

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II
Excise Appeal No. 50575 of 2022 (SM)

(Arising out of Order-in-Appeal No. RPR-EXCUS-000-APPL-053-21-22 dated 06.09.2021 passed by the Commissioner (Appeals) of CGST, Raipur.)

M/s Jaisawal Neco Industries Ltd

Appellant

(Steel Plant Division), Siltara Growth Centre, Siltara,
Raipur (C.G.)

VERSUS

**Principal Commissioner of Central Tax &
Central Excise, Raipur**

Respondent

GST Bhawan, Dhamtari Road,
Tikrapara, Raipur-492001.

APPEARANCE:

Mr. Hemant Bajaj & Ms. Sukriti Das, Advocates for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51097 / 2022

Date of Hearing: 02.06.2022

Date of Decision: 22.11.2022

ANIL CHOUDHARY:

The issue involved in this appeal is whether the provisions of Rule 3(5)(B) of CCR, 2004 are attracted in case of making a general provision in the books of account for slow moving/non moving inventory, without reducing the value of such inventory.

2. The Appellant is engaged inter alia in the manufacture of pig iron, iron ore pellet, sponge iron, M.S. Billets, Alloy Steel Billets, M.S. Rolled Products, etc. falling under the First Schedule to the Central Excise Tariff Act, 1985, and also availing Cenvat credit on various inputs, capital goods and input services in terms of the provisions of the Cenvat Credit Rules, 2004 (Credit Rules).

3. The Appellant had made provision in the books of account in respect of slow moving/ non-moving inventory, as a managerial tool for maintaining lowest possible inventory stock. The aforesaid entry or provision in the books of account, does not change the value of inventory in any manner. This accounting entry was made as per the established accounting principles. The said exercise is carried out annually and whenever this exercise is carried out, the provision on spares lying as per the provision made in last year (opening balance) is adjusted from the provision to be made in the current year and accordingly, the provision is made for the balance amount.

4. Pursuant to audit for the period 2014-15 up to June 2017, it appeared to revenue that the appellant have created a provision for non/slow moving inventory amounting to Rs. 2,94,05,889/-. However, they have not reversed an amount calculated at Rs. 36,67,466/- towards Cenvat credit availed in respect of the value of such provision, in terms of Rule 3(5)(B) of the CCR. The appellant by their letter dated 23/10/2018 express their disagreement with audit objection stating that mere creation of provision for slow moving/non moving inventory in the books of account, in compliance with the accounting standards cannot be construed as a provision for writing off the inventory. Such slow moving/non moving inventory were not obsolete, were still of use and hence, not reduced of from the inventory. The same have only been shown at net realisable value, as per requirement of accounting standard Ind AS-2. Under such facts and circumstances, no reversal of Cenvat credit is called for. Revenue issued SCN dated 28/08/2019 to demand reversal of Cenvat credit Rs. 36,67,466/- alongwith interest and further penalty was proposed invoking the extended period of

limitation with further proposal to impose penalty under Rule 15. The appellant contested the SCN *inter alia* on the grounds that the SCN have wrongly assumed that value of inventory have been written down or off from the books of account. Actually, there is no removal of any inventory and only the value has been written down in the books of account. Further such inventory is still in usable condition. Further, the records reflect the slow moving inventory at its appropriate value as per the accounting standard, rather than the original cost. Further, such inventory still exists in the books of account at the original value only. While creating the provision, a liability has been created in the books of account to reduce the value of such slow moving goods. Appellant also enclosed certificate issued by the statutory auditor explaining the accounting standard adopted, clarifying that the inventory is being carried at the original cost and only provision have been created as required under the accounting standard, it was also urged that there is neither loss of such goods nor reduction in original cost and such goods are available in the factory in usable condition. As per Accounting Standard AS-2, inventories are required to be valued at lower of cost or net realisable value. It was further urged that appellant has been creating such provision in the books right from the financial year 2005-06, and never any objection raised, required reversal of Cenvat credit. Further writing down or writing off are very different under the accounting principles. It was further urged that the provision of reversal of Cenvat credit is attracted in case of removal or writing off the inventory, which is admittedly not the case.

5. The SCN was adjudicated *vide* OIO dated 03/11/2020 confirming the proposed demand with interest and equal amount of penalty was imposed.

6. Being aggrieved the appellant preferred appeal before the Commissioner (appeals) who was pleased to partially allowed the appeal by setting aside the demand of Rs. 6,39,265 on the opening balance of Rs. 51,72,050 in the ledger for provision for non/ slow moving inventory for FY 2014-15 and confirmed the balance demand of Rs. 30,28,202. The Ld. Commissioner(Appeals), while confirming the demand held that on perusal of ledger of non-moving inventory for FY 2014-15, Appellant had made provision for non-moving inventory for Rs. 7,35,108 and hence, is liable for reversal of Cenvat credit on this amount. Thus, the demand of Cenvat credit required to be reversed was re-quantified as under:

Year	Amount written off (Rs.)	Credit to be reversed (Rs.)
2014-15	7,35,108	90,860
2015-16	1,80,03,637	22,50,455
2016-17	54,95,094	6,86,887
Total	2,42,33,839	30,28,202

7. Being aggrieved the appellant is in appeal before this Tribunal. Learned Counsel for the appellant urges that the issue is no longer *res integra* and under similar facts and circumstance, this Tribunal have decided the issue in favour of the assessee in the following rulings:

- **Hindustan Zinc Ltd. v. Commissioner, CGST, Udaipur, 2021 (8) TMI 935 - CESTAT NEW DELHI**
- **Hindustan Zinc Ltd. v. Commissioner, CGST, Udaipur, 2021 (10) TMI 482 - CESTAT NEW DELHI**

- **Takata India Pvt. Limited v. CCE, Alwar, 2022 (4) TMI 1359 - CESTAT NEW DELHI**

8. In the afore-cited cases, this Tribunal had categorically held that the provisions of Rule 3(5B) of the Credit Rules are applicable only when the value of the asset and or inventory is written off fully or partially, or wherein any specific provision to write off fully or partially has been made in the books of accounts. It was held *inter alia* that since the assessee has made only a 'general provision', which is not attributable to any particular capital asset/ input, and the Department has not been able to identify the details of inventory or any asset, for which the general provision has been made, demand is not sustainable.

9. It is further urged that Rule 3(5B) is not applicable in the facts of the present case, where admittedly appellant have only written down the value in the books as regards the inventory, whereas the inventory itself neither been written off partially or fully and the same continues to exist at its original value. Further, the demand have been raised on the basis of presumption and assumption, with total disregard to the exact state of affairs, the court below erred in presuming that there is no difference between 'writing down or writing off'.

10. It is further urged that in the facts and circumstances that the appellant have been making such provision since the financial year 2005-06, extended period of limitation is not invokable and accordingly, the show cause notice is bad on this score also. It is admitted fact that there is no case made out of suppression, mis-

declaration or fraud against the appellant. It is further urged that the appeal may be allowed with consequential benefits.

11. Learned AR for revenue relies on the impugned order.

12. Having considered the rival contentions, I find that the appellant have only created a general provision for slow/non-moving inventory and have admittedly not written of the inventory from the inventory or the asset account. In actuality, such provision have been made by appropriation in the profit and loss account, without writing of any amount/value from the asset/inventory account. Rule 3(5B) of CCR is attracted only when the value of the asset and/or inventory is written off fully or partially or wherein any specific provision to write off a fully or partially has been made in the books of account. In the facts of the present case, the appellant have made a general provision, which is not attributable to any particular asset/inventory. Admittedly, revenue have not been able to identify the details of inventory or asset, for which the general provision has been made. It is further evident that the appellant have demonstrated that such provision has been made year to year by way of increasing or reducing the provision, depending on the usage of inventory as required.

13. In view of my findings and observations, I allow this appeal and set aside the impugned order. The ground of limitation raised is left open. Appeal allowed.

(pronounced in open Court on 22.11.2022)

Anil Choudhary
Member(Judicial)