

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20045 of 2015

(Arising out of Order-in-Original No. 18/2014-15 dated 08.09.2014
passed by the Commissioner of Central Excise and Service Tax
(Adjudication), Bangalore.)

**M/s. GTR Aluminium Private
Limited,**

33E, 1st Cross Road,
Veerasandra Industrial Area,
Anekal Taluk,
Bangalore – 560 100.

Appellant(s)

VERSUS

**Commissioner of Central
Excise, Bangalore-I
Commissionerate,**

Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. H. Y. Raju, Advocate for the Appellant

Mr. M. Sreekanth, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 21826 /2025

DATE OF HEARING: 18.07.2025

DATE OF DECISION: 18.11.2025

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No. 18/2014-15 dated 08.09.2014 passed by the Commissioner of Central Excise (Adjudication), Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of excisable goods, namely Aluminium Alloy Ingots, etc., falling under Chapter Heading 7601 of Central Excise Tariff Act, 1985. During the course of audit of records, it is observed that the appellant had cleared imported aluminium scrap which was used in the manufacture of 'ingots' to their another unit on stock transfer basis during the period from August 2010 to November 2011 without reversal of cenvat credit availed on such imported scrap as per Rule 3(5) of the Cenvat Credit Rules, 2004. The appellant had reversed the cenvat credit availed on CVD portion but not reversed proportionate cenvat credit on SAD amount of Rs.57,47,391/-. A show-cause notice was issued to them for recovery of the said credit with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3.1. At the outset, the learned advocate placing reliance on the question of law has submitted that the present recovery of the credit availed on the aluminium scrap cleared on stock transfer basis to their other unit was proposed to be recovered under Rule 3(5) of the Cenvat Credit Rules, 2004 pertaining to the period August 2010 to November 2011. He has submitted that an explanation to Rule 3(5) of the Cenvat Credit Rules, 2004 has been inserted vide Notification No.3/2013-CE (NT) dated 01.03.2013 which made applicable provisions of Rule 14 of the Cenvat Credit Rules, 2004 to recover the amount payable under Rule 3(5) of the Cenvat Credit Rules, 2004. It is his contention

that there was no recovery mechanism under Rule 3(5) of the Cenvat Credit Rules, 2004 prior to the amended. Therefore, on clearance of inputs as such credit availed for the period prior to 01.03.2013 cannot be recovered. In support, he has referred to the judgment in the case of DGFT Vs. Kanak Exports [2015 (326) ELT 26 (SC)] wherein it is observed that the delegated legislation can only be prospective in nature unless the rule making authority has been vested with power to make rules with retrospective effect.

3.2. Further, he has referred to the judgment in the case of Thirumalai Chemicals Ltd. Vs. UIO [2011 (268) ELT 296 (SC)]. This Tribunal in the case of M/s. GKN Driveline (India) Ltd. Vs. CCE, Delhi-III [2023 (9) TMI 1131-CESTAT Chandigarh, examined the retrospective applicability of the said explanation introduced to Rule 3(5) of the Cenvat Credit Rules, 2004 w.e.f. 01.03.2013 and observed that no recovery can be affected under Rule 14 of the Cenvat Credit Rules, 2004 for the period prior to 01.03.2013. This has been followed by this Tribunal in the cases of (i). M/s. Stumpp, Schuele and Somappa Springs Pvt. Ltd. Vs. CCE and ST, LTU Commissionerate, Bangalore [2025 (5) TMI 571 CESTAT Bangalore], (ii). M/s. Bharat Heavy Electricals Ltd. Vs. CCE, Bangalore-III Commissionerate [2024 (10) TMI 1249 CESTAT] and (iii). M/s. Hewlett Packard India Sales Pvt. Ltd. Vs. CST, LTU, Bengaluru – 2024 (8) TMI 718 CESTAT Bangalore.]

4. *Per contra*, learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. Undisputedly, the appellant are engaged in the manufacture of aluminium ingots for which they utilize duty paid imported aluminium scrap. A portion of the imported aluminium

scrap was transferred to their sister unit on reversal of the proportionate credit (CVD) availed on such aluminium scrap. However, the Department alleged that the appellant had failed to reverse a proportionate SAD amount involved on the transferred scrap hence proceeded to recover the same with interest. The principal argument of the learned advocate for the appellant is that there has been no recovery mechanism under Rule 3(5) of the Cenvat Credit Rules, 2004 for clearance of inputs as such prior to 01.03.2013. It is his contention that with the insertion of explanation to Rule 3(5) of the Cenvat Credit Rules, 2004 vide Notification No.3/2013-CE (NT) dated 01.03.2013, recovery mechanism has been introduced, stating that provisions of Rule 14 of the Cenvat Credit Rules, 2004 would be applicable for such clearances. He has argued that therefore, the recovery for the period from August 2010 to November 2011 cannot be sustained. We find merit in the argument of the learned advocate for the appellant inasmuch as the issue is no more *res integra* and considered by the Tribunal in the case of GKN Driveline (India) Ltd. Vs. CCE, Delhi-III [2023 (9) TMI 1131-CESTAT Chandigarh, wherein it is observed as follows:

“13. Further, we find that during the relevant period, there was no recovery mechanism under Rule 3(5B) of the Cenvat Credit Rules and the explanation which was introduced vide Notification No. 3/2013 dated 01.03.2013 was from 01.03.2013 vide which it was provided that if the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken. This recovery mechanism introduced from 01.03.2013 cannot be made applicable from the retrospective date and it can be only prospective and this issue was considered in various decisions cited (supra) by the Tribunal wherein it was held that when there was no recovery mechanism before 01.03.2013, therefore, no recovery can be affected and accordingly the present proceedings initiated under Rule 14 of Cenvat Credit Rules read with Rule 3(5B) of the Cenvat Credit Rules is liable to be dropped.”

Also, this Tribunal subsequently followed this judgment in the case of (i). M/s. Stumpp, Schuele and Somappa Springs Pvt. Ltd.

Vs. CCE and ST, LTU Commissionerate, Bangalore [2025 (5) TMI 571 CESTAT Bangalore], (ii). M/s. Bharat Heavy Electricals Ltd. Vs. CCE, Bangalore-III Commissionerate [2024 (10) TMI 1249 CESTAT] and (iii). M/s. Hewlett Packard India Sales Pvt. Ltd. Vs. CST, LTU, Bengaluru – 2024 (8) TMI 718 CESTAT Bangalore.]

7. Following the aforesaid precedent, we are of the view that confirmation of the demand in the impugned order cannot be sustained. In the result, the impugned order is set aside and appeal is allowed with consequential relief, in any, as per law.

(Order pronounced in Open Court on 18.11.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

GB/Raja...