CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41127 of 2015

(Arising out of Order-in-Appeal No.198/2014 dated 17.11.2014 passed by Commissioner of Central Excise (Appeals-II at Trichy), No.1, Williams road, Cantonment, Trichirappalli-620 001)

M/s. Eversendai Constructions Pvt. Ltd. .... Appellant
G.K. Industrial Park Pvt. Ltd.
Plot No.B-5, B-6, B-7, B-8 & B-18,
Reddimangudi,
Siruganoor, Lalgudi Taluk,
Trichy.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent
Trichy Commissionerate,
No.1, Williams Road, Cantonment,
Trichirapalli-620 001.

APPEARANCE :

Shri V. Srikanth, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.41168/2025

DATE OF HEARING : 29.05.2025
DATE OF DECISION : 28.10.2025

Per: Shri P. Dinesha

The facts in brief are that the Appellant is engaged in fabrication of structures of different designs classifiable under CETH 7308 90 90. The Appellant entered into a Tripartite Agreement on 21.10.2013 with M/s. Forum Projects Pyt. Ltd., a Kolkata based real estate developer (**FPPL**, for short) and its contractor M/s Larsen & Toubro Ltd. (L&T, for short) an engineering construction enterprise, to fabricate and erect the structures including connection design shop drawing preparation & primer painting as per the specifications as per the specifications/ agreed terms on job work basis. The Appellant had agreed in principal to undertake fabrication & erection used in the construction of High Rise Condominium titled "Atmosphere' at Kolkata, out of the Steel procured by FPPL and L&T and supplied to them on free issue basis. These inputs were received by the Appellant under relevant original copies of duty paying document viz. Bill of Entry and Excise Invoices duly endorsed in favour of the Appellant by the contractor and by FPPL to enable availment of Cenvat credit. In terms of the

Agreement the Appellant has to pay applicable Central Excise duty on the fabricated structures; FPPL / L&T Shall pay @ Rs.73,370/- unit rates per MT for the net weight of duly fabricated structure plus differential Central excise duty i.e. excise duty minus Cenvat credit availed on inputs supplied on free issue basis. On receipt of the said goods the Appellant sought permission through their letter dated 02.04.2014 to avail Cenvat credit of duty on the input steel (to the tune of Rs.1,43,49,807/-) [Rs.1,19,47,096/- duty on imported inputs and Rs.24,02,711/-] duty on indigenous inputs) based on endorsed invoices received by them. The Appellant vide their letter dated 02.04.2014 requested the jurisdictional Assistant Commissioner of Central Excise for allowing them to avail Cenvat credit of duties suffered on both the imported Beams and indigenously procured steel on the strength of the original copy of Bill of Entry duly endorsed by the importer and the original copies of M/s.Jindal Steel & Power Ltd. (JSPL) excise invoices duly endorsed by the buyer. The Assistant Commissioner vide letter dated 01.08.2014 had rejected the request of Appellant, informing that the consignee particulars in the invoices furnished were in the name of M/s. Larsen & Toubro Ltd., Noida, endorsed to M/s.Eversendai Construction

Private Ltd., (Appellant) and that, based on such endorsed invoices Cenvat credit was not admissible as there were no provisions in the relevant Rules. Further, the letter stated that if credit was availed action would be initiated to recover the wrong credit along with interest and penalty. Appellant again submitted a letter dated 02.08.2014 to the jurisdictional ACCE seeking permission to avail cenvat credit on inputs on the strength of endorsed invoices. It appears that there were no response received from the Department and hence feeling aggrieved by the said letter dated 01.08.2014 of the Asst. Commissioner, the Appellant filed an Appeal before Commissioner (Appeals) who *vide* impugned Order-in-Appeal No. 198/2014 dated 17.11.2014 rejected the Appeal of the Assessee on the ground of maintainability of appeal as well as on merit. Hence, the present has been filed by the Appellant/Assessee before this forum.

2. Heard Shri V. Srikanth, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Assistant Commissioner for the Respondent.

3. It is submitted by the Ld. Advocate that the Appeal before the First Appellate Authority is maintainable as the communication letter 01.08.2014 of the Asst. Commissioner denied the benefits of credit available to the Appellant. He placed reliance on Tribunal decision in **CCE Vs Bihar Foundry and Castings Ltd.** – 1992 (62) ELT 216 (Tribunal). He would submit that the said letter having resulted in denying credit, the Appellant is seriously aggrieved by the same and hence, the Appeal was maintainable. The Asst. Commissioner should have then issued SCN and decided the matter on merit. By not deciding the appeal on merit, the Commissioner (Appeals) has deprived the Appellant of an opportunity of getting redressal.

4. On merits of the case, Ld. Advocate submitted that benefit of CENVAT credit is available on the basis of endorsed Bill of Entry and invoices even though the name and address of the consignee was not mentioned in the documents. The First Appellate Authority had relied on the proviso to Rule 9 (2) of CCR 2004, without considering Rule 3 of the said Rules. Rule 3 (1) states that *a*

manufacturer shall be allowed to take CENVAT credit of duty paid on any input or capital goods received in the factory of manufacturer of final product on or after 10.09.2004. Rule 3 is substantive law. Rule 9 is a procedural provision and should be read along with Rule 3 for deciding the dispute raised in the instant Appeal. He also submitted that Department has not raised nay doubt as regards genuineness of the transaction. There is no dispute as to payment of duty on the Bill of Entry and invoices and also on receipt of the goods into the factory. She placed reliance on the following case law and prayed that Appeal may be allowed :

(i) Union of India Vs Marmagoa Steel Ltd. – 2008 (209) ELT 481 (SC);

(ii) Chokkaiyan Karthikeyan & Co. CCE Salem - 2011 (272) ELT 545 and

(iii) Darshan Industries Vs Union of India - 2014 (307) ELT 36 (Guj.)

(iv) Uni Cast Private Ltd. Vs CCE Meerut - 2016 (331) ELT 369 (All.)

(v) **Eupec Welspun Coatings India Vs CCE Vadodara** II - 2009 (235) ELT 347 (Tri.-Ahmd.)

5. Ld. A.R reiterated the findings in the impugned order and prayed that Appeal may be dismissed.

6. It is well settled now, that an Appeal is maintainable even against a Bill of Entry as held by Hon’ble Supreme Court in the case of **ITC Ltd. vs. CCE, Kolkata** reported in AIROLINE 2019 SC 1088, (2019) 12 SCALE 543, AIRONLINE 2019 SC 2692; hence, the Appellant was right in filing Appeal against the letter issued by the Assistant Commissioner, feeling aggrieved. The issue raised by the Appellant was the denial of CENVAT credit which required proper appreciation of facts in the context of verification of supporting documents and hence, throwing the entire case of the appellant in one stroke, that too without affording an opportunity of being heard and without bothering to examine the case of the Appellant on merits and without any discussion is a serious lapse and has indeed resulted in miscarriage of justice.

7. It is a different matter that the Commissioner (Appeals) has gone on merits, which should have ideally done by the Lower Authority; this itself proves that by this, the Appellant was deprived of an opportunity of seeking redressal in the manner known under law. No doubt the Appellant filed its Appeal as it had to and also requested the Commissioner (Appeals) to

remand the matter to the file of Assistant Commissioner, which according to us, is a very reasonable request. The Commissioner (Appeals) should have remanded or at least called for a report on the issue, which apparently has not been done. Strangely, the Commissioner (Appeals) has chosen to dispose of on merits without calling for any report, which only has resulted in perpetuation of miscarriage. The Appellant did not have a chance to know the mind of the Adjudicating Authority on various grounds it urged in its request seeking availment of credit and hence, as submitted by the Ld. Advocate, the Appellant could only raise all possible legal grounds in its appeal before the First Adjudicating Authority.

8. In view of the above, we deem it appropriate to set aside the impugned order which we hereby do; we remit the case back to the file of the Adjudicating Authority who shall hear the Appellant on its request dated 02.04.2014, cause proper verification and then pass a speaking order on merits. He shall invariably afford reasonable opportunities to the Appellant in this regard and adhere to the principles of natural justice.

9. All the contentions are left open and the Appeal stands disposed of on the above terms by way of remand.

(Order pronounced in open court on 28.10.2025)

(M. AJIT KUMAR)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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