CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2046 of 2011

(Arising out of Order-in-Original No. 21/2011 dated 29.04.2011 passed by the Commissioner of Central Excise, Bangalore.)

M/s. BPL Technovision Pvt. Ltd.
17 KM, Avalahalli,
Virgonagar Post,
Old Madras Road,
Bangalore - 560 049.

Appellant(s)

VERSUS

The Commissioner of Central Excise
Bangalore-I Commissionerate
CR Buildings, Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri Maneesh Akhoury, Authorised Representative for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20430 / 2024

DATE OF HEARING: 08.01.2024
DATE OF DECISION: 22.05.2024

PER : R. BHAGYA DEVI

M/s. BPL Technovision Private Limited are manufacturers of rechargeable lanterns, speakers, digital satellite receivers/solar lanterns etc. The Appellant availed cenvat credit of duty paid on inputs used in the manufacture of the above products and also sent cenvat credit availed inputs to their job worker M/s. BPL Engineering Limited under Notification No.214/86 dated 25.3.1986. The appellant vide letter dated 18.9.2006 informed the department that the fire accident in the premises of their job worker destroyed the cenvat credit availed materials. The department vide letter dated 21.9.2006 directed the appellant to produce the details of the value of the raw materials, materials in process, capital goods for which the appellant responded that they are under process of ascertaining the details of the value of the items damaged in the fire accident and requested time for applying for remission of duty and other procedures. After that no action was taken by the appellant to request for remission of duty. During the course of audit, it was observed that the appellant had preferred an insurance claim of Rs.4,27,32,599/- with regard to the loss of raw materials and fixed assets in the fire accident. Since the goods sent for job work had not received back after 180 days, the cenvat credit had to be reversed accordingly, notice was issued and the Commissioner in the impugned order held that the insurance claim by the appellant does not bifurcate or gives details to the element of cenvat credit disallowed in the claim. He also held that the appellant had not claimed remission of duty and had not produced any documents called for by the department immediately after the fire accident and the details came to the notice of the department only through the audit party through their audit note dated 21.05.2009 that the appellant had not reversed the credit in spite of receiving the insurance amount. The impugned order also notes that the notice dated 14.05.2010 is well within the time period of 5 years under provision to Section 11A as relevant date in which the wrongly availed cenvat credit had to be reversed and that was September 2006. And since no claim of remission was made, the question of giving the benefit of remission of duty does not arise, accordingly, the impugned order was issued confirming a sum of Rs. 59,04,879/- the credit to be reversed along with appropriate interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944. The Commissioner also imposed equivalent amount of penalty under Section 11AC in view of the decision by the apex court in the case of **Union of India versus Dharmendra Textile Processes reported in 2008 (231) ELT 3 (S.C).**

2. The learned counsel for the appellants made the following submissions:

(i) The Appellant is engaged in manufacture of Rechargeable Lanterns; Speakers; Solar lanterns, etc. and availed cenvat credit of duty paid on inputs and capital goods. These capital goods and inputs were sent to their job worker M/s. BPL Engineering Limited in terms of notification no.214/86-CE dated 25.03.1986. On 17.09.2006 a fire accident occurred at the job-worker's premises and the appellant informed the jurisdictional Police Department including Fire Extinguishing Department and also lodged FIR. On 18.09.2006, both the job-worker and the Appellant informed the Central Excise authorities vide letters dated 18.09.2006 regarding the fire accident without any other details. In December 2008, United India Insurance Company Limited settled the insurance claim (without cenvat) for a total sum of Rs.3,01,00,921 as against the claim of Rs.4,27,32,599/- by the Appellant which was intimated to the authorities on 16.01.2009. Pursuant to Audit conducted by the Department, a show-cause notice No.64/2010 dated 14.05.2010 was issued wherein it was alleged that inputs and capital goods which were sent for job-work to M/s. BPL Engineering Limited were lost/damaged in fire accident and the said goods have not been received back within 180 days as envisaged in Rule 4(5)(a) of the Cenvat Credit Rules, 2004 and that the Appellant were required to pay an amount equivalent to the cenvat credit attributable to the inputs and capital goods. Accordingly, by invoking the extended period of limitation, the notice proposed to demand cenvat credit of Rs.57,32,477/- in respect of inputs and Rs.1,72,402/- in respect of capital goods which were destroyed in fire accident.

(ii) The learned counsel further submits that undisputedly the cenvat availed goods were issued for manufacture through job-work procedure in terms of Notification No.214/86-CE and the said goods were destroyed at the premises of the job-worker and he had taken all steps to inform the Police and lodged FIR immediately along with necessary intimations to the Central Excise department. He further submits that it is well settled that when the cenvat availed inputs and/or capital goods were issued for manufacture, the requirement of Cenvat Credit Rules is fulfilled and if the goods are destroyed in a fire accident, the appellant need not reverse the cenvat credit taken on the inputs, since the inputs sent for job-work, it has to be considered as has been issued for manufacture. In support of this plea, the Appellant place reliance on the following decisions, -

- *CCE v. Indchem Electronics,* 2003 (151) ELT 393 (Tri-Che.) maintained by Honorable Supreme Court as reported in 2003 (157) ELT A206 (SC).
- *Sabers Organics Gujarat Ltd v. CCE,* 2009 (236) ELT 281 (Tri-Ahmd.).
- *Dishman Pharm & Chemicals Ltd v. CCE,* 2006 (206) ELT 254 (Tri-Mum.).
- *Grasim Industries Ltd v. CCE,* 2007 (208) ELT 336 (Tri-LB).
- *VFC Industries Pvt Ltd v. CCE,* 2017 (352) ELT 507 (Tri-Ahmd.).
- *CCE v. Asian Paints India Ltd,* 2015 (319) ELT 253 (Bom).
- *CCE v. Fenner India Limited,* 2014 (307) ELT 516 (Mad.).
- *Aurobindo Pharma Ltd v. CCE,* 2009 (247) ELT 820 (Tri-Bang.).
- *Rako Mercantile Traders v. CCE,* 2014 (307) ELT 602 (Tri-Del.).
- *CCE v. Biopac India Corporation Ltd,* 2010 (258) ELT 56 (Guj.).

(iii) It is further submitted that the insurance claim received by the Appellant in respect of loss of goods does not include the element of central excise duty or cenvat credit. This aspect has not been appreciated in perspective. The Appellant place reliance on the following decisions, -

- CCE v. Tata Advanced Materials Limited, 2011 (271) ELT 62 (Kar.).
- Arvind International Limited v. CCE, 2012 (282) ELT 232 (Tri-Del.).
- Sheltron Insulations Pvt Ltd v. CCE, 2009 (239) ELT 145 (Tri-Bang.).

(iv) Finally, it is submitted that the demands are barred by limitation since the entire issue revolves around *bona fide* interpretation of Cenvat Credit Rules and therefore invocation of extended period and imposition of equivalent penalty invoking section 11AC is not sustainable.

3. Per Contra, the learned Authorised Representative for Revenue submits that the goods were sent to the job worker under Rule 4(5)(a) of Cenvat Credit Rules not under Notification

No.214/86 dated 25.03.1986. The impugned notification only speaks of liability to pay duty and the said Rule speaks about liability to take credit. All the case law cited by the appellant are pertaining to the impugned notification or demand of duty under Rule 21 read with Section 47 of Central Excise Rules, 1944. As held by the Commissioner, the credit is allowed on the inputs sent to the job worker but however it is mandatory to reverse the credit if the inputs or the capital goods are not returned after 180 days. It is also argued by the Revenue that even though goods were sent to the job worker under the Notification No.214/1986 dated 25.03.1986, these goods have to be necessarily used in the manufacture of the final products and the appellant has failed to produce these details as to how much was destroyed as inputs or work in progress or the finished products. Further, he submits that the claim of remission argued by the appellant is irrelevant since there was no request from the appellant for claiming remission of duty. Rebutting the appellants claim that the demand is barred by limitation, the learned Authorised Representative for the Revenue submits that though the fire accident happened on 17.09.2006, no details were furnished to the department. The Revenue vide letter dated 21.09.2006 had directed the appellant to provide the value of raw materials, value of semi-finished/finished goods destroyed, value of cenvat credit availed on job work goods, value of capital goods destroyed, details of insurance claim and any claim under Rule 21 of Central Excise Rules, 2002 for remission of duty. On 03.10.2006, another reminder was issued by the department and only on 16.01.2009, the appellant intimated settlement of insurance claim which was settled in November 2008 but for the audit during November 2008, this fact would not have known to the department. Since the destruction of goods in the fire accident was not provided to the department, the actual date of knowledge based on the insurance claim came to be known only in November 2008 and thereafter, based on the audit note, show-cause notice was issued to the appellant Therefore, the appellant cannot claim that the notice was time barred because the notice was well within the specified time limit from the date of knowledge to the department based on the audit note.

4. Heard both sides. The issue to be resolved is whether the cenvat credit availed on inputs and capital goods which were claimed to have been destroyed in fire at the job workers premises are recoverable from the appellant. The undisputed facts are that there was a fire accident at the job workers premises of the appellant and this was intimated to the department on 18/9/2006 without providing any details of the destruction either of the inputs or of the capital goods. In spite of two letters written by the Revenue, the appellant had not responded to these letters and neither had claimed remission of duty for the goods that were destroyed in the fire. From the insurance claim, it is noticed that the initial claim was settled in October 2008 and final settlement happened in December 2008. In spite of this, the appellant failed to provide the details of inputs, semifinished/finished goods to the department and they did not approach the department for remission of duty. Though, insurance was claimed and settlement of the same was not intimated to the department and it came to knowledge of the department only after the visit of the audit party to the appellants premises in November 2008. Therefore, the show-cause notice came to be issued on 14.05.2010 after getting the details from the audit officers which is well within the time limit specified under the proviso to Section 11A of the Central Excise Act 1944.

5. On perusal of the records, it is seen that the insurance claim was settled at Rs.3,01,00,921/- as against the claim of Rs.4,27,32,599/-. From the insurance claim by the appellant, it is seen that the amount of Rs.4,27,32,599/- is inclusive of cenvat credit and therefore, it can be inferred that the claim was restricted to the value of the goods only. From this insurance claim reproduced below, it is clearly seen only item no.1 to 4 deals with inputs which were destroyed in the fire. Item no.5 is for finished goods and Item No.6 is for replacement cost of

equipment. Therefore, the inputs which have been destroyed before putting it to use the benefit of cenvat credit cannot be extended. As per the cenvat credit rules only those inputs which are used in the manufacture of final products are eligible for cenvat credit. With regard to capital goods also, one needs to verify whether they were put to use or destroyed before the same was used in the manufacture of the final products. If the capital goods were not used then the question of extending the benefit of cenvat credit does not arise.

Insurance claim made by the appellant

BPL TECHNO VISION PVT LTD

SUMMARY OF LOSS ON FIRE - VALUE OF STOCK AS ON 16/09/2006

In Rs.

Segment	Basic	Cenvat	Vat	Total
Worldspace (Celetste Mrk I / Mk II / Diva II)	12278430	2086302	122235	14486967
Torches (RLT 210 / RLT 410)	493596	65608	20555	579759
Speakers / Transformers / Cables	15217067	2605980	894858	18717905
Value of Goods held trust	5917496	974587	96348	6988431
Finished Goods - Cost of Repair	662510			662510
Replacement Cost of Equipments	1297027			1297027
TOTAL	35866125	5732477	1133996	42732599

UNITED INDIA INSURANCE COMPANY LIMITED

No. 40/3, 3rd Floor, Geetha Mansion,
K G Road, Bangalore – 560 009.

Phone : 2226 2375
2226 4618
2220 8753
E-mail : ui71804@gmail.com

Ref: 071804/fire/claim/0012& 0013/06/2008

Date: 25.11.2008

To
Sri S V Ganesh
Asst.General Manager
BPL Techno vision private limited
BPL Towers,
13,Kasturba Road
Bangalore 560001

Dear Sir

Reg: Fire Claim in respect of fire accident occurred in your factory at old madras road on 17.09.2006.

Ref: **Policy no.071804/11/06/11/00000048 and 071804/11/06/14/00000049 claim no. 071804/11/06/14/90000012 and 071804/11/06/11/90000013**

This is further to our letter dtd 30.10.2008 on the captioned subject. We furnish below the details of the claim settlement without cenvat:

Details	Stocks	Equipment	Total
Gross Assessed loss	31525598	549012	32074610
Less:Salvage Rs.694545 apportioned on the basis of gross assessed loss	682657	11888	694545
Less: Excess apportioned in proportion to the loss net of salvage	9857	143	10000
Less: New India share of loss (contribution)	1204276		1204276
Less: Difference in STFI premium	11212	6734	17946
Less: Reinstatement premium	46161	761	46922
Net Claim	29571435	529486	30100921
Amount already paid vide ch.no56703 dt 30.10.2008			29000000
Balance amount payable			**1100921**

6. In the case of **CCE v. Indchem Electronics, 2003 (151) ELT 393 (Tri-Che.)** relied upon by the appellant is not relevant because admittedly the inputs were used in the manufacture of the final products as seen from the observation of the Tribunal reproduced below:

*"**6.** As we have already observed, in this case, the fact regarding fire accident and goods having been destroyed as a result there of is not disputed. The department has also not contested the claim of the assessee that the inputs were destroyed after the inputs were actually issued. Further, there was also no allegation that there was any diversion of the goods elsewhere. In view of our discussion above, we are of the considered opinion that the Commissioner (Appeals) has come to a correct conclusion after analysing the evidence on record, that there was no warrant to reverse the input credit taken in this case and we do not find any reason to interfere with the order passed by the lower appellate authority. Accordingly, the Revenue appeal is dismissed."*

7. In the case of **CCE v. Tata Advanced Materials Limited, 2011 (271) ELT 62 (Kar.)**, this was a case where the capital goods were used in the manufacture of the final products for three long years and later, these capital goods were destroyed in the fire as seen from the observations of the Hon'ble High Court of Karnataka. The facts cannot be compared with the instant case where the goods were not put to use at all, hence not applicable.

"In the instant case, when the assessee purchased the capital goods and when he has paid the excise duty on them, in law, he is entitled to get the credit on the duty paid while clearing the finished products from his factory. Accordingly, he utilised the cenvat credit and cleared the finished products. It is about three years after such payment, the capital goods were destroyed in fire. As the assessee had insured the said capital goods, he put forth a claim for payment of the loss sustained by him, which includes the payment of excise duty. The Insurance Company in terms of the policy has compensated the assessee. Merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the cenvat credit wrong or irregular. At the same

time, it does not confer any sight, on the Excise Department to demand reversal of credit or default to pay the said amount. The assessee has paid the premium and covered the risk of this capital goods and when the goods were destroyed in terms of the insurance policy, the Insurance Company has compensated the assessee. It is not a case of double payment as contended by the department. At any rate, the Excise Department has no say in the instant case as held by the Apex Court. In that view of the matter, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed".

8. In the case of **VFC Industries Pvt Ltd v. CCE, 2017 (352) ELT 507 (Tri-Ahmd.)**, the Tribunal has categorically held that inputs lying in stock which were not put to use and which were not used in the manufacture of final products the benefit of cenvat credit cannot be extended. The observations of the Tribunal are reproduced below:

"10. *As far as the Cenvat credit on inputs lying in stock, as such, destroyed in fire, it is crystal clear that the same had not been used in or in relation to the manufacture of final product in their factory; thus the criterion of use, the basis on which the Cenvat credit on inputs contained in WIP goods, has been allowed in the aforesaid cases, is undoubtedly not fulfilled. This Tribunal in the case of Golden Polymex India Ltd. case (supra) observed as follows :-*

> *"7. As regards the reversal of credit in respect of the inputs which were lying in the appellants' factory unutilised and got destroyed in the fire, it is seen that the said inputs were admittedly neither used in the manufacture of the final product, nor even issued for the manufacture. They were lying as such in the appellants' premises. The Modvat credit on the inputs is available only when the inputs are used in or in relation to the manufacture of the final product. In the present case they cannot even be said to have been used in relation to the manufacture of the final product, or can be said to have been destroyed during the manufacture of the final product, inasmuch as the same were admittedly not even issued for the manufacture. The appellants' reliance upon the Larger Bench's decision in the case of Ashoke Iron is not appropriate inasmuch*

> *as the decision was given in the different set of facts and circumstances. The inputs were received by the appellants in that case, and were admittedly used in the manufacture of the final product, though no duty was paid on the final product. As such the facts and circumstances of that decision are distinguishable from the facts of the instant case inasmuch as in the present matter after receiving the inputs the same were destroyed by fire."*
>
> ***11.*** *Thus, the credit of Rs. 57,52,500/- involved on the inputs lying in stock and destroyed in the fire before being put to use could not be allowed to the appellant and the same is required to be paid back/reversed."*

9. In view of the above, we do not find any reason to interfere with the order of the Commissioner demanding reversal of cenvat credit on the inputs and the capital goods which were not used in the manufacture of the final products. However, for the limited purpose of verifying whether the capital goods were put to use in the manufacture of the final products, the matter is being remanded and accordingly, the penalty needs to be redetermined based on the final determination of the reversal of cenvat credit. Accordingly, we also set aside the penalty for redetermining the same.

10. In view of the above discussions, the appeal is allowed by way of remand.

(Order pronounced in Open Court on 22.05.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv