CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 61342 of 2019

[Arising out of Order-in-Original No. 02-03/CE/COMMR/VMJ/RTK/2019-20 dated 31.07.2019 passed by the Commissioner of Central Excise & CGST, Rohtak]

Commissioner of Central Excise, Goods & Service Tax, Rohtak ……**Appellant**
SCO No. 6-8 & 10, Sector 1, HUDA Market,
Rohtak, Haryana 124001

VERSUS

M/s Dharam Industries ……**Respondent**
Piau Maniyari, Narela Road, Kundli,
Sonepat, Haryana 131001

APPEARANCE:

Ms. Amita Gupta, Authorized Representative for the Appellant

Mr. Rohan Pahwa, Advocate for the Respondent

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

FINAL ORDER NO. 60302/2026

DATE OF HEARING: 18.12.2025
DATE OF DECISION: 13.04.2026

S. S. GARG :

The present appeal is filed by the Revenue against the impugned Order-in-Original dated 31.07.2019 passed by the Commissioner of Central Excise & CGST, Rohtak, whereby the learned Commissioner has set aside the demands raised in two Show Cause Notices.

2. Briefly stated facts of the present case are that the Assessee/Respondent, M/s Dharam Industries (in short 'DI'), were registered with the Central Excise Department and were engaged in the business of manufacturing of Stainless Steel ('S.S.') products like S.S. Sheets/Coils and Stair/Furniture, Railings etc classified under Chapters 72199013 & 73089090 of the Central Excise Tariff Act, 1985. The Respondent had been availing the facility of CENVAT Credit under the Cenvat Credit Rules, 2004.

2.1 During the scrutiny of ER-1 Returns for the period December 2014 to March 2016 and April 2016 to June 2017, the Department observed that the Respondent after polishing and pasting paper or adhesive plastic film on S.S. Sheets/Coils, were clearing the same on payment of central excise duty. It was further observed by the Department that the Respondent were also availing CENVAT Credit of duty paid on raw materials such as S.S. Sheets/Coils. As per the Department since no new product emerged from the process undertaken by the Respondent, no manufacture had taken place and therefore CENVAT Credit availed was not admissible.

2.2 Consequently, two Show Cause Notices ('SCNs') dated 03.01.2017 and 06.03.2018 were issued to the Respondent for the period December 2014 to March 2016 and April 2016 to June 2017 respectively, demanding recovery of the CENVAT Credit cumulatively amounting to Rs.4,72,60,648/- along with applicable interest and penalties.

2.3 The Respondent filed detailed reply to the said SCNs and submitted that: (a) the process undertaken by the Respondent resulted in a commercially new product having distinct characteristics and hence amounting to manufacture; (b) no investigation was carried out by the Department to find out the commercial significance of differently surfaced S.S. Sheets/Coils namely satin finish no.4 or mirror finish no.8 and PVD coated; (c) the excise duty was paid at the time of clearance of goods and as such no revenue loss was suffered by the Department; (d) in an identical matter for the previous period November 2011 to March 2012, the Commissioner (Appeals) had granted relief to the Respondent, and (e) extended period was not invokable, as there was no allegation of suppression or fraud or wilful mis-statement and the fact of availment of CENVAT Credit was known to the Department beforehand.

2.4 After following the due process, the learned Adjudicating Authority vide the impugned Order-in-Original, held that the process undertaken by the Respondent did not constitute manufacture but since excess duty was paid by the Respondent through PLA, CENVAT Credit availed stands more than reversed and hence, no further reversal or recovery was necessary. The learned Adjudicating Authority also relied upon several decisions of the Tribunal, the High Courts and the Supreme Court to support his contentions. Aggrieved by the said Order-in-Original, 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 is not sustainable in law as the same has been passed without properly appreciating the facts and the law and correct appreciation of Cenvat Credit Rules.

4.1 She further submits that in the present case two issues are involved – (i) whether the different processes undertaken/carried out by the Respondent, i.e. polishing S.S. Sheets/Coils and thereafter pasting the paper or adhesive plastic film coating amounted to manufacture or not? and (ii) whether the Respondent had correctly availed and utilized the CENVAT Credit?

4.2 She further submits that the learned Commissioner has erred by holding that the CENVAT Credit availed and utilized is admissible and recovery from the Respondent under Rule 14 of the Cenvat Credit Rules, 2004 read with first proviso to Section 11A(4) of the Central Excise Act, 1944 is not sustainable as the Respondent have already paid the CENVAT Credit to the government exchequer.

4.3 She further submits that as per the statutory provisions, it is clear that where the processes undertaken by an assessee does not amount to manufacture, the assessee is not eligible to avail the CENVAT Credit and is not required to pay duty. She further submits that the learned Commissioner has held that the process undertaken by the assessee does not amount to manufacture and therefore, CENVAT Credit of duty paid on material i.e. steel coil/sheet/packing material and capital goods are not available by virtue of Rule 2(k), Rule 2(l) and Rule 3 of the Cenvat Credit Rules, 2004.

4.4 She further submits that the Respondent had wrongly availed the CENVAT Credit on raw materials, capital goods and input services as their final product was not amounting to manufacture and hence not dutiable.

5. On the other hand, the learned Counsel for the Respondent justifies the impugned order. He submits that the amount of duty paid by the Respondent on their final product namely S.S. Sheets/Coils (satin finish no.4 or mirror finish no.8 and PVD coated) exceeds the CENVAT Credit availed on raw materials, effectively resulting in an over-payment more than offsets alleged availment of inadmissible credit.

5.1 He further submits that the process undertaken by the Respondent resulted in production of commercially distinct product having different character and use, and in the Respondent's own case for the earlier period, the said contention was accepted by the learned Commissioner (Appeals) in Order-in-Appeal No. 556-557/SVS/RTK/2023 dated 22.10.2013.

5.2 The learned Counsel further submits that the demand for the period December 2014 to March 2016 amounting to Rs.2,29,38,046/- has been raised by invoking extended period of limitation in terms of Section 11A(4) of the Central Excise Act, 1944. He further submits that the Department has failed to prove any of the ingredients which are necessary for invoking extended period of limitation because the fact of paying excise duty by the Respondent on their final product was known to the Department beforehand. He also submits that whether an activity amounts to manufacture or not, is a matter of legal interpretation; whereas, the Respondent were paying the excise duty under *bona fide* belief that their activity amounted to manufacture; and it is a settled legal position that extended period cannot be invoked in such cases. He also submits that demand for the said period is not sustainable for the another reason also, because the impugned order has been passed beyond the time-limit prescribed in Section 11A(1) of the Central Excise Act, 1944.

5.3 The learned Counsel further submits that the demand for the period April 2016 to June 2017 amounting to Rs.2,43,22,602/- has been raised by invoking first proviso to Section 11A(1) of the Central Excise Act. He further submits that the SCN dated 06.03.2018 imposes penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC(1)(c) of the Central Excise Act. He submits that the said provisions pertain to imposition of penalty in case of fraud, collusion or any wilful mis-statement or suppression of facts, which are not applicable to the Respondent as the said SCN pertains to subsequent period.

6. We have considered the submissions made by both the parties and perused the material on record. We find that the main allegation of the Department in the present case is that the Respondent have wrongly availed the CENVAT Credit on raw materials, capital goods

and input services as their final product does not amount to manufacture and hence not dutiable. Further, as per the Department, the Respondent have contravened the provisions of Rule 9 of the Cenvat Credit Rules, 2004. Further, as per the Department, the Respondent were purchasing the raw materials i.e. S.S. Sheets/Coils under Tariff Item 72199013 of the Central Excise Tariff Act, 1985 and after polishing and coating the paper or PVD coating thereto, they were clearing the S.S. Sheets/Coils under the same Tariff Item i.e. 72199013 and therefore, no new product with distinct name, characteristics and use had emerged out of the processes carried out by the Respondent, and hence, the Respondent were not manufacturing any final product and not entitled to avail the CENVAT Credit and the CENVAT Credit availed by them is inadmissible.

7. Further, we find that it is a fact that the Respondent have undertaken the processes and after the said processes, the final product namely S.S. Sheets/Coils which were satin finish no.4 or mirror finish no.8 and PVD coated, resulted in a commercially new product having different characteristics and use. Further, we find that in the Respondent’s own case for the earlier period, the learned Commissioner (Appeals) has accepted in the Order-in-Appeal No. 556-557/SVS/RTK/2023 dated 22.10.2013 that the Respondent have rightly taken the CENVAT Credit.

8. Further, we find that it is a fact that the Respondent have cleared their final product on payment of excise duty which is more

than the CENVAT Credit availed by them on capital goods and input services.

9. We also find that the learned Commissioner has observed in the impugned order that the CENVAT Credit availed by the Respondent was being utilized for payment of duty and by adopting such an exercise, the CENVAT Credit availed by them is reversed by way of utilizing the same for payment of duty on their final product, which they were not required to pay. Relevant findings of the learned Commissioner are reproduced herein below:

> "**11.** Now another leading issue involved in the present impugned SCNs under consideration is at point no. (ii) above as to whether the Assessee was eligible/or correctly availed and utilized CENVAT credit amounting to Rs.2,29,38,046/- and Rs.2,43,22,602/- respectively, given the fact that processes undertaken/carried out by them do not amount to manufacture as alleged in the present SCNs. From the records placed before me, I find that department has raised the issue that as the process undertaken by the Assessee did not amount to manufacture, the raw material consumed by them cannot be termed as inputs and services utilized were not input services. The Assessee is thus not entitled to take Cenvat Credit of specified duties paid on the raw material brought in their factory as the said raw material were not their inputs. They were also not entitled to take Cenvat Credit of tax paid on the services or on the capital goods installed in their factory, as the same were not utilized in or relation to manufacture of any final product. Cenvat Credit was thus wrongly taken & utilized by the Noticee. Further, Cenvat Credit was available only when 'manufacture' takes place. Cenvat provisions are available when there is 'manufacture Le new and identifiable product known in the market having distinct name, character or use emerges. Nevertheless, if the processing does not amount to 'manufacture' Cenvat Credit on inputs is not available. Therefore, the Assessee had wrongly availed the Cenvat Credit on raw materials, capital goods and input services as their final product was not amounting to manufacture & hence not dutiable. Therefore, it is proposed in the present SCNs that the inadmissible Cenvat

Credit taken by the Noticee amounting to Rs.2,29,38,046/- and Rs.2,43,22,602/-respectively, is required to be disallowed, demanded and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with Rule 11A(1) of the Central Excise Rules, 2002.

11.1 On the contrary, the Assessee has mainly argued that it is not in dispute that they paid Central Excise duty at the time of clearance of their final products i.e. Satin Finish No. 4 Stainless Steel and the Mirror Finish No. 8 Stainless Steel. Accordingly, they are entitled to credit of Rs. 2,29,38,046/ and Rs. 2,43,22,602/ respectively, pertaining to Central Excise duty paid on 2b Stainless Steel Sheets and Coils and other inputs used in the process, input services and capital goods used in the manufacture of finished goods. Even if it is assumed for the sake of argument that the process in question does not amount to manufacture, the impugned Cenvat credit cannot be denied to them as they have paid Central Excise duty on the goods which have allegedly not resulted from a process of manufacture.

11.2 After going through the relevant provisions of the Cenvat Credit, I observe that the Department's case is that the process undertaken by the appellant does not amount to manufacture, it amounts to saying that the appellant have cleared the Cenvat credit availed inputs as such and this is something which is not prohibited, if at the time of removal of Cenvat credit availed inputs, in terms of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, an amount equal to the Cenvat credit availed is paid under an invoice issued under Rule 9 of the Central Excise Rules, 2002. There is no dispute that the amount paid by the Assessee is more than the Cenvat credit availed. Moreover, the excess duty was paid by the Assessee through PLA account. Therefore, the Assessee should not be penalized for paying more amount than their actual duty liability. Since Rule 3(5) itself requires that removal of cenvated inputs as such on payment of an amount equal to the Cenvat credit availed has to be under an invoice issued under Rule 9 of the Central Excise Rules, 2002 and since in terms of the Rule 9(1) of the Cenvat Credit Rules, 2004, an invoice issued by a manufacturer under Rule 9 even for removal of cenvated inputs/capital goods as such is a valid document for availing Cenvat credit, there is no illegality. Since the amount paid on the clearance of their final products i.e. Satin Finish No. 4 Stainless Steel and the Mirror Finish No. 8 Stainless Steel is more than the Cenvat credit availed by them. Hence, the Cenvat credit availed stands more than reversed and there is no need to recover the same again. Moreover, the Department has retained the duty paid on final products. Accordingly, I do agree with this contention advanced by the Assessee because of the following facts, reasons and judicial pronouncements.

11.3 It is not out of place to mention here that in the present matter though the processes carried out by the Assessee does not amount to manufacture as held above in preceding paras, the recovery of credit, once duty has been paid by utilizing the credit, is not warranted in such cases in the light of the various judicial pronouncements on the issue. I find that the issue of reversal or recovery of credit in a case where processes undertaken/carried out by the Assessee do not amount to manufacture as alleged in the present SCNs, is no more *res-integra*. It has been consistently held by the judicial fora that once duty is paid treating the activity as a manufacturing activity, Cenvat credit is available and duty paid at the time of clearance is to be treated as reversal of credit and a manufacturer cannot be asked once again to reverse the credit so availed. * * * *

11.4 Looking to the facts and circumstances of the case it remains undisputed facts on record that during the material period the Assessee were availing the benefit of the Cenvat credit of duty paid on the input/input services/capital goods and were paying the duty of excise on their final product. As such the credit availed by them was being utilized for payment of duty. By adopting such an exercise, the credit availed by the Assessee is reversed by way of utilizing the same for payment of duty on their final product which they were not required to pay. In these circumstances, in my views, the Cenvat credit availed by the Assessee and utilized by them for the purpose for which the same was not required to be utilized, already stands reversed by them. As such, they cannot be asked to once again reverse the credit so availed.

11.5 Accordingly, in view of the foregoing discussions, I hold that the denial of Cenvat Credit, demand of Cenvat Credit already availed & utilized and recovery from them under Rule 14 of the Cenvat Credit Rules, 2004 read with first proviso to Section 11A (4) of the Central Excise Act, 1944 as proposed in the present SCNs is not sustainable."

10. As regards the invocation of extended period, we find that for the period December 2014 to March 2016, extended period cannot be invoked because the Respondent have not suppressed any material

facts from the Department with intent to evade the payment of duty; in fact, they have been paying the duty on their final product on *bona fide* belief that they are liable to pay duty on their final product. The fact of paying excise duty by the Respondent on their final product was also known to the Department beforehand and moreover, whether an activity amounts to manufacture or not, is a matter of legal interpretation and it is a settled position in law that extended period cannot be invoked in such cases. Further, we also find that for the subsequent period i.e. April 2016 to June 2017, extended period cannot be invoked as the impugned SCN was a subsequent SCN and extended period was already invoked in the earlier SCN.

11. In view of our discussion above and after going through the matter minutely, we find that the conclusion arrived at by the learned Commissioner in the impugned order is legally sustainable and hence, there is no infirmity in the impugned order passed by the learned Commissioner. Consequently, we uphold the impugned order and dismiss the Revenue's appeal.

(Order pronounced in the open court on 13.04.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi