

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

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PRINCIPAL BENCH – COURT NO. 2

**Excise Appeal No. 54899 Of 2023**

[Arising out of Order-in-Appeal No. 09(RLM)CE/JPR/2023 dated 31.01.2023 passed by the Commissioner (Appeals) of Central Excise and Central Goods, Service Tax, Jaipur]

**RHEA INC**

Plot No. B-1125, Phase-III, RIICO  
Industrial Area, Phase-III, Bhiwadi,  
Alwar, Rajasthan

**: Appellant (s)**

Vs

**Commissioner of Central Goods, Service : Respondent (s)**  
**Tax and Central Excise, Alwar, Rajasthan**

A-Block, Surya Nagar, Alwar, Rajasthan

APPEARANCE:

Shri G. G. Gupta, Advocate for the Appellant

Shri Arun Sheoran, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

**FINAL ORDER No. 55478/2024**

Date of Hearing:30.01.2024

Date of Decision:04.04.2024

**DR. RACHNA GUPTA**

The present appeal has been filed to assail Order-in-Appeal bearing No. 09/2023 dated 31.01.2023 vide which the refund claim filed by the appellant has been rejected.

2. The facts giving arise to the present adjudication are as follows:-

(i) That the appellant are the manufacturer-exporter of the excisable goods, they were issued an EPCG Authorization No. 1309015805 dated 11.09.2009 by DGFT for import of capital goods

without paying customs duty on the condition of exporting goods manufactured out of those imported machines within the stipulated period. However, they were supposed to pay customs duty in case of non-fulfillment of export obligations qua the machinery ported under the terms of said EPCG Authorization.

(ii) The appellant under the said authorization, imported machineries vide Bill of Entry No. 2176023 dated 10.09.2010. The appellant who was supposed to fulfill the export obligation i.e. to export the goods manufactured from these machines has failed to fulfill the said obligation within the period of 8 years as prescribed under Foreign Trade Policy. Due to said failure, they had paid the duties i.e. Basic Customs Duty (BCD of Rs. 4,14,495/- and countervailing duty (CVD) of Rs. 13,36,794/- vide TR6 Challans dated 28.06.2019. The said failure has also been acknowledged vide their letter dated 28.06.2021 under which the appellant has also prayed for the refund of aforesaid amount of duties paid/the Cenvat Credit thereupon.

(iii) The said refund claim dated 28.06.2021 was proposed to be rejected vide show cause notice No. 919 dated 10.08.2021 proposing that as per the provisions of foreign trade policy, since the appellant has failed to fulfill the export obligation he does not appear to be entitled for cenvat credit nor for the input tax credit admissible under the provisions of Cenvat Credit Rules 2004 or CGST Rules, 2017. The said proposal of rejection of refund claim for an amount of Rs. 13,36,794/- was confirmed initially vide Order-in-Original dated 28.09.2021. However, no penalty, as proposed vide the said show cause notice was imposed upon the appellant. Appeal against the said

order has been rejected vide the aforementioned order under challenge. Being aggrieved, the appellant is before this Tribunal.

3. I have heard Shri G. G. Gupta, Advocate and Shri Arun Sheoran, Authorized Representative.

4. Learned Counsel for the appellant has mentioned that the new CGST Act allows a person registered under existing law (Central Excise Act, 1944) to avail input tax credit which was held in stock on the appointed day (01.07.2012) even if he is not in possession of any document evidencing payment of central excise duty. The only requirement is that the assessee should have transferred the said credit in Form GST Tran-I.

5. Learned Counsel has emphasised upon Section 140 of CGST Act, 2017. He has also relied upon the decision of the Tribunal in the case of ***M/s Mithila Drugs Pvt. Ltd. vs. Commissioner, Central Goods, Service Tax, Udaipur vide Final Order Nos. 50157-50159/2022 dated 03.02.2022 and M/s New Age Laminators Pvt. Ltd. vs. Commissioner, Central Excise, Goods and Service Tax, Alwar vide Final Order No.50256-50257/2022 dated 16.03.2022*** vide which the refund claim of CVD and SAD, the cenvat credit thereupon has been granted in favour of the appellant.

6. With respect of limitation, the Learned Counsel has placed reliance on the decision of Hon'ble Supreme Court in Writ Petition No. 3 of 2020 vide order dated 10.01.2022 wherein the period from 15.03.2020 till 28.02.2022 is ordered to have been excluded in computing the period of limitation. With these submissions, Learned Counsel has prayed for setting aside the impugned order and for the appeal to be allowed.

7. While rebutting the submissions, Learned Authorized Representative has mentioned that all these arguments were raised before the Adjudicating Authority below as well. All have duly been dealt with. Impressing upon no infirmity in the order-in-appeal/order under challenge. Learned Authorized Representative has prayed for dismissal of the impugned appeal.

8. Having heard the rival contentions, I observe and hold as follows:-

That the refund claim lying in cenvat credit on CVD and BCD paid by the appellant has been rejected on two counts:-

- (i) Non compliance by the appellant to the export obligation in terms of EPCG License of advance authorization for import of the capital goods by the appellants
- (ii) On the ground of limitation, the refund claim being filed after the expiry of period mentioned in the Section 11B of the existing law (CEA, 1944)

9. With respect to first issue as mentioned above, following are observed to be admitted facts:-

- (i) That the appellant was issued an EPCG Authorization dated 11.09.2009 by DGFT for import of capital goods without paying customs duty on the conditions of exporting the goods manufactured by those capital goods/machines that too within 8 years of the import thereof.
- (ii) That the appellant failed to fulfill the said obligation within the time given as per the provisions of Foreign Trade Policy. Consequent to the said failure, the appellant was

liable to pay BCD and CVD which was forgone at the time of import of machinery/capital goods.

- (iii) That the appellant was not registered under existing law (CEA, 1944)
- (iv) Consequent to the said failure with respect to the imports made in the year, 2010, the appellant paid BCD and CVD totaling for an amount of Rs. 13,36,794 on 28.06.2019 i.e. after the existing law (Central Excise Act, 1944) got reported by CGST Act, 2017.
- (v) The impugned refund claim has been filed under Section 11B of existing law (CEA, 1944) on 28.06.2021

The findings for rejecting the impugned claim on this count which have been upheld by the impugned order are as follows”-

“The Cenvat Credit of the CVD paid is admissible only if the manufacturer is Registered under the Central Excise Act 1944 and paid Central Excise duty on the goods manufactured by them. The claimant was not registered under Central Excise Act, 1944 thus the question of claiming Cenvat Credit under Cenvat Rules, 2004 does not arise, therefore, it can be rightfully concluded that the claimant was not eligible of Cenvat Credit of CVD paid under Cenvat Credit Rules, 2004. Further, the availability of Cenvat paid on inputs despite failure to meet with the export obligation may not hold good here since, firstly, it was a conditional import, and secondly, such import was to be exclusively used as per Foreign Trade Policy. Moreover, such imported inputs cannot be used anywhere else but for export, and hence, claiming input credit upon failure would defeat the very purpose/mandate of the Advance Authorization. Hence, claim as to the benefit of CENVAT just as a normal import which is suffering duty is also unavailable for the very same reasons, also since the rules/procedures/conditions governing normal import compared to the one under Advance Authorization vary because of the nature of import. In brief, the unit can not be rewarded through refund of the duty which was paid by the unit for non compliance of the scheme whose main focus is to promote and where the applicant failed to do the very same thing i.e. export.”

10. From the conjoint reading of above quoted admitted facts and the findings of the Adjudicating Authority below, it is clear that the appellant had not deposited the duty during the existence of the Central Excise Act, 1944. Resultantly, the question of appellant

becoming entitled to cenvat credit under the existing law does not at all arise. Section 140 and 142 of CGST, Act no doubt all the transitional provisions permits for tax or duty or refund of amount credit lying in stock on the appointed day (01.07.2012) however, subject to following two conditions:-

- (i) the assessee should have become eligible for the said credit under existing law
- (ii) the said credit should have been transferred to electronic ledger

Since the duty in the present case has been paid after the said appointed day, the question of impugned credit being available to the appellant under the existing law is absolutely redundant, giving only one inference that on the appointed day, the appellant was not eligible for the cenvat credit as has been prayed to be refunded under the garb of the transitional provisions.

11. With these observations, I have no reason to differ from the findings of this Tribunal in the case of **M/s Servo Packaging Ltd. vs. Commissioner of CGST, Central Excise-Pondicherry, CESTAT Chennai** as decided by **Final Order NO. 40098 of 2020 dated 05.02.2020** as has also been relied upon by the adjudicating Authority. We accordingly conclude that the amount in question since has been paid after introduction of CGST, Act 2017 but for the Bill of Entry of the year 2010 (dated 10.09.2010) on account of failure of compliance with the export obligation under advance authorization license, the cenvat credit of such duty which is paid under the present CGST Law, cannot be made available to the assessee in the light of the transitional provisions of new CGST, Act. More for the reason, the

appellant was not registered under Excise Department. The appellant is not eligible even under Section 172 of the GST Act.

12. Coming to the second ground of rejection i.e. limitation, apparently and admittedly the claim has been filed under Section 11B of the existing law, the period prescribed therein is one year from the relevant date. Present is the case of claiming refund of credit on CVD and BCD paid. The imports in question was of the year 2010, CVD/BCD were paid after 10 years in the year 2019. Therefore, the refund claim has been filed after 2 years for payment of duty in the year, 2021. The refund claim is apparently barred by time. Though the appellant has taken the plea of decision of Hon'ble Supreme Court in the aforementioned *suo-moto* writ petition. But seeing the impugned refund was absolutely online, the benefit of said decision cannot be extended in favour of the appellant.

13. With these discussion, I do not find any infirmity in the findings below. Resultantly, the refund claim is held to have rightly been rejected. The impugned order is sustained. Appeal is accordingly dismissed.

*(Order pronounced in the open Court on 04.04.2024)*

**(RACHNA GUPTA)**  
MEMBER (JUDICIAL)

G.Y.