

**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI.**

PRINCIPAL BENCH, COURT NO. II

**Excise Appeal No.52939 of 2018
along with Miscellaneous Application No.51029 of 2018**

(Arising out of order in appeal No. 279 (SM)CE/JPR/2018 dated 18.06.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur).

M/s Rajasthan Antibiotics Ltd.

A-619 & 630, Road No. 5B
RIICO Industrial Area, Bhiwadi
Rajasthan -301019.

Appellant

VERSUS

**Commissioner of Central Goods and
Service Tax,**

NCR Building, Statue Circle, C-Scheme
Jaipur, Rajasthan.

Respondent

AND

Excise Appeal No.53017 of 2018

(Arising out of order in appeal No. 279 (SM)CE/JPR/2018 dated 18.06.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur).

**Commissioner of Central Goods and
Service Tax, Customs & Central Excise**

A Block, Surya Nagar
Alwar, Rajasthan-301001.

Appellant

VERSUS

Rajasthan Antibiotics Ltd.

A-619 & 630, Road No. 5B
RIICO Industrial Area, Bhiwadi
Rajasthan -301019.

Respondent

APPEARANCE:

Shri G.K. Sarkar and Shri P. Srivastava, Advocates for the assessee.
Shri V.B. Jain, Authorised Representative for the Department.

CORAM:

Hon'ble Shri Anil Choudahry, Member (Judicial)
Hon'ble Shri C. L. Mahar, Member (Technical)

FINAL ORDER NO. 50845-50846/2020

DATE OF HEARING: 10/10/2019

DATE OF DECISION:22.09.2020

ANIL CHOUDHARY:

Both assessee and Revenue are in cross appeal.

M/s. Rajasthan Antibiotics Ltd., inter alia, is engaged in the manufacture of bulk drugs and pharmaceutical products falling under Chapter 29 of the First Schedule of CETA.

2. It appeared to the Preventive Branch of the Central Excise Division, Bhiwadi that the assessee has wrongly availed cenvat credit on the strength of the improper duty paying documents issued by the two dealers viz. i) M/s. Poonam Chemicals, P.O. Tapukara, District- Alwar and ii) M/s. Aditi Chem, Bhiwadi, as the invoices issued by these dealers did not contain essential details of suppliers/ manufacturers i.e. name and address of suppliers/manufacturers' invoice no. and date, item name, quantity and rate of duty, amount of duty. As the invoices of these dealers appeared improper for availing cenvat credit, it appeared to the Department that the cenvat credit has been taken by Rajasthan Antibiotic on such invoices in contravention of the provisions of Rule 11(2) of CER, 2002 read with Rule 9(2) of CCR, 2004. Such credits were taken during the period 2011-2012 to 2013-2014.

3. The statement of Vice President (Finance), Shri Sanjay Mittal was recorded on 26.02.2014, wherein, he admitted the mistake of availing cenvat credit on improper invoices, which do not contain the details such as suppliers' /manufacturers' name, address, CST No. ECC No. TIN No., Invoice No. and date, item name, quantity and rate of duty and further voluntarily deposited Rs.20,60,000/- as part of cenvat credit wrongly availed.

4. Rajasthan Antibiotic vide their letter dated 12.06.2014 submitted an application under Rule 9(2) of CCR, 2014, accepting therein that the invoices issued by the aforementioned two dealers do not contain some of

the particulars, however, name and address of buyer/supplier, central excise registration of the supplier, description of the inputs supplied, tariff heading of inputs supplied, transaction price of inputs supplied, rate of amount of central excise duty passed on have been mentioned in the invoices issued by the two dealers and accordingly, requested for allowing the cenvat credit of these invoices, subject to verification as per the provisions of proviso to Rule 9(2) of CCR 2004.

5. The proviso to Rule 9(2) provides that, if the said invoice or documents do not contain all the particulars but contain the essential details of the excise duty or service tax payable, description of goods or taxable service, assessable value, central excise or service tax registration number of the dealer issuing invoice, as the case may be, name and address of the factory or the premises of first and second stage dealer or provider of output service, the Asstt./Dy. Commissioner, as the case may be, is satisfied that the goods or services covered by the said documents have been received and accounted for in the books of accounts of the receiver, he may allow the cenvat credit.

6. The Dy. Commissioner, passed order-in-original dated 31.07.2015 under Rule 9(2) of CCR and held that Rajasthan Antibiotic are entitled to cenvat credit by observing as follows:-

"In the instant case, I find that the goods in question were cleared from the factory premises of M/s. Rajasthan Antibiotics Limited, A-619 & 630, RIICO Industrial Area, Bhiwadi on payment of duty to the dealers i) M/s.Poonam Chemicals, Near Mittal Dharamkanta, Tapukara, Bhiwadi having Central Excise Registration No.ANYPR0360FED001 & ii) M/s.Aditi Chem,, C-118, Central Market, Bhiwadi having central excise registration no.BLAPS8655RED001, and the dealers have in turn again sold the goods by passing on the cenvat credit to the said manufacturer i.e. M/s.Rajasthan Antibiotics Limited. I also find that Central Excise duty has been paid by the manufacturer and the dealers have passed on the same amount of credit to the manufacturer. On examination of records, it is also observed that the goods in question were also received and accounted for in the books of accounts of the assessee.

Further, ledgers of M/s.Rajasthan Antibiotics Limited, M/s.Poonam Chemicals and M/s.Aditi Chem also show that payment of goods were also made for the goods sold inter-units.

16. Therefore, under proviso to the Rule 9(2) of the Cenvat Credit Rules, 2004, application filed by the assessee appears to be in order and they are entitled to avail cenvat credit on such documents as the assessee has fulfilled all the conditions stipulated in the said rules."

7. In the operative portion of the order, the Dy. Commissioner allowed the cenvat credit of Rs.4,22,49,650/- in respect of invoices issued by M/s. Poonam Chemicals and Rs.4,02,65,242/- in respect of invoices issued by M/s.Aditi Chem.

8. Being aggrieved, Revenue preferred appeal before the Commissioner (Appeals), inter alia, on the ground that the Vice President (Finance), Rajasthan Antibiotics admitted their mistake of availing improper cenvat credit, which was recorded on 26.02.2014. The total cenvat credit availed on the basis of improper duty paying documents and further, there is suppression of material facts with intent to wrongly utilise the cenvat credit. There is clear cut violation of Rule 11(2) of CER read with Rule 9(2) of CCR. As admittedly, the documents on the basis of which credit was taken do not contain several material particulars. Subsequently, the assessee filed application under Rule 9(2) of CCR for allowing the credit and to regularise the same. Further, in the purported proceedings under Rule 9(2) of CCR, statement of Shri Arun Goyal, Asstt. Manager (QA & Micro) was recorded and based on the belatedly recorded statement, the credit of duty has been regularised. Such statement suffers from the vice of afterthought and is not reliable. Another statement dated 12.03.2015 was recorded of Shri Sanjay Mittal, Vice President (Finance), which is also after more than 15 months from the date of visit of the Preventive Team in Feb., 2014, and the order-in-original is not a speaking order. Further, it is urged that there is

violation of Rule 16 of CER 2002, which prescribes that where any goods on which duty has been paid at the time of removal thereof, are brought back to any factory, for being re-made, refined, reconditioned or for other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take cenvat credit of the duty paid, as such goods are received as inputs under CCR and utilised, this credit is in accordance with the Rules. If the process to which the goods are subjected to before being again removed, does not amount to manufacture, the manufacturer shall pay an amount equal to the cenvat credit taken and in any other case, the manufacturer shall pay duty on the goods at the rate applicable, on the date of removal and on the value as per Section 4 or Section 4 A of the Central Excise Act.

9. In the statements of the two officers of Rajasthan Antibiotics, it has been categorically admitted that the finished goods, on which credit has been availed, lose its strength if the same are not used within the span of approximately 15 days. Further, it is an admitted fact that Rajasthan Antibiotics was the original supplier/manufacturer of the goods, but the details of which were missing on the invoices of the dealers, on the strength of which, they have taken credit. The goods were brought to the factory merely for re-processing and thus, the provisions of Rule 16 of CER were *ipso facto* applicable, but the same has not been complied with. This fact and applicable law has not been considered by the Adjudicating Authority. It is further urged that the order-in-original is illegal and bad as the same has been passed without jurisdiction as to the prescribed monetary limit under Section 33 read with Section 11 A of the Act, and the Circular thereunder prescribed monetary limit for the Asstt./Dy. Commissioner to adjudicate the cases involving amount upto Rs.5 lakhs. The instant case involves

disputed credit of Rs.8.25 crores, which was well above the prescribed limit for the Dy. Commissioner of Central Excise.

10. Rajasthan Antibiotics also appeared before the Commissioner (Appeals) and contested the appeal of the Revenue by filing the written submission, as well as cross objection.

11. The Id. Commissioner (Appeals) observed that the Order-in-Original is silent as to what documents were examined to arrive at the findings and conclusions. Thus, it is a non-speaking order. It was further observed that as per Note of the Inspector dated 10.11.2014, which was approved by the Dy. Commissioner, contains certain aspects to be examined. The file does not show whether the mentioned aspects were examined and the result of such examination. The Commissioner (Appeals) observed that the issue needed further examination like, whether the parties involved are related, as regards the shelf life of the goods involved, transaction declared in the records of the dealers and manufacturers. Whether the said goods were sold by the dealers within 15 days after re-processing of the goods or the goods were again sent to the manufacturer for re-processing etc. The Id. Commissioner (Appeals) was pleased to allow appeal of revenue by way of remand observing as follows:-

"5.5 Hence, in view of above, I am inclined to remand back the impugned order to the competent authority, with the directions that the matter may be thoroughly investigated, result of examination of all aspects and relevant records may be taken on record. While doing so the competent authority should also keep in mind the aspects discussed in the review order and so far as possible should complete investigation within two months. Proper action may also be taken as per law in case CENVAT credit is not found admissible. A show cause notice be issued for raising the demand in accordance with the provisions of law, if the need so arises. The limitation clause for raising the demand shall not be applicable in the instant matter, as order under Rule 9(2) of the CENVAT Credit Rules, 2004 was issued which curtailed further investigations on party's request, which

deprived Department in carrying out further investigations.”

12. Being aggrieved, both Revenue and the assessee are in appeal by way of cross appeal before this Tribunal. The comparative grounds are as follows:-

Assessee's Appeal No. E/53017/2018	Department's Appeal No. E/52939/2018
Ground C- No remand power Ground D- Order passed is beyond the scope of power conferred with Commissioner (Appeals) and beyond the scope of appeal filed by Department – Commissioner (Appeals) not empowered to investigate.	Para 15 – No Remand Power Para 16 – Order passed by the Commissioner (Appeals) is beyond mandate of the law – No power to re-investigate the case.
The other grounds taken by the appellant. Ground E- (i) Statement recorded during the proceeding of Rule 9(2) cannot be discarded alleging the same to be belated statements. ii) There is no monetary limit prescribed under rule 9(2) of Cenvat Credit Rules. iii) Rule 16 of Cenvat Credit Rules, 2014 is not applicable to the appellant.	The other grounds taken by the department Para 17 – No power with Commissioner (Appeals) to give waiver of limitation. Para 18 OIO is without jurisdiction as Assistant Commissioner can adjudicate the case having monetary value upto Rs. 5 lakhs. Para 20 – The Assistant Commissioner erred in allowing credit of inputs on the basis of improper documents.

13. Ld. Authorised Representative for Revenue urges the grounds of appeal of the Department. Further, urges that the Commissioner (Appeals) lacks the power to remand and order to re-investigate with direction to issue show cause notice, which are beyond his powers under Section 35 A(3), to re-open investigation and that too, at the belated stage when order-in-original has been passed on 31.07.2015, about 2 years back. It is further urged that the Commissioner (Appeals) has erred by ordering waiver of limitation period along with order for reinvestigation. Further, the Commissioner (Appeals) did not adjudicate upon the ground raised as to monetary limit. The Order-in-Original is evidently beyond the monetary jurisdiction of the Dy. Commissioner. It is further urged that as the cenvat credit stood objected to by the Preventive Team in Feb., 2014 and such

objection was admitted by the assessee, thereafter the same could not be regularised under Rule 9(2) of CCR, without issue of show cause notice by the proper officer. Further, there is failure on the part of the Commissioner (Appeals) to exercise the jurisdiction vested in him under Section 35 A(3), which gives powers of making such further inquiry, as may be necessary, and pass such orders as is just and proper, confirming, modifying or annulling the decision or order appealed against. It is further provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating the goods of greater value or reducing the amount of refund, shall not be passed unless the aggrieved party is given a reasonable opportunity to show cause against the proposed order. Further, where the Commissioner (Appeals) is of the opinion that excise duty has not been levied or short levied, etc. or erroneously refunded, no order requiring the appellant to pay duty etc. shall be passed without opportunity of being heard, after issue of notice within the time limit under Section 11 A of the Act. Thus, the Commissioner (Appeals) can do everything under the sun, which an Assessing authority can do. Thus, the powers of the Commissioner (Appeals) are coterminous with the powers of the Adjudicating Authority. Ld. Authorised Representative also prays for dismissing the appeal of the assessee.

14. Ld. Counsel for the assessee urges that in response to the application of the assessee for regularisation of the credit under Rule 9(2) of CCR, the Adjudicating Authority recorded statement of the concerned persons of assessee as well as the concerned persons of the two dealers, who had issued the invoices. Inquiry was also made from the transporters. Further, the documents like ledger, balance sheet, movement of goods, etc. were also examined and thereafter on being satisfied, the Dy. Commissioner allowed the cenvat credit vide order dated 31.07.2015.

15. It is a settled law that the Commissioner (Appeals) does not have the powers to remand. Further, the Commissioner (Appeals) have no authority to direct for further investigation and to grant extension of limitation. The main bone of contention is whether the jurisdictional Dy. Commissioner had power to regularise the cenvat credit under Rule 9(2) of CCR, being beyond Rs.5 lakhs.

16. It is urged that there is no monetary limit for considering the regularisation of cenvat credit under Rule 9(2) of CCR. What is required is a satisfaction of Asstt./Dy.Commissioner having jurisdiction that the goods covered under the subject invoices have been received and accounted for in the books of accounts of the assessee, and duty has been properly discharged on the goods on which CENVAT Credit has been availed although there may be some discrepancy in the documents. The language of Rule 9(2) of CCR is very clear and unambiguous. Further, instructions /circulars of the Board fixing the monetary limit for adjudication are not applicable in the present case, as admittedly no show cause notice was issued raising demand with proposal to impose penalty.

17. Further, reliance is placed on the ruling of the Hon'ble Supreme Court in the case of **Sri Jeyaram Educational Trust and Others Vs. – 2010 (2) SCC 513**, wherein it has been held that it is now well settled that the provisions of a statute have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provisions should be assessed and ascribed their natural, ordinary or popular meaning. Only when a plain reading of the statute, leads to ambiguity, vagueness, uncertainty or absurdity, which were not obviously intended by the law making body, a court should open its interpretation toolkit containing the settled rules of construction or interpretation to arrive at the true meaning of the provisions.

18. Thus, the proceedings under Rule 9(2) of CCR not being the adjudication proceeding, prescribed monetary limits for adjudication are not applicable. Further, reliance is placed on the ruling of Hon'ble Allahabad High Court in the case of **Mayfair Leather Export (Pvt.) Ltd. Vs. Union of India – 2011 (272) ET 193 (Allahabad)**, wherein, the Customs Department sought to recover 'draw back' from the exporter under Rule 16 (A) of the Draw Back Rules, on the receipt of information from other source. In spite of the fact that Rule 16 (A) as applicable provided for recovery on the receipt of the relevant information from RBI, set aside the recovery by observing – nowhere in the said Rules, it is provided that the Asstt./Dy. Commissioner of Customs can cause notice to be issued on the receipt of the relevant information from any other source or *suo moto*. Thus, there is no scope for reading any restriction on the Asstt./Dy. Commissioner with regard to the monetary limit for regularising /allowing cenvat credit under Rule 9(2).

19. It is further urged that Revenue has nowhere objected to the duty paid nature of the inputs on which the assessee has taken credit. Further, there is no dispute as to receipt of the inputs in the factory of the assessee nor there is any dispute with regard to the payment made towards the said inputs. Thus, the only objection of Revenue is that the invoices on the basis of which the assessee has taken cenvat credit, were not containing all the prescribed particulars as per Section 11 of the CER. It is for such situation that Rule 9(2) of CCR read with proviso, provides a window for examination in detail by the Asstt./Dy. Commissioner and on being satisfied, to allow or reject the credit accordingly.

20. Ld. Counsel also relies on the ruling in the case of **CC, New Delhi Vs. Prodelin India (P) Ltd. – 2006 (202) ELT 13 (SC)** and **Hindustan**

Construction Co. Ltd. – 1997 (89) ELT 123 affirmed by the Hon'ble Supreme Court in the case of **1999 (106) ELT A-67 (SC)**.

21. Ld. Counsel further points out that there has been periodical audits of the assessee particularly in Jan. 2014, prior to visit of the Preventive Officers in Feb., 2014. In Audit Report dated 10.01.2014, IAR No.423 /2013, no objection has been raised with respect to the duty paid inputs received by the assessee. Ld. Counsel further refers to the sample copy of the invoices along with copy of the transportation documents (from appeal paper book) in support of his contention. Further, reliance is placed on the ruling of this Tribunal in the case of **CST, Chennai Vs. Verizon Data Services India Pvt. Ltd. – 2015 (39) STR 522 (Tribunal-Chennai)**, wherein it has been held that procedural requirement for allowing cenvat credit is to be construed more liberally than the condition of an exemption notification. Further, reliance is placed on the ruling of the Apex Court in the case of **Formica India Division Vs. CCE – 1995 (77) ELT 511 (SC)**, wherein it has been held that the benefit of cenvat credit was not deniable to the assessee on the technical ground of non-compliance of procedural requirement of Rule 57A of CER, 1944. Ld. Counsel further urges that filing of application under Rule 9(2) of CCR for regularisation by the assessee, *ipso facto* amounts to non-admission or retraction of their admission before the Preventive Officers as regards availing of irregular credit. Further, documentary evidence has got higher evidentiary value than the oral evidence. As both the oral evidences under Section 14 have been recorded of the same persons on different dates, the argument of Revenue is erroneous that the second statement is not reliable. Ld. Counsel further urges that there is no suppression or fraud or mis-statement on the part of the appellant/assessee in availing the cenvat credit under dispute.

Accordingly, the Id. Counsel prays for allowing the appeal of the assessee and dismissing the appeal of the Revenue.

22. Having considered the rival contentions and having perused the records and the written submission, we find that the Id. Commissioner (Appeals) has failed to exercise the jurisdiction vested in him judiciously as noticed hereinabove. Further, allowing of appeal by way of remand is bad in law. Id. Commissioner (Appeals) was required to make such further inquiry and obtain explanation and details as deemed fit, and should have passed a reasoned order in accordance with law either allowing or dismissing the appeal.

23. For the sake of better appreciation of the facts and issue, we quote Rule 9(2) of Cenvat Credit Rules as under:-

"Rule 9(2) – No cenvat credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said documents:-

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service Tax Registration number of the person issuing the invoice, as the case may be,], name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service] and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of account of the receiver, he may allow the Cenvat Credit.]."

From the plain reading of Rule 9(2) with the proviso, it is evident that legislature has taken into account difficulty that may arise for some discrepancy in the documents on the basis of which, credit has been taken.

To alleviate such difficulty and to facilitate the assessee, power has been conferred on the jurisdictional Deputy/Asstt. Commissioner that he may enquire into documents, etc. and on being satisfied that the goods or services covered by the said documents have been received and accounted for in the books of account of the receiver, he may allow the cenvat credit.

24. We further find from the findings recorded by the Dy. Commissioner, that he has made proper inquiries both oral and documentary and on being satisfied, has allowed the cenvat credit in dispute. We further hold that the Commissioner (Appeals) has got no powers to order for reinvestigation. Further, the Commissioner (Appeals), being a creature of statute, has no powers to extend the limitation prescribed in the Act for issue of show cause notice. We further find that an order allowing to take cenvat credit under the proviso to Rule 9(2) of CCR is not an adjudication order and accordingly, the monetary limit prescribed for an adjudication order is not applicable. Admittedly, there is no cause to issue notice. We further hold that the Commissioner (Appeals) has got no powers to remand in the facts and circumstances. We further find that duty paid nature of the goods/inputs in question has not been doubted. Evidently, there is only a technical objection raised by the Preventive Team. We further find that the Dy. Commissioner, after examining the records and documents, has given a categorical finding that the finished goods in question were cleared from the factory of Rajasthan Antibiotics Ltd. on payment of duty to the two dealers viz. Poonam Chemicals and Aditi Chem, who are both registered under the provisions of Central Excise. Thereafter, as the goods have a short shelf life of about 15 days, being bulk drugs, such goods were again sold back to the manufacturer –Rajasthan Antibiotics for reprocessing (as inputs). The Dy. Commissioner has also recorded the finding that central excise duty has

been paid by the appellant- assessee as manufacturer and the same goods have been received back as inputs, under the invoices of the dealers.

25. Further, Rule 16 (1) of Central Excise Rules provides that where any goods on which duty has been paid at the time of removal thereof, or brought to any factory for being re-made, refined, reconditioned, etc., the assessee shall state the particulars of such Rule in his records and shall be entitled to take cenvat credit of the duty paid, as such goods are received as inputs under the Cenvat Credit Rules, and utilise this credit, according to the said Rules. Thus, under the facts and circumstances, there is no violation of the provisions of Rule 16 of Central Excise Rules. Further, the position is wholly Revenue neutral as the same amount of duty is available as cenvat credit even if the procedure under Rule 16 of Central Excise Rules is followed. Further, the Dy. Commissioner has found proper entries in the books of accounts and records maintained by the parties. Accordingly, we further hold that there is no error in the order-in-original passed by the Dy. Commissioner allowing cenvat credit to the assessee –Rajasthan Antibiotics.

26. We further find that even in the appeal of the Revenue before the Commissioner (Appeals), there is no allegation that the goods in question have not been received or these were not duty paid. We further find that there is no suppression of facts and adequate disclosure has been made by the assessee.

27. We further place reliance on the ruling of the Hon'ble Supreme Court in the case of **Formica India Division Vs. CCE – 1995 (77) ELT 511 (SC)**, wherein under the facts that **Formica India Division** was engaged in the manufacture of rigid plastic laminates and for such purpose, they procure paper, cotton fabrics and glass fabrics as input and treated them with synthetic resin. Thereafter, layers of such treated paper/cotton fabrics, glass sheets are compressed under the heat to form rigid plastic laminates.

Revenue had raised objection that the appellant did not pay duty on the intermediate products viz. Treated paper and treated cotton fabrics, which were dutiable under the CETA. Since these treated papers and cotton fabrics were consumed captively for manufacture of rigid plastic laminates, no duty has been paid on the intermediate products but duty was paid on the final products. Further, taking notice that under Notification No.71/71-CE, the assessee is entitled to a set off of the duty paid on the intermediate products from the final products, it was held that the benefit of the said notification cannot be denied on the technical ground of non-compliance with Rule 56A procedure when the assessee contested the correctness of the classification and dutiability of the intermediate products, observing that the assessee could not have ordinarily complied with the procedure under Rule 56A (Proforma GATI Procedure).

28. Accordingly, we set aside the order-in-appeal and restore the order-in-original. Appeal No. E/ 53017 of 2018 of Revenue is dismissed and the appeal by the assessee – Rajasthan Antibiotics Ltd. numbering E/52939 of 2018 is allowed. The Misc. Application filed by the assessee also stands disposed of. The ground of limitation is left open.

[Pronounced on 22.09.2020].

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)