CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50025 of 2025

[Arising out of Order-in-Appeal No. DDN/EXUS/APPL/MRT/86/2024-25 dated 10.09.2024 passed by the Commissioner of Central Goods & Service Tax (Appeals), Dehradun]

L.G. Balakrishnan and Bros Limited **...Appellant**
Plot No. 16, Sector-9, IIE, Pantnagar,
Distt.- Udham Singh Nagar,
Uttarakhand - 263123

VERSUS

Commissioner of Central Goods and Service Tax, Customs and Central Excise, Dehradun **...Respondent**
2nd and 3rd Floor, Shree Palace,
Nathanpur, Dehradun,
Uttarakhand - 248001

<u>APPEARANCE:</u>
Ms. Sukriti Das and Ms. Aarushi Prabhakar, Advocates
Shri Anuj Kumar Neeraj, Authorized Representative for the Department

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

DATE OF HEARING: 26.11.2025
DATE OF DECISION: 26.11.2025

FINAL ORDER NO. <u>51840/2025</u>

<u>S.K. MOHANTY</u>

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants having their factory at Rudrapur in the state of Uttarakhand, are engaged in the manufacture of sprockets and chains, falling under Chapter 73, 84 and 87 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant had availed the area based exemption, provided under the Notification No. 50/2003-CE dated 10.06.2003 for a period of 10 years from the date of commencement of the commercial production. Since, the

commercial production commenced by the appellant on 29.11.2006, the 10 years period as per the said notification expired on 29.11.2016. Central excise duty paid on the inputs/capital goods and service tax paid on the input services, received in the factory of the appellants were taken as Cenvat credit on 29.11.2016 and the credit particulars were duly reflected in the monthly ER-1 returns filed for the period November/December, 2016. On scrutiny of the records maintained by the appellants, the department had observed that the appellants had availed and utilized the Cenvat credit twice, which is not permissible under Rule 3 read with Rule 4 of the Cenvat Credit Rules, 2004. On the basis of such observation, the department had initiated show cause proceedings against the appellants for recovery of the irregularly availed Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The show cause notice dated 06.03.2020 issued to the appellant was adjudicated vide the Order-in-Original dated 25.08.2023, wherein the learned Assistant Commissioner of Central Goods & Service Tax, Rudrapur had confirmed Cenvat credit demand of Rs.35,81,523/- and an amount of Rs.21,62,526/- paid by the appellants during the course of adjudication was appropriated towards the confirmed demand in the said order. Besides the Order-in-Original had also confirmed the interest demand as per the provisions under Rule 14 of the Rules of 2004 and imposed penalty on the appellants under Section 11AC of the Central Excise Act, 1944. On appeal against the said adjudication order dated 25.08.2023, learned Commissioner (Appeals) vide impugned order dated 10.09.2024 has upheld the Order-in-Original and has considered the amount already reversed

by the appellant and the net demand confirmed in the said order was Rs.14,18,997/-. Feeling aggrieved with the impugned order dated 10.09.2024, the appellants have preferred this appeal before the Tribunal.

3. At the outset, the appellants have contended that the show cause proceedings initiated by the department are barred by limitation of time. In this context, it was submitted that the facts regarding availment of the area based exemption and subsequent taking of the Cenvat credit in the month November/December, 2016 was known to the department way back in November 2016 and thus, the show cause notice should have been issued within the normal period of two years and that since the show cause notice was issued on 06.03.2020, the same is clearly barred by limitation of time. To substantiate the stand that the proceedings are barred by limitation of time, the appellants have relied upon the following judgment delivered by the judicial forums:

(i) National Engineering Industries Ltd. Vs. Commissioner of CGST & Central Excise, Final Order No. 51189/2025 dated 19.08.2025 in Excise Appeal No. 51129 of 2022-CESTAT New Delhi.

(ii) Mahanagar Telephone Nigam Ltd. Vs. UOI, 2023 (73) GSTL 310 (Del.) affirmed by Hon'ble Supreme Court in Union of India Vs. Mahanagar Telephone Nigam Ltd., (2024) 15 Centax 285 (SC).

(iii) Hero MotoCorp Limited (Global Parts Centre) Vs. Commissioner (Appeals), Central Excise and CGST, Jaipur, Final Order No. 55631-55632/2024 dated 25.04.2024 in Excise Appeal No. 51930 of 2019 and Excise Appeal No. 50688 of 2020.

(iv) GD Goenka Private Limited Vs. The Commissioner of Central Goods and Service Tax, Delhi South, Final Order No. 51088/2023 dated 21.08.2023 in Service Tax Appeal No. 51787 of 2022, CESTAT New Delhi.

(v) Sarda Energy and Mineral Ltd. Vs. Commissioner of Central Excise (Appeals), Raipur, Final Order No. 50897/2023 dated 13.07.2023 in Excise Appeal No. 52181 of 2022-CESTAT New Delhi.

(vi) Franke Faber India Private Limited Vs. Commissioner of CGST & Central Excise, Aurangabad Commissionerate, Final Order No. A/85028/2025 dated 09.01.2025 in Excise ROM Application No. 86875 of 2024 in Excise Appeal No. 85030 of 2019.

(vii) Diamond Cements Vs. CCE, Bhopal, Final Order No. 57095/2017 dated 14.09.2017 in Excise Appeal No. E/50014/2017.

(viii) JSW Cement Limited Vs. Commissioner of Central Excise & Service Tax, Raigad, Final Order No. A/85857/2022 dated 09.09.2025 in Excise Appeal No. 85990 of 2019.

(ix) Simplex Castings Ltd. Vs. CCE & ST, Raipur, 2016 (12) TMI 903 – CESTAT New Delhi

3.1 With regard to merits of the case, the appellants have contended that upon completion of the exemption period as per the area based notification, they had properly scrutinized the records and the actual credit on the inputs, capital goods and taxable services were availed by them as Cenvat credit and thus, it was submitted that taking of Cenvat credit by them is in conformity with the Cenvat statute.

4. On examination of the case records, I find that the appellant vide their letter dated 30.11.2016 addressed to the jurisdictional superintendent had informed regarding availment of the area based

exemption and upon completion of the exemption period, they had availed the Cenvat credit and the credit particulars were duly reflected in the monthly ER-1 returns filed by them. Further, subsequent to the said letter dated 30.11.2016, the appellants had also filed another letter on the same date, enclosing therewith the Certificate dated 08.12.2016 issued by B. Varada Rajan, Chartered Accountant, certifying that the Cenvat credit was availed in respect of the inputs and capital goods received by the appellants in their factory premises.

5. Furthermore, the appellants in their letter dated 10.12.2016 had once again informed the jurisdictional Range Superintendent regarding availment of the disputed Cenvat credit by them. On reading of the said letters available in the case file, I find that the fact regarding availment of the benefit under the notification dated 10.06.2003 and taking of Cenvat credit on the disputed goods and services were known to the department in November, 2016. Thus, under such circumstances, the department was required to issue the show cause notice within the normal period of two years from the date of taking of such Cenvat credit. Since the provisions of sub-section (4) of Section 11A of the Central Excise Act, 1944 was invoked for recovery of the adjudged demands, it is incumbent on the department to substantiate their stand that there are in fact involvement of the ingredients i.e. fraud, willful misstatement, collision, etc., on part of the appellants. Since the department had not properly substantiate its case regarding invocation of the extended period of limitation, in my considered view, the show cause proceedings initiated cannot be sustained on the ground of

limitation, inasmuch as issuance of show cause notice within the normal period is the 'rule' and issuance of the same by invoking the extended period of limitation is the 'exception'. Thus, the onus entirely lies with the department to prove that their action is correct in invoking the extended period of limitation, which in the present case, has not been properly substantiated. I find that the issue with regard to limitation for issuance of the show cause notice has adequately been dealt with by judicial forums as per the judgments relied upon by the appellants.

6. In view of the foregoing discussions, I do not find any merits in the impugned order, insofar as, it has upheld confirmation of the adjudged demands on the appellants under the provision of sub-section (4) of Section 11A of the Central Excise Act, 1944. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants on the grounds of limitation.

[Dictated and pronounced in the open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

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