CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20518 of 2023

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-AS-026-2022-23 dated 29.11.2022 passed by the Commissioner of Central GST & Central Excise (Appeals), Belagavi.)

M/s. RSB Transmission I Ltd.
Plot No. 184-189, Belur Industrial Area,
Belur, Dharwad, Bangalore
Karnataka – 580011. ……….**Appellant**

VERSUS

Pr. Commissioner of Central GST, Belgaum
No. 71, Club Road, Belagavi,
Karnataka – 590001. ……..**Respondent**

APPEARANCE:

Mr. J J Fernandes, Advocate for the Appellant.
Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

<u>Final Order No. 22228/2025</u>

Date of Hearing: 08.09.2025
Date of Decision: 08.09.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding eligibility to claim CENVAT credit.

2. The brief facts are the Appellant is engaged in manufacture and clearance of excavator parts and also holding service tax registration. During audit, certain observations were made regarding utilization of the credit before payment of service tax and Show Cause Notice (SCN) dated 08.07.2019 was issued. Thereafter Adjudication authority as per the Order-in-Original dated 13.08.2021 confirmed the demand in respect of CENVAT credit availed before making payment under RCM

with interest and also imposed equal amount of penalty. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per impugned order dated 29.11.2022 rejected the appeal filed by the Appellant. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that due to transition from Central Excise, Service Tax to GST with effect from 01.07.2017, the amount of service tax is shown in the closing balance on 30.06.2017 only to facilitate easy transfer of the said amount in TRAN-1 for utilizing the same in the GST. The issue is no more *res-integra* as per the Board Circular No. 207/5/2017-ST dated 28.09.2017, it is clarified that in such instances, the assessee who had chosen to wait till 5th/6th July to make payment of service tax on reverse charge basis, instead can pay the same by 30.06.2017. Learned Counsel further submits that the non-payment of service tax as per the Circular on 30.06.2017 instead of 05.07.2017 is only a procedural lapse and substantial benefit cannot be denied for such procedural lapses. Learned Counsel also draws our attention to Order-in-Original dated 02.12.2020 issued by very same Commissionerate in the matter of M/s. Tata Marcopolo Motors Ltd., wherein a similar allegation was made, and Adjudication authority dropped the proceedings on the ground that:

> *"10. The assessee have violated the provision of Rule 4(7) of the Rules by availing the CENVAT credit before payment of service tax. Since the service tax has been paid subsequently but within the due date for payment of service tax. Hence the issue is a procedural lapse on the part of the assessee. But there is no proposal in the show cause notice to impose penalty for such procedural lapse. Accordingly dropped the proceedings."*

4. Learned Counsel further submits that once an amount has been paid in lieu of tax, the amount availed as credit cannot be denied on the ground that the said tax was not paid in time. Once the CENVAT credit is used as per Rule 4(7) of Cenvat Credit Rules, 2004, question of

demand of CENVAT credit, interest thereof and equivalent penalty does not arise. Learned Counsel also relied on the decisions;

i. **M/s. Bostik India Pvt Ltd. Vs. CCE, Bangalore-I, in Appeal No. E/21832/2015 dated 02.07.2015 (Tri-Bangalore)**
ii. **M/s. Thraiking Industrial Controls Vs. Commissioner of Central Excise, Bangalore – Appeal No. E/21159/2017 dated 11.08.2025**
iii. **M/s. Way2wealth Securities Pvt. Ltd. Vs. CST Bangalore, in Appeal No. ST/20439/2014 dated 10.07.2025**
iv. **M/s Hindustan Zinc Ltd Vs. Central Goods and Service Tax in Appeal No. 52425 of 2018 dated 13-08-2019 (Tri-Delhi)**

5. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order.

6. Heard both sides and perused the records.

7. We find that the omission is due to transition from Central Excise, Service Tax to GST with effect from 01.07.2017 and it is only a procedure lapse. Since the issue is covered by large number of decisions as relied upon by appellant the impugned order is liable to be set aside.

8. Accordingly, the impugned order is set aside, and the Appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Sasi