CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60369 of 2016

[Arising out of Order-in-Original No. 05/MV/CCE/2016 dated 26.04.2016 passed by the Commissioner of Central Excise, Gurgaon]

M/s Pricol Limited **……Appellant**
Plot No.34-35, Sector-4, IMT,
Manesar, Gurgaon, Haryana-122052

VERSUS

Commissioner of Central Excise, **……Respondent**
Delhi-III
Plot No.36-37, Sector-32, Gurgaon,
Haryana-122021

APPEARANCE:

Shri Amar Pratap Singh and Shri Niren Sharma, Advocates for the Appellant
Ms. Amita, Gupta, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61493/2025

DATE OF HEARING: 15.09.2025
DATE OF DECISION: 14.10.2025

P. ANJANI KUMAR:

M/s Pricol Limited, the appellants, assail the impugned order dated 26.04. 2016, passed by Commissioner of Central Excise.

2. The appellants are engaged in manufacture of Oil pumps, Speedometer and PCB, falling under Chapter subheading No.

8413320, 90268010 and 85340000 CETA; On conduct of an audit of the records of the appellant, Revenue observed that the Appellant had written off the rejection of raw material, sub-assembly and finished goods and showed the same under the head 'scrapping of inventory' during the afore-said period and that the appellants were required to reverse CENVAT Credit availed on the same under Rule 3(5B) CENVAT Credit Rules, 2004. A Show Cause Notice, dated 21.04.2015, was issued to the Appellants seeking to recover, CENVAT Credit of Rs. 68,06,633, along with interest and proposing to impose penalty under Section 11AC, Rule 15, and Rule 25 of Central Excise, Act 1944, CENVAT Credit Rules, 2004 and Central Excise Rules, 2002 respectively. Vide impugned order, Learned Principal Commissioner disallowed CENVAT Credit of Rs. 45,70,560, for the period from 2010-11 to 2014-15 along with interest; he also imposed penalty of Rs. 45,70,560 under Rule 15 of CENVAT Credit Rules, 2004 (CCR rules) and penalty of Rs. 45,70,560 under Rule 25 of Central Excise Rules, 2002. Hence, this appeal.

3. Shri Amar Pratap Singh, assisted by Shri Niren Sharma, Learned Counsel for the appellants, submits that Rule 3(5B) of CCR, 2004 is not applicable as the raw materials and sub-assemblies were scrapped during the manufacturing process; it was nothing but loss on account of scrapping of work-in-progress; scrapping of inventory of finished goods, pertained to goods returned after sale, under Rule 16 of CCR,2004, and no CENVAT credit was availed on the same. He submits that while the impugned proceedings were for the period from 2011-12 to 2014-15, revenue initiated further proceedings for

2015-16, vide which demand of Rs. 13,66,789 was confirmed, along with interest and penalty by original authority; however, the Appellate Authority, vide order dated 28.02.2017, decided the issue of admissibility of CENVAT credit on account of loss of scrapping of raw materials, sub-assembly and finished products in favour of the Appellant relying on tribunal decision Castrol India Ltd 2016 (339) ELT 265; therefore, the issue is no longer *Res Integra*; He also relies further on

- SS Engineers, 2023 (386) E.L.T. 192 (S.C.)
- Rosmerta Technologies Ltd 2020-TIOL-916-CESTAT-CHD affirmed by the Hon'ble Supreme Court in Civil Appeal No. 177/2021
- Birla Corporation Ltd (2005) 6 SCC 95
- Jayarwals NECO Lad. v. CCE, (2007) 13 SCC 807

4. Learned Counsel submits further that there was no recovery mechanism under Rule 3(5) before the insertion of explanation 2 w.e.f. 01.03.2013; he relies on this Bench decision in M/s GKN Driveline (India) Ltd (Final Order no. A/60318/2023 dated 30.08.2023); decision of Delhi Bench in the case of Ericsson India Pvt Ltd (Final Order No. 50307/2019 dated 07.02.2019) and Heidelberg Cement India Ltd (2018-TIOL-712-CESTAT-BANG); Rule 3(5B) is applicable to the cases where the value of inputs or capital goods before being put to use are written off; Rule 3(5B) does not deal with work-in-progress and finished goods.

5. Learned Counsel submits also that finished goods which have been scrapped are also not covered under Rule 3(5B) as held in BCH Electric Ltd 2016 (344) ELT 469 (Tri. - Chan.), Monarch Self Adhesive Tapes & Foams (I) Pvt Ltd 2017-TIOL-3640-CESTAT-MUM

and Comfort Polymers Pvt Ltd (Final Order No. A/60213/2023 CESTAT Chandigarh). He submits that the inputs written off were already put in the process of manufacturing; Rule 3(5B) of CCR Rules does not cover work in progress; Circular no. 907/27/2009-CX dated 07.12.2009 has been misinterpreted. if this circular is applied to the facts of the instant case, then work in progress at the stage of sub-assembly cannot be subject to the rigorous of Rule 3(5B). Furthermore, finished goods are completely out of ambit of Rule 3(5B). The test w.r.t WIP not amounting to manufacture' has not been applied by the Ld. Principal Commissioner, even though the CA certificate and submissions made by the Appellant on record clearly indicate that assembling and sub-assembling are stages of manufacture for the Appellant. Therefore, the Ld. Principal Commissioner has simply failed to understand the scope of application of the Circular and blindly quoted and applied the same.

6. Learned Counsel submits that submits that the appellant produced a Chartered Accountant’s certificate, which clearly certified that no input as such were written off in the books of the Appellant; learned Principal Commissioner, did not consider certificate. He relies on Shyam Coach Engineers 2024 (388) ELT 194 (Tri. - Del.), Mix National Engineering Industries Limited (Final Order No. 58084/2024 dated 22.08.2024 New Delhi, Cadila Pharmaceuticals Ltd (Final No. 60298/2024 dated 04.06.2024 Chandigarh) and Systronics (India) Ltd 2019 (370) ELT 945 (Tri. - Bang.).

7. Learned Counsel submits also that the Show Cause Notice was issued on 21.04.2015, for the demand for the period from 2011-12 to 2013-14, is barred by limitation; department was regularly conducting audit of the Appellant; the Appellant was regularly filed the statutory returns; the department had full knowledge that the Appellant took credit in the manner discussed above; there was not suppression of facts on the part of the Appellant; department failed in bringing out any positive act on part of the Appellant which establishes fraud, willful misstatement or suppression to invoke extended period of limitation; the proceedings initiated for the period from 2011-12 to 2013-14 are barred by limitation; he relies on Mahanagar Telephone Nigam Ltd 2023-TIOL-407-HC-DEL-ST, GD Goenka Private Limited 2023-TIOL-782-CESTAT-DEL, Delhi Airport Metro Express Pvt Ltd (Final Order No. 50031/2024 dated 11.01.2024 Tri.-Del.) and Mahesh Chemicals Allied Industries 2024-TIOL-1120-CESTAT-CHD. He submits that since demand is not sustainable, interest and penalty cannot be imposed; commissioner erred in imposing penalty twice, firstly, under Section 11AC of Central Excise Act and secondly, under Rule 15 of CENVAT Credit Rules for same offence; further, these provisions not applicable in cases where the demand is confirmed under Rule 3(5B) of CCR rules as held in GKN Drive Line India Ltd 2017; (357) E.LT. 1083 (Tri. - Chan.) and Sangrur Agro Ltd. 2010 (254) ELT 25 (P&H).

8. Ms Amita Gupta, Learned Authorised Representative for the Revenue, reiterates the findings of the impugned order and submits that the intent of provisions of Rule 3(5B), also explained in Circular

No, 907/27/2009-CX dated 07.12. 2009, was to plug the situations, wherein, the assessee avails the benefit of CENVAT Credit on inputs which are not intended to be used and are written off or provisioned to be written off in the books of accounts. She relies on Mumbai Bench decision in the case of General Motors Pvt Limited 2022(11) TMI 1460-CESTAT and the decision of Allahabad Bench in the case of Gallant Ispat Ltd 2016(340) ELT 606 (Tri-All).

9. Learned Authorised Representative submits that the appellants reliance on order, dated 28.11.2007, by Commissioner (Appeals), in the case of appellants, is not correct as the same was accepted only on monetary limits and not on merits; the case of Castrol India relied upon by the appellants is distinguishable on facts. She submits that though the recovery mechanism in Rule 3(5B) was inserted w.e.f. 01.03.2013, the Show Cause Notice, being issued by the department on 21.04.2015, the amended provisions are applicable; in addition, the circular dated 07.12.2009 was issued much before the amendment. She submits that though the appellant contended that the raw material, work in progress and semi-finished goods were scrapped and sold on payment of duty, no documentary evidence was shown; the certificate issued by Chartered Accountant only talks of field visit but it doesn't show if any accounts were verified.

10. Learned Authorised Representative argues on the issue of the extended period that there is nothing on record to show that this activity of the appellants was in the knowledge of the department;

the appellants never contacted the department for clarification on this issue; it came to the knowledge of the department only during the Audit, on scrutiny of private records of the appellants; but for the audit the short levy would have remained unnoticed; hence extended period of limitation is invocable.

She relies on

- RDC Concrete (I) Ltd 2016 (337) ELT A 205 (SC)
- Anjay Bahadur-2009 (240) ELT 282 (Tri. - Mumbai)
- Delite Kom Ltd. - 2016 (336) ELT 675 (Tri. - Del.)
- Jabalpur Oxygen Company 1991 (52) ELT 455

11. Heard both sides and perused the records of the case. The instant case revolves around the applicability of Rule 3(5B) of CCR, 2004 to the inputs scrapped, at the stage of work in progress, assembly/ sub-assembly, after being put to use is the contention of the appellants, relying on various decisions, that there was no recovery mechanism under Rule 3(5B) before 01.03.2013 when an Explanation under the said Rule to the effect that:

> Explanation - If the manufacturer of goods is provider of output service fails to pay the amount payable under sub-rules (5), (5A) & 5(B), it shall be recovered in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.

12. We find that this Bench in the case of GKN Driveline (India) Ltd. – Final Order No. A/60318/2023 dated 30.08.2023 held as follows:

> 12. After considering the submissions of both the parties and perusal of material on record, we find that the appellant as per the normal commercial practice in the automobile industry has made a provision for writing off the CENVAT credit on inputs as per Rule 3(5B) of the CENVAT Credit Rules, 2004. During the audit, the department was of the view that the appellant is

required to reverse CENVAT Credit availed on inputs which were written off as per Rule 3(5B) of the CENVAT Credit Rules. 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.

14. It is pertinent to note that the identical issue was considered by the Division Bench of the Tribunal in the case of Ericsson India Pvt. Ltd. cited (supra) wherein the Tribunal has held as under:-

> "7. Having considered the rival contentions, we find that the issue is one of interpretation. We further find that for reversal of CENVAT credit on partial writing down of value of inputs , the provision was introduced only first time by amendment of Rule 3(5B) of CENVAT Credit Rules, with effect from 01.03.2011. Further, there was no provision prior to 01 March 2013 for recovery of CENVAT credit and interest thereon under Rule 3(5B) etc. which was made applicable with effect from 01.3.2013 only, by virtue of Notification No. 3 of 2013-CE(NT) dated 01.03.2013. The notification provides that if the manufacturer of goods or the provider of output service fails to paythe amount payable under sub-rule (5), (5A) and (5B), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken. 8. Learned Counsel have also pressed the ground that as they were not required to reverse the CENVAT credit on partial writing down the value of inputs, prior to 01.03.2011, accordingly, we hold that as there was no such legal requirement. The learned Counsel also prays that they are entitled to refund, already reversed credit on account of partial writing down of value, prior to 01.03.2013. 9. In this view of the matter, we hold that the issue has arisen due to change of opinion on the part of the Revenue, but there is no suppression of facts on the part of the appellants. Further, we find that no amount was due to be reversed under rule 3(5B) on the date of issue of

> show cause notice. Accordingly, we hold that larger period for limitation cannot be invoked and no show cause notice was required to be issued. Accordingly, we hold that impugned order is not sustainable, and is set aside. Appeal is allowed with consequential relief. In this view of the matter, we set aside the demand, penalty and interest"

13. The appellants further submit that Rule 3(5B) and the Circular bearing No.907/27/2009 dated 07.12.2009 are not applicable as the appellants have not written off the inputs as such; what has been written off were the inputs after they have undergone various stages of manufacturing like sub-assembly level, assembly level and packing level; the appellant may have, by mistake, referred to the same in their books of accounts under the Heading "Loss from Scrapping of Inventory – Raw Materials"; however, they are not raw materials as they are understood; the nature of material scrapped and written off is evident from the Chartered Engineer certificate. We find that there is force in the arguments of the appellants. Learned Commissioner ignored/ disregarded the Chartered Accountant certificate without going through the same and without countering the same with evidence and logic. We find that it has been held in a catena of cases that a certificate given by a professional cannot be disregarded, more so, in the absence of any evidence to the contrary.

14. We further find that Commissioner (Appeals) adjudicating the appellant's case, on the same issue, for the subsequent period i.e. 2015-16, in favour of the appellants dropping the demand of Rs.13,66,789/-. Revenue has not filed any appeal against such order. Therefore, we are of the opinion that Revenue cannot change their

stand for an earlier period, which is impugned in the present case. In view of the same, we find that Revenue's reliance on different cases is of no avail. The issue stands settled in favour of the appellants on merits as well as on legal issues.

15. In view of the above, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 14/10/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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