CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41993 of 2017

(Arising out of Order-in-Appeal No. 166/2017 dated 12.06.2017 passed by Commissioner of Central Excise (Appeals-I), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai – 625 002)

M/s. TVS Novotema Elastomeric Engineered Products Pvt. Ltd. **...Appellant**
Arittapatti Road,
Narasingampatti,
Madurai – 625 122.

Versus

Commissioner of GST and Central Excise **...Respondent**
Madurai Commissionerate,
Central Revenue Building,
Lal Bahadur Shastri Marg,
Madurai – 625 002.

APPEARANCE:
For the Appellant : Ms. S. Uma Maheswari, Advocate
For the Respondent : Mr. M. Selvakumar, Authorized Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40440 / 2026

DATE OF HEARING : 06.01.2026
DATE OF DECISION : 27.03.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal is directed against the Order-in-Appeal No. 166/2017 dated 12.06.2017 passed by the Commissioner (Appeals), Madurai, whereby the Order-in-Original confirming demand of reversal of CENVAT credit along with interest and penalties was upheld. The appellant, M/s. TVS Novotema Elastomeric Engineered Products Pvt. Ltd., Madurai, is engaged in the manufacture of rubber products such as O-rings, gaskets and rubber sealing components classifiable under Chapter 40 of the Central Excise Tariff Act, 1985. These products are manufactured based on specifications provided by their customers and require customer-specific moulds. The moulds are imported from M/s. Novotema, Italy on payment of applicable customs duties and the appellant availed CENVAT credit of the duties paid thereon treating them as capital goods used in the manufacture of final products.

2. The facts briefly stated are that during audit conducted by the department for the period April 2009 to June 2013, it was noticed that the appellant had raised invoices for sale of moulds to certain customers under Rule 11 of the Central Excise Rules, 2002 and had collected VAT on such invoices. However, the department observed that in several instances the appellant had not reversed the CENVAT credit availed on such moulds at the time of issuing the invoices. According to the department, raising of invoices for sale of moulds amounted to removal of capital goods and therefore the appellant was required to pay an amount equal to the CENVAT credit availed under Rule 3(5) of the CENVAT Credit Rules, 2004. On this basis, a Show Cause Notice dated 06.01.2015 was issued proposing recovery of wrongly availed CENVAT credit amounting to Rs. 21,95,821/- along with interest and penalties under the provisions of the

Central Excise Act, 1944 and the CENVAT Credit Rules, 2004. The adjudicating authority confirmed the demand along with interest and penalties and the Commissioner (Appeals) upheld the said order, against which the present appeal has been filed before this Tribunal.

3. The Ld. Advocate Ms. S. Uma Maheswari appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Mr. M. Selvakumar appeared for the Revenue and defended the impugned Order.

4. The arguments of the Ld. Advocate Ms. S. Uma Maheswari are summarized as below: -

4.1 The entire demand is unsustainable both on facts and in law as the moulds were never physically removed from the factory premises but continued to remain in the factory and were used for manufacturing customer-specific products. Since the moulds remained within the factory and were used in the manufacture of final products, the condition of "removal" contemplated under Rule 3(5) of the CENVAT Credit Rules, 2004 was not satisfied. It was further submitted that the moulds are customized tools designed for specific customers and their cost is amortized over the value of the finished products manufactured using those moulds as reflected in the pricing agreements with customers. The learned counsel contended that raising invoices for recovery of mould cost is merely a commercial arrangement and does not amount to removal of capital goods as the concept of deemed removal is not recognized under Central Excise law.

4.2 In support of the above contention reliance was placed on *J.K. Spinning and Weaving Mills Ltd. v. Union of India – 1987 (32) ELT 234 (SC), Mutual Mecaplast Ltd. v. CCE – 2007 (220) ELT 888 (Tri.),* and *Polyplastics Industries (I) Ltd. v. CCE – 2016 (332) ELT 895 (Tri.-Del.),* affirmed by the Hon'ble Punjab & Haryana High Court, wherein it was held that raising invoices without physical removal of moulds does not amount to removal and therefore reversal of credit under Rule 3(5) is not required when moulds remain within the factory and are used in manufacture of final products. It was further submitted that the issue is revenue neutral and that the extended period of limitation is not invokable as the appellant had regularly filed ER-1 returns and recorded all transactions in their books of account. Reliance was placed on *Tamil Nadu Housing Board v. CCE – 1995 Supp (1) SCC 50* and *CCE v. Dashion Ltd. – 2016 (41) STR 884 (Guj.).* It was finally contended that since the demand itself is unsustainable, the question of interest and penalty does not arise.

5. The Ld. AR appearing for the Revenue reiterated the findings contained in the impugned order and submitted that once invoices were raised for sale of moulds and VAT was collected, the transaction amounted to removal of capital goods and therefore the appellant was required to reverse the CENVAT credit under Rule 3(5) of the CENVAT Credit Rules, 2004.

6. After hearing both sides and perusing the records, the following issues arise for consideration: -

i. Whether raising invoices for sale of moulds without physical movement of moulds amounts to “removal” of capital goods under Rule 3(5) of the CENVAT Credit Rules, 2004.
ii. Whether the appellant is required to reverse the CENVAT credit availed on such moulds.
iii. Whether the extended period of limitation has been correctly invoked.
iv. Whether the demand of interest and imposition of penalties are sustainable.

7. We now proceed to examine the issues seriatim and record our findings as follows.

Issue No. (i) Whether raising invoices for sale of moulds without physical movement of moulds amounts to

"removal" of capital goods under Rule 3(5) of the CENVAT Credit Rules, 2004

8. We observe that the first question that arises for determination is whether the act of raising invoices for sale of moulds, without the moulds being physically removed from the factory premises, can be construed as removal of capital goods so as to attract Rule 3(5) of the CENVAT Credit Rules, 2004. The department has proceeded on the premise that once invoices were issued for sale of moulds and VAT was collected, the transaction must necessarily be treated as removal of capital goods. The appellant on the other hand contends that the moulds continued to remain within the factory and were used for manufacture of final products supplied to the customers and therefore there was no removal in terms of the Central Excise law.

9. We note that Rule 3(5) of the CENVAT Credit Rules, 2004 stipulates that when inputs or capital goods on which CENVAT credit has been taken are removed "as such" from the factory, the manufacturer shall pay an amount equal to the credit availed. The statutory scheme therefore clearly contemplates physical removal of goods from the factory. The rule does not create any deeming fiction whereby mere transfer of ownership or issuance of an invoice would amount to removal of capital goods.

10. We observe that the Hon'ble Supreme Court in *J.K. Spinning and Weaving Mills Ltd. vs Union of India – 1987 (32) ELT 234 (SC)* has explained the concept of removal under Central Excise law. The Apex Court held that excise duty is attracted on manufacture and removal and that removal contemplates physical movement of goods from the place of manufacture. Thus, unless the goods physically move out of the factory premises, the requirement of removal cannot be said to have been satisfied.

11. We further note that a similar issue was examined by the Tribunal in *Mutual Mecaplast Ltd. vs CCE – 2007 (220) ELT 888 (Tri.)* wherein moulds were invoiced to customers but continued to remain within the manufacturer's factory for use in production. The Tribunal held that issuance of an invoice does not by itself amount to removal when the goods continue to remain within the factory and are used in the manufacture of final products.

12. We also take note of the decision of the Tribunal in *Polyplastics Industries (I) Pvt Ltd vs CCE – 2016 (332) ELT 895 (Tri.-Del.)* which was subsequently affirmed by the Hon'ble Punjab & Haryana High Court. In the said decision, the Tribunal observed as follows: -

> *"5. I find from the available records that upon verification of the documents and after visiting of the factory of the appellant, the Chartered Engineer has certified that the*

> *moulds in question are in possession of the appellant and that the said moulds are running in good working condition. The said certificate proves beyond any shadow of doubt that the moulds on which CENVAT credit taken by the appellant had been installed in the factory for use, in or in relation to manufacture of the final product. In view of the fact that the said moulds have not been removed from the factory, the requirements of Rule 3 (5) of the CENVAT Credit Rules will have no application. The said rule provides payment of equal amount of CENVAT credit, when the CENVAT availed inputs or capital goods are removed as such from the factory. Since, moulds, in this case, have not been removed from the factory by the appellant; denial of CENVAT benefit by the authorities below is not justified……."*

13. The above finding of the Tribunal was affirmed by the Hon'ble Punjab & Haryana High Court in *CCE vs Polyplastics Industries (I) Pvt Ltd – 2017 (351) ELT 129 (P&H)* wherein the High Court observed: -

> *"The Tribunal cannot be faulted for having relied upon the certificate issued by the Chartered Engineer. The Tribunal rightly proceeded on the basis of the balance of probabilities and concluded that the moulds had not been removed from the premises."*

14. The Tribunal in *Grupo Antolin India Pvt Ltd vs Commissioner of Central Excise & ST, Ahmedabad-II – 2024 (3) TMI 66 (CESTAT Ahmedabad)* while dealing with an identical issue observed in paragraph 6 of the Final Order as follows: -

> *"From a plain reading of Rule 3(5A)(a), it can be seen that CENVAT credit is to be reversed only if the capital goods on which CENVAT credit has been availed by any assessee, have physically been removed. We find from the entire proceedings that no evidence has been adduced by the department to prove that the tools and moulds which were purchased and used by the appellant have been physically removed from their factory of manufacture and therefore, we are of the view that since the tools and moulds were being used in manufacture of excisable goods it was wrong on the part of the department to ask for the payment of Central Excise duty on such tools and moulds that these are physically available in the appellant's manufacturing premises."*

15. We observe that the moulds in the present case are specialized tools designed for manufacture of specific rubber components for particular customers and remain installed in the factory for the entire production cycle. The appellant has also produced evidence in the form of records and certificates to show that the moulds continued to remain within the factory premises.

16. In view of the statutory provisions and the judicial precedents referred to above, we find that the mere issuance of invoices for recovery of mould cost does not establish removal of moulds from the factory. Central Excise law is concerned with manufacture and removal of goods and not with transfer of ownership for commercial purposes.

17. Accordingly, we hold that raising invoices for sale of moulds without physical movement of the moulds from the factory does not amount to removal of capital goods under Rule 3(5) of the CENVAT Credit Rules, 2004.

ISSUE (ii) Whether the appellant is required to reverse the CENVAT credit availed on such moulds

18. Having held that the moulds were not removed from the factory, the next question that arises is whether the appellant was nevertheless required to reverse the CENVAT

credit availed on such moulds. We note that the moulds were imported by the appellant on payment of customs duty and CENVAT credit of such duties was availed treating them as capital goods used in the manufacture of final products. The eligibility of such moulds as capital goods under Rule 2(a) of the CENVAT Credit Rules has not been disputed.

19. We observe that Rule 3(5) is intended to neutralize credit only when inputs or capital goods are removed as such from the factory without being used in the manufacture of final products. When capital goods remain within the factory and are continuously used in the manufacture of dutiable final products, the credit legitimately taken cannot be denied.

20. We note that the appellant has also submitted that the cost of the moulds was amortised and included in the assessable value of the finished products supplied to customers. Thus, the value of the moulds formed part of the cost of production of the final goods on which excise duty was discharged.

21. In this regard we find support from the decision of the Hon'ble Supreme Court in *CCE vs. Narmada Chematur Pharmaceuticals Ltd – 2005 (179) ELT 276 (SC)* wherein the Court recognized the principle of revenue neutrality and held

that when the duty paid is available as credit to the same assessee, the entire exercise becomes revenue neutral.

22. We also note that the Tribunal in Grupo Antolin India Pvt. Ltd. (*supra*) categorically held that when moulds continue to remain within the factory and are used in the manufacture of final products, reversal of credit is not required merely because invoices were raised for recovery of mould cost.

23. In view of the above legal position, we find that the moulds in the present case continued to remain within the factory and were used in the manufacture of final products and therefore the appellant was not required to reverse the CENVAT credit availed on such moulds.

Issue No. (iii) Whether the extended period of limitation has been correctly invoked

24. We now proceed to examine the question whether the extended period of limitation has been correctly invoked by the department in the present case. We find that the extended period under Section 11A of the Central Excise Act can be invoked only when the non-payment of duty arises due to fraud, suppression of facts, wilful misstatement or collusion with intent to evade payment of duty. We observe that the appellant had been filing statutory returns

regularly and maintaining proper records of the transactions and that the issuance of invoices for mould cost was duly reflected in the books of account. In such circumstances, it cannot be alleged that the appellant suppressed material facts from the department. We further note that the dispute in the present case essentially relates to interpretation of Rule 3(5) of the CENVAT Credit Rules and the meaning of the term "removal", and when the issue is interpretational and the relevant facts are available in statutory records, invocation of the extended period of limitation is not justified.

25. We find support for this view from the judgment of the Hon'ble Supreme Court in *Tamil Nadu Housing Board vs CCE – 1995 Supp (1) SCC 50* wherein the Court held that extended limitation cannot be invoked in cases involving interpretation of law.

26. We also note the decision of the Hon'ble Gujarat High Court in *CCE vs Dashion Ltd. – 2016 (41) STR 884 (Guj.),* where it was held that when the department is aware of the relevant facts and the issue is interpretational, the invocation of extended period of limitation is not justified.

27. We therefore find that the department has not produced any evidence to establish suppression of facts or

intention to evade payment of duty on the part of the appellant. Accordingly, we hold that invocation of the extended period of limitation in the present case is not sustainable.

Issue No. (iv): Whether the demand of interest and imposition of penalties are sustainable

28. We now examine whether the interest and penalties imposed in the impugned order are sustainable. We observe that interest under Section 11AA/11AB of the Central Excise Act is merely consequential to the duty liability. Once the demand of duty itself is held to be unsustainable, the question of recovery of interest does not arise. We further note that penalty under Section 11AC of the Central Excise Act can be imposed only when the duty short payment is attributable to fraud, suppression of facts or wilful misstatement with intent to evade payment of duty. In the present case, the dispute arises out of interpretation of the provisions of the CENVAT Credit Rules and the appellant had acted under a bona fide belief that reversal of credit was not required since the moulds were not physically removed from the factory. The transactions were duly reflected in the statutory records and books of account and therefore the essential ingredients necessary for imposition of penalty are absent and the element of mens rea required for invoking penal provisions cannot be attributed to the appellant.

Accordingly, we hold that the penalties imposed in the impugned order are not sustainable.

29. In view of the foregoing discussion, we hold that raising invoices for recovery of mould cost without physical removal of moulds from the factory does not amount to removal of capital goods under Rule 3(5) of the CENVAT Credit Rules, 2004. Consequently, the appellant was not required to reverse the CENVAT credit availed on such moulds. We further hold that the extended period of limitation has been wrongly invoked and therefore the demand of reversal of CENVAT credit along with interest and penalties cannot be sustained.

30. Accordingly, the impugned Order-in-Appeal No. 166/2017 dated 12.06.2017 is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 27.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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