CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.55111 of 2014

(Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/31/14 dated 31.01.2014 of the Commissioner (Appeal) Customs & central Excise Noida)

M/s Hotline Electronics Ltd., ...Appellant
(8A, Udyog Vihar, Part-1 & 11, Noida)

VERSUS

Commissioner of Central Excise, Noida ....Respondent

(C-56/42, Sec-62, Noida)

<u>APPEARANCE:</u>

A letter on record, for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70558/2025

DATE OF HEARING : 22 April, 2025
DATE OF DECISION : 22 April, 2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order in Appeal No. NOI/EXCUS/000/APPL/13/14 dated 31.01.2014 of the Commissioner (Appeal) Customs & central Excise Noida. By the impugned order, Order-In-Original No. 22/ ADC/ Noida / 2013-14 Dated: 26.07.2013 holding as follows has been upheld.

"ORDER

1. *I hereby disallow the Cenvat credit amounting to s.6,73,000/- (Rupees Six Lacs Seventy Three Thousand only) availed on the basis of improper documents and order to recover the same from the party under Section*

11A of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004

2. *I order to recover the Interest on the above amount of Cenvat Credit from the party under Section 11AB of the Central Excise Act, 1944 and*
3. *I also impose a penalty of Rs.6,73,000/- (Rupees Six Lacs Seventy Three Thousand only)) upon M/s Hotline Electronics Ltd., Plot No. 8 A, Udyog Viha Greater Noida) under Rule 15 of the Cenvat Credit Rules,2004 read with Section 11AC of the Central Excise Act, 1944.* "

2.1 Appellant were registered with the Central Excise department vide Central Excise Registration No. AAACH7522HXM001 for the manufacture of Electronic and Electrical goods such as Color Television, B/W Television and Sheet Metal components etc. failing under Central Excise Tariff Heading No. 8528 and 8504 respectively to the first schedule to the Central Excise Tariff Act, 1985 (5 of 1986)

2.2 During the scrutiny of records of the appellant by the officers of AGUP, Allahabad, for the period from April 2007 to March 2008 as pointed out in CERA No 643/08-09, it was noticed that the party has availed Cenvat credit to the tune of Rs. 6,73,000/- on the strength of ineligible documents

2.3 Appellant had availed Cenvat credit against the invoices issued by M/S Tack, Dehradun, Uttaranchal under Rule-11 of the central Excise Rule 2002, while the goods cleared by M/s Tack, Dehradun, Uttaranchal were without payment of duty as the unit was enjoying benefit of tax exemption under Notification No.50/2003-CE dated 1.6.2003. Since the duty was not paid by M/S Tack, availment of Cenvat credit on such invoices was not proper. On being pointed out the party stated that the Cenvat credit was taken on inputs cleared from the factory on payment of duty to M/s Tack, and subsequently the same inputs were received back from the said party as per provisions of Rule 16 of the Central Excise Rules, 2002. However, the submission of the party was not accepted by the auditors as the subject invoices did not bear any reference that the same goods were being returned by M/s Tack, Dehradun, Uttaranchal.

2.4 Appellant thus contravened the provisions of said Rule 16 in as much as the subject invoices did not bear any reference relating to return of the goods which were already duty paid and no one to one co-relation could be made vis a vis the goods cleared by the party on payment of dutv and the goods cleared by M/s Tack, Uttaranchal. Thus the said invoices were not proper documents in terms of availment of Cenvat credit since no duty was paid by M/s Tack on the goods cleared under invoices issued by M/s Tack, Dehradun, Uttaranchal. Hence availing Cenvat credit on such invoices is not admissible. The total amount of credit on this account during the said period has been worked out by the Auditors at Rs.673000/-.

2.5 After making investigations and enquiries in the matter a show cause notice 16.12.2011 was issued to the appellant asking them to show casue as to why:

1. *Cenvat credit amounting to Rs.6,73,0007- Rupees Six Lacs Seventy Three Thousand only)availed should not be disallowed and recovered from the under Section 11A of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules. 2004*
2. *Interest on the above amount of Cenvat Credit should not be demanded and recovered from them under Section 11AB of the Central Excise Act, 1944 and*
3. *Penalty should not be imposed upon them under Rule 15 of the Cenvat Credit Rules,2004.*

2.6 The show cause notice was adjudicated as per the order in original referred in para 1 above. Aggrieved appellant filed the appeal before Commissioner (Appeal) which has been dismissed as per the impugned order.

2.7 Aggrieved appellant has filed this appeal.

3.1 Appellant has vide letter received on 20.03.20205 made the submissions in appeal and stated as follows:

> *"In reply to notice for hearing it is submitted that appellant do not wish to appear either in person or through an authorized representative. Matter may kindly be decided on merit. .."*

3.2 Taking note of the above submissions matter was listed for hearing on 11.04.2025 and 22.04.2025. On 22.04.2025, Shri A K Choudhary, Authorized Representative for the revenue was heard, who reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal, written submissions filed by the appellant and during the course of arguments.

4.2 Impugned order records the findings as follows:

> *5.4 regards the eligibility of the appellants for taking Cenvat Credit on the strength of invoices issued by M/s Tack, Dehradun, Uttarakhand, who. was avaiing area based exemption provided by the Notification No. 50/2003-CE dated 10/06/2003 (as amended), it is observed that M/s Tack, Dehradun, Uttarakhand, primariiy cannot pass on Cenvat Credit on clearances of goods from their unit as they are availing area based exemption provided by the Notification No. 50/2003-CE dated 10/06/2003. Since, the duty was not paid by M/s Tack, Plot No. E-36, UPSIDC Industrial Area, Dehradun, Uttarakhand, in respect of the impugned goods, the availrnent of Cenvat Credit against such invoices were not proper. Further, it is observe that the invoices issued by M/s Tack, Plot No. E-36, UPSIDC Industrial Area, Dehradun, Uttarakhand do not bear sufficient details/reference to the invoice / goods in respect of which this credit was originally taken. Therefore, it is not possible to establish that the said goods/inputs, which were sold by the appellants, are the same goods which were being returned by M/s Tack Dehraun. 7he appellants were required to submit proper document to establish that thie*

goods/inputs which were being returned by M/s Tack, Dehradun, were the sarnie goods which were cleared by the appellants on payment of duty, before taking Cenvat Credit against those invoices. Mere mentioning invoice no. (without date) on the invoices issued by M/s Tack, Dehradun is not sufficient to establish the same. Therefore, appellants plea in this regard i.e. M/s Tack issued their own invoices in which reference were made of the under which were sent from appellant factory on payment of duty is not tenable.

5.6 Further, the appellants submitted that "...duty paid inputs were received from the factory of M/s Tack, Dehradun. Who are availing regional exemption under Notification No. 50/03-CE. as the manufacturing was closed down at Dehradun M/S Tack returned the inputs lying in balance as these inputs were purchased from the factory of the appellan t.. In this regard it is observed that it is not clear if the goods returned by M/s Tack, Dehradun, were the same goods purchased from the appellants upon which duty was paid In view of the above, I find that the appellants contravened the provisions of Rule 16 of the Central Excise Rules, 2002. Therefore, it is found that Adjudicating authority has rightly disallowed the Cenvat Credit and I do not find any infirmity in the impugned order.

5.7 I have noticed that the present demand was raised in compliance of the audit objection, raised in respect of the audit of the appellant's records (April 2007 to Marci 2008). The appellants did not enclose any evidence which could have proved that the facts of the case were in the knowledge of the department, prior to the audit. The appellants has been working under the self assessment system and are not required to submit documents or details of each cenvat credit availed, to the department. Therefore it is the appellant who has the true knowledge of *the working of the unit and other facts such as credit in respect of inputs or input services which nhas been utilized. The rules and regulation formed, in this regard, by the statute are required to be followed voluntarily by the appellant. The appellant has failed on this ount. Therefore, taking proper Cenvat Credit in appropriate manner as provided under the relevant law is the responsibility of the appellant but although the inadmissible Cenvat Credit was pointed out to them they did not agree with the aforementioned discrepancy. Hence, the extended period is correctly invoked and demand is not time-barred. Thus, it is found that the appellants violated the provisions of Rule 16 of the Central Excise Rules, 2002 and willfully suppressed the facts to avail inadmissible Cenvat Credit on the strength of improper documents and therefore they are also liable for penal action under Rule 15 of the Cenvat Credit Rules, 2004.*

4.3 Order in original records the findings as follows:

"I have carefully gone through the facts of the case, allegation made in the show cause Notice, defence submission made by the party and the evidence on record and following issue have surfaced for decision:

> *Whether M/s Hotline Electronics were eligible for taking Cenvat Credit on the strength of invoices issued by M/s Tack, Dehradun, Uttaranchal availing area based exemption provided by the Notification No. 50/2003-CE.*

The party had availed Cenvat credit against the invoices issued by M/S Tack, Dehradun, Uttaranchal, under Rule-11 of the Central Excise Rule 2002. Goods cleared by M/s Tack, Dehradun, Uttaranchal under these invoices were without payment of duty as the unit availing area based exemption provided by the Notification No. 50/2003-CE. Since the duty was not paid the availment of Cenvat credit against such invoices was not proper. Party's plea that the

Cenvat credit was taken on inputs cleared from the factory (M/s Hot shine) on payment of duty to M/s Tack, and subsequently the same inputs were received back from the said party. As per provisions of Rule 16 of the Central Excise Rules, 2002 invoices issued by M/s Tack, Dehradun are not proper documents for availing Cenvat Credit as the subject invoices did not bear Sufficient details /references to establish that the same goods were being returned by M/s Tack, Dehradun, Uttaranchal.

Rule 16 of the Central Excise Rules, 2002 envisages that where any goods on which duty has been paid at the time of removal, thereof, are brought to any factory for being remade, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take Cenvat credit of the duty paid as if such goods are received as inputs under the Cenvat Credit Rules, 2002 and utilize this credit according to the said Rules.

The party has contravened the provisions of said Rule 16 as the subject invoices did not bear any reference relating to return of the goods which were already duty paid and no one to one co-relation could be made vis a vis the goods cleared by the party on payment of duty and the goods received from M/s Tack, Uttaranchal. Therefore the said invoices are not proper documents to avail Cenvat Credit and hence availing Cenvat credit on such invoices is not admissible.

I further find that party has violated the provisions of Rule 16 of Central Excise Rules, 2002 and willfully suppressed the facts to avail inadmissible Cenvat Credit on the strength of improper documents and therefore they have rendered themselves liable for penal action under Rule 15 of the Cenvat Credit Rules, 2004."

4.4 The case against the appellant is that the documents against which the appellant has claimed the CENVAT Credit were not the prescribed document for availing the CENVAT Credit in terms of Rule 9 of the CENVAT Credit Rules, 2004. Appellant claim that goods against which they have claimed were the inputs which were cleared by them to a unit located in the Uttarakhand. The units located in Uttarakhand are exempt from payment of duty under notification No 50/2003-CE, hence while returning the inputs sent by them, the Uttarakhand Unit has not indicated the duty details of duty payment. However they are claiming the CENVAT credit in terms of Rule 16 of the Central Excise Rules, 2002.

4.5 Rule 16 (1) of the Central Excise Rules, 2002 permit the credit to be taken against manufactured and finished goods which are received by the appellant for undertaking the process specified in the said rule i.e. for being re-made, refined, re-conditioned or for any other reason. The said rule is applicable for allowing the credit of the duty paid in respect of the finshed goods which are received by the manufacturer not as inputs but for the purposes specified in the said rule against a duty paying invoice.

4.6 Rule 16 (2) provides for payment of duty against these goods at the time of removal, in case where the goods were subject to processes amounting to manufacture and in case the process did not amount to manufacture on reversal of the credit taken under rule 16 (1).

4.7 Rule 16 of the Central Excise Rules, 2002 is not applicable where the inputs are received against the invoices/ document not evidencing the payment of duty. In the present case the appellant has received the inputs, against the invoices of a unit located in Uttarakhand and exempt under Notification No 50/2003-CE. On the invoices no details of payment of duty are indicated but it is clearly mentioned that the unit claims exemption under Notification No 50/2003-CE. I do not find that rule 16 provides for such a condition where the goods have been received, under claim of exemption by the unit in Uttarakhand.

4.8 If the goods are received by the appellant against the invoice, on which no exemption has been claimed, the credit of the duty paid would have been available to the appellant on the basis of that document itself. In case the where no duty is paid the document would be admissible document as per Rule 9 of the CENVAT Credit Rules, 2004, but the quantum of credit admissible against the said document would be the amount of the duty paid against the said document, which in the present case is nil.

4.9 Appellant has sought to make out a case under Rule 16, for claim of CENVAT credit on the basis of document/ invoice which do not contain the particulars of duty paid. It is settled position in law, that when a statute provides for manner of doing a thing it should be done in that manner or not at all. Hon'ble Supreme Court has in case of Saral Wire Craft Pvt. Ltd. [2017 (50) S.T.R. 237 (S.C.)] observed as follows:

> *10. ……. We must immediately recall the decision in Taylor v. Taylor - (1875) 1 Ch. D 426, rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor - (1935-36) 63 IA 372 and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh - AIR 1954 SC 322, State of UP v. Singhara Singh - AIR 1964 SC 358, Babu Verghese v. Bar Council of Kerala - (1999) 3 SCC 422 and more recently in Hussein Ghadially v. State of Gujarat - (2014) 8 SCC 425. As observed by this Court in Babu Verghese, "it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all." ……."*

4.10 Appellant has in the written submission filed relied upon another decision of Commissioner (Appeal) to buttress his claim to the credit. The copy of the order has also been produced. In terms of the observations and discussions above I do not find anything in the said order by which it can be said that appellant has correctly availed the credit. I also note that Hon'ble Supreme Court has in case of MIL India Ltd. [2007 (210) E.L.T. 188 (S.C.)] observed as follows:

> ***"4.*** *In our view the High Court had erred in holding that the Tribunal could not have examined the question of dutiability, once on merits, the order of the Commissioner (A) dated 22-3-2000 became final. Firstly, one must understand that excisability is a matter of principle. The Tribunal is the highest authority in hierarchy to decide on facts whether the bought out items were dutiable or not. The Tribunal was not bound by the decision of the Commissioner (A) on the question of dutiability or excisability. ……."*

4.11 As the facts were support by the appellant as observed in the order of the lower authorities, with intention to evade the payment of central excise duty by taking the inadmissible, the extended period of limitation has been invoked for making the demand. In absence of any challenge to invocation of extended period of limitation in the written submissions filed by the appellant, I hold that extended period of limitation has been rightly invoked for the reasons recorded in the impugned order. As I uphold the invocation of extended period of limitation I uphold the penalty imposed upon the appellant under Rule 15 of the Cenvat Credit Rules,2004 read with Section 11AC of the Central Excise Act, 1944.

4.11 Before completing the discussions I would further observe that in this appeal filed in year 2014, appellant vide Stay Order No 50477/2015-EX (SM) dated 06/12.02.2015 was directed to deposit 50% of the disputed duty within eight weeks. As the appellant did not comply with this order of CESTAT, the appeal was dismissed as per Final Order No A/51132/2015-EX (SM) dated 08.04.2015. Both these orders were made in absence of the appellant or his counsel. Against the above order dismissing the appeal, appellant filed Miscellaneous Application for Rectification of Mistake (E/Misc/70134/2021) on 08.07.2021.

This application could have been dismissed for the delay in filing the same (filed after more than 6 years from the dated final order dismissing the appeal), however by Miscellaneous Order No 70248/2024 dated 05.09.2024 the order dismissing the appeal was recalled and the matter was listed for hearing. As after recall the appellant failed to appear when the matter was listed the appeal was dismissed invoking the provisions of Rule 20 of CESTAT Procedure Rules, 1982, vide Final Order No 70741/2024 dated 19.11.2024. Appellant filed application for restoration which was allowed in his absence vide Miscellaneous Order No 70049/2025 dated 21.02.2025. While restoring the matter, matter was directed to be listed on 21.03.2025 and it was also made clear that no request for any further adjournment will be considered. The copy of the order was sent to the appellant by sped post. Appellant vide letter received on 21.03.2025 requested for decision on merits without causing any appearance. Thereafter the matter was listed on 11.04.2025 and 22.04.2025. From the above it is quite evident that appellant never had any interest in pursuing the matter by causing appearance on the dates when the matter was listed except on 05.09.2024, appellant has never caused any appearance in the matter. If they were requesting for a decision on merits they could have stated so at the time of filing the appeal to save the valuable time of the court. By their conduct I am constrained to observe that appellant was only interested in delaying the proceedings in appeal for the reasons best known to them.

5.1 Appeal is dismissed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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