

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

PRINCIPAL BENCH COURT NO.IV

Excise Appeal No. 52917 / 2019

[Arising out of Order-in-Appeal No. 264 (CRM) CE//JPR/19 dated 20.9.2019 passed by the Commissioner (Appeals) Central Excise & Central Goods and Service Tax, Jaipur]

**SUNBEAM LIGHT WEIGHING SOLUTIONS
PVT. LTD**

APPELLANT

Vs.

**COMMISSIONER OF CENTRAL EXCISE,
CENTRAL GOODS AND SERVICE TAX, ALWAR**
New Central Revenue Building, Statue Circle
'C' Scheme, Jaipur 302 005.

RESPONDENT

WITH

Excise Appeal No. 50928 / 2020

[Arising out of Order-in-Appeal No. 33 (SM) CE//JPR/2020 dated 15.5.2020 passed by the Commissioner (Appeals) Central Excise & Central Goods and Service Tax, Jaipur]

**SUNBEAM LIGHT WEIGHING SOLUTIONS
PVT. LTD**

APPELLANT

Vs.

**COMMISSIONER OF CENTRAL EXCISE,
CENTRAL GOODS AND SERVICE TAX, ALWAR**
New Central Revenue Building, Statue Circle
'C' Scheme, Jaipur 302 005.

RESPONDENT

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant
Shri Yashvir Singh, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

**DATE OF HEARING: June 29, 2021
DATE OF DECISION: 03.08. 2021**

FINAL ORDER No. 51696-51697 /2021**PER RACHNA GUPTA**

This is a order disposing of two appeals arising out of common Order in Appeal bearing No. 264/ 2019 dated 20.9.2019. The said order has been assailed vide the impugned appeal. The factual matrix in brief is as follows:

The appellant is engaged in manufacture of motor vehicles part for two wheelers and four wheelers. During the course of audit of its records, it was observed by the Department that the appellant had exported their finished goods to clients situated in various countries through ICD Patli, Gurgaon, Haryana where 'Let export' order were given. Department formed an opinion that the appellant has wrongly availed the Cenvat Credit of service tax amounting to Rs.1680450/- pertaining to 'let export' services i.e. rail freight BL charges, destination delivery charges, detention charges etc. The appellant was alleged to have wrongly availed the inputs cenvat credit pertaining to Rs.27,803/- with respect to WCT services, rent a cab service and credit of service tax on penalty and construction services during the period August 2015 to August 2016. Accordingly, a show cause notice bearing No. 3026 dated 21.7.2017 was served upon the appellant proposing reversal of said credit along with interest and imposition of penalty at the appropriate rate. Said proposal was confirmed vide Order-in - Original No. 78/EX/BHD-D/18-19 dated 18.1.2019. The appeal thereof has been rejected by order under challenge.

2. Being aggrieved the appellant is before this Tribunal.
3. I have heard Shri Aalok Arora, learned Counsel appearing for the appellant and Shri Yashvir Singh, learned Authorized Representative appearing for the Revenue.
4. It is submitted on behalf of the appellant that the appellant had already reversed the Cenvat Credit of input service as was demanded by the impugned show cause notice against the

intimation to the Department by their letter dated 28.11.16. It is submitted that since the amount was reversed even before issuance of show cause notice, penalty has wrongly been imposed upon the appellant. Infact the extended period of limitation was not invokable as there is no suppression of facts that too with intent to evade payment of duty. The appellants were otherwise not required to intimate the particulars of input service on which Cenvat Credit is being availed. The findings are, therefore, prayed to be set aside. Both the appeals are prayed to be allowed.

5. Learned Authorized Representative while rebutting the arguments, has relied upon paragraph 7 of the order under challenge in these appeals wherein the Commissioner (Appeals) has given the sufficient reason to hold suppression against the appellant. Justifying the said findings, learned Authorized Representative has requested that the impugned appeals be dismissed

6. Keeping in view the rival contentions of the parties and perusing the entire record, I observe and hold as follows:

Since the reversal of Cenvat Credit has not been disputed, the amount rather stand deposited with the department much before initiation of present proceedings, the only issue to be adjudicated is as to whether the department has rightly invoked the extended period of five years, while making the demand for the period September, 2013 to August, 2016 vide Show cause notice dated 21.7.2017.

As per section 11A of Central Excise Act as was applicable at the time of issue of impugned show cause notice, the notice would have been served within 2 years of noticing of short comings on the part of assessee. However sub section 4 thereof extend the said period to that of five years in case it is observed that duty has not been paid or short paid or erroneously refunded by reason of fraud collusion or wilful mis-statement or suppression of facts or

contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty.

7. Reverting to the facts of the present case, apparently and admittedly there was no disclosure on the part of appellant to the Department informing the availment of CENVAT Credit post let export order. The information was given only after it was demanded by the Department post audit of the appellant records. No doubt there is no provision in the CENVAT Credit Rules for disclosing the particulars of import service on which CENVAT Credit is availed by the manufacturer nor there is any column in ER / ERI /ST 3 return to indicate various input service in respect of which CENVAT Credit is taken but since system is based on self assessment scheme, the particular opportunity as prescribed Performa of return to be filed by the assessee. Accordingly, I do not find any infirmity in the findings of Commissioner (Appeals) that being a private limited company engaged in the manufacture / export of motor vehicle parts and availed CENVAT Credit since long is supposed to have knowledge of law and procedure laid down with regard to availment of CENVAT Credit, ignorance of law otherwise is not a defense available. I, therefore, endorse the findings of the Commissioner (Appeals) in the event of self assessment, it is not expected that assessee should not avail such irregular credit as are not permissible by law and in case of bonafide wrong availment, the same should have been reversed on their own. In the present case, the said suo moto reversal is apparently and admittedly not the fact. Reversal has been made only after it was pointed out by the Department. I do not find any reason for holding the silence of the appellant till he was asked to be a positive act on his part. Thus I hereby hold that the appellant wrongly took the CENVAT Credit on the services which were not eligible import service. Over and above, there is apparent admission of the appellant that the credit availed has been wrong. Such case is definitively a case of suppression of facts that too with intention to evade payment of duty.

8. I draw my support from the decision of Hon'ble High Court of Allahabad in the case of **Touraids (I) Travel Service** reported in **[2014 (35) STR 234 (All)]** as has earlier been relied upon by the Commissioner (Appeals). In view of this finding, I don't find any infirmity in the order under challenge where the penalty for the period April, 2013 to August, 2016 has been imposed upon the appellant. The order is accordingly is upheld. Consequent thereto both the appeals stand dismissed.

(Pronounced in the open Court on 03.08. 2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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