CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Excise Appeal No.71262 of 2018

(Arising out of Order-In-Appeal No.19-COMMR-APPL-GZB-2017-18, dated -27/04/2018 passed by Commissioner, CGST, Ghaziabad)

Sampark Industries Ltd, ...Appellant
(P-215, Site-IV, UPSIDC, Industrial Area, Greater Noida, Surajpur Gautam Budh Nagar, Uttar Pradesh 201306)

VERSUS

Commissioner, CGST, Ghaziabad ....Respondent

(Ghaziabad)

APPEARANCE:

Absent on call for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70788/2025

DATE OF HEARING : 15.07.2025
DATE OF DECISION : 13.11.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.19-COMMR-APPL-GZB-2017-18, dated -27/04/2018 passed by Commissioner, CGST, Ghaziabad. By the impugned order Order-In-Original No.10/AC/Div.-II/Noida-II/2016-17 dated 30.12.2016 has been upheld holding as follows:-

ORDER

1. I confirm the demand of Rs 35, 74,487/- (Rupees Thirty Five Lakh Seventy Four Thousand Four Hundred and Eighty

Seven) only, under Rule 14 of the CENVAT Credit Rules, 2004 read with Sec.11A of the Central Excise Act, 1944.

2. I order for appropriation of an amount of Rs.13, 04,131/- (Rupees Thirteen Lakh Four Thousand One Hundred and Thirty One) only deposited vide Challan No.47 dated 13/05/2015 and debited vide Entry No.105 dated 10-06-2015 by the party.

3. I order for recovery of interest, at the applicable rates, on the aforesaid sums to be recovered under Rule 14 of the said Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 from the party.

4. I impose penalty of Rs.35,74,487/- (Rupees Thirty Five Lakh Seventy Four Thousand Four Hundred and Eighty Seven) only under Rule 15(1) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2.1 Appellant is having Central Excise Registration No. AAFCS4898EXM001. A Show Cause Notice dated 16.11.2018 was issued to the Appellant for demand and recovery of Rs.35,74,487/- alleged to have been wrongly taken credit of duty involved on the following counts:-

(i) that they availed and utilized CENVAT Credit to the tune Rs. 19,65,034/- of amount paid towards Customs Education Cess and Customs Secondary & Higher Education Cess during the year 2012-13 to 2014-15, which were not permissible in terms of Rules 3(1) of the Cenvat Credit Rules, 2004.

(ii) that they availed inadmissible credit amounting to Rs. 5,43,704/- paid as SAD on capital goods imported by them, which was not permissible in terms of Rules 3(1) of the Cenvat Credit Rules, 2004, and

(iii) that they availed inadmissible credit amounting to Rs. 10,65,749/- paid as CVD on capital goods namely, Flat Die

Co-extrusion Line imported under EPCG, which was destroyed in the fire accident and was not in possession of the appellant on 01.04.2014 i.e. the date on which the impugned credit was availed. The said credit was inadmissible in terms of Rule 4(2) of CCR, 2004.

2.2 The Show Cause Notice also alleged that the Appellant has suppressed vital fact while availing CENVAT Credit as detailed above from the Department and the same was noticed only during the course of audit. The said inadmissible credit was availed with an intent to evade the central excise duty. They contravened the provisions of Rule 3(1) and Rule 4 of the CENVAT Credit Rules, 2002/2004 read with Rule 4 & Rule 8 of the Central Excise Rules, 2002 knowingly with an intent to evade the payment of duty. Thus extended period of limitation as per proviso to Section 11A of the Central Excise Act, 1944 have been invoked and also penal action as provided under Rule 15 of the CENVAT Credit Rules read with Section 11AC of the Central Excise Act, 1944 has been imposed.

2.3 The Show Cause Notice has been adjudicated as per the Order-In-Original dated 30.12.2016 referred in para 1 above.

2.4 Aggrieved Appellant filed appeal before the Commissioner (Appeals) which has been dismissed as per the impugned order.

2.5 Aggrieved appellant filed this appeal.

3.1 This matter has been listed for hearing on 10.07.2019, 30.10.2019, 08.01.2020, 03.02.2020, 30.08.2023, 11.10.2023, 22.11.2023,08.01.2024, 26.02.2024, 02.07.2024, 21.08.2024, 09.10.2024, 22.11.2024, 08.01.2025, 12.03.2025 & 15.07.2025. On all the occasions the Counsel for the Appellant was absent or requested for adjournment without specifying any specific reasons. We find that proviso to Section 35C (1A) of the Central Excise Act, 1944 provides as follows-

"35C. Orders of Appellate Tribunal.-

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."

RULE 20 of CESTAT Procedure Rules, 1982 provide as follows:-

Action on appeal for appellant's default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his nonappearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

3.2 As the matter has been adjourned for more than the requisite number as prescribed by the Central Excise Act we are not inclined to adjourn this matter any further more so ever when neither written request or verbal communication has been received seeking adjournment with specific reason. In terms of Rule 20 of the CESTAT Procedure Rules, 1982 matter has been taken up for consideration after hearing the learned Authorized Representative for the Revenue.

3.3 Learned Authorized Representative for the Revenue reiterates the findings recorded in the impugned order.

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

4.2 The impugned order records as follows:-

> *"6. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I observe that there are three issues involve in the impugned case regarding eligibility of Cenvat credit - (i) on Education Cess and Higher Education Cess paid as part of Customs duty at the time of import of goods as per the listed duties specified under Rule 3(1) of Cenvat Credit Rules 2004, (ii) on the goods imported under EPCG, duty was paid due to failure of the appellants to fulfill export obligation and also the goods were destroyed in fire accident on 27.09.2010 and were not in the possession of the party as on 01.04.2014 je. the date on which credit was availed, and (iii) credit of Special Additional Duty paid at the time when the capital goods were imported in the factory premises, as per the listed duties specified under Rule 3(1) of Cenvat Credit Rules 2004,*
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> *6.1 I find that the provisions as mentioned in the said sub rule (1) of Rule 3 of the said CCR categorically stipulate the nature of duties specified and conditions laid therein for taking credit of the said duties. In case of import, credit would be admissible of the various types of specified excise duty, which is also known as CVD and education cess and higher education cess leviable on such specified excise duties. The appellant had taken credit of education cess and higher education cess paid on total customs duty including basic customs duty and CVD. The education cess and higher education dess paid on the amount inclusive of Basic customs duty and CVD is not specified in the above definition. Hence credit of such education cess & higher education cess would not be admissible to them. Merely payment of education cess and higher education of total amount of Basic customs duty and CVD does not make it*

eligible for Cenvat credit. Therefore, the adjudicating authority has rightly observed that the aspect of admissibility of credit of duty is contained and sole determining factor exists in the above referred rule (i.e. sub rule (1) of Rule 3} and it does not lie in the event of payment of Cess under a different law, i.e. the Customs Tariff Act and/or the Finance Act, 2004. Therefore, it flows from the law as envisaged under sub rule (1) of Rule 3 of the CCR that the credit of Education Cess and the Higher Education Cess having been paid as part of Customs duty was not available for taking credit. Thus, the credit of both Education Cess and the Higher Education Cess paid under the authority of Section 91 read with Sec.94 as well as Section 140 read with Section 138 (respectively) of the Finance Act, 2004 was wrongly availed and deserves to demanded and recovered from the party.

6.2 As regards admissibility of Cenvat credit in respect of duty paid on capital goods imported under EPCG, I find that the capital goods namely Vaccume Metallizer and Flat Die Co-extrusion Line were imported by the appellant duty free under EPCG scheme, however, they failed to discharge their export obligation. The appellant had taken credit on the basis of challan under which duty demanded by DGFT was deposited. Therefore, the duty was not in the normal course of circumstances at the time of receipt of the goods in the factory of production. Admittedly, the goods were not physically available in the pactory as the same were destroyed in a fire accident taken place in their factory and were no more available for their use in or in relation to the manufacture of their finished goods. Therefore, the adjudicating authority had rightly decided that the said goods do not deserve to be allowed for credit of duty paid in default of fulfillment of export obligations.

6.3 Regarding admissibility of Special Additional Duty to the appellant, at the time when the capital goods were imported in the factory premises, I find that credit of such duty was

extended only w.e.f. 01.03.2005 vide Notification no. 13/2005-CE (NT) dated 01.03.2005. It is a fact that an amount of Rs. 5, 43,704/- was paid as special Additional Duty under sub-section 5 of section 3 of the Customs Tariff Act, 1985. The appellant had imported the capital goods in question under EPCG. I find that at the relevant time, Cenvat Credit of Special Additional Duty leviable under sub-section 5 of Section 3 of the Customs Tariff Act was not admissible in view of Rule 3(1) of CCR, 2002. Therefore, the adjudicating authority has rightly concluded that the appellant were not eligible to such credit.

6.4 I also find that the act of availment of the ineligible credit was never within the knowledge of the Department prior to the visit of the audit officers. Thus, the adjudicating authority has rightly concluded that the material information regarding taking credit on the three issues, as discussed herein above, remained suppressed from the Department. Hence, the proviso of Section 11 A as made applicable read with the Rule 14 of the CENVAT Credit Rules, 2004 was rightly invoked, and the consequences thereof would follow accordingly."

4.3 In the present case the Appellant have availed the credit in respect of the capital goods imported under EPCG scheme on which duty was paid. Due to failure of Appellant's to fulfill the export obligations, the said goods were destroyed in fire accident on 27.09.2010 and were not in possession of the Appellant on the date when credit was taken.

4.4 The Appellant has imported Metallic BOPP Film, Metallic Polyester Film, Metallic Coated Poly Film and Metalized Paper and under EPCG scheme against EPCG license No.0530132877 dated 21.05.2002 the Appellant failed to fulfill the export obligation i.e. 5 times the CIF value imported under the EPCG license. As the Appellant did not fulfill the requirement of the license, DGFT directed the Appellant to pay the due Customs Duty vide letter dated 15.10.2014 the entire credit. It is also worth noting that the capital goods against which credit was being sought have

been destroyed in fire accident in the year 27.09.2010. It is quite evident that even before the date when the fire accident took placed the period prescribed as per EPCG license has been completed. The Appellant have not fulfilled the export obligation in term of Rule 4(2)(b) of the CENVAT Credit Rules.

4.5 Subsequent to the payment of duty as directed by the DGFT in terms of the license issued, Appellant have taken this credit. We do not find any merits in the grounds taken by the Appellant for the reason that the Appellant had not fulfilled the obligations caused on him under EPCG Scheme and have evidently mis-utilized the facility granted. In case of Servo Packaging Ltd.[2020 (373) ELT 550 (T-Chennai)] Chennai bench has observed as follows:

> *"**9.1** Advance Authorization is issued in terms of paragraph 4.03 of the Foreign Trade Policy [F.T.P. (2015-20)] and the relevant Notification is Notification No. 18/2015-Cus., dated 1st April, 2015. The said Notification exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the FTP subject to the conditions laid down thereunder. One of the conditions, as per clause (iv), is that it requires execution of a bond in case of non-compliance with the conditions specified in that Notification. Further, paragraph 2.35 of the FTP also requires execution of Legal Undertaking (LUT)/Bank Guarantee (BG) : (a) Wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT)/Bank Guarantee (BG)/Bond with the Customs Authority, as prescribed, before clearance of goods.*
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> ***9.2** Further, there is no dispute that the above is guided by the Handbook of Procedures ('HBP' for short) and paragraph 4.50 of the HBP prescribes the payment of Customs Duty and interest in case of bona fide default in Export Obligation (EO), as under :*

"(a) Customs duty with interest as notified by DoR to be recovered from Authorisation holder on account of regularisation or enforcement of BG/LUT, shall be deposited by Authorisation holder in relevant Head of Account of Customs Revenue i.e., "Major Head 0037 - Customs and minor head 001-Import Duties" in prescribed T.R. Challan within 30 days of demand raised by Regional/Customs Authority and documentary evidence shall be produced to this effect to Regional Authority/Customs Authority immediately. Exporter can also make suo motu payment of Customs duty and interest based on self/own calculation as per procedure laid down by DoR."

10. *Thus, the availability of CENVAT paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import and secondly, such import was to be exclusively used as per FTP. Moreover, such imported inputs cannot be used anywhere else but for export and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Licence. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import compared to the one under Advance Authorization may vary because of the nature of import."*

4.6 Further, on the date of taking credit, Appellant was not in possession of any of these machines. However we also find that period for fulfillment of the export obligation in the present case was over much before the destruction of the machines in the fire accident as claimed by the appellant. Appellant have at no stage of proceedings even produced the copy of installation certificate in respect of these capital goods imported under EPCG scheme in their premises. In similar sets of facts in case of Tirupati Structural Ltd. [FINAL ORDER NO.70557/2025 dated 08 August,

2025 in Excise Appeal No.70135 of 2022] Allahabad Bench has observed as follows:

> *"4.7 I find that appellant was well aware long back even prior to introduction of GST w.e.f. 1st July, 2017 that they had and were not in position to fulfill the export obligation. In fact appellant have not even produced the installation certificate as require under the EPCG scheme evidencing the installation of the said capital goods in their premises at any time during the entire proceedings. Both the authorities have found that these capital goods imported under EPCG scheme were never installed in the premises of the appellant and were diverted elsewhere. Even in this appeal before CESTAT the installation certificate has not been produced.*
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> *4.8 They claimed that Customs Authorities for 10 years never have issued any notice demanding the said dues for non fulfillment of conditions of EPCG Scheme. Thus they paid these duties in the year 2019 and have claimed the refund. I do not find any merits in such submission when appellant was well aware that he is not in position to fulfill the export obligation and he had diverted the capital goods elsewhere he was required to deposit the duty in terms of the conditions of the bond executed by him for claiming the benefit of EPCG Scheme. The deposit of custom duty has been made against the capital goods which were never installed in the factory of appellant and installation certificate produced. The misdemeanor committed by the appellant cannot be a ground for claiming this amount as refund by taking shelter of the fact that GST has been introduced w.e.f. 01.01.2017. Appellant has in my view no case for claiming the refund of various duties paid, either on merit or on equity. The appellant do not have clean hands to make this claim even on the ground of equity.*
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> *4.9 It is settled law that no one should be allowed to claim benefit of his own wrongs. In the case of Municipal Committee Katra [Order dated 09.05.2024 in CIVIL*

APPEAL NO(S). 14970- 71 OF 2017] Hon'ble Supreme Court observed as follows:

> *"18. The situation at hand is squarely covered by the latin maxim „nullus commodum capere potest de injuria sua propria", which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav [(1996) 4 SCC 127] observing as below: -*
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> > *"28. …In this behalf, the maxim nullus commodum capere potest de injuria sua propria — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estoppel to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:*
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> > > *"… it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*
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> *The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757 : 15 LJ QB 239] . At p. 192, it is stated that if a man be bound to appear on a certain*

day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the nonperformance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make profit out of his own wrong". The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition."

4.7 In respect of the credit availed on Education CESS and Secondary and Higher Education CESS paid on Customs duty, we find that these do not clarify as specified duty in terms of Rule 3(1) of the CENVAT Credit Rules, 2004. Also SAD paid on capital goods imported by them was not specified duty in terms of Rule 3(1) of CENVAT Credit Rules. Therefore, we do not find any merits in the submissions made by the Appellant in this regard. Rule 3(1) only promotes credit in terms of Education CESS and Higher Education CESS paid on respect of the Central Excise duty (countervailing duty) at the time of importation not of customs thus there is no merits in this submissions. Thus we do not find any merits in the claim to the credit.

4.8 We find that Appellant never disclosed these facts to the concerned authorities in their ER-1 Return. They suppressed the fact that they were availing CENVAT Credit in respect of the

duties paid as per the direction of the DGFT of the EPCG license issued in the year 2002 and they have availed CENVAT Credit on the Customs Education CESS and Customs Secondary & Higher Education CESS. The intention to evade payment of tax is clearly visible as by availing this inadmissible credit and utilizing the same for payment of Central Excise duty, Appellant have evaded payment of due Central Excise duty. Necessary ingredients to invoke extended period of limitation as per proviso to Section 11A are present in the appeal and the impugned order rightly upholds that extended period is invokable.

4.9 As we find that Appellant have evaded Central Excise duty by resorting to suppression of facts etc with intent to evade payment of duty, the penalties proposed in terms of Rule 15(1) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 needs to be upheld. In view of the Hon'ble Supreme Court decision in the case of **Union of India V/s M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)].**

4.10 We do not find any merits in the appeal filed by the Appellant.

5.1 Appeal is dismissed.

(Pronounced in open court on 13.11.2025)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

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