CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.51200 of 2019 (SM)

[Arising out of Order-in-Appeal No.95 & 96 (CRM)CE/JDR/2019 dated 29.01.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s.Bhansali Engineering Polymers Ltd. **Appellant**
SP-138-143, Ambaji Industrial Area,
Abu Road,
Rajasthan.

VERSUS

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
Jodhpur-I.

WITH

Excise Appeal No.51201 OF 2019 (SM)

[Arising out of Order-in-Appeal No.95 & 96 (CRM)CE/JDR/2019 dated 29.01.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s.Bhansali Engineering Polymers Ltd. **Appellant**
SP-138-143, Ambaji Industrial Area,
Abu Road,
Rajasthan.

VERSUS

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
Jodhpur-I.

AND

Excise Appeal No.51207 OF 2019 (SM)

[Arising out of Order-in-Appeal No.88 (CRM)CE/JDR/2019 dated 24.01.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s.Bhansali Engineering Polymers Ltd. **Appellant**
SP-138-143, Ambaji Industrial Area,
Abu Road,
Rajasthan.

VERSUS

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
Jodhpur-I.

APPEARANCE:

Shri Pradeep Jain, Chartered Accountant for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOS.51815-51817/2021

DATE OF HEARING/DECISION:06.09.2021

ANIL CHOUDHARY:

All these three appeals relate to rejection of refund claim for unutilised cenvat credit under Rule 5 of CCR read with Notification No.27/2012-CE (NT). The refund claims were filed prior to 30.07.2017, which were rejected by the Adjudicating Authority vide different orders-in-original. Thereafter, the appellant preferred appeals before the ld. Commissioner (Appeals), which were rejected by the orders-in-appeal passed in the year 2018, as is evident from the Chart below;-

Chart

Refund Claim (Rs.)	Filed on	Rejected Vide OIO No.	Rejected by Commissioner (Appeals) vide OIA No.	Ground of rejection
3,30,690/-	31.03.2010	267/2014-R dated 28.10.2014	28-31(CKJ)CE/UDR/2018 dated 31.01.2018	Time barred.
21,78,919/-	30.09.2012	127/2014-R dated 28.04.2014	163(CRM)CE/JPR/17-18 dated 21.03.2018	
18,01,287/-	31.12.2010	02/2014-R dated 12.12.2014	163(CRM)CE/JPR/17-18 dated 21.03.2018	

2. The appellant instead of filing further appeals before the Tribunal, under some erroneous advice, took re-credit of the rejected amount of refund and thereafter, again filed the refund claims before the Adjudicating Authority, which were again rejected. Being aggrieved, the appellant preferred appeals before the Commissioner (Appeals), who vide common impugned order dated 29.02.2019, held that once the appeals were rejected by the Commissioner (Appeals), though the appellant may be entitled to take re-credit under the repealed provisions of Notification No.27/2012-CE, he is not entitled again to claim the refund amount, as the same has lapsed under the first Proviso to Section 142(3) of the CGST Act, 2017.

3. Heard the parties.

4. Having considered the rival contentions, I find that the provisions of Section 142(3) First Proviso read with Section 142(6)(a) along with the proviso clearly provides that the existing pending claims of an assessee under the repealed Central Excise Act or Service Act provisions shall be decided in accordance with erstwhile Act, and it further provides that if any claim of refund is rejected, the same shall lapse. I also find that the present appeals are also bad under the principles of *res judicata,* as the same issue of refund attained finality on passing of the order by the Commissioner (Appeals) in the year 2018 as the appellant chose not to file any further appeal before the higher forum. I further hold that the subordinate legislation is effective or in force till the date of Parent Act only. As the Parent Act in this case is repealed w.e.f. 1.7.2017, when the CGST provisions, came into force. Accordingly, the appellant have erred in law taking re-credit of the rejected refund amount in the year 2018 and thereafter they have again filed claim for the rejected amount of refund.

5. In view of my observations and findings, I hold that there is no merit in these appeals and they are rejected. Thus, the appeals are dismissed.

[Order dictated and pronounced in open court]

(**ANIL CHOUDHARY)**
MEMBER (JUDICIAL)

Ckp.