# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## <u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 60789 of 2019**

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2306-19 dated 25.04.2019 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

**M/s Oliver Engg. Pvt. Ltd.** ......**Appellant**
Sandharshi Tehsil Rajpura, Patiala,
Punjab-140401

*VERSUS*

**Commissioner of Central Excise & Service Tax, Ludhiana** ......**Respondent**
GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

**<u>APPEARANCE:</u>**

None for the Appellant

Shri Aniram Meena, 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. 60355/2026**

DATE OF HEARING/DECISION: 15.05.2026

**<u>S. S. GARG</u>:**

The present appeal is directed against the impugned order dated 25.04.2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has set aside the demand for the extended period and demand for the normal period has been upheld.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacturing of excisable goods falling under Chapter 72 & 73 of the Central Excise Tariff Act, 1985 and are availing the facility of CENVAT credit on inputs, input services and capital goods under CENVAT Credit Rules, 2004. During the audit, it was found that the appellants have wrongly utilized CENVAT credit of Education Cess and Secondary & Higher Education Cess amounting to Rs.20,58,966/- as available on 28.02.2015 for making payment of Central Excise Duty, which was in contravention of the Notification No.12/2015-CE (NT) dated 30.04.2015 and the provisions of Sub Rule 7(b) of Rule 3 of the CCR, 2004. On these allegations a show cause notice was issued and after following the due process, the demand was confirmed along with interest and a penalty of Rs.2,05,897/- was also imposed under Section 11AC. Aggrieved by the said order, the appellants filed appeal before the Commissioner (Appeals), who partly allowed the appeal. Hence, the present appeal.

3. No one has appeared on behalf of the appellants.

4. Learned AR for the Department brought to our notice that the appellant has filed a letter dated 01.08.2025 and in that said letter, the appellant has also placed on record the various orders issued by NCLT, New Delhi in the appellant's own case. Learned AR further submits that in this case, Corporate Insolvency Resolution Process (CIRP), proceedings of the appellant were initiated and after following the due process, the NCLT finally approved the Resolution

Plan and the order approving the Resolution Plan has also been placed on record. Learned AR 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.**

5. After considering the submissions made by the learned AR and perusal of the Resolution Plan, we find that the identical matter has been considered by two coordinate benches of the Tribunal; by Mumbai Bench vide order dated 12.05.2023 in the case of **M/s Jet Airways (India) Limited vs. Commr of Service Tax-V, Mumbai [**vide **Final Order No. 85896-85897/2023 dt 12.05.2023** in **Appeal Nos. ST/86949, 87287/2015]** and Hyderabad Bench in the case of **Icomm Tele Ltd. vs. Commr of Central Tax, Puducherry [**vide **Final Order No. 30309/2023 dt 06.10.2023** in **Appeal No. E/1335/2012]**. It is pertinent to refer the findings of Mumbai Bench of the Tribunal in the case of **M/s Jet Airways (India) Limited** (supra), wherein 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. Relevant findings 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 Resolutionplan 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 theadjudicating authority?*

*.....*

*<u>CONCLUSION</u>*

*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 Governmentor 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 extinguishedand 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 respectof 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, wefind 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."

6. By following the ratio of the above said decision and upon taking note of the fact that the NCLT has approved the resolution plan, we are of the considered view that the present appeal stands abated as the CESTAT has become *functus officio* in the matter relating to the present appeal.

7. The appeal 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)**

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