# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# SOUTH ZONAL BENCH
# BANGALORE

Appeal(s) Involved:

**E/21047/2018-SM**

[Arising out of Order-in-Appeal No. 126/2018-CT dated 09/02/2018 passed by Commissioner of Central Tax, North West Commissionerate , BANGALORE-I( Appeal) ]

**M/s. Turbo Tech Precision Engineering Pvt Ltd**
Survey No 8/2,honnasandra Village,kosaba Hobli,nelamangala Taluk,bangalore Rural
BANGALORE - 582123
KARNATAKA

Appellant(s)

**Versus**

**Commissioner Of Central Tax, Bangalore North West Commissionerate**
2nd Floor, South Wing, BMTC Bus Stand Complex
Shivaji Nagar
Bangaluru - 560051
Karnataka

Respondent(s)

**Appearance:**

**G.B.ESWARAPPA**
#1711/1712
5TH MAIN ROAD, JUDICIAL LAYOUT,
OPP.JAKKUR AERODROME,
ADJACENT:G.K.V.K(UAS)
BENGALURU - 560065
KARNATAKA

For the Appellant

**Mr. K.B. Nanaiah, AR** — For the Respondent

Date of Hearing: 27/11/2018
Date of Decision: 27/11/2018

**CORAM:**
**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

## Final Order No. 21810 / 2018

**Per : S.S GARG**

The present appeal is directed against the impugned order dated 09.02.2018 passed by the Commissioner of (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of goods falling under chapter 84 of CETA, 1985 and are availing CENVAT credit on inputs. The appellant has manufactured and cleared 45 Nos. of "Oil Cooling System" valued at Rs.3,67,20,000/- during the period from June 2009 to January 2010 to M/s. Hindustan Aeronautics Limited, Bangalore without paying duty by availing exemption under Notification No. 63/95 dated 16.03.1995 based on the purchase orders issued by M/s. HAL, Bangalore. Department observed that Notification No. 63/95-CE dated 16.03.1995 vide SI. No. 2 exempts the goods manufactured by M/s. HAL, Bangalore for supply to the Ministry of Defence for official purposes and does not exempt supply made by vendors to M/s. HAL, Bangalore. Therefore, SCN C. No. V/84/15/30/2010 Adjn BNG-II dated 17.05.2010 was issued by the Additional Commissioner of Central Excise, Bangalore-II Commissionerate proposing to demand Central Excise duty of Rs.30,52,728/- along with appropriate interest besides penalty under Rule 25 of the Central Excise Rules, 2002. Additional Commissioner of Central Excise, Bangalore-II Commissionerate, vide Order-in-Original No. 28/2010 confirmed the demand.

2.1 Aggrieved by the above order, assessee preferred an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore vide Order-in-Appeal No. 278/2011 dated 26.09.2011 dismissed the appeal filed by the appellant and upheld Order-in-Original No. 28/2010 dated 25.08.2010 passed by the Additional Commissioner of Central Excise, Bangalore-II Commissionerate.

2.2 Against Order-in-Appeal No. 278/2011 dated 26.09.2011, appellant filed an appeal before Hon'ble CESTAT, Bangalore vide Appeal No. E/3168/2011. The Hon'ble CESTAT, Bangalore, vide Final Order No. 25404/2013 dismissed the appeal filed by the appellant. During the course of hearing, assessee had sought for the benefit of CENVAT credit on inputs as the duty is being paid on the supplies made to M/s. HAL, Bangalore. However, Hon'ble CESTAT has rejected the same.

2.3 Consequent to the above Final Order, appellant has paid the duty of Rs.30,25,728/- along with interest of Rs.17,27,240/- and vide their letter dated 29.10.2015, have requested for permission to avail CENVAT credit of Rs.17,55,567/- being the Central Excise duty paid on inputs used in the manufacture of "Oil Cooling Systems" cleared to M/s. HAL, Bangalore. However, the Deputy Commissioner of Central Excise, Peenya-II Division, Bangalore vide letter C.No. IV/16/296/2014

P-II Tech dated 05.02.2016 rejected the request for the assessee to avail CENVAT credit on invoices which was more than five years old in view of the following:

(i) Rule 4 of CENVAT credit Rules 2004 provides the conditions for availment of credit. Vide Notification No. 21/2014-CE (NT) dated 11.07.2014, after the second proviso to Rule 4(1) of the CENVAT Credit Rules, 2004, the following proviso was inserted for the first time to fix time limit to avail CENVAT credit (effective from 01.09.2014). "Provided also that the manufacture or the provider of output services shall not take CENVAT credit after six months of the date of the issue of any of the documents specified in sub-rule (1) of Rule 9."

(ii) With effect from 01.03.2015, time limit for availment of CENVAT credit has been extended to one year from the date of invoice. This implies that CENVAT credit on inputs and input services which could be earlier availed within a period of six months from the date of invoice can now be availed within a period of one year from the date of invoice. This amendment has been made vide Notification No. 06/2015-CE (NT) dated 01.03.2015 w.e.f. 01.03.2015 wherein the words 'six months' have been substituted by words 'one year' in the third proviso of Rule 4(1) of CENVAT Credit Rules, 2004.

2.4 During the scrutiny of ER-1 Returns for the month of January 2016, it was observed that the assessee has availed CENVAT credit of Rs.17,65,667/- on inputs pertaining to the period 2009-10. It appeared that appellant availed ineligible credit of Rs.17,65,667/- during the month of January 2016, in violation of Rule 4 of CENVAT Credit Rules, 2004 read with Notification No. 21/2014-CE (NT) dated 11.07.2014 as amended by Notification No. 06/2015-CE (NT) dated 01.03.2015. A Notice demanding an amount of Rs.17,65,667/- under the provisions of Section 11A of the Central Excise imposed on them in terms of Rule 15(1) of the CENVAT Credit Rules, 2004 read with clause (a) of sub-section (1) of Section 11AC of the Central Excise Act, 1944 wherein penalty shall not exceed ten percent of the demand was issued. After following the due process, the Original Authority vide Order-in-Original dated 31.03.2017 confirmed the demand with 10% penalty under Section 11AC(1)(a) of Central Excise Act and Rule 15(1) of CCR. Aggrieved by the said order, the appellant filed appeal before the Commissioner who also rejected the same. Hence, this appeal.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been

passed without properly appreciating the facts and the law and the judgment of this Tribunal dated 03.06.2013. He further submitted that goods were manufactured by the appellant and supplied to M/s. HAL during the period from June 2009 to January 2010 and the inputs were used in the manufacture of finished goods supplied to M/s. HAL long before the introduction of time limitation for availment of CENVAT credit i.e. 01.09.2014. He further submitted that the period restriction to avail CENVAT credit introduced later is not applicable to past instances. He further submitted that the rights were accrued during the period from June 2009 to January 2010 and the amendment to Rule 4(1) of the CCR, 2004 to deny the credit is not applicable for the said period. He further submitted that in pursuance of the CESTAT Order, they have paid the duty along with interest and therefore they are rightly eligible to avail CENVAT credit. He further submitted that Rule 4 of CCR, 2004 was amended w.e.f. 01.09.2014/01.03.2015 prescribing the period of limitation for availing the CENVAT credit but the same cannot be made applicable retrospectively applicable for the period June 2009 to January 2010. He also submitted that the Commissioner (A) has wrongly held that CESTAT, Bangalore has rejected the prayer of the appellant for claiming CENVAT credit on inputs used in the manufacture of final product supplied to M/s. HAL, Bangalore. He further submitted that the Tribunal was unable to consider the matter because there was no scrutiny of the documents.

5. On the other hand, learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant manufactured the goods and supplied the same to M/s. HAL during the period June 2009 to January 2010 and for manufacturing the said products, inputs were used and at that time, he did not avail CENVAT credit on inputs because he was under the impression that he is entitled to the benefit of Notification No. 63/95-CE dated 16.03.1995. Further, I find that the CESTAT, Bangalore in their final Order dated 03.06.2013 held that the appellants are not entitled to the benefit of exemption Notification. Thereafter, the appellant paid the entire duty along with interest but claimed the benefit of CENVAT credit on inputs which the Tribunal at that point of time did not consider his request on the ground that it was not possible to grant him the CENVAT credit in the absence of scrutiny of documents and also the factual circumstances, the Tribunal at that time refused to entertain the plea of the appellant for claiming the CENVAT credit but it was not rejected on merits. Further, I find that the Rule 4

of CCR, 2004 was amended w.e.f. 01.09.2014/01.03.2015 and time limitation was prescribed for claiming the CENVAT credit but this amendment cannot be applied retrospectively for the period from June 2009 to January 2010 which is a period of dispute in this case. Further, I find that during the period of dispute, there was no time limitation prescribed under Rule 4 for claiming the CENVAT credit on inputs used in the manufacture of final product. Therefore, rejection of CENVAT credit on the ground of limitation is not sustainable in law. Therefore, I set aside the impugned order and remand the case back to the Original Authority to decide the claim of the appellant regarding CENVAT credit on inputs on the basis of documents which may be produced by the appellant in support of their claim. Consequently, the appeal is allowed by way of remand to the Original Authority to decide the claim of the appellant without considering the time limit as prescribed in Rule 4 of the CCR, 2004. The Original Authority will decide the claim of the appellant after following the principles of natural justice.

(Operative portion of the Order was pronounced
in Open Court on **27/11/2018**)

**S.S GARG**
**JUDICIAL MEMBER**

Parveen...