M/s Wellknown Polyester Limited, 2019 (11) TMI 1268 - CESTAT Ahmedabad
- ii. Commissioner of CE & ST-Daman Vs Pamis Tex Pvt Ltd and Commissioner of CE & ST - Silvasa Vs Pamis Tex Pvt Ltd, 2024 (9) TMI 61- CESTAT Ahmedabad
- iii. Commissioner of Central Excise & ST, Silvasa vs M/s Sanathan Textiles Pvt. Limited, 2018 (12) TMI 356-CESTAT Ahmedabad
- iv. Vedanta Ltd. Versus CCE, Tirunelveli, 2018 (7) TMI 158-CESTAT Chennai
- v. Commissioner of C. Excise, Dibrugarh Vs. Prag Bosimi Synthetics Ltd., 2013 (295) ELT 682 (Gau)

5. We have heard both sides. We find that the issue whether respondent can utilise Cenvat Credit of basic excise duty for payment of National Calamity Contingent Duty (NCCD) has earlier come up before Hon'ble Gauhati High Court in the case of CCE, Dibrugarh Vs. Prag Bosimi Synthetics Ltd., before Hon'ble Uttarakhand High Court in the case of Hero Motocorp Ltd. Vs. Commissioner of Central Excise, Dehradun reported in 2018 (14) G.S.T.L. 200

(Uttarakhand) and before this Tribunal in the case of M/s. Pamis Tex Pvt Ltd., M/s. Wellknown Blyester Ltd. and M/s. Welspun Syntex Ltd. In all referred cases, the issue has been decided in party's favour by holding that Cenvat Credit of BED can be utilised for paying NCCD as there was no restriction in utilisation of credit of basic excise duty till 01.03.2008. We also find that the Tribunal while deciding Revenue's appeal in the case of M/s. Pamis Tex Pvt. Ltd. (cited supra) also considered the decision of Hon'ble Sikkim High Court in the case of M/s. Unicorn Industries which is regarding extending benefit of Notification issued under Section 5A of the Central Excise Act, 1944 for exemption of excise duty, to NCCD also.

5.1 We therefore find that the issue is no more res-integra. While hearing appeal of Hero Motocorp Ltd, Hon'ble High Court of Uttarakhand at Nainital vide their decision reported at 2018 (14) G.S.T.L. 200 (Uttarakhand) have held that for payment of NCCD and cesses- these were part of levies under Rule 3(1) for Cenvat Credit Rules, 2004 making up aggregate of Cenvat Credit. Hence, could make use of basic excise duty for payment of NCCD or cesses. It was after substitution of 5th proviso to Rule 3(4) ibid in 2016, this was proscribed and under 3(7)(b) ibid, Cenvat Credit on NCCD and Cesses has to be utilized for payment of corresponding duties on final products only. The relevant paras of this decision are reproduced below:-

"28. *From the aforesaid Rules, we may notice the following aspects. In the definition of the words "exempted goods" in Rule 2(d), the expression used is "the duty of excise leviable thereon, inter alia". In Rule 3(1)(i) again, the words used are "the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act". In Rule 3(1)(ii) again, the expression employed is "the duty of excise specified in the Second Schedule to the Excise Tariff Act". Likewise, the preposition "the" precedes various duties/levies, which are mentioned in sub-rules (iii), (iv), (v), (vi) and (vii). It is in sub-rule (vii) that the words "the additional duty leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i) to (via)" have been used. We do notice that instead of using the words "duties of excise", the expression used is "the duty" and, therefore, in the singular. There are other duties also, with which, we may not be concerned. It is quite clear that all these imposts are component parts of Cenvat credit. In Rule 3(2) again, the expression used is "the duty paid". Furthermore, in Rule 3(4)(a), which deals with how the Cenvat credit may be utilized, it is declared that it may be employed for payment of "any duty of excise". In the first proviso to*

Rule 3(4), the words "duty of excise" are not preceded either by the word "the" or "any". The proviso appears to declare that the Cenvat credit can be utilized only to the extent such credit is available on the last day of the month or quarter for payment of duty or tax. In fact, the words "duty of excise" are not repeated in the last portion of the proviso; it is abbreviated as "duty". Similarly in the second proviso to Rule 3(4), the word "duty" is preceded by the word "any". This is by way of proscribing utilization of Cenvat credit, where benefit of exemption under the Notification of 1/2011-C.E., dated 1-3-2011 is availed. In the third proviso again, the expression "Cenvat credit of the duty, inter alia, paid on the inputs in respect of certain products" is adverted to. Similarly, a perusal of Rule 3(7), which begins with a non-obstante clause viz-a-viz sub-rule (1) and sub-rule (4) limits availing of Cenvat credit in respect of the duties mentioned therein in the manner provided therein.

30. It is true that the decision of the Hon'ble Apex Court in *Modi Rubber* revolved around the effect of the use of the words "duty of excise" in Exemption Notifications and the question was, whether it would be confined to basic excise duty or it would extend to other duties as well.

NCCD The National Calamity Contingent Duty was introduced by the Finance Act of 2001. It was provided for by virtue of Section 136 of the said Finance Act. Section 136 of the Finance Act, 2001 reads as under :

"136. National Calamity Contingent Duty. - (1) In the case of goods specified in the Seventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, by surcharge a duty of excise, to be called the National Calamity Contingent duty (hereinafter referred to as the National Calamity Duty), at the rates specified in the said Schedule.

(2) The National Calamity Duty chargeable on the goods specified in the Seventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the National Calamity Duty leviable under this section in respect of the goods specified in the Seventh Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be.

31. A perusal of Rule 3(1) unravels the mind of the Rule-maker as to the component parts of the Cenvat credit. In Rule 3(4)(a), the Rule-maker has unambiguously declared that the amounts standing to the credit of Cenvat can be utilized for payment of any duty of excise on any final product. No doubt, this is subject to the injunctions in the form of limitations and restrictions contained in the provisos, seven in number. Unless, the Revenue establishes the case within four walls of any of the provisos, in our view, there can be no embargo against utilization of Cenvat credit, which consists of duties and taxes paid on inputs, inter alia, for payment of any duty of excise on any final product. NCCD and the cesses, as we have noted from the Finance Acts, are undoubtedly surcharges by way of duties of excise. Undoubtedly, they are not levies under the Act. They are imposed under the respective Finance Acts, namely, Finance Act of 2001, Finance Act of 2004 and finally Finance Act of 2007 respectively. The provisions of the aforesaid Acts make it clear that the collection of the aforesaid levies can be made under the provisions of the Excise Act and the Rules. The power to exempt payment of NCCD and the cesses in

terms of the Act and the Rules are certainly available in relation to NCCD and the cesses, but they remain levies under the concerned Finance Acts. Since they are part of the basket of levies embraced under Rule 3(1) making up the aggregate of the Cenvat credit, subject to any restriction or limitation, which may be found elsewhere, there can be no doubt that the assessee can make use of the basic excise duty under the Act for payment of the NCCD or the cesses on the final product.

32. In fact, we may dissect and break down the elements contained in the 5th proviso to Rule 3(4) as it stood prior to amendment in the year 2016, as also, the impact of the amended provisions of the proviso. Prior to its amendment, the 5th proviso to Rule 3(4) tabooed the utilization of any other part of the Cenvat credit, except the NCCD for payment of the NCCD on final products, which fell under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Tariff Act. Thus, this proviso purported to render impermissible utilization of the basic excise duty paid on any input for payment of NCCD on the final product, if the final product fell under tariff item 8517 12 10 and 8517 12 90 respectively of the First Schedule. The said proviso has already been quoted above. The provision after its modification by the amendment on 1st March, 2016 reads as follows :

"[Provided also that the Cenvat credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001 (14 of 2001).]"

33. After substitution of the said proviso in the year 2016, the rule-maker has totally proscribed the utilization of any part of the Cenvat credit, except the NCCD duty for payment of NCCD on any final product. Under Rule 3(7)(b), Cenvat credit, consisting of NCCD and the cesses, is to be utilized for payment of the corresponding duties on the final products only. No doubt, this is subject to the two provisos, which are contained therein. It is also true that the use of the word in singular need not be restricted to the singular and can comprehend also the plural. As to whether it would so embrace the plural, is a matter to be discerned from the context, as also, the purpose of the enactment, besides the phraseology of the statute otherwise.

43. For our purpose, there can be no doubt that the words "duty paid" may take in the whole of the duties, which are contemplated under Rule 3(1). Likewise, the language of Section 3(4)(a) of the Cenvat Credit Rules, which provides that Cenvat credit may be utilized for payment of any duty of excise on any final product clearly indicates that Cenvat credit is available with reference to all its component parts for payment of any duty of excise on the final product, subject to the restrictions or limitations under the provisos or any other provision, as for instance, Rule 6. It is clear that with reference to the facts of this case, for instance under the law as stood then, basic excise duty paid would be available for payment of NCCD and the cesses as they would fall under the category of "any duties of excise", which is imposed on the final product, which is no doubt subject to the provisos, which are mentioned. However, after 2016, it is clear that NCCD components of Cenvat credit paid on input alone can be used for payment of NCCD on the final product. No other part of duties is available for the said purpose. There is no case before us that the said proviso, which was substituted on 1st March, 2016, has retrospective effect or it is declaratory in nature and we need not to explore the said aspect.

44. It is equally true that under Rule 3(7)(b) of the Cenvat Credit Rules, despite what is provided in Rule 3(4)(a), it is also subject to the restrictions

and conditions contained in Rule 3(7)(b) as it opens with a non obstante clause and declares that notwithstanding anything contained in sub-rule (1) and sub-rule (4) inter alia, the Cenvat credit in respect of NCCD and the cesses are to be utilized only towards the payment of the NCCD and the cesses but it is true that there is no prohibition that the Cenvat credit consisting of basic excise duty paid on input is to be exclusively directed only for payment of basic excise duty on the final product.

45. *Thus, as far as the periods relevant to these cases are concerned, the appellant would indeed have the right of basic excise duty paid on inputs adjusted against the charge under the NCCD and the cesses, but it is here that the shadow of Rule 6 looms large."*

5.2 Prior to this decision, Hon'ble Gauhati High Court also ruled on similar lines in the case of Commissioner of C. Excise, Dibrugarh Vs. Prag Bosimi Synthetics Ltd. reported at 2013 (295) ELT 682 (GAU). Relevant para 16, 17 and 18 are reproduced below:-

"16. *We are in agreement with the view expressed by the CESTAT. In terms of Rule 3(1) a manufacturer or producer of a final product is allowed to take CENVAT credit of NCC duty. Since NCC duty is admittedly a duty of excise, Rule 3(4) provides that CENVAT credit may be utilized for payment of any duty of excise on any final product. Therefore, CENVAT credit of NCC duty may also be utilized for payment of any duty of excise on any final product in terms of Rule 3(4) subject to Rule 3(7).*

17. *Rule 3(7) limits the utilization of CENVAT credit in respect of NCC duty as also other duties mentioned in Rule 3(7)(b). It provides that CENVAT credit in respect of NCC duty and other duties shall be utilized towards payment of duty of excise leviable under various statutes respectively. The use of the word "respectively" in this regard is important inasmuch as it confines the utilization of CENVAT credit obtained to a particular statute and for utilization for payment of duty under that statute only. The converse, however, does not follow. That is to say that merely because CENVAT credit in respect of NCC duty can be utilized only for payment of NCC duty, it does not follow that any other credit of duty cannot be utilized for payment of NCC duty.*

18. *This being the position, in our opinion the Commissioner of Central Excise at Dibrugarh was in error in coming to the conclusion that CENVAT credit of basic excise duty cannot be utilized for payment of NCC duty on the final product.'*

5.3 CESTAT Ahmedabad also in the case of M/s. Pamis Tex Pvt Ltd and M/s Sanathan Textiles Pvt. Limited (cited supra) have clearly ruled in favour of the party holding that prior to 2016, there was no restriction in utilisation of Cenvat Credit of basic excise duty for payment of NCCD. The relevant para 4.2 of the said decision is reproduced below:-

"4.2. From the above decisions of this tribunal it can be seen that the utilization of basic excise duty for the payment of NCCD has been allowed considering the provisions of Rule 3 of Cenvat Credit Rules, 2004. As regard the heavy reliance placed by the revenue in the case of M/s. Unicorn Industries vs. UOI (Supra), in that case the issue was different that whether the NCCD is an excise duty or surcharge. Even though as per the said judgment the NCCD is not an excise duty but a surcharge, rule 3 permits the utilization of basic excise duty for payment of NCCD. Therefore, judgment in the case of M/s. Unicorn Industries vs. UOI (Supra) is not relevant on the issue and facts of the present case. Accordingly, we are of the view that the respondent is correct in utilizing the credit of basic excise duty for payment of NCCD. Therefore, the impugned orders are legal and correct and the same deserve to be sustained."

5.4 The Revenue has heavily relied upon the decision in the case of Unicorn Industries, where the issue was whether Notification issued under Section 5A of the Central Excise Act, 1944 granting exemption from payment of excise duty subject to fulfilment of conditions specified therein also exempts NCCD on those goods? It is in that background, Hon'ble Sikkim High Court held that the Notification issued for exemption of basic excise duty will not cover exemption of NCCD. This decision has also been upheld by Hon'ble Supreme Court (cited supra). The issue before us is not of interpretation of any exemption Notification but utilisation of Cenvat credit of basic excise duty for payment of NCCD which was also permitted by the statute under Cenvat Credit Rules, 2004. Notification restricting utilisation of basic excise duty for payment of NCCD first came in 2008 when 5th proviso to Rule 3(4) of CCR 2004 was inserted to the effect that Cenvat Credit of any duty specified in subrule (1) of the Rule 3 except the NCCD in item (v) thereof, shall not be used for payment of said NCCD on goods of Chapter 85171210 and 85171290 respectively of the First schedule to the Central Excise Tariff Act, 1985. Thereafter, complete restriction came w.e.f. 1st March 2016 by virtue of Notification 13/2016-CE (NT) dt. 01.03.2016. We therefore find that no such restriction in utilisation of credit of basic excise duty was there under Cenvat Credit Rules during the period involved in these cases.

5.5. From the above, it can be seen that utilization of credit of basic excise duty for payment of NCCD was allowed as per the provisions of Rule 3 of the

Cenvat Credit Rules, 2004. The judgment in the case of M/s. Unicorn Industries (cited supra) is distinguishable as per the facts of the present case. Accordingly, we are of the view that the respondent is correct in utilizing the credit of basic excise duty for payment of NCCD. The impugned orders are therefore held legal and correct and the same deserve to be sustained.

6. Accordingly, we dismiss the Revenue's appeals. Cross objections stand disposed of.

(Pronounced in the open court on 22.04.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)