# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH – COURT NO. 1

**Central Excise Appeal No. 21598 of 2016**

[Arising out of Order-in-Original No. BLR-EXCUS-001-Pr COM-MVK-19-16-17 dated 24.07.2016 passed by the Principal Commissioner of Central Excise, Bangalore-I Commissionerate, Bangalore]

**M/s. Bostik India Private Limited**
121/1 & 124/2A, Kachanayakanahalli
Anekal Taluk, Hennagara Post
Bangalore – 560 106

**....Appellant**

VERSUS

**The Principal Commissioner CGST, Customs & Central Excise, Bangalore – I Commissionerate**
P.B. No. 5400, C.R. Building,
Queen's Road
Bangalore – 560 001

**....Respondent**

**APPEARANCE:**

Mr. Saurabh Bhutra, Advocate & Mr. Basavaraja Nishani, Chartered Accountant for the Appellant
Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

**CORAM:**
**Hon'ble Mr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**Final Order No.: 20182 / 2025**

Date of Hearing: 11.02.2025
Date of Decision: 11.02.2025

**Per: D.M. Misra**

This is an appeal filed against Order-in-Original No. BLR-EXCUS-001-Pr.COM-MVK-19-16-17 dated 24.07.2016 passed by the Principal Commissioner of Central Excise, Bangalore. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of adhesive compounds such as Hydro Cyclic compounds, Acrylic Emulsion, pigments etc. falling under Chapters 29, 32 & 35 of CETA, 1985. A show-cause notice was issued to the appellant on 02.11.2025 alleging that the appellant had availed cenvat credit of Rs. 1,04,80,736/- on input invoices which were received more than 6 months before availing credit in their factory; also they have availed inadmissible cenvat credit of Rs. 1,75,320/- on input services viz. RCM - Civil charges, Electrical License, Pest Control, Testing charges for Civil works and RCM-Repairs in contravention of Rule 2(l) of CCR, 2004. Consequently, it is proposed to recover the said inadmissible credit with interest and penalty. On adjudication, the demand was confirmed with interest and equivalent penalty. Hence, the present appeal.

2. At the outset, the learned Advocate for the appellant has submitted that there is no allegation in the show-cause notice that the inputs were not received in their factory and utilized in the manufacture of finished goods, but the allegation in denying cenvat credit of Rs. 1,04,80,736/- was solely on the ground that the input invoices were issued more than 6 months before the credit was availed. He has submitted that out of the total cenvat credit of Rs. 1,41,28,161/- availed in

ER-1 filed in the month of October 2014, an amount of Rs. 1,04,87,376/- pertains to service tax received during the period January 2013 to April 2014. It is alleged that the cenvat credit was availed in contravention of Rule 4(7) of CCR, 2004 which provides a time limit of 6 months for availing the credit. He has submitted that amendment to Rule 4(7) of CCR has been carried out by issuance of Notification No. 21/2014-CE (NT) dated 11.07.2014. The said Notification expressly provided that it would come into effect from 1st September 2014. Thus, the stipulation to avail credit within 6 months from the date of invoice would not be applicable to cenvat credit pertaining to inputs and input services received prior to 01.09.2014. He submits that the issue is no longer *res integra* and covered by various judgments of this Tribunal. In support, he has referred to the following judgments:

- ***i.*** ***Roquette Riddhi Siddhi Pvt. Ltd. V. CCE, Customs and Service Tax, Belgaum – [2022-VIL-187-CESTAT-BLR-CE]***
- ***ii.*** ***Global Ceramics Pvt. Ltd. V. Principal Commissioner of C. Ex., Delhi-I [2019 (26) G.S.T.L. 470 (Del.)]***
- ***iii.*** ***Hariprabha Chemicals P. Ltd. V. CCGST, Kolhapur [2018 (9) TMI 19- CESTAT Mumbai]***
- ***iv.*** ***Roquette Riddhi Siddhi P. Ltd. V. CCE, Ahmedabad-II [2024-VIL-157-CESTAT-AHM-CE]***

2.1. Further with regard to the inadmissible cenvat credit of Rs. 1,75,320/-, the learned Advocate has fairly accepted that they have already reversed an amount of Rs. 1,11,999/- soon after which has been pointed out to them and the balance amount of credit being negligible, the appellants are not interested to pursue the same. However, it is their contention that no penalty be imposable as the same was taken under bonafide interpretation of the relevant Rule.

3. Learned AR for the Revenue reiterated the findings of the learned Commissioner. He has submitted that the appellant had availed cenvat credit on documents issued between January 2013 and September 2014 in the month of October 2014 and hence, the credit for the period January 2013 to April 2014 was inadmissible. Further he has submitted that since proper documents had not been placed to establish the nexus, the learned adjudicating authority has rightly disallowed the credit of Rs. 1,75,320/- and imposed penalty.

4. Heard both sides and perused the records.

5. The short issue involved in the present appeal is whether the appellants are eligible to avail cenvat credit on input service invoices issued prior to 01.09.2014 and credit availed in October 2014; also cenvat credit admissible on service tax paid on construction related services during the period in question. As far as the first issue is concerned, applicability of 6 months pursuant to issuance of Notification No. 21/2014-CE (NT) dated 11.07.2014 which has been brought into effect from 01.09.2014 for invoices issued prior

to 01.09.2014, it is no more *res integra* and covered by the judgment of this Tribunal in the case of ***Roquette Riddhi Siddhi Pvt. Ltd. V. CCE, Customs and Service Tax, Belgaum,*** wherein it is held as under:

> *"6. On a careful consideration of the submissions made by both sides, a common issue in both the appeals is that whether the appellant is required to reverse the proportionate cenvat credit on inputs and input services consumed in by-product while manufacturing the final goods or not? The said issue has been settled by the Tribunal in the case of Anil Products Ltd. (supra) and the said order has been affirmed by the Hon'ble Gujarat High Court cited (supra).*
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> *6.1. Further in the case of Rajaram Maize Products vide Final Order dated 20/09/2018 – 2018-VIL-1126-CESTAT-DEL.-CE, this Tribunal further observed as under:*
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> *"After careful consideration of the submissions made from both the sides we know that admittedly, the Adjudicating Authority has dropped the demand by treating the entire period being prior to 01/03/2015. As such his findings on the Explanation 1 introduced with effect from 01/03/2015 are not available. As such we set aside a part of the impugned order, for the period post 01/03/2015 and remand the matter back to Commissioner to consider the Explanation 1 to sub Rule 1 of Rule 6 and give his findings on the same. We make it clear that we have not expressed our views on merits of the case and the assessee at liberty to contest the same before the Adjudicating Authority."*
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> *6.2 In view of this, we hold that the provisions of Rule 6 are not applicable to the appellants in these cases. Therefore, the appellants are not required to reverse the proportionate cenvat credit used in by-product while manufacturing their final product. Accordingly, the demand on the said count is set aside.*
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> *6.3. The second issue arises in Appeal No. E/20044/2017 is that whether the appellant can avail cenvat credit on the invoices issued prior to 01/09/2014 within six months after the issuance of the Notification No. 21/2014 CE (NT) dated 11/07/2014 or not? The said issue has been settled by this Tribunal in the case of Bharat Aluminium Company Limited wherein this Tribunal has observed as under:*

*"5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions;*

*(i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad] - 2018-VIL-1097-CESTAT-ALH-CE*

*(ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore] - 2018-VIL-1128-CESTAT-BLR-CE*

*(iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore [2019 (1) TMI 1426-CESTAT New Delhi] - 2019-VIL-478-CESTAT-DEL-CE*

*(iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai] - 2018-VIL-1129-CESTAT-CHE-CE*

*(v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore] - 2019-VIL-884-CESTAT-BLR-CE*

*(vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473- CESTAT New Delhi] - 2019-VIL-906-CESTAT-DEL-CE*

*Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 - 2019-VIL-330-DEL-CE has also observed to the same effect in paragraph 11.4 of their decisions.*

*6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given."*

*As the issue has already been settled and no more res integra, therefore, we hold that appellants have correctly taken the cenvat credit on 18/09/2014 for the invoices issued prior to 01/09/2014.*

*7. In view of the above, we do not find any merit in the impugned orders and the same are set aside. In the result, appeals are allowed with consequential relief, if any."*

Similar view has been expressed by the Hon'ble Delhi High Court in the case of ***Global Ceramics Pvt. Ltd.*** wherein it is observed as follows:

*"17. There is substance in the contention of the Learned Counsel for the Assesses in both the cases that the above amended provision cannot be given retrospective effect. As explained in Eicher Motors Ltd. V. Union of India (supra) the rule of lapse of credit lying with it unutilized on the date of amendment, cannot be applied to the goods manufactured prior to the date of the amendment. This is based on the principle that the right to adjustment of tax on final products accrues to an Assessee on the date when they paid the tax on the raw materials and that right would continue until the facility available thereto gets worked out. In fact, the judgment in Osram Surya (P) Ltd. V. Commissioner of Central Excise, Indore (supra) approvingly refers to the judgment in Eicher Motors Ltd. V. Union of India (supra).*

*……………….*

*22. Consequently, in the present case, the Court is satisfied that the Amendment to Rule 4(1) CCRs prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment and the deemed manufacture took place when the MRP was altered, which also happened prior to the amendment. In other words, the CVD paid by the BRCPL will have to be permitted to be adjusted against the CE duty settled as will the service tax paid on the input services."*

6. Thus, the confirmation of demand of cenvat credit of Rs. 1,04,80,736/- on this count is unsustainable in law, accordingly, set aside. Since the appellant had submitted not to pursue the confirmation of cenvat credit of Rs. 1,75,320/- as they have already reversed a major portion of Rs. 1,11,999/- and the balance amount is negligible, the order

confirming the demand on this count is upheld. However, the imposition of penalty for availing the said credit being interpretation of law cannot be sustained, accordingly set aside. The impugned order is modified and the Appeal is partly allowed to the extent mentioned as above.

(Operative portion of the order was pronounced
in Open Court on 11.02.2025)

**(D.M. Misra)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

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