

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 36 of 2010

[Arising out of Order-in-Appeal No. 277/MA/GGN/2009 dated 29.09.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

M/s Emkay Automobile Industries Ltd

.....Appellant

39/7 KM Stone, NH 8, Delhi-Jaipur Highway,
Begumpur, Khatola, Gurgaon, Haryana 122001

VERSUS

Commissioner of Central Excise, Delhi-III

.....Respondent

Plot No. 36-37, Sector 32,
Gurgaon, Haryana 122001

APPEARANCE:

None for the Appellant

Shri Narinder Singh and Shri Harish Kapoor, Authorized Representatives
for the Respondent

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

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60066/2025

DATE OF HEARING: 08.01.2025

DATE OF DECISION: 08.01.2025

S. S. GARG :

The present appeal is directed against the impugned order dated 29.09.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III (Gurgaon), whereby the learned Commissioner (Appeals) has passed the following order :

"..... I find that that Appellant have fraudulently availed Cenvat Credit which merits recovery in terms of Rule 14 of CC Rules read with proviso (1) to Section 11A of the Act. Penalty under Rule 13 of erstwhile Cenvat Credit Rules, 2002 and under Rule 15 of CC Rules, 2004 has been correctly imposed against Appellant by the adjudicating authority. Therefore the order-in-original confirming the demand of Rs. 8,09,566/- alongwith equal penalty is upheld."

Aggrieved by the said order, the appellant filed the present appeal before us.

2. No one has appeared on behalf of the appellant; heard the learned Authorized Representative for the Revenue and perused the material on record.

3. The learned Authorized Representative for the department submits that a petition was filed before the NCLT by M/s Swastik Pipe Limited, Operational Creditor seeking initiation of Corporate Insolvency Regulation Process (CIRP) against the Corporate Debtor (CD) i.e. the appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for the alleged default on the part of the Corporate Debtor. The NCLT, New Delhi vide order dated 12.10.2021 admitted the petition and appointed the IRP to carry out the CIRP. Finally, the NCLT has approved the Resolution Plan in Company's Petition No. (IB)/3173/ND/2019. Further, he submits that once the Resolution Plan has been approved, the present appeal needs to be abated in view of the law laid down by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra & Sons**

Pvt Ltd vs. Edelweiss Asset Reconstruction Company Ltd & Ors in Civil Appeal No. 8129 of 2019.

4. After considering the submissions made by the learned Authorized Representative for the department and perusal of the Resolution Plan, we find that the identical matter has been considered by two coordinate benches of the Tribunal; Mumbai Bench vide order dated 12.05.2023 in the case of ***M/s Jet Airways (India) Limited vs. Commissioner of Service Tax-IV*** and Hyderabad Bench in the case of ***Icomm Tele Ltd. vs. Commissioner of Central Tax, Puducherry***. It is pertinent to refer the findings of Mumbai Bench of the Tribunal in the case of ***M/s Jet Airways (India) Limited*** (supra) which was disposed of vide its order dated 12.05.2023 in Appeal Nos. ST/86949, 87287/2015 and it was ordered that the appeals stand abated once the Resolution Plan has been approved by NCLT and the CESTAT has become *functus officio* in the matters relating to this appeal. It is pertinent to reproduce the relevant findings of the coordinate benches on the issue which are reproduced herein below:-

"4. We also find that the matter is no more res integra, as the Hon'ble Supreme Court in Civil Appeal No. 8129 of 2019, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. vide judgement dated 13.04.2021, had decided the settled position of law, as under:-

"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-

(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and

Bankruptcy Code, 2016 (herein after referred to as 'I&B Code')?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/ declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate

Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

.....

CONCLUSION

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

5. We also find that CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, and reiterated the legal position that as operational creditors, GST and Customs authorities are required to submit their claims against the corporate debtors when the corporate insolvency and resolution process has been initiated. Once the Resolution plan is approved by NCLT, no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted below:

"C.B.I. & C. Circular No. 1083/04/2022-CX.9
F. No. 296/286/2021-CX.9

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Indirect Taxes & Customs, New Delhi

Dated 23.05.2022

To All Principal Chief Commissioner(s)/ Chief Commissioner(s) of Customs/ Customs (Preventive)/ Customs & CGST, All Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, Webmaster: cbic@icegate.gov.in

Madam/Sir,

Subject: Standard Operating Procedure (SOP) for NCLT cases in respect of the Insolvency and bankruptcy Code (IBC) – reg.

I am directed to inform the Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational creditors and are required to submit their claims against corporate debtors when the Corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.

2. A timeline of 90 days from the insolvency commencement date is available for filing of claims.

However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the Resolution Applicant who has taken over the company through such a resolution plan."

6. *Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of the judgement is extracted as follows:*

"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.

15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."

7. *However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal.*

8.1 *In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (supra) and*

upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated.”

5. By following the ratio of the above said decision, we are of the considered view that once the Resolution Plan has been approved by the NCLT, thereafter, the present appeal stands abated as the CESTAT has become *functus officio* in the matter relating to the present appeal.

6. In view of our discussion above, the appeal filed by the appellant is disposed of as abated.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)