CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60403 of 2016
&
Excise Cross Objection Application No. 60343 of 2017

[Arising out of Order-in-Original No. 06/MV/CCE/2016 dated 28.04.2016 passed by the Commissioner of Central Excise, Gurgaon-II]

Commissioner of Central Excise, Delhi-III **......Appellant**
Gurgaon-II Commissionerate,
Plot No. 36 & 37,Sector 32,
Gurgaon, Haryana

VERSUS

M/s FCC Rico Limited **......Respondent**
Plot No. 5, Sector 3, IMT Manesar,
Gurgaon, Haryana

APPEARANCE:

Mr. Siddharth Jaiswal and Ms. Amita Gupta, Authorized Representatives for the Appellant
Ms. Krati Singh, Ms. Khushbu Sood and Mr. Jai Ahuja, Advocates for the Respondent

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

FINAL ORDER NO. 60136/2026

DATE OF HEARING: 03.02.2026
DATE OF DECISION: 03.02.2026

S. S. GARG :

The present appeal is filed by the Revenue against the impugned order dated 28.04.2016 passed by the Commissioner of Central Excise, Gurgaon-II, whereby the learned Commissioner has dropped the demand of penalty under Section 11AC of the Central Excise Act read with Rule 15 of Cenvat Credit Rules, 2004.

2. Briefly stated facts of the present case are that the Respondent/Assessees are engaged in manufacture of Clutch Assembly and Parts thereof and are duly registered with Central Excise department. The Respondent availed the CENVAT Credit on inputs, input services and capital goods used in manufacture of their final products in terms of Rule 3 of Cenvat Credit Rules. Apart from their head-office at Manesar, the Respondent have four other manufacturing units located at Bengaluru, Haridwar, Pune and Tapukara. The Haridwar unit was availing the benefit of exemption under Notification No. 50/2003-CE dated 10.06.2003.

2.1 During the relevant period, i.e. 2009-10 to 2013-14, the Respondent entered into a License Agreement with FCC Limited, Japan for use of Industrial Property Rights and Technical Information as well as a Service Agreement with Rico Auto Industries Limited for provision of Production Support Services, Human Resource and Industrial Relations Support Services, Finance and Accounting Support Services and General & Administrative Support Services; also, an agreement with FCC Limited for deputation of specified employees to the Respondent on loan basis for an agreed consideration. All these services were subject to levy of service tax which was duly paid by Service Providers/Respondent under RCM; accordingly, the Respondent availed and utilized the CENVAT Credit on the same.

2.2 An audit was conducted by the department wherein the department alleged that the abovementioned services were partly attributable to the Haridwar unit which was already enjoying the benefit of exemption from payment of excise duty. On this basis, it was alleged that the Respondent had irregularly availed the CENVAT Credit attributable towards the Haridwar unit in contravention of Rule 7 of the Cenvat Credit Rules.

2.3 Thereafter, the Respondent deposited the entire amount of allegedly inadmissible CENVAT Credit of Rs.81,23,441/- along with interest of Rs.25,68,296/- vide e-payment challan dated 27.12.2014.

2.4 The department issued the SCN proposing recovery of the CENVAT Credit along with interest and penalty, by invoking the extended period of limitation. The said SCN was adjudicated by learned Commissioner vide the impugned OIO wherein the demand of CENVAT Credit was confirmed along with interest and the amounts already paid by the Respondent, were appropriated. The learned Commissioner dropped the proposal to impose the penalty under Section 11AC of the Act. Hence, the Revenue is in appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Authorized Representative for the Appellant/Revenue submits that the impugned order passed by the learned Commissioner dropping the penalty under Section 11AC of the Act, is not sustainable in law.

4.1 The learned Authorized Representative further submits that the Respondent have suppressed the material facts from the department with intent to evade the payment of duty and only during the audit, it was detected that the Respondent have been availing the CENVAT Credit on the input services which are partly attributable to the Haridwar unit which was already enjoying benefit of exemption from payment of excise duty.

4.2 The learned Authorized Representative further submits that extended period of limitation has rightly been invoked, but the learned Commissioner has wrongly dropped the penalty.

5. On the other hand, the learned Counsel for the Respondent submits that extended period of limitation cannot be invoked and the demand of penalty is not sustainable.

5.1 She further submits that the present case is covered by the provisions of Section 11A(2) of the Act which state that in cases where non-payment or short-payment is *bona fide* and the assessee, prior to issuance of SCN pays the duty along with interest by virtue of his own assessment or on the ascertainment of department, no SCN shall be issued for demand of duty or penalty.

5.2 She further submits that *bona fide* the Respondent has been rightly established in the case and as such, issuance of SCN itself is beyond the premise of law. In this regard, she relies on the following decisions:

a) M/s Bhima Sahakari Sakhar Karkhana Ltd vs. Commr of CGST, Pune-I – 2026 (1) TMI 1226 - CESTAT MUMBAI

b) **M/s CNF Automotive India Pvt Ltd vs. Commr of CGST, Chennai North – 2024 (10) TMI 896 – CESTAT Chennai**

c) **CCE, Delhi-III vs. Machino Basell India Ltd – 2011 (273) ELT 53 (P&H)**

d) **Sri Velmurugan Sago Factory vs. CCE, Salem – 2017 (347) ELT 185 (Tri. Chennai)**

5.3 She further submits that the Respondent have always been and are still under the *bona fide* belief that they are eligible to avail CENVAT Credit on the tax paid on IPR and other services.

5.4 She also submits that though she has raised an objection on invocation of extended period of limitation, but she is not pressing the same at this stage and she only restricts her argument under the provisions of Section 11A(2) of the Act which squarely covers the case of the Respondent.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that in the present case, during the course of audit, it was pointed out by the audit team that the Respondent have wrongly availed the CENVAT Credit on various input services attributable to Haridwar unit which was already enjoying the benefit of exemption from payment of excise duty. As soon as the audit team pointed out the irregular availment of CENVAT Credit attributable to Haridwar unit, the Respondent deposited the entire amount of allegedly inadmissible CENVAT Credit along with interest vide e-payment challan dated 27.12.2014, which is not disputed here. Once the Respondent have paid the amount along with interest before the issuance of SCN then as per the provisions of Section 11A(2) of the Act, the department is not supposed to issue

the SCN as held in the various judgments cited above. Hence, issuance of SCN, invoking the extended period of limitation, is itself legally not sustainable, therefore, we hold that the SCN was not required to be issued in the present case. Consequently, the learned Commissioner has rightly dropped the penalty under Section 11AC of the Act.

7. In view of the above, we do not find any infirmity in the impugned order, hence, we uphold the same and dismiss the appeal of the Revenue. Cross-objection is also disposed of accordingly.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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