

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50179 of 2024

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-05-2023-24 dated 13.04.2023 passed by the Commissioner of Customs, CGST & Central Excise (Appeals), Indore]

M/s. Kesar Ispat Ltd.

Plot No. 619-621, Sector-III,
Industrial Area, Pithampur,
Dhar, Madhya Pradesh - 454775

...Appellant

VERSUS

**Commissioner of Central Excise & CGST,
Ujjain**

29, Bharatpuri, Administrative Area,
Ujjain, Madhya Pradesh - 456010

...Respondent

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Appellant
Shri V.J. Saharan, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING: 13.04.2026
DATE OF DECISION: **22.06.2026**

FINAL ORDER NO. 51054/2026

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Appeal No. 05-2023-24 dated 13.04.2024. Briefly stated, the audit was conducted of M/s. Kesar Ispat Ltd. from 20.03.2018 to 26.03.2018. It was observed that the appellant was liable to pay duty of Rs.7,20,000/- for the month of June 2017. However, had short paid the same. It was observed that Rs.1,41,749/- with interest of Rs. 3,660/- was paid on 15.08.2017 against the said liability. Remaining Rs.5,78,251/- was paid vide service tax credit register entry No. 193 dated 20.08.2017. Department also observed that the said amount of credit was wrongly availed and utilized as the same was

not available on 30.06.2017. Since it was the clear cut violation of the provisions of Cenvat Credit Rules, 2004 and the duty short paid was recoverable in terms of Rule 8(4) of Central Excise Rules, 2002 that show cause notice was not warranted and the appellant was called upon to deposit the said duty. The appellant instead of complying with the same had filed the appeal against the said letter before Commissioner (Appeals). Being aggrieved, appellant is before this Tribunal.

2. We have heard Ms. Priyanka Goel, learned Advocate for the appellant and Shri V.J. Saharan, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that there was no default in paying the duty for the month of June, 2017. The entire duty of Rs.7,20,000/- was duly paid vis-à-vis the availment of Cenvat credit. It is submitted that the appellant was eligible to avail the credit of Rs.5,78,251/- of the various service tax paid under Reverse Charge Mechanism for the said month. The utilization of such Cenvat credit has wrongly been denied. The department has not even issued the show cause notice but had decided to recover the said short paid amount from the appellant. Thus appellant had no option but to file the appeal before Commissioner (Appeals). The appeal is wrongly rejected as not maintainable.

3.1 While submitting on merits, it is mentioned that the utilization of available Cenvat credit is duly permissible. Hence the duty on

merits has also been wrongly confirmed. With these submissions, appeal is prayed to be allowed.

4. On the other hand, learned Departmental Representative has submitted that the appellant in the present case had declared Central Excise liability of Excise duty of Rs.53,01,319/- in their ER-1 return filed for the month of June 2017 but had discharged liability of Rs.45,81,319/- only and the balance liability of Rs.7,20,000/- remained unpaid. When the duty remains unpaid, in view of the Rule 8(4) of Rules Central Excise Rules, such dues become recoverable under Section 11 of Central Excise Act, 1944. Further, CBIC also in this regard has clarified that such amounts are required to be accounted for and reported as realisable arrears of revenue and action under Section 11 of Central Excise Act, 1944 can be taken without issuance of show cause notice. Since it being arrears of revenue, the department had correctly initiated action for recovery against the appellant. Therefore, the appellant's contention that show cause issued in the matter is not correct and cannot be entertained.

4.1 With respect of debiting the amount Cenvat credit register, it is submitted that the said credit was not available to the appellant on 30.06.2017. Hence the availment is rightly denied. Thus there is no infirmity in the findings of the order under challenge. With these submissions, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, it is observed that the present adjudication is on two fronts:

- (i) Maintainability of appeal before Commissioner (Appeals).
- (ii) The liability of the appellant to pay the service tax, the availment and utilization of Cenvat credit being wrongful.

6. Issue No. 1

6.1 The appeal before Commissioner (Appeals) are maintainable in terms of Section 85 of the Finance Act, 1994. Sub-section (1) thereof reads as follows:

"Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals)"

The bare perusal makes it clear that the provision is absolutely unambiguous to the effect that what is appealable before Commissioner (Appeals) is an order passed by an adjudicating authority subordinate to him. Admittedly, the only order assailed before Commissioner (Appeals) is actually a letter of the Deputy Commissioner proposing the recovery of government dues. The same cannot be called as the order of the subordinate adjudicating, challenging the same before Commissioner (Appeals) is not sustainable. Accordingly, it is held that Commissioner (Appeals) has rightly held the appeal before him to not to be maintainable. The order to that extent is upheld.

7. Issue No. 2

The liability of the appellant for the month of June 2017 was 53,01,319/- and Rs.7,20,000/- is alleged to have not been paid out of the said amount. While paying the said remaining amount

admittedly the appellant had paid only Rs.1,41,749/- and remaining of Rs.5,78,251/- was debited from the Cenvat credit. No doubt the Cenvat Credit Rules, 2004, Rule 3(4) thereof permits that while paying duty of excise or service tax Cenvat credit can be utilized. However, the provisions makes it clear that the same can be utilized only to that extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be. It becomes clear that for the duty of the month of 2017, the credit which was available on 30.06.2017 could only have been utilized. The documents on record shows including appellant's own ST-3 returns that the credit available to the appellant on 30.06.2017 was only Rs.58,939/-. The utilization of Cenvat credit of Rs.5,78,251/- against the available credit of just Rs.58,939/- is not permissible under the aforesaid provision.

7.1 Though the appellant had taken the plea that the credit had to be accumulated as the service tax was to be paid by the appellant under Reverses Charge Mechanism. But Rule 4(7) of Cenvat Credit Rules, 2004 says that the credit of service tax payable by the service recipient shall be allowed only after such service tax is paid. Apparently and admittedly, there is nothing on record to show that the service tax against which the Cenvat credit of Rs.5,78,251/- and above was to accumulate, was already paid by the appellant before 30.06.2017. In absence thereof, the appellant is held to have wrongly availed the Cenvat credit of Rs.5,78,251/- while discharging the service tax liability for the month of June 2017.

7.2 The further plea of the appellant that appellant had applied to carry forward the accumulated credit of Rs.5,78,251/- through TRAN-1 in GST era but the said request was also not considered and that the given circumstances amounts to double taxation. However, I observe that this plea has also been dealt with by Commissioner (Appeals) in Para 10 of the impugned order. It reads as follows:

10. The Appellant on one hand contended before me that they had discharged the Central Excise liability of Ra 5,78,251/- by utilizing the credit of service tax availed after filing of ER-1 returns on 10.07.2017 and on the other hand when I scrutinized whether the Appellant had carry forwarded such credit through TRAN-1 in the GST era, surprisingly I find the Appellant in terms of provisions of Section 140 (5) of CGST Act, 2017 has filed new TRAN-1 on 30.11.2022 claiming credit of Rs.5,79,823/- in respect of input or input services received on or after 01.07.2017. The Appellant in the appeal proceedings before me contended that the said credit had been utilized towards payment of Central Excise duty which had remained unpaid for the month of June 2017 and simultaneously also filed TRAN-1 claiming the erstwhile credit in GST regime. This is nothing but causing loss to government exchequer by not discharging the Central Excise of June 2017 and also claiming credit of the same amount in the GST regime by declaring it as eligible credit. This clearly establishes the willful mis-statement and suppression of facts on the part of the Appellant to cause loss to government exchequer by not discharging the duty and also availing cenvat credit of the same by filing TRAN-1. If the Appellant had clean intent and wishes, they would have discharged the unpaid liabilities of Central Excise duty so declared in their ER-1 returns and then would have filed TRAN-1 by informing the same in the appeal proceedings. Since Appellant failed to submit evidence of payment of Rs. 1,41,749/-, the entire amount of Central Excise duty not paid for the month of June 2017 amounting to Rs.7,20,000/- is recoverable along with interest and penalty under Section 11 of Central Excise Act, 1944. In view of the same the action taken by the Assistant

Commissioner, Division-II Pithampur for recovery is legally correct.

In the light of the apparent and admitted facts on record, I do not find any infirmity in those findings. The findings are accordingly upheld.

As a result of above discussion, both the issues stand decided against the appellant except that the appellant is held at liberty to avail the appropriate remedy vis-à-vis the Cenvat credit which got accumulated later than the period of dispute. Consequently the order under challenge dated 13.04.2024 is hereby upheld and the appeal is dismissed.

[Order pronounced in the open court on **22.06.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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