CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Excise Appeal No.70032 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-955-19-20 dated 20/09/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Jakson Engineers Ltd., **....Appellant**

(Plot No.25, Ecotech III, Udyog Kendra, Noida-201306)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida **....Respondent**

(4th Floor, C-56/42, Renu Tower, Sector-62, Noida-201301)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70684/2025

DATE OF HEARING : 14 July, 2025
DATE OF PRONOUNCEMENT : 24 September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No NOI_EXCUS-002-APPELLANT-955-19-20 dated 20.09.2019. By the impugned order following has been held:

> *"4.8 In light of the above discussions, I hold that the CENVAT credit amounting to Rs. 86, 33,733/- was wrongly availed by the appellant. I find no infirmity in the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant."*

2.1 Appellant having Central Excise registration No. AAACJ1625KXM002, are engaged in the manufacture of solar power generating system other power generating systems and parts thereof falling under Chapter No. 85 of the Central Excise Tariff Act, 1985.They pay central excise duty on the goods manufactured and cleared by them and also avail Cenvat credit of duty paid on inputs and input services used in or in relation to the manufacture of such goods.

2.2 During the scrutiny of the ER-1 Return for the month of February 2017 it was observed that appellant has made an adjustment of Cenvat credit amounting to Rs. 38,35,747/- & service-tax credit amounting to Rs. 47,97,986/- for the month of June & July, 2016. Therefore, It is apparent from the Return that the party has taken suo-moto input credit of Rs. 38,35,747& service tax credit of Rs.47,97,986/- (totaling to Rs.86,33,7331-) during the month of February, 2017.

2.3 Appellant vide their letter dated 04.03.2017 informed the jurisdictional Range Superintendent that during the month of June & July, 2016 they have paid duty on clearances of such goods on which no duty was payable and therefore, they intended for adjustment of Cenvat credit utilized in excess on clearances of goods on which no duty was payable. The Range officer vide letter dated 08.03.2017 asked the party not to make such adjustment of credit on their own and file proper refund claim if they feel that duty has been paid in excess during the relevant period i.e. in the month of June and July, 2016. But the party did not pay heed to the advice of the Range officer and took the said suo-moto credit i.e. input credit & input service credit as per then ER-1 Return for the month of February, 2017.

2.4 The Range Superintendent vide his letter C.No.20- CE / MISC /Jakson /R-2/51/12/130 dated 30.03.2017 again requested the party to reverse the said wrongly taken credit along with interest. The Cenvat credit so taken by the party in the month of February, 2017 without duty paying documents is inadmissible and the same is required to be reversed with interest. The plea of the party that the amount of duty paid in the month of June and July, 2016 was paid in excess and therefore, this excess paid duty has been taken as credit in the month of February, 2017, is not acceptable as there is no provision in Central Excise Law to take suo-moto credit of duty or tax, as held in BDH Industries Ltd. [2008(229) ELT 364 (Tr-L-B)]

2.5 Thus appellant had taken Cenvat Credit of Rs.86,33,733/- without any refund order or without permission from the proper authority and without filing proper documents under Rule 9 of Cenvat Credit Rules, 2004 prescribes duty/ tax paying documents viz., invoice, Challan, Bill & Bill of Entry etc., on the basis of which Cenvat Credit could be taken by a manufacturer or assessee. But, in the present case, no such document in support of availment of credit of Rs.86,33,733/- has been submitted by the party.

2.6 The credit taken by the appellant in violation to the provisions of Rule 3, 4 & 9 of Cenvat Credit Rules, 2004, becomes inadmissible and the same was recoverable with interest. Appellant was also liable to be penalized for violating the provisions of the above mentioned 1944.

2.7 A Show Cause Notices dated 05.07.2017, was issued to the appellant requiring them to show cause as to why:-

(i) The Cenvat Credit of f Rs.86,33,733/- (Eighty six lakh thirty three thousand seven hundred and thirty three only) should not be disallowed and demanded from them under Rule 14 of the Cenvat Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 for the reasons as mentioned above.

(ii) Interest on the above said amount of duty should not be demanded from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Act ibid;

(iii) *Penalty should not be imposed upon them under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act ibid.*

2.8 The show cause notice was adjudicated as per the Order-In-Original No. 27/JC/GBN/2017-18 dated:24.01.2018 holding as follows:

(i) I disallow the Cenvat Credit of Rs. 86,33,733/- (Eighty six lakh thirty three thousand seven hundred and thirty three only) taken by the party suo-motu in the month of Feb'2017 and order to recover the same under Rule 14 of the Cenvat Credit Rules. 2004 read with section 11A of the Central Excise Act, 1944 for the reasons as mentioned above.

(ii) I confirm the demand of interest as per applicable rate in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944.

(iii) *I impose a penalty of Rs. 8,63,373/- (10% of the credit amount wrongly taken by the party) under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act ibid.*

2.9 Aggrieved appellant filed an appeal before the Commissioner (Appeal) which has been dismissed as per the impugned order, referred in para 1 above.

2.10 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Atul Gupta, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Learned counsel submits as follows:

- The show cause notice is vague as no specific clause of any provision has been invoked therefore, in violation of the principles of natural justice. Such vague show cause notice can be basis of proceedings initiated as held in following decisions:

- Brindavan Beverages P Ltd. [2007 (213) ELT 487 (SC)]
- Kaur & Singh [1997 (94) ELT 289 (SC)]
- Board of Technical Education UP [AIR 1991 SC 271]
- S C Chakrabarty [1970 (3) SCC 548]

➢ Amount paid in excess cannot be termed as duty, hence, not required to be claimed as refund under Section 11B of the Excise Act, 1944.

- Motorola India Pvt Ltd. [2006 (193) ELT 468 (T)] upheld at [2008 (11) STR 555 (Kar)]
- J K Lakshmi Cement Ltd. [2015 (40) STR 618 (T)] affirmed at [2018 (8) GSTL 231 (Raj)]
- Svizera Labs Pvt Ltd. [2020 (374) ELT 595 (T-Mum)]
- Krishnav Engineering Ltd. [2016 (331) ELT 391 (ALL)]
- Sopariwala Exports Pvt Ltd. [2013 (291) ELT 70 (T-Ahmd)]
- ICMC Corporation Ltd. [2014 (302) ELT 45 (Mad)]
- Linkwell Telesystems Pvt Ltd. [2017 (7) TMI 278 CESTAT-HYD]

➢ A mere clerical error in the ER-1 return and its subsequent correction/ adjustment does not amount to suo motto availment of CENVAT Credit.

- Samrat Forgings Ltd. [2017 (346) ELT 296 (T-Chand)]
- Prism Cement Unit [2016 (333) ELT 107 (T-Del)]
- Stumpp Scheule & Somappa P Ltd. [2015 (319) ELT 146 (T-Bang)]

➢ Reliance placed on the decision of larger bench of tribunal in case of BDH Industries is misplaced, said decision is distinguishable.

➢ Admissible benefit cannot be denied merely on technical or procedural ground.

- Indian Metals and Ferro Alloys Ltd. [2022 (380) ELT 134 (Ori)]
- Biocon Ltd. [2022 (380) ELT 252 (Kar)]

- Imposition of penalty is not sustainable as demand is not sustainable as held in case of H M M Ltd. [1995 (76) ELT 497 (SC)]

3.3 Authorized representative reiterated the findings recorded in the impugned order

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

4.1 I find that a letter dated 04.03.2017 was written by the appellant to the department (Range Superintendent) informing that during the month of June & July, 2016, they have paid excess duty on clearances of goods and therefore, they intended for adjustment of Cenvat credit utilized in excess on clearances of goods. The Range Superintendent vide letter dated 08.03.2017 asked the party not to make such adjustment of credit on their own and file proper refund claim if duty has been paid in excess during the relevant period i.e. in the month of June and July, 2016. But the party did not pay any heed to the advice of the Range officer and took the said suo-moto credit by way of adjustment of Cenvat credit, in ER-1 return of February-2017, amounting to Rs. 38,35,747/- & service tax credit amounting to Rs. 47,97,986/- for the month of June & July, 2016. The Range Superintendent vide his letter dated 30.03.2017 again requested the party to reverse the said wrongly taken credit along with interest which was replied in negative by the party. Accordingly proceedings like issuance of demand and adjudication order followed.

4.2 I find that, it has been alleged that the party had taken Cenvat Credit of Rs. 86,33,733/- without any refund order or without permission from the proper authority and *without proper documents as prescribed under Rule 9 of Cenvat Credit Rules, 2004. Therefore, credit taken by the party is in violation to the provisions of Rule 3, 4 & 9 of CCR, 2004, and the same is required to be recovered with interest under Rule 14 of CCR, 2004 read with Section 11A & 11AA of the Central Excise Act, 1944.*

4.3 On going through the provisions of rule 9 of Cenvat Credit Rules, 2004, I find that 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 the documents as mentioned in the Rule. In the instant case, the party had taken Cenvat Credit of Rs. 86,33,733/- without any refund order or without permission from the proper authority and without filing proper documents under Rule 9 of Cenvat Credit Rules, 2004, which prescribes duty/ taxpaying documents viz., invoice, Challan, Bill & Bill of Entry etc. Thus, the party had contravened the provisions contained in Rule 9 of the Cenvat Credit Rules, 2004 read with Rule 3 of the Cenvat Credit Rules, 2004.

4.3 I am of the view that even though the party had paid the excess duty in the month of June'2016 and July'2016, yet they were not entitled to take the re- credit of the excess paid duty suo motu. In this regard they should have either filed the refund claim before the proper authority under Section 11B of Central Excise Act'1944 or applied for permission of re-credit the Cenvat and only after sanction of the refund claim/permission they could have taken credit of excess duty paid.

4.4 Section 11B of the Central Excise Act, 1944 also provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty, may make an application for such refund to the jurisdictional divisional officer before the expiry of one year from- the *relevant date. There is no provision for suo-moto availing of credit.*

4.5 I find that the appellant have also submitted Certificate dated 25.03.2018 issued by their Charted Accountants i.e. Bajaj Arora & Co., New Delhi in support of their claim that excess duty has been paid in the month June & July- 2016. In my opinion, instead of submitting. CA's certificate, the party should have submitted a certificate issued by Charted Engineer certifying that relevant entries of Cenvat account maintained in software installed in their system have not been-tampered with.

4.6 It creates suspicion that the appellant kept on filing the ER-1 return till January-2017 without realising that excess duty payment has been made in the month of June & July-2016, though the Opening & Closing balance of ER-1 return account is tallied with Cenvat account every month and Cenvat details is filled in ER-1 return on the basis of Cenvat account register maintained by the party in their system. It is really surprising that he appellant took 6 to 7 months to realize that such a huge/ substantial amount has been paid in excess.

4.7 It has been laid down in the various settled case laws that any credit wrongly debited or debited twice or in excess cannot be taken as re-credit and the proper remedy is to file the refund for the excess credit debited. In this regard, I place reliance on judgement of Hon'ble Tribunal in the case of BDH INDUSTRIES LTD. Vs. COMMISSIONER OF C.EX. (APPEALS) MUMBAI-1 reported in 2008 (229) E.L.T. 364 (Tri, LB) -

> *"We find that there is no provision under Central Excise Act and Rules allowing suo moto taking of credit or refund without sanction by the proper officer. The appellant's contention that refund in respect of duty pa id twice cannot be considered as refund of duty and is only the accounting error does*

> *not appeal to us as the debit entry made in the accounts is towards payment of duty only and therefore refund of these amounts has to be considered as refund of duty only. The PLA account and the credit accounts are required to be submitted to the department and any correction carried therein, need to have department's sanction. We also note that the law relating to refund has beer fully analysed by the Apex Court in the case of Mafatlal Industries (citea supra) which makes it very clear that all types of refund claim be there of excess duty paid or otherwise are to be filed under Section 11B and have to pass the proof ofnot passing on the incidence of duty to others. The recent decisions of Hon'ble Supreme Court in the case of Sahakari Khand Udyog and Others clearly laid down that all refunds have to pass through doctrine of unjust enrichment, even if it is not so expressly provided for in the statute From these decisions it clearly emerges that all types of refund have to be filed under Section 11B of the Central Excise Act and no suo moto refund can be taken unless and until the department is satisfied that the incidence of duty has not been passed on.*
>
> *In view of above, we answer the reference made to us by holding that all types of refund have to be filed under Central Excise Act and Rules made thereunder and no suo moto credit of the duty paid in excess may be taken by the assessee. The matter is now sent back to the referral bench for passing appropriate orders on the appeal before it".*

I further rely on the judgments of the Tribunals in the following cases - 2011 (274) E.L.T. 215 (Tri-. Mumbai) CANDICO (I) LTD. Vs. CCE, NAGPUR

> *Appellant took Suo Motu, credit of amount of refund in their PLA account on 25-4- 2007, and intimated the Same to Department vide their letter dated 25-4- 2007 - Suo motu taking of credit of refund without sanction by proper officer not permissible under law - Hence, no infirmity in impugned order directing recovery of such amount - interest chargeable.*

2009 (247) E.L.T. 519 (Tn. - Del.) TITAWI SUGAR COMPLEX Vs. CCE, MEERUT-1

> *Penalty -.Cenvat/Modvat Suo motu credit of Cervat cedit earlier reversed - Debiting in Cenvat account means payment of duty and the amount stands transferred to Government account - Appellants not eligible to take such Suo motu credit- However, it is not proper to demand once on the ground that the credit has been taken wrongly and again on the ground that credit has been utilized - Utilization of credit led to payment without duty - Therefore penalty on this count is warranted but is reduced to Rs. 13 lakhs - Rule 15 of Cenvat Credit Rules, 2004, [para 6.1]*

2004(174) ELT 220 (Tri-Bang) Commissioner of C.Ex Belgaum Vs. Comfit Sanitary Napkins (I) Pvt. Ltd.

> *We have considered the submissions and we note that the assessee cannot suo motu take credit without applying for refund when the excess duty has been paid The Assistant Commissioner had confirmed the duty under Sec. I1D read with Sec. 11A and has imposed penalty under Rule 210 besides demanding interest under Sec. 11AA. The assessee before the Commissioner had urged that they could take suo motu refund. We are of the considered opinion that the Assistant Commissioner's Order is correct. The assessee cannot take srio*

motto refund but should follow the procedure laid down under Sec. 11B of the Act The citation referred to by the DR deals on this point and is applicable to the facts of the case. The order passed by the Commissioner (Appeals) is not legal and proper and hence the same is set aside by allowing the Revenue appeal.

4.3 From the ER-1 return filed by the appellant for the month of June 2016 it is evident that appellant had self assessed their duty liability as indicated in the table below:

CETSH	Description	Quantity Cleared	Assessable Value	Rate of Duty	Duty Payable	Nature of Clearance
73089090	Fabricated Structure	300	358681	0	0	Export
		3708	19500	12.5	2437	Home Clearance
85021100	Gas Generating Set	2	5913876	0 Exempt 12/2012-CE	0	
		9	45256302		0	
		11	144927957		0	
85023990	Solar Power Generating System	944	25977747		0	
85414019	Solar PV Module	3972	18684389		0	
85437092	Equipment Gadgets based on Solar energy	8	1950000		0	
85447090	Busduct	2001.3	877943	12.5	109743	
85030010	Parts of Generating Set	472	661168	12.5	82646	
85371000	Board Electric Panel	705	48004767	12.5	6000596	
85371000	Electric Panel	228	4560423	0 Exempt 15/2010-CE	0	
85381010	Parts of Board/ Electric Panel	27	135000	12.5	16875	
72044100	Iron Scrap	103535	1504185	12.5	188023	
74040019	Copper Scrap	2640	444840	12.5	55605	
76020090	Aluminium Scrap	9305	903858	12.5	112982	
85015210	Motor	2	37292	12.5	4661	
85361040	Fuse	288	88150	12.5	11018	
72162100	Pipe	6.1	7342	12.5	918	

72162100	Angle	54	2251	12.5	281	
	Total Duty Payable				6585785	
	Total Duty Paid				6586490	CENVAT Account
	Excess Duty Paid				705	

From the table above it is evident that during month of July 2016 appellant had self assessed the total duty liability of Rs 6585785/- and had paid the same by debiting from their CENVAT Credit account in respect of the inputs.

4.4 Similarly for the month of July 2016 it is evident that appellant had self assessed their duty liability as indicated in the table below:

CETSH	Description	Quantity Cleared	Assessable Value	Rate of Duty	Duty Payable	Nature of Clearance
73089090	Fabricated Structure	6212	414921	12.5	51865	Home Clearance
85023990	Solar Power Generating System	69	4408409	0 Exempt 12/2012-CE	0	
85414019	Solar PV Module	2326	17947280		0	
85030010	Parts of Generating Set	490	286600	12.5	35826	
85030090	Parts of Generating Set (Canopy)	2	2079449	12.5	259932	
85372000	Board Electric Panel (Spares)	6	497354	12.5	62170	
85371000	Board Electric Panel	5	99760	0 Exempt 22/2003-CE (NT)	0	
85371000	Board Electric Panel	1617	82701124	12.5	7939045	
39073090	Nter-pon (powder)	40	96824	12.5	1150	
72044100	Iron Scrap	27615	401245	12.5	50155	
	Total Duty Payable				8400143	
	Credit Utilized for clearance of Inputs as such				1150	
	Total Duty Paid				16799136	CENVAT Account

	Excess Duty Paid				8397843	

4.5 From the table as above it is evident that the appellant had during the months of June and July 2016 paid excess duty by debiting their CENVAT Account to the of Rs 83,98,548/-. The fact that they have assessed the duty on their clearances which is much lower than the amount debited from their CENVAT Credit Account is self evident from the ER-1 return filed by the appellant.

4.6 Subsequently on realizing the mistake they informed the jurisdictional authorities about the same and also their intention to take the credit of excess amount debited by them in the ER-1 return for the month of February 2017, on the basis of the CA Certificate, as detailed in table below:

S No	Particulars	Amount
June 2016		
1	Actual Duty Paid	65,86,490
2	Duty Payable as Per CA Certificate	63,64,222
3	Difference	2,22,268
July 2016		
1	Actual Duty Paid	167,99,136
2	Duty Payable as Per CA Certificate	83,87,672
3	Difference	84,11,464
	Total Excess payment (Credit taken in Feb 17)	86,33,732
	Total Excise Payment as per ER-1	83,98,548
	Excess Credit taken	2,35,184

Revenue authorities did not dispute the fact of excess debit from the CENVAT Account towards the duty due for the month of June and July 2016, but directed the appellant to file a refund claim in terms of Section 11B of the Central Excise Act, 1944. As appellant had taken the credit of the excess amount debited by them suo motto these proceedings have been initiated against the appellant, alleging contravention of Rule 3,4 & 9 of the CENVAT Credit Rules, 2004

4.7 The question that needs to be addressed in the present case is whether the ER-1 of the appellant for the months of June and July 2016 could be considered as prescribed document for the purpose of availing this credit. Rule 9 (2) of the CENVAT Credit Rules, 2004 reads as follows:

> *(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:*
>
> *Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.*

4.8 This rule was considered by the Mumbai Bench in the case of HDFC Bank Ltd. [Final Order No: A/87414/2021 dated 23.12.2021 in Service Tax Appeal No. 89160 of 2018] and following was observed:

> *"4.8 Admittedly the document the certificate issued by NPCI do not qualify as prescribed document in terms of Rule 9 (1) of the CENVAT Credit Rules, 2004. Respondents have labored hard during the course of the entire proceedings to establish that the document against which the CENVAT Credit has been claimed qualify to be prescribed document in terms of Rule 9 (2) of the CENVAT Credit Rules, 2004 read with Rule 4A of the Service Tax*

Rules, 1994. They also succeeded before the Commissioner.

4.9 It is settled law that the credit could not be allowed, if the fact of payment of tax cannot be established. In the present case what needs to be examined is not the admissibility of the document against which the credit has been claimed but the fact of payment of tax needs to be established. In his statement recorded on 22.03.2017, the Chief Financial Officer of NPCI, on being asked as to whether NPCI is raising any invoices for Interchange Fees and the Service Tax payable thereon, stated that NPCI does not raise any invoices in respect of Interchange Fee and the Service Tax payable thereon, however, NPCI do provide daily settlement report which contains amongst other information the Interchange Fees and Service Tax thereon. From the above statement the obvious conclusion is that NPCI is not paying any service tax the credit, but only engaged in issuing of the certificate against which the CENVAT Credit has been availed by the respondent. If the NPCI was not issuing any invoices in respect of this amount claimed as credit, these amount would not reflect in the ST-3 returns filed by NPCI. In case there is anything contrary to this the same needs to be established from the ST-3 returns filed by NPCI during the relevant period. In the case of Karur Vyasa Bank, heavily relied upon by the respondent counsel during the argument of the case bench has specifically recorded as follows:

> *"5.3 The assessee as a Member Bank, has entered into an agreement with NPCI, wherein, NPCI has agreed to provide intermediary network switching and other support services, as may be required, for accounting and settlement of transactions made on the Automated Teller Machines (ATM) and integrating the same with the accounts of the customers, in the books of the member banks. The*

said agreement also records that in the event payments are made by one Member bank ATM operated by the appellant to the customers of another bank, then the banks are required to settle such payments made with the member bank who had issued the subject card. In nutshell, the above agreement provides for smooth operation of member banks regarding transaction through credit or debit cards or such other instruments, to the customers who perform transactions through ATMs for specified services. The agreement also provides for the NPCI to raise invoices on member bank and it is that payment made by the appellant for which the NPCI has only issued a e-statement that has triggered the first issue. From a perusal of the statement issued by NPCI, we note that it is a self-contained document incorporating all the mandatory requirements of proviso to Rule 4A and in any case, NPCI is not a private body just to ignore its statement; as to the nature of service, there is an agreement in place.

5.4 It is not the case of the Revenue that NPCI has not filed its ST-3 return or that there was any contravention by NPCI whereby a doubt is entertained as to the transactions, to deny cenvat credit availed by the assessee on its payment to NPCI. Hence, we are unable to subscribe to the views of the Ld. Commissioner and hence, we are setting aside the same."

…….

4.12 Before we further proceed it is evident that the payment of service tax on the input services claimed as CENVAT credit is basic feature of the CENVAT Credit scheme. Rule 9 provides the manner for establishment of the claim for such payment. Rule 9 prescribes the documents which can be relied for the purpose of *establishing the claim of such payment of the service tax. Rule 9 is prescription of the document against which the credit can be claimed and do not relax the requirement of payment of the service tax, credit of which is claimed. If the document falls within the category of the documents prescribed the same are accepted as direct evidence of payment, but still in case of doubt the same needs to be established. If the document do not file within the category of the prescribed documents as per Rule 9 (1) then the burden to establish the payment of the tax shifts on to the person claiming the credit. Rule 9 (2) do not prescribe any document but provides for relaxation in respect of the documents as specified in the Rule 9 (1) and subject to those relaxation the credit can be allowed in respect of the document fulfilling the requirement of Rule 9 (2)."*

4.9 We will have no hesitation in holding that the ER-1 filed by the appellant is a duty paying document and contains all the details as prescribed by the proviso to Rule 9 (2). It is not even the case of the revenue that this excess amount debited from the CENVAT Account is not reflected in the ER-1 returns filed by the appellant. Having held so, we do not find any merits in the allegations made against the appellant in respect of the availing the credit on the basis of in-admissible documents.

4.10 Appellant have relied upon a series of decisions in the support of their contention with regards the admissibility of this CENVAT Credit, without following the procedure of Section 11B for the refund of the excess duty paid. In any case for the reasons recorded in the preceding paragraphs we do not find it necessary to decide with regards to the applicability of the said decision.

4.11 The decision of the larger bench of tribunal in the case of BDH Industries, relied upon by the revenue is clearly distinguishable for the reason that the same was in case of the double payment of duty, para 4 of the said decision records "*in their case the goods were supplied under claim for rebate of* *duty and duty was paid once at the time of clearance of consignment and secondly at the end of the month when the duty is required to be paid in respect of all consignments cleared during the month. Since the duty was debited twice, they suo motto took the credit of the same and informed the department of it."* In the present case we are not concerned with the case of double payment of duty, but the issue that needs to be decided is whether the ER-1 filed by the appellant showing debit of CENVAT Credit in excess of the duty assessed can be considered as document for availing the CENVAT Credit. The other decisions relied in the impugned order follow the ratio laid down by the BDH Industries and are distinguishable.

4.14 As per the table in para 4.6 we observe that appellant has taken credit of Rs 2,35,184/- in excess of what was the excess payment as per the ER-1 returns and due to them accordingly we modify the demand to that extent. As the demand has been restricted to Rs.2,35,184/- penalty imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is restricted to Rs.23,518/- (10% of the amount of credit recoverable).

5.1 Appeal is partly allowed as indicated in para 4.14 above.

(Order pronounced in open court on-24 September, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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