

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 54730 of 2014

[Arising out of Order-in-Original No. 10/Commr/Pkl/2014 dated 24.06.2014
passed by the Commissioner, Central Excise, Panchkula]

M/s Shahabad Co Op Sugar Mills Ltd

.....Appellant

Shahabad Markanda,
Kurukshetra, Haryana 136135

VERSUS

Commissioner of CE & ST, Panchkula

.....Respondent

SCO 407-408, Sector 8,
Panchkula 134119

APPEARANCE:

Shri Sagar Verma, Advocate for the Appellant

Shri Siddharth Jaiswal and Shri Narinder Singh, 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. 60344/2026

DATE OF HEARING:12.01.2026

DATE OF DECISION:11.05.2026

S.S. GARG:

The present appeal is directed against the Order-in-Original dated 24.06.2014 passed by the Commissioner, Central Excise, Panchkula, whereby the learned Commissioner has confirmed the demand and recovery inadmissible Cenvat credit of Rs. 4,97,13,725/- under Rule 11 CCR read with Section 11A along with

interest under Rule 14 read with Section 11AB and also imposed equal penalty under Rule 15(2) of CCR 2004 read with Section 11AC by invoking the extended period of limitation under proviso of Section 11A of Central Excise Act, 1944 for raising demand and recovery of inadmissible Cenvat credit.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacturing of Sugar and Molasses falling under chapter sub heading 17019990 and 17031000 respectively of the Schedule to the CETA, 1985 and is availing the facilities/benefit of Cenvat credit of duty paid on inputs and Capital goods. During the course of audit of the appellant by AG (Haryana) from 15.04.2010 to 20.4.2010, it was found that the appellant has availed the Cenvat Credit amounting to Rs, 3,46,49,935/ during the period from April-2009 to March-2010 on the capital goods/inputs used exclusively in the manufacture of exempted goods (non-excisable) i.e. the Power Plant, installed and erected at site for generation of the electricity to be supplied for captive use and part of its supply to be made to UHBVPN from it. Further, the Department found that the appellant have actually brought the Power Plant in SKD condition to be erected and installed in their factory. In order to increase the existing capacity of Power generation from 8 MW to 24 MW and they have availed the Cenvat credit on the components and accessories of the said Power Plant to the tune of Rs. 4,97,13,725/-during the period from Jan-2009 to March-2010 as per annexure enclosed. It was found that out of 24 MW, 8MW of electricity generated from this plant was intended to be consumed captively in running of Sugar

Mill and the balance 16 MW was to be given to Haryana Electricity Department. The appellant took 1/3rd of the total Cenvat Credit available on purchase invoices of these capital goods/inputs on assumption that they will use 1/3rd of electricity used in manufacture of dutiable final product.

2.1 Further the Department, entertained the view on the basis of the judgment in the case of M/s. Treveni Engineering & Industries Ltd Vs CCE [2000 (120) ELT 273 (SC)] and also relied upon the clarification issued by the Board vide its order No. 58/2002-CX. dt 15 Jan. 2002, wherein the Board took view and clarified that the Turnkey Projects like Steel plant, Cement plant and Power plant are non excisable goods. Further, the Department was of the view that as per the provisions of Rule 6(1) & 6(4) of Cenvat Credit Rules, 2004 the appellant is not eligible to take Cenvat credit on capital goods & inputs which have been used in the manufacture of exempted goods i.e. Power Plant. On these allegations, the Department issued the show cause notice dated 28.01.2011 by invoking the extended period and demanding the ineligible Cenvat credit along with interests and penalties. The appellant filed detailed reply to the show cause notice controverting the allegation of the Department and asserted that they have rightly taken the Cenvat credit as per the Cenvat Credit Rules. After following the due process, the learned Commissioner vide the impugned order has confirmed the demand along with interest and penalties. Hence, the present appeal.

3. Heard both the parties and perused the material on record. Both the parties have filed the written submissions which have been taken on record.

4. Learned counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law. He further submits that the entire dispute in the present case as framed by the Department itself is very limited. The only allegation in the show cause notice is that Cenvat credit on capital goods and inputs is not admissible because they were used in setting up of a Power Plant, which according to the Department is non excisable and exempted goods. He further submits that in the show cause notice, the Department has placed reliance on the Board Circular No. 58/1/2002-CX dated 15.02.2002 and the Supreme Court decisions in Triveni Engineering & Industries Ltd. v. CCE [2000 (120) E.L.T. 273 (SC) (cited supra). He further submits that the appellant in the present case is eligible to avail cenvat credit under the provisions of Cenvat Credit Rules, 2004. He further submits that the appellant has complied with all the conditions in the Cenvat Credit Rules which are relevant for availment of Cenvat credit on capital goods and inputs and there is no bar operating against the appellant. He further submits that they have fulfilled all the relevant conditions under Rules 2(a), 2(k), 3 and 4 of the Cenvat Credit Rules, 2004 for availment of Cenvat credit on capital goods and the goods in question undisputedly satisfy the definition of capital goods under Rule 2(a); that they

have been received (the requirement under Rule 3) and used in the factory of manufacture; that inputs are used in the setting up of electricity generation plant used in manufacturing of dutiable goods and that credit has been correctly taken in the manner prescribed under Rule 4(2) of the Cenvat Credit Rules, 2004.

4.1 The learned counsel, thereafter took us through the definition of capital goods under Rule 2(a) and Rule 3(1) of the Cenvat Credit Rules, 2004 and submits that the goods on which credit has been taken fall within the category of goods listed in the definition of capital goods under Rule 2(a). He further submits that the definition of capital goods requires that the goods be (used in the factory of the manufacturer of final products) but does not include any equipment or appliance used in an office". He also submits that the goods on which capital goods credit has been availed by the appellant, have indeed been used in the factory of the appellant, who is the manufacturer of the final products, i.e. Sugar and Molasses and there is no allegation to the contrary in the show cause notices and the impugned Order-in-Original. He further submits that once the goods are covered under sub-clauses (i) to (vii) of clause A of Rule 2(a), and once the same has been used in the factory of the Appellant is established, and the same is not disputed, the requirements of Rule 2(a) stand satisfied and the appellant is entitled to Cenvat credit of the same. He further submits that the appellant has complied with all the conditions for availing credit. He relied upon the decision of Commissioner of Central Excise

& Customs Vs. Sunrise Chemical Industries, 20110 (262) ELT 1110 (Guj.), wherein, the Hon'ble High Court has held as under:

"4. Thus, on overall reading, it is apparent that credit is available to a manufacturer or producer of final product, which means excisable goods manufactured or produced and such credit is for the duty paid on any inputs or capital goods received in the factory after the prescribed date Admittedly, the capital goods in question were received in the factory of the respondent-assessee and were used for the purposes of manufacturing final product which is an excisable item. The Rule nowhere prescribes installation of the capital goods, nor does the Rule refer to ownership of the capital goods. The only requirement prescribed by the Rule is use of capital goods received in the factory after the prescribed date and used in the manufacture or production of final products. The respondent-assessee has/fulfilled all the requisite conditions of the Rule."

4.2 He further submits that the goods on which the credit has been availed are in fact movable goods and that no credit has been taken on immovable goods and immovability is not a legally tenable criteria for determination of whether credit on capital goods or inputs would be admissible or not. In this regard, he refers to the decision in the case of ***M/s Rajasthan Spinning & Weaving Mills Ltd. v. Commissioner of Central Excise, Jaipur, 2010 (255) ELT 481 (SC)***, the Hon'ble Supreme Court allowed credit on steel plates and M.S. channels used in fabrication of chimney for diesel generating set, even though a chimney is by its very nature

immovable. He further submits that this issue is no longer *res integra* and has been settled by this Bench of the Tribunal in the case of M/s Indian Oil Corporation Ltd. v. CCE & ST, Panchkula vide Final Order No. A/61158-61161/2019 dated 17.12.2019, wherein the Tribunal dealt with an identical dispute where Cenvat credit on capital goods and inputs used for erection and commissioning of a Naphtha Cracker Plant was denied on the very same grounds now raised by the Department-viz., that the goods were used in setting up of an immovable plant and therefore not excisable, in that case the Department has relied upon the Triveni Engineering judgment (cited supra) and CBEC's Order No. 58/1/2002-CX dated 15-02-2002. He further submits that the contention of the Department that capital goods must be movable, excisable goods specifically rejected by the Karnataka High Court in the case of CCE, Bangalore vs. SLR Steel Ltd. reported in 2012 (28) ELT 176 (Kar.). the learned Counsel also submits that the Department's reliance in the show cause notice as well as in the impugned order relying on the CBEC Circular No. 58/1/2002-CX dated 15.02.2002 and the decision in the case of M/s Triveni Engineering & Industries Ltd. (cited supra) and M/s Quality Steel Tubes Pvt. Ltd [1995 (75) ELT 17 (SC)] is wholly misplaced and legally unsustainable. He further submits that the said Circular was issued under Section 37B of the Central Excise Act, 1944 to clarify the excisability of plant and machinery assembled at site, not the admissibility of Cenvat credit. It specifically states that while turnkey projects like power or cement plants erected at site are not excisable as a whole, the components, machinery and equipment

forming part of such projects are dutiable in the normal course, wherein, in the present case, the dispute pertains to Cenvat credit on duty-paid capital goods and inputs received in the factory under valid invoices and used for setting up the power plant within the same premises. Therefore, as per the Circular, which concerns classification and excisability, has no bearing on the admissibility of the credit. He also submits that neither the Circular nor the judgment in the case of M/s Triveni Engineering & Industries Ltd. (cited supra) and M/s Quality Steel Tubes Pvt. is applicable to the present case.

4.3 As regards the invocation of the extended period, the learned counsel submits that the appellant has not suppressed any fact with intend to evade payment of duty and the detailed data of Cenvat credit availed by the appellant submitted in the ER-1 returns and the Department was very much aware of the credit being availed. He further submits that the Department has failed to show any positive act of suppression on the part of the appellant. In support of his submissions, he relied upon the following decisions:

1) Padmini Products v. Collector of Central Excise, Bangalore, 1989 (43) ELT 195 (SC)

(ii) Gopal Zarda Udyog . Commissioner of Central Excise, New Delhi, 2005 (188) ELT 251 (SC)

(iii) Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut, 2005 (188) ELT 149 (SC)

(iv) *Lubri-Chem Industries Ltd. v. Collector of Central Excise, Bombay, 1994 (73) ELT 257 (SC)*

(v) *Cosmic Dye Chemical v. Collector of Central Excise, Bombay, 1995 (75) ELT 721 (SC)*

4.4 He further submits that the appellant was and still is under a bonafide belief that the credit on invoiced capital goods availed by it is correct as per the Cenvat Credit Rules, 2004. He also submits that the issue in the present case involves interpretation of complex legal provision and the belief of the appellant that credit availed on capital goods is correct, is justified in view of the various judgments of the Tribunal, High Court and Supreme Court (cited supra) and in view of the Board Circular F.No. B-4/7/2000-TRU, dated 03.04.2000; therefore, he submits that the imposition of penalty is not warranted in the present case. He placed the reliance upon the following decisions:

1) *CCE v. Sikar Ex-serviceman Welfare Coop. Society Ltd. 2006 (4) STR 213 (Tri.-Del.)*

(1) *Haldia Petrochemicals Ltd. v. CCE 2006 (197) ELT 97 (Tri.-Del.)*

(iii) *Siyaram Silk Mills Ltd. v. CCE 2006 (195) ELT 284 (Tri.-Mumbai)*

(iv) *Fibre Foils Ltd. v. CCE 2005 (190) ELT 352 (Tri.-Mumbai)*

(v) *ITEL Industries Pvt. Ltd. v. CCE 2004 (163) ELT 219 (Tri.-Bang.)*

The learned counsel for the appellant has also relied upon the judgement of the Hon'ble Chhatisgarh High Court in ***Union of India***

Vs. HEG Ltd. reported in 2012 (275) ELT 316 and the decision of Tribunal, Bangalore in the case of ***M/s Nizam Deccan Sugars Ltd. Vs. Commissioner of Central Excise Hyderabad reported in 2008 (227) ELT 122.***

5. On the other hand, learned authorized representative for the Department reiterated the findings of the impugned order and submits that the Department has rightly invoked the Circular Order No. 58/1/2002-CX, dated 15.02.2002 and has also rightly relied upon the decision of the Hon'ble Apex Court in the case of ***M/s Triveni Engineering & Industries Ltd.*** (cited supra) and has rightly come to the conclusion that the appellant is not entitled to avail Cenvat Credit on the inputs or capital goods used for the manufacture of exempted goods i.e. the Power plant. He further submits that the entire thrust of the demand is that what came into existence is a Power Plant which is alleged as exempted goods. The learned authorized representative for the Department has also relied upon the following decision:

- ***MARUTI SUZUKI LTD Versus COMMISSIONER OF CENTRAL EXCISE, DELHI-III 2009 (240) E.L.T. 641 (S.C.)***
- ***COLLECTOR OF C. EX Versus BALLARPUR INDUSTRIES LTD. 1989 (43) ELT. 804 (S.C.) [29-09-1989]***

- ***COMMISSIONER OF CENTRAL EXCISE Versus GUJRAT AMBUJA CEMENT LTD 2010 (256) ELT 356 (H.P.) [30-10-2008]***
- ***Iron and Steel structures would not go into composition of vacuum pans, crystallizers etc. and are not essential requirements in sugar manufacturing unit***
- ***SARASWATI SUGAR MILLS Versus COMMISSIONER OF C. EX, DELHI-II 2011 (270) E.LT. 465 (S.C.)***
- ***UPPER GANGES SUGAR & INDUSTRIES LTD. Versus COMMR. OF CUS & C EXCISE 2015 (324) E.LT. 94 (All) (25-02-2015)***
- ***COMMISSIONER OF C EX., LUCKNOW Versus***
- ***NANDGANJ SIHORI SUGAR CO. LTD.2017 (357) ELT 13 (All.) [10-01-2017]***

6. We have considered the submissions of both the parties and perused the material on record, we find that the only issue in the present case is whether the appellant is entitled to Cenvat credit on capital goods/inputs used in the manufacturing of exempted goods i.e. Power Plant. Further, we find that as per the definition of capital goods as well as the inputs under Cenvat credit Rules is concerned, the appellant has satisfied the conditions which are necessary to fulfill for availment of credit as per the provisions of Cenvat Credit Rules, 2004. We find that as per the requirement of the Cenvat Credit Rules, the appellant has fulfilled all the relevant conditions

Rule 2(a), 2(k), 3 and 4 of the Cenvat Credit Rules, 2004 for availment of Cenvat credit on capital goods, the goods in question has to satisfy the definition of capital goods under Rule 2(a) and they have been received (the requirement under Rule 3) and used in the factory for manufacture; that inputs are used in the setting up of electricity generation plant used in manufacturing of dutiable goods. We have also examined minutely the definition of capital goods as provided in Rule 2(a) and Rule 3(1) of Cenvat Credit Rules, 2004; we find that the goods on which the credit has been taken fall within the categories of the goods listed in the definition of the capital goods and have been used for the manufacturing of final product. We also find that this issue has been considered by this Bench of the Tribunal in the case of *M/s Indian Oil Corporation Ltd. v. CCE & ST, Panchkula* (cited Supra), wherein this Tribunal has dealt with identical issue of whether Cenvat credit of Capital goods and inputs used for erection Commissioning of Naphtha Cracker Plant is permissible or not? After considering the decision of the ***M/s Triveni Engineering & Industries Ltd.*** of the Hon'ble Apex court (cited supra) and the CBEC Circular No. 58/1/2002-CX dated 15.02.2002 the Tribunal has categorically held as under:

"7. In term of the definition of capital goods" as given in Rule 2(a) of the Cenvat Credit Rules, 2004, the capital goods are those goods which are specified in this Rule and which (except for office equipment or appliance) are used in the factory of the manufacture of the final products or for providing of output service. Thus any items which is covered by the list of the items mentioned in Rule 2(a) of the Cenvat Credit Rules, except for office equipment or office

appliances, and is used in any manner in the factory of the manufacturer of the final products, would be covered by the definition of the capital goods and accordingly would be eligible for Cenvat Credit. There is absolutely no requirement that the capital goods at the time of receipt must be owned by manufacturer or that the same would cease to be capital goods, if they are installed in the factory and become fixed to earth. In fact, most of the capital goods the machinery, equipment or instruments covered by Chapter 84, 85 & 90, pipes and tubes, pollution control equipment refractories, and storage tanks are required to be installed and after installation, the same put together constitute a manufacturing plant, which is a fixed to earth structure. Just because after being installed in the factory, the capital goods put together become a plant which is a fixed to earth structure, the Cenvat Credit cannot be denied on the basis that the plant which is fixed to earth structure, is not excisable. This preposition of the Department is, in fact absurd, as there is not such condition in Rule 2(a) for capital goods. For capital goods Cenvat Credit, the items must be among those mentioned in this Rule and should have been used in the factory of the manufacturer and how the items are not used relevant. The words used in Rule 2(a) are "used in the factory of manufacturer of the final product" not "used in the manufacture of final product". Therefore, once any item received in the factory is "capital goods" in terms of Rule 2(a) of the Cenvat Credit Rules, and is used in the factory, the manufacturer would be entitled to Cenvat Credit of excise duty paid in respect of the same. If the logic of the commissioner in the impugned orders are accepted, no capital goods Cenvat Credit can be allowed in respect of any item of capital goods enumerated in Rule 2(a) of the Cenvat Credit Rules, as all the items machinery covered under Chapter 84, 85 & 90 of the Tariff, pipes & tubes, various items of tanks, pollution control equipments refractors etc. have to be installed in the factory before being put to use and after installation, the same would become fixed to earth plant."

7. Further, we find that the reliance by the Department on the Board Circular No. 58/1/2002-CX dated 15.02.2002 and the judgment of the Supreme Court in the case of ***M/s Triveni Engineering & Industries Ltd.*** and *M/s Quality Steel Tubes Pvt. Ltd* (cited supra) is wholly misplaced and legally unsustainable because the issue in those judgments were entirely different than the issue involved in the present case. We also find that this issue has also been decided by the Hon'ble Chhatisgarh High Court in ***Union of India Vs. HEG Ltd. reported in 2012 (275) ELT 316***, wherein, the High Court has held that where electricity generated from a captive power plant is partly used in the manufacturing of dutiable goods, the capital goods cannot be said to be used exclusively in manufacturing of exempted goods and Rule 6(4) is no bar to availment of credit. Similarly, the CESTAT Bangalore Bench, in the case of ***M/s Nizam Deccan Sugars Ltd. Vs. Commissioner of Central Excise Hyderabad*** (cited supra) has held that when part electricity is used captively in the manufacturing of dutiable final products, credit on capital goods used in the power plant is admissible and Rule 6(4) is not attracted.

8. Further, we also find that the Orissa High Court in the case of ***Principal Commissioner of GST and Central Excise, Bhubanesar Vs. Neelachal Ispat Nigam Ltd. reported in 2023 (3) Centax 262 (Ori.)*** has held that Cenvat credit of capital goods used in the power plant cannot be denied merely because surplus energy was sold. Further, we find that the decision relied upon by the learned authorized representative (cited supra) are not

applicable in the facts and circumstances of the present case and they are quite distinguishable on facts.

9. Considering the ratios of the various decisions relied upon by the learned counsel for the appellant (cited supra), we are of the considered view that the Cenvat credit has rightly been availed and utilized by the appellant in the present case and therefore, the decision of the Commissioner denying the Cenvat credit is not sustainable and we set aside the same. As regards the invocation of extended period of limitation also, we find that in the present case, the appellant has not suppressed any material fact from the Department as they have been filing ER-1 returns regularly and has submitted detailed data regarding the Cenvat credit availed by them and entire case was built on the basis of audit conducted by AG, Haryana and it is a settled law that the extended period cannot be invoked on the basis of audit alone.

10. Further, we find that the Department has failed to prove any positive act of suppression on the part of the appellant and the decisions relied upon by the appellant (cited supra) clearly applicable in the present case and further the appellant was under a bonafide belief that they are entitled to take the Cenvat credit on the capital goods availed by them in view of the various decisions in their favour. Further, the present issue involves interpretation of complex provisions of law and in view of the various decisions (cited supra) by the appellant imposition of penalty is not warranted in the

present case and therefore, we set aside the invocation of extended period as well as the imposition of penalty.

11. In the result, we are setting aside the impugned order by allowing the appeal of the appellant with consequential relief, if any as per law.

(Order pronounced in the open court on 11.05.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash