

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75048 of 2015

(Arising out of Order-in-Original No. 03/Commr./Kol-I/C.Ex./2014-15 dated 29.09.2014 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Lux Industries Limited

: Appellant

PS, Srijan Tech-Park, 10th Floor,
DN-52, Salt Lake, Sector-V,
Kolkata – 700 091

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

WITH

Excise Appeal No. 75091 of 2015

(Arising out of Order-in-Original No. 03/Commr./Kol-I/C.Ex./2014-15 dated 29.09.2014 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Commissioner of Central Excise

: Appellant

Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

VERSUS

M/s. Lux Industries Limited

: Respondent

Lohia Jute Press Premises, 28, B.T. Road, Cossipore,
Kolkata – 700 002

AND

Excise Appeal No. 76076 of 2015

(Arising out of Order-in-Original No. 10/Commr./Kol-I/C.Ex./2015-16 dated 20.08.2015 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Lux Industries Limited

: Appellant

Lohia Jute Press Premises, 28, B.T. Road, Cossipore,
Kolkata – 700 002

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-I Commissionerate,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Rahul Tangri, Advocate
Shri ShovitBetal, Advocate
For the Assessee

Shri Prasenjit Das, Authorized Representative
For the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76739-76741 / 2024

DATE OF HEARING: 23.08.2024

DATE OF DECISION: 29.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

Excise Appeal No. 75048 of 2015 has been filed by M/s. Lux Industries Ltd. (herein after referred as the Appellant-Assessee) against Order-in-Original No. 03/Commr./Kol-I/C.Ex./2014-15 dated 29.09.2014 passed by the Commissioner of Central Excise, Kolkata-I Commissionerate.

1.1. **Excise Appeal No. 75091 of 2015** has been filed by the Revenue against the same Order-in-Original.

1.2. **Excise Appeal No.76076 of 2015** has been filed by the Appellant-Assessee against the Order-in-Original No.10/Commr/Kol-I/C.Ex./2015-16 dated 20.08.2015 passed by the Commissioner of Central Excise, Kolkata - I Commissionerate.

1.3. As the issues involved in all the three appeals are common in nature, they are taken up together for decision, by a common order.

Excise Appeal No. 75048 of 2015 and Excise Appeal No. 75091 of 2015:

2. M/s. Lux Industries Limited are engaged in the business of manufacturing of hosiery goods such as vests, briefs cotts wool falling under CETH 6107. The Appellant-Assessee has got 4 manufacturing units located at different locations. One such manufacturing unit is located at Lohia Jute Press premises 28, BT Road, Cossipore, Kolkata – 700002 having the Central Excise Registration No. AAACL5023BEM003. The proceedings in these appeals is related to the aforesaid registration. The final products manufactured by the Appellant-Assessee were dutiable till 28.02.2013 and were exempted w.e.f. 01.03.2013. As the Appellant-Assessee was having considerable quantity of finished goods and inputs in stock, they were under the process of making inventory of such goods to calculate their liability to reverse the amount equivalent to the CENVAT credit availed on inputs lying in stock as well as inputs used in manufacture of finished goods/semi-finished goods.

2.1. A team of officers from the anti-evasion unit of the Department visited the factory of the Assessee on 07.03.2013 for the purpose of ascertaining the details of finished goods and inputs lying in stock with regard to implementation of Rule 11(3)(ii) of the CENVAT Credit Rules, 2004 (hereinafter referred to as 'CCR').

2.2. Consequent to verification by the officers, a Show Cause Notice bearing No. V (12)74/HQAE/Misc. Inv/Kol-I/2013/Lux/943 dated 27.02.2014 was issued to the Assessee demanding the following: -

Sl. No.	Issue/Allegation	Demand (Rs)
1.	CENVAT credit availed for brand promotion services in relation to exempted final product in contravention of Rule 6(1) of the CCR as well on the ground that invoice was addressed to head office instead of the manufacturing unit	89,61,000/-
2.	CENVAT credit availed on invoices addressed to head office/corp. office of the Assessee and also on some invoices mentioning incorrect address.	26,84,966/-
3.	Demand under Rule 11(3)(ii) of the CCR in respect of inputs (paper board, snow white bleaching powder, yarn) contained in semi-finished goods (work-in-progress) when final product became exempted	6,25,651/-
4.	Demand under Rule 11(3)(ii) of the CCR in respect of inputs contained in final product lying in stock when goods became exempted	31,24,345/-
5.	Demand under Rule 16(2) of the Central Excise Rules, 2002 (hereinafter referred to as "CER") on 2,85,310 pcs of returned goods lying in stock as on 28.02.2013. i.e., the day before the final product became exempted	5,14,168/-
TOTAL		1,59,10,130/-
Interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the CCR on the aforesaid amount and penalty under Rule 15(1) of the CCR was also proposed.		

2.3. Regarding demand under Rule 11(3)(ii) of the CCR and under Rule 16(2) of the CER, the Appellant-Assessee submitted that the Department had calculated the liability incorrectly and the correct liability of the Appellant would be Rs.32,04,919/-. It was further submitted that against such liability the Appellant had already paid Rs. 19,20,801/- and they

are willing to pay the balance amount of Rs. 12,84,118/-.

2.4. The Notice was adjudicated by the Ld. Commissioner vide Order-in-Original No. 03/COMMR/KOL-1/CEX/2014 dated 29.09.2014, wherein he has partially dropped certain demands and confirmed rest of them, the details of which are as follows:

Sl. No.	Demand (Confirmed or Dropped)	Issue/Finding in brief
1.	Rs.89,61,000/- (Entire demand dropped)	Issue - CENVAT credit availed for brand promotion services in relation to exempted final product in contravention of Rule 6(1) of the CCR as well on the ground that invoice was addressed to head office instead of the manufacturing unit. FINDING – In terms of Rule 3(a) r/w Rule 2(e) of the Point of Taxation Rules, 2011 the service of brand promotion is deemed to be provided on the date of issue of invoice i.e., on 25.02.2013 when the final product of the Assessee was not exempted. Further, a person is entitled to avail CENVAT credit of input service on or after the day of receiving the invoice as per Rule 4(7) of the CCR, hence, CENVAT credit has been rightly availed. In respect of the issue regarding mentioning of head office address on the invoices instead of manufacturing unit, it was held that when there is no dispute regarding rendering of services and payment being made, substantial benefit cannot be denied for mere procedural lapse.
2.	Rs.26,84,966/- (Demand of 26,70,004/- dropped and 14,962/- confirmed)	CENVAT credit availed on invoices addressed to head office/corp. office of the Assessee and also on some invoices mentioning incorrect address. FINDING– Demand of

		Rs.26,70,004/- was dropped on the same finding as mentioned above. Demand of Rs.14,962/- was confirmed on the ground that address contained in the invoice is not associated with the Assessee.
3.	Rs.6,25,651/- (Entire demand confirmed)	Demand under Rule 11(3)(ii) of the CCR in respect of inputs (paper board, snow white bleaching powder, yarn) contained in semi-finished goods (work-in-progress) when final product became exempted. FINDING—Inputs/Packing materials on which CENVAT credit was availed was sent to job worker on 28.02.2013, it was not possible to consume such input/packing material before 01.03.2013, therefore, such duty suffered input/packing material would be available in Work-in-Progress
4.	Rs.31,24,345/- (Entire demand confirmed)	Demand under Rule 11(3)(ii) of the CCR in respect of inputs contained in final product lying in stock when goods became exempted. FINDING—Calculation made by the Appellant was incorrect. In respect of closing stock of cott'swool where span yarn has been consumed closing stock was taken as 76,027 pcs only whereas total closing stock was 13,24,033 pcs. Total closing stock as on 28.02.2013 amounted to 96,62,666 pcs. The Appellant paid Rs.19,20,801/- taking into account closing stock of 41,92,970 pcs only, whereas closing stock of 54,69,175 pcs was left out (this pertaining to closing stock of all finished goods including cott'swool relating to all cenvatable inputs except span yarn). The Assessee in its WS dated 03.09.2014 stated that no Cenvatable inputs were used in manufacture 12,48,006 pcs of Cott'swool, so it was excluded. The Assessee changed its stance from time to time, its submissions cannot be accepted being an afterthought.

5.	5,14,168/- (Entire demand confirmed)	Demand under Rule 16(2) of the Central Excise Rules, 2002 on 2,85,310 pcs of returned goods lying in stock as on 28.02.2013. i.e., the day before the final product became exempted. FINDING– The Appellant-Assessee's contention that such quantity of return goods have been included in the total quantity of finished goods as on 01.03.2013 cannot be accepted since finished goods register and returned goods register was maintained separately.
Interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the CCR was levied on the confirmed amount and penalty Rs. 5,00,000/- under Rule 15(1) of the CCR was also imposed.		

2.5. Aggrieved against the confirmation of the above said demands, the Appellant-Assessee has filed this appeal.

2.6. Revenue has filed appeal against dropping of part of the demands in the impugned order, as mentioned above.

Excise Appeal No.76076 of 2015:

3. The proceedings pertaining to this appeal are an outcome of an EA2000 Audit conducted by the Department in the Cossipore unit for the FY 2011-12 and FY 2012-13 (up to February 2013). Based on the aforesaid audit, a Show Cause Notice dated 25.02.2015 was issued to the Appellant and the entire demand proposed in the Show Cause Notice was confirmed vide the impugned order dated 20.08.2015. The demands confirmed in this order are summarized as under:

- CENVAT Credit/Excise Duty including Cess – Rs. 1,85,75,437/- (Initial amount – Rs. 1,97,97,310/- less Rs. 12,21,873/- already reversed) under 11(5) of the Central Excise Act, 1944 (CEA) r/w Rule 14 of the CENVAT Credit Rules, 2004 (CCR);
- Interest – Not quantified on Rs. 1,85,75,437/- and Rs. 1,24,190/- on amount of Rs. 12,21,873/- already reversed under Section 11AA of the CEA r/w Rule 14 of the CCR;
- Penalty – Rs.92,87,721/- under Section 11AC(1)(b) of the CEA read with Rule 15 of the CCR.

3.1. Aggrieved against the confirmation of the above said demands, the Appellant-Assessee has filed this appeal.

4. Regarding the demands in respect of **Excise Appeal Nos. 75048 and 75091 of 2015**, confirmed and dropped in the Order-in-Original No. 03/Commr./Kol-I/C.Ex./2014-15 dated 29.09.2014, the Appellant-Assessee made the following submissions:

4.1. Demand to the extent of Rs. 1,16,31,004/- has been correctly dropped against the Assessee and Demand to the extent of Rs. 14,962/- has been wrongly confirmed.

It is submitted that the demand of CENVAT credit of Rs.89,61,000/- availed on brand promotion services of the brand "Lux" received through 2 IPL franchises namely M/s. Sahara Adventure Sports Ltd. and M/s. KPH Dream Cricket Pvt. Ltd. for the period - FY 2013-2015 was raised on 2 counts:

- the said service had been rendered in relation to exempted final product w.e.f. 01.03.2013 and thus contravened Rule 6(1) of the CCR,
- invoices were addressed to head office instead of manufacturing unit.

4.2. In this regard, the Appellant-Assessee submitted that once CENVAT credit on input services is legally taken and utilized it need not be reversed on final product being exempted subsequently.

4.3. It is submitted that the Order-in-Original has recorded that CENVAT credit of Rs. 89,61,000/- on brand promotion services provided by 2 IPL franchises was availed by the Appellant on 25.02.2013, i.e., before 01.03.2013, when the final product manufactured by the Appellant-Assessee was not exempted. The Appellant-Assessee submitted that Rule 6 of the CCR cannot be invoked in this case to deny CENVAT credit on input service provided and availed before the date when the final product became exempt inasmuch as Rule 6 is applicable only in cases where the assessee is manufacturing both dutiable as well as exempt products; it is not applicable where the input/input service is used in the manufacture of final product, which becomes subsequently exempt. Thus, it is contended that the Department's appeal is liable to be dismissed on this ground alone.

4.4. It is further submitted that Rule 11(3) which was inserted on 01.03.2007 under the CENVAT Credit Rules mandated the manufacturer to pay an amount equivalent to the CENVAT credit taken in respect of inputs received for use in the manufacture

of the final product, which is lying in stock or contained in the final products, if the final products become exempted subsequently. It is submitted that Rule 11(3) is only restricted to inputs and there is no provision which requires paying of an amount in respect of input services; hence, CENVAT credit availed on input services before the final product became exempt cannot be denied to the Appellant.

4.5. In this regard, reliance is placed on *Commissioner of C. Ex., Bangalore-II vs. Tafe Ltd [2011 (268) ELT 49 (Kar.)]*, wherein for the period prior to the insertion of Rule 11(3), the Hon'ble Karnataka High Court relying on *Dai Ichi Karkaria Ltd. [1999 (112) ELT 353 (S.C.)]* held that reversal of credit availed on inputs contained in finished goods is not warranted when the finished goods are exempted subsequently. The Assessee states that though the aforesaid observations were made in the context of inputs prior to insertion of Rule 11(3), it will equally apply to input services as well inasmuch as there was no provision equivalent to Rule 11(3) for input services during the relevant period. It is submitted that SLP against the above ruling was dismissed by the Hon'ble Supreme Court reported as *2015 (320) ELT A185 (S.C.)*.

4.6. Further, it is submitted by the Appellant-Assessee that similar observations have been made by this Tribunal and various High Courts in the below mentioned rulings:

- *Commissioner of C. Ex., Rajkot vs. Ashok Iron and Steel Fabricators [2002 (140) ELT 277 (Tri-LB)]*, SLP dismissed by Supreme Court reported as *2003 (156) ELT A212 (SC)*,

- *Tractor and Farm Equipment Ltd vs. Commr. of C. Ex., Madurai [2015 (320) ELT 357 (Mad.)]*,
- *Commissioner of Cus. & C. Ex., Meerut – I vs. Apco Pharma Ltd [2015 (319) ELT 641 (Uttarakhand)]*,

4.7. CENVAT credit of Rs. 26,84,966/- availed by the Appellant-Assessee was proposed to be denied on the ground that some of the invoices were addressed to head office/corp. office of the Appellant-Assessee and also some invoices mentioned incorrect address. On adjudication, the Id. adjudicating authority has allowed the CENVAT Credit amounting to Rs.26,70,004/- and confirmed the demand of 14,962/- on the ground that address contained in the invoice is not associated with the Appellant-Assessee. The department contended that the Ld. Commissioner has erred in allowing CENVAT Credit of Input Services to the tune of Rs.26,70,004/- without verifying the fact whether those services were actually utilised in the factory in the process of manufacturing or in relation to that. In this regard, the Appellant-Assessee submitted that it is settled position of law that substantive benefit of CENVAT credit cannot be denied for mere procedural lapse of mentioning incorrect/not proper address in the invoice issued by the service provider. It is further submitted that as per proviso to Rule 9(2) of the CCR, address of service recipient is not a mandatory requirement and hence CENVAT credit cannot be denied. In this regard reliance is placed on the following rulings:

- *Commissioner of Central Excise, Bhopal vs. ACC Ltd. [2006 (205) ELT 730 (Tri-Del.)]*
- *Commissioner of Customs & C. Ex., Vapi vs. DNH Spinners [2009 (16) STR 418 (Tri-Ahmd.)]*
- *Mordern Petrofils vs. Commissioner of C. Ex., Vadodara [2010 (20) STR 627 (Tri-Ahmd.)]*
- *EEI Industries Ltd vs. Commissioner of Central Excise, Bhopal [2013 (287) ELT 475 (Tri-Del.)], and*
- *Novozymes South Asia Pvt Ltd vs. Commissioner of C. Ex., Bangalore [2015 (38) STR 204 (Tri-Bang.)]*

4.8. In light of the above, it is submitted that demand to the extent of Rs. 1,16,31,004/- has been correctly dropped against the Assessee and hence the Departmental appeal is liable to be dismissed. Further, the Appellant-Assessee submits that the demand to the extent of Rs. 14,962/- has been wrongly confirmed against the Appellant-Assessee and hence their appeal is liable to be allowed to that extent.

5. Demand of Rs. 6,25,651/- under Rule 11(3)(ii) of the CCR in respect of inputs contained in semi-finished goods (Work-in-progress) cannot be sustained.

5.1. It is submitted that the Order-in-Original has confirmed this demand on the ground that inputs and packing materials were issued to the job worker only on 28.02.2013 and it was not possible for the Appellant-Assessee to consume such large quantity of inputs in a single day; the said finding of issuance of the inputs and packing material to job-worker is beyond the Show Cause Notice, which alleged the

usage of inputs by the Appellant-Assessee itself. Thus, it is their contention that the impugned order is liable to be set aside on this ground alone. It is further contended by the Appellant-Assessee that the impugned order has proceeded merely on an apprehension or a suspicion that the Appellant could not have consumed so much inputs in a single day; this is without any corroborative evidence on the part of the Department; that it is a settled law that suspicion however strong, cannot take place of evidence and thus, the demand is liable to be set aside on this ground also.

5.2. Further, it is submitted that the Appellant-Assessee did not consume such inputs in a single day, but such inputs were consumed in making final goods by the Appellant-Assessee over the month; the Appellant-Assessee merely recorded the fact of such usage of inputs at the end of the month, as per its accounting practice, which is evident from the stock register maintained in RG-23A Part I which forms part of RUD-3 to the Show Cause Notice dated 27.02.2014.

5.3. Further, it is the submission of the Appellant-Assessee that the issue, when looked along with the issue of reversal of credit under Rule 11(3) on inputs contained in finished goods, is revenue neutral inasmuch as upon recording these inputs as consumed in manufacture of final products, the stock of finished goods increased; thus, the Appellant has taken into account CENVAT credit availed on such inputs while calculating the amount to be reversed on inputs which is contained in the stock of finished goods. Accordingly, it is submitted that if this

demand is allowed to be sustained then it would amount to duplication of demand. It is submitted that the Department has not brought any evidence on record to suggest that these inputs are not included in the inputs contained in the finished products on which reversal has been computed in the succeeding ground.

5.4. It is further submitted that the instant issue is revenue neutral in as much as the Department has considered the instant amount as reversal on inputs contained in work-in-progress whereas the Appellant-Assessee has considered such inputs while calculating reversal on inputs contained in the final product lying in stock; if this amount has to be retained as demand in respect of inputs contained in work-in-progress, then this amount has to be deducted from the reversal to be made on inputs contained in final products lying in stock.

5.5. Accordingly, they prayed for setting aside the demand confirmed in the impugned order on this count.

6. Regarding the demand of Rs.31,24,345/- on inputs contained in finished products lying in stock, The Assessee is liable to be pay Rs.32,04,919/-. They have already paid Rs.19,20,801/- and are ready and willing to pay Rs.12,84,118/-more.

The Appellant-Assessee further submitted that the Departmental officers visited their premises on 07.03.2013 in order to ensure compliance of Rule 11(3) of the CCR and the workings' regarding reversal was calculated by the Appellant-Assessee in

presence of the Departmental officers and the Appellant-Assessee had paid Rs. 19,20,801/- at that time; Later on, after the said Show Cause Notice was issued, it was found that the formula adopted by the Appellant-Assessee was not correct and at the time of attending the personal hearing, they had filed a written submission dated 03.09.2014 and made a revised calculation of the amount payable as per Rule 11(3)(ii) of the CCR wherein the liability came to Rs.32,04,919/- They submitted that against such liability, the Appellant-Assessee had already paid Rs. 19,20,801/- and expressed its willingness to pay the balance amount of Rs.12,84,118/-.

6.1. It is submitted that the reason for difference is that:

- a. Earlier incorrect CENVAT credit amount availed on spun yarn and packing material was taken,
- b. Further, the Assessee had calculated the reversal only on the closing stock figure as on 28.02.2013 for FY 2012-13 instead of the closing stock arrived at after taking into account opening stock, manufacture and clearance of final products.
- c. Further, there were a few final products on which spun yarn was used whereas it was not used in respect of others. The previous working did not consider the said aspect.

6.2. It is submitted that initially all these aspects were not taken into consideration and the reversal amount was calculated. The Assessee submits that in any case, as against the Department's demand of

Rs. 31,24,345/-, the Appellant-Assessee has arrived at a higher reversal of Rs.32,04,919/- and hence there is no plausible reason for not accepting the reversal amount determined by the Appellant-Assessee; such working cannot be discarded merely by saying it to be an afterthought.

6.3. Accordingly, the Appellant-Assessee prayed for accepting the revised calculation submitted by them at the time of Personal Hearing and to confirm the demand accordingly.

7. Demand of Rs.5,14,168/- on goods returned and lying in stock is not sustainable, being duplication.

Regarding the demand of Rs.5,14,168/-under Rule 16(2) of the Central Excise Rules, 2002on the goods returned and lying in stock, the Appellant-Assessee submitted that such goods have been already included in the total quantity of closing stock, therefore, no separate reversal is required; the Appellant-Assessee entered such returned goods in their finished goods stock records; however, for the purpose of control, they have recorded the factum of receipt back of cleared goods in a separate register; merely by relying on such recording of these goods in separate register, the Department assumed that the inventory of these products was separately maintained without physically verifying the same or even checking the accounting of finished goods stock.It is stated in this regard that a bare look at the goods return register would reveal that these goods were received back during the period November2011 to June 2012; there would be no

rationale to keep these goods in stock separately up to 28.02.2013; that even during the Department's visit to the factory of the Appellant-Assessee on 07.03.2013, there was no assertion or positive evidence led by the Department that these goods were kept separately. It is submitted that the Order-in-Original completely failed to appreciate the aforesaid contention/submission of the Appellant-Assessee and inasmuch as the said inventory of returned goods was always included/subsumed/kept along with the inventory of finished goods, the demand of credit on such goods amounts to duplication and is liable to be set aside. Accordingly, they prayed for setting aside the demand confirmed in the impugned order on this count.

8. The Appellant-Assessee submitted that Rule 14 of the CCR has been invoked to levy interest on the amount to be recovered under Rule 11(3)(ii) of the CCR. As per Rule 14(2) only if CENVAT credit is taken and wrongly utilized interest can be levied. It is submitted that an amount determined under Rule 11(3)(ii) of the CCR cannot be termed as CENVAT credit taken and wrongly utilized. Hence, Rule 14 cannot be invoked to levy interest while recovering an amount under Rule 11(3) of the CCR. In this regard reliance is placed on *Hamdard (Wakf) Laboratories vs. Commr. of Customs, CE & ST, Ghaziabad* [2021 (11) TMI 299-CESTAT Allahabad]- as affirmed by the Hon'ble Allahabad High Court in 2022 (3) TMI 1523 - Allahabad High Court - as affirmed by the Hon'ble Supreme Court in 2023 (5) TMI 603 - SC, wherein it has been held that an amount required to be reversed under Rule 6(3) cannot be demanded under Rule 14 of the CCR.

8.1. The Appellant-Assessee submitted that penalty under Rule 15 can be imposed only when CENVAT credit taken is wrongly utilized in contravention of any provision of the Central Excise Act or rules made thereunder. It is submitted that while recovering an amount under Rule 11(3)(ii), no penalty can be imposed. In this regard reliance is placed on *Commissioner of Cus., C. Ex. & ST., Hapur vs. Shree Baba Exports [2018 (364) ELT 665 (Tri-All.)]*.

8.2. Accordingly, the Appellant-Assessee submitted that no interest can be levied or penalty imposed in this case and prayed for setting aside the same.

9. Regarding the demands confirmed in **Excise Appeal No. 76076 of 2015**, vide Order-in-Original No.10/Commr/Kol-I/C.Ex./2015-16 dated 20.08.2015, the Appellant-Assessee submitted that the demand of Rs. 1,20,66,182/- has been raised again on the Appellant-Assessee on the ground that the Appellant did not reverse an amount equivalent to the CENVAT credit availed on input (PV Yarn) and lying on stock as on 28.02.2013 i.e., the date just before the date on which the final product manufactured by the Appellant got exempted. It is submitted that vide the Show Cause Notice dated 27.02.2014, demand of Rs. 31,24,345/- was raised by the Department under Rule 11(3)(ii) representing an amount equivalent to CENVAT credit availed by the Appellant-Assessee on inputs contained in final product lying in stock as on date of the exemption; For the purpose of calculating such amount, the Department considered CENVAT credit availed on PY Yarn/Spun Yarn to be Rs. 23,64,695/- i.e., the amount initially arrived at by the Appellant-Assessee. While adjudication of the aforesaid Show Cause

Notice, the Assessee vide its written submission dated 03.09.2014 stated that the correct amount of CENVAT credit availed on PV Yarn/Spun Yarn would be Rs. 1,44,31,147/- instead of Rs. 23,64,695/-, which has been fully consumed during the year and arrived at Rs. 32,04,919/-which is liable to be paid in terms of Rule 11(3)(ii) [viz. credit on inputs contained in finished stock] against the Department's demand of Rs. 31,24,345/-; completely brushing aside the aforesaid revised calculation by the Appellant-Assessee, the demand raised in the Show Cause Notice dated 27.02.2014 was confirmed vide the Order-in-Original dated 29.09.2014. Therefore, the Assessee submitted that the instant demand in the Show Cause Notice has been raised on a total misconception/assumption that Rs. 1,20,66,182/- arrived at by deducting Rs. 23,64,695/- from Rs. 1,44,31,147/-represents the CENVAT credit on PY Yarn/Spun Yarn which are lying on stock as on 28.02.2013; that it was an admitted position in the proceedings under the Show Cause Notice dated 27.09.2014 that no stock of PV Yarn/ Spun Yarn was there as on 28.02.2013 and even during the visit of the Departmental officers no evidence to the contrary was led; this is even corroborated by the stock account of PV Yarn which shows invoice wise receipt and issuance/use of PV Yarn in manufacture of final product for the period April 2012 to February 2013; as evident from the same, the stock of PV Yarn as on 28.03.2013 was zero. It is submitted that Rs. 1,20,66,182/- representing the CENVAT credit on PY Yarn/Spun Yarn has been duly considered by the Appellant while working out reversal of Rs. 32,04,919/- under Rule 11(3)(ii) of the CCR which is the subject matter of Excise Appeal No. 75048 of

2015. It is submitted by the Assessee that if this demand amount is allowed to be sustained, it would amount to duplication of demand.

9.1. It is further submitted that the Department is taking contrary stands in different cases pertaining to the same issue. In Excise Appeal No. 75048 of 2015, the Department is of the view that CENVAT credit on PV Yarn/Spun Yarn is only Rs. 23,64,695/- and the revised calculation with the figure of Rs. 1,44,31,147/- was an afterthought whereas in the instant case, the Department has taken the same very figure as credit of PV Yarn/ Spun Yarn availed during the year and adopted it to work out the credit pertaining to such yarn in stock, by reducing the incorrect figure of Rs. 23,64,695/- therefrom. In light of the aforesaid, the Appellant-Assessee submitted that the instant demand confirmed by invoking the extended period of limitation again cannot be sustained and is liable to be set aside.

9.2. The Appellant-Assessee submitted that entire demand confirmed in the impugned order dated 20.08.2015 is barred by limitation. It is submitted that during the relevant period of time under Section 11A (1) of the CEA demand for not payment/short payment of duty could be raised within a period of 1 year from the relevant date; in the instant case, the period of dispute relates to FY 2011-12 to FY 2012-13 up to February 2013 and the SCN has been issued on 25.02.2015 by invoking extended period of limitation under Section 11A (5) of the CER alleging wilful suppression of facts and mis-declaration. It is submitted that no material/evidence has been adduced by the Department to prove how the

Assessee had wilfully suppressed facts or made any mis-declaration; In absence of any such evidence, raising of demand by invoking of extended period of limitation is not invokable. The records of the Assessee were periodically audited by the Department. Further, they submit that particularly post the amendment brought w.e.f. 01.03.2013, the Departmental officers visited the factory as well to scrutinize all records. It is submitted that the fact of availment of CENVAT credit was duly reflected in the periodical returns (ER-1) filed by the Appellant; thus, suppression of fact with intention to evade the tax has not been established in this case and hence extended period cannot be invoked to confirm the demand. Reliance in this regard is placed on *Pr. Commissioner vs. Himadri Speciality Chemical Ltd. [2022 (66) G.S.T.L. 264 (Cal.)]* wherein it has been held that if availment of credit shown in ER-1 return filed with Department five years extended period of demand cannot be invoked. Further reliance is placed by the Appellant-Assessee on the following rulings:

- *Bordubi Engineering Works vs. Union of India [2016 (42) STR 803 (Gau.)]*
- *Commissioner of C. Ex., Noida vs. Accurate Chemicals Industries [2014 (310) ELT 441], and*
- *Johnson Matthey Chemicals India P. Ltd vs. Comm. of C. Ex., Kanpur [2014 (34) STR 458 (Tri-Del.)]*

9.3. Thus, the Appellant-Assessee submitted that entire demand confirmed vide impugned order dated 20.08.2015 is legally unsustainable on the grounds of being time-barred.

10. The Ld. Authorized Representative appearing for the Revenue reiterated the grounds under which the demands have been confirmed in both the Orders-in-Original. Regarding dropping of the demand of CENVAT Credit of Rs.89,61,000/- in the Order-in-Original dated 29.09.2014, the Revenue has made the following submissions: -

- (a) The Commissioner has overlooked the fact that in the Show Cause Notice dt. 27.02.2014, the credit of CENVAT on Input Service to the tune of Rs. 89,61,000/- was never disputed. The point of dispute was utilisation of the same credit during the period 2013-15 when their product for which such Input Service was utilised, was exempted.
- (b) The Commissioner also overlooked the fact that the agreement between the Assessee and M/s. Sahara Adventure Sports Ltd. was signed during April/ May 2013, but it is seen that the Invoices were all dated 25.02.2013 i.e., prior to the date of agreement. The Commissioner failed to examine/scrutinize the invoices all dt. 25.02.2013 as how those were executed/transacted before agreement.
- (c) The Commissioner has erred in discussing about the applicability/application of "Point of Taxation Rules 2011" when the question of taking credit of the Input Service was never disputed in the Show Cause Notice dt. 27.02.2014 and in the same Show Cause Notice, no reference of the "Point of Taxation Rules 2011" was made.
- (d) The Commissioner failed to appreciate that during the period when their products were exempted, the Assessee could not utilise the

credit on Input Service on such exempted products. Thus, they contended that the has Commissioner erred in not disallowing the credit of Rs. 89,61,000/- .

10.1. Regarding the allowing of CENVAT Credit of input services to the tune of Rs.26,70,004/- by the Id. adjudicating authority vide the Order-in-Original dated 29.09.2014, the Ld. Authorized Representative for the Revenue contended that the Ld. Commissioner has erred in allowing CENVAT Credit of Input Services without verifying the fact whether those services were actually utilised in the process of manufacturing in the factory or not.

10.2. Heard both sides and perused the appeal documents.

11. Personal hearing in this case was held on 30.04.2024. During the course of hearing, the Appellant-Assessee had submitted that the demands in the impugned orders had been confirmed on the basis of wrong calculations given by them. Both the Appellant-Assessee and the Ld. Departmental Representative had agreed to sit together and reconcile the differences in the calculations to arrive at the differential duty, if any. Accordingly, this Tribunal passed the order dated 30.04.2024, with the observation that *"as there is an issue of miscalculation of Cenvat pertaining to inputs, work in progress and closing stock lying in the stock as on 01.03.2013, which is to be ascertained on the basis of books of account of the appellant and relevant records, the adjudicating authority and Appellant are directed to sit together and find out what is the actual amount of reversal and file the report thereof*

within three months from today.” The Appellant-Assessee was also directed to cooperate with the adjudicating authority.

11.1. As directed, the representative of the Appellant-Assessee and the adjudicating authority sat together and reconciled the figures and furnished their report dated 06.08.2024. We have perused the report dated 06.08.2024 submitted by the Department. From the report, we find that the adjudicating authority has reconciled the figures in respect of CENVAT reversal and found that the CENVAT reversal calculated by the Appellant-Assessee was more than the demand raised in the Notice. The difference in the calculation has been narrowed down to only two issues. The relevant part of the report is reproduced below for ready reference:

*“On 18.07.2024, Shri Rahul Tangri and Shri Shovit Betal, both Advocates, appeared for personal hearing on behalf of M/s Lux Industries and submitted that Cenvat Reversal is on account of finished goods lying in stock as on 28/02/2013 and same can be ascertained from calculation as shown in SCN. There are two Cenvatable input, packing material which are used in all finished goods and **spun yarn which are used in cots wool**. Thus, ITC reversal related to packing material shall be in proportion to percentage of Closing Balance of finished goods of all manufactured goods and ITC reversal related to Spun Yarn shall be in proportion to percentage of Closing Balance of Cots wool. Their calculation is more than the demand raised.*

However, two issues remain unanswered (1) whether returned goods have been accounted in their finished goods and (2) whether demand raised for ineligible credit of Rs.1,20,66,182/-is correct or not.”

11.2 We observe that the Id. adjudicating authority has reconciled the figures in respect of Cevat reversal and found that the CENVAT reversal calculated by the Appellant-Assessee was more than the demand raised in the Notice. While reconciling the CENVAT Credit related to inputs contained in the finished goods, the Appellant-Assessee submitted that they have already paid Rs. 19,20,801/- and are ready to pay Rs.12,84,118/- more. As per the report dated 06.08.2024 also, the CENVAT Credit liable to be reversed as worked out jointly was found to be more than the demand made in the Notice and confirmed in the impugned order. Accordingly, we hold that the Appellant-Assessee is liable to pay/reverse CENVAT Credit amounting to Rs.12,84,118/- as worked out by them.

12. The first issue, where there is a difference of opinion between the Appellant-Assessee and the adjudicating authority, is with regard to consumption of inputs involving CENVAT credit amount of Rs.6,25,651/-. In the report, the Department has not allowed this credit on the ground that the CENVAT Credit of Rs.6,25,651/ was issued on 28.02.2013 i.e., on a single day. The contention of the Department is that three invoices were pertaining to February, 2013 itself and one pertaining to January, 2013; these inputs cannot be used in a single day. In the report it has been further alleged that no documentary evidences have been submitted by the Appellant-Assessee indicating that these inputs were not consumed in a single day; as per date of issuance mentioned in RG23A Register, these inputs were issued only on 28.02.2023 which cannot be used in a single day.

12.1. The Appellant-Assessee submitted that the report failed to consider that they merely recorded the fact of usage of inputs at the end of the month, as per the prevailing accounting practice; however, such inputs were consumed in making final goods by them over the month. They have also stated that this is evident from the stock register maintained in RG-23A Part I which forms part of RUD-3 to the Show Cause Notice dated 27.02.2014.

12.2. We find that the allegation of the Department in the report and in the impugned order is merely on the basis of an apprehension or a suspicion that the Assessee could not have consumed so much inputs in a single day. This allegation has been made without any corroborative evidence on the part of the department. It is a settled law that suspicion however strong, cannot take the place of evidence. We observe that the Appellant-Assessee never claimed that all those inputs were consumed in a single day. Their submission is that they were consumed over a period of one month and the entry in the RG-23A Part-I has been made on a single day as per accounting practice. We observe that the Department has not submitted any evidence to the contrary. Accordingly, we hold that there is no substance in the allegation of the Department that all those inputs are consumed in a single day. This is evident from the stock register maintained in RG-23A Part-I which forms part of RUD-3 to the Show Cause Notice dated 27.02.2014. Accordingly, we hold that the CENVAT Credit of Rs.6,25,651/-availed by the Appellant-Assessee cannot be denied on this ground. Thus, we set aside the demand confirmed in the impugned order on this count.

13. The next issue in which there is a difference of opinion in the report dated 06.08.2024 is with respect to returned goods involving CENVAT Credit of Rs.5,14,168/-. This demand has been made under Rule 16(2) of the Central Excise Rules, 2002 as per Annexure D of the said Show Cause Notice. It was alleged that 329270 pieces were despatched by the Appellant-Assessee during 2011-12 and 2012-13, Out of which 285310 pcs were returned. It has been mentioned in the Goods return Register Statement that "duty paid goods were sent to depot but some manufacturing defect was noticed and received back in the factory for reprocessing and stored separately". The impugned order denied the CENVAT Credit of Rs.5,14,168/- as was availed on these goods. It has been alleged that these goods were not included in the closing stock as on 28.02.2013; it is alleged that even during the Department's visit to the factory of the Appellant-Assessee on 07.03.2013, there was no assertion or positive evidence that these goods were kept separately.

13.1. We observe that the Appellant-Assessee entered such returned goods in their finished goods stock records. However, for the purpose of control, they have also recorded the factum of receipt back of cleared goods in a separate register. Merely relying on such recording of these goods in separate register, the Department assumed that the inventory of these products was separately maintained without physically verifying the same or even checking the accounting of finished goods stock. A bare look at the goods return register would have revealed that these goods were received back during the period November 2011 to June 2012. There would be no

rationale to keep these goods in stock separately up to 28.02.2013. Thus, we hold that the demand of reversal of CENVAT credit of Rs.5,14,168/-is not warranted. Accordingly, we set aside the demand confirmed in the impugned order on this count.

14. Regarding the appeal filed by the Revenue against dropping of the demand of CENVAT credit of Rs. 89,61,000/- availed on brand promotion services of the brand "Lux" received through 2 IPL franchises namely M/s. Sahara Adventure Sports Ltd and M/s. KPH Dream Cricket Pvt Ltd for the period FY 2013-2015, we observe that the CENVAT Credit was proposed to be denied in the impugned order on 2 counts:

- the said service had been rendered in relation to exempted final product w.e.f. 01.03.2013 and thus contravened Rule 6(1) of the CCR,
- invoices were addressed to head office instead of manufacturing unit.

14.1. We observe that once CENVAT credit on input services is legally taken and utilized, it need not be reversed on final product being exempted subsequently. In this case, we observe that CENVAT credit of Rs. 89,61,000/- on brand promotion services provided by 2 IPL franchises was availed by the Appellant-Assessee on 25.02.2013, i.e., before 01.03.2013, when the final product manufactured by the Appellant-Assessee was dutiable. Thus, we observe that Rule 6 of the CCR cannot be invoked in this case to deny CENVAT Credit on input service which was rightly taken when the final product was chargeable to duty. It is to be noted that Rule 6 is

applicable only in cases where the assessee is manufacturing both dutiable as well as exempted products. It is not applicable where the input/ input service is used in the manufacture of final product, which is exempted subsequently.

14.2. Further, we observe that Rule 11(3) which was inserted on 01.03.2007 under the CENVAT Credit Rules, mandated the manufacturer to pay an amount equivalent to the CENVAT credit taken in respect of inputs received for use in the manufacture of the final product, which is lying in stock or contained in the final products, if the final products become exempted subsequently. We observe that Rule 11(3) is only restricted to inputs and there is no provision which requires paying of an amount in respect of input services. Hence, we hold that CENVAT credit availed on input services before the final product became exempt cannot be denied to the Appellant.

14.3. In this regard, we rely on the decision in the case of **Commissioner of C. Ex., Bangalore-II vs. Tafe Ltd.[2011 (268) ELT 49 (Kar.)]**, wherein for the period prior to the insertion of Rule 11(3), the Hon'ble Karnataka High Court relying on **Dai Ichi Karkaria Ltd. [1999 (112) ELT 353 (S.C.)]** held that the demand for reversal of credit on inputs contained in finished goods which subsequently become exempt is not warranted:

"9.....Therefore it is clear from the aforesaid judgment of the Apex Court that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. Only if any products are purchased subsequent to the said exemption and if any tax is paid on such

inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, they vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. Therefore the authorities taking advantage of the notification exempting the final product cannot claim reversal of Cenvat credit either in respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products.....
....."

14.4. Though the aforesaid observations were made in the context of inputs prior to insertion of Rule 11(3), we observe that it will be equally applicable to input services as well inasmuch as there was no provision equivalent to Rule 11(3) for input services during the relevant period. We also find that the SLP against the above ruling was dismissed by the Hon'ble Supreme Court as reported in **2015 (320) ELT A185 (S.C.)**. Thus, we hold that the adjudicating authority has rightly dropped the demand for reversal of CENVAT credit of Rs.89,61,000/- on brand promotion services provided by 2 IPL franchises, which was availed by the Appellant-Assessee on 25.02.2013, i.e., prior to 01.03.2013. Thus, we do not find any infirmity in the order passed by the adjudicating authority in dropping the demand. Accordingly, we hold that there is no merit in the Department's appeal on this issue and reject the same.

15.1. Regarding the appeal filed by the Revenue against allowing CENVAT credit to the tune of Rs.26,70,004/-, we observe that there is no dispute regarding receipt and utilization of the inputs or input services by the Appellant-Assessee in the factory. The objections raised by the Department in the Notice are procedural in nature. It is the settled position of law that substantive benefit of CENVAT Credit cannot be denied for mere procedural lapse of mentioning incorrect/not proper address in the invoice issued by the service provider. We also observe that as per proviso to Rule 9(2) of the CCR, address of service recipient is not a mandatory requirement; hence CENVAT credit cannot be denied on this ground. Accordingly, we hold that the Id. adjudicating authority has rightly allowed the credit of Rs.26,70,004/- For the same reason, we hold that the confirmation of demand of Rs.14,962/- in the impugned order is not sustainable. Hence, the Revenue's appeal on this issue is dismissed.

16. Regarding the demands confirmed in Excise Appeal No.76076 of 2015, vide Order-in-Original No.10/Commr/Kol-I/C.Ex./2015-16 dated 20.08.2015, we observe that in addition to some other demands, the demand of Rs. 1,20,66,182/- has been confirmed on the ground that the Appellant-Assessee did not reverse an amount equivalent to the CENVAT credit availed on input (PV Yarn) and lying on stock as on 28.02.2013 i.e., the date just before the date on which the final product manufactured by the Appellant-Assessee got exempted. In this regard, we observe that the Appellant-Assessee and the adjudicating authority has jointly examined the issue and file the report

dated 06.08.2024, wherein the following observation has been made on this demand:

"With regard to another proceedings, it is mentioned that Cenvat Credit of Rs.3,14,61,941/- was availed by the Noticee in 2012-13 on finished stock. Initially, they have informed that Cenvat Credit of Rs.23,64,695/- was availed on P.V. Yarn and rest of them was on Packing Materials. Subsequently, it was found that Cenvat credit of Rs.1,44,31,147/- instead of Rs.23,64,695/- was availed on Yarn and Rs.1,70,30,794/- was availed on Packing Materials. Total Availed credit in 2012-13 remains unchanged."

16.1. The Appellant-Assessee has submitted that the demand of Rs. 1,20,66,182/- has been raised on the Appellant-Assessee on the ground that the Appellant did not reverse an amount equivalent to the CENVAT credit availed on input (PV Yarn) and lying on stock as on 28.02.2013 i.e., the date just before the date on which the final product manufactured by the Assessee got exempted. It is submitted that vide the Show Cause Notice dated 27.02.2014, demand of Rs. 31,24,345/- was raised by the Department under Rule 11(3)(ii), representing an amount equivalent to CENVAT credit availed by the Appellant-Assessee on inputs contained in final product lying in stock as on date of the exemption. For the purpose of calculating such amount, the Department considered CENVAT credit availed on PV Yarn/Spun Yarn to be Rs. 23,64,695/- i.e., the amount initially arrived at by the Appellant-Assessee. While adjudication of the aforesaid Show Cause Notice, the Assessee vide its written submission dated 03.09.2014 stated that the correct amount of CENVAT credit availed on PV Yarn/Spun Yarn would be Rs. 1,44,31,147/- instead of Rs. 23,64,695/-, which has been fully

consumed during the year and arrived at Rs. 32,04,919/- which is liable to be paid in terms of Rule 11(3)(ii) [viz. credit on inputs contained in finished stock] against the Department's demand of Rs. 31,24,345/-. Completely brushing aside the aforesaid revised calculation by the Appellant-Assessee, the demand raised in the Show Cause Notice dated 27.02.2014 was confirmed vide Order-in-Original dated 29.09.2014. It is thus contended by the Assessee that the instant demand in the Show Cause Notice has been raised on a total misconception/assumption that Rs. 1,20,66,182/- arrived at by deducting Rs. 23,64,695/- from Rs. 1,44,31,147/- represents the CENVAT credit on PV Yarn/Spun Yarn which are lying on stock as on 28.02.2013; it was an admitted position in the proceedings under the SCN dated 27.09.2014 that no stock of PV Yarn/ Spun Yarn was there as on 28.02.2013 and even during the visit of the departmental officers no evidence to the contrary was led. The Assessee submitted that this is even corroborated by the stock account of PV Yarn which shows invoice wise receipt and issuance/use of PV Yarn in manufacture of final product for the period April 2012 to February 2013; as evident from the same, the stock of PV Yarn as on 28.03.2013 was zero. It is submitted that Rs. 1,20,66,182/- representing the CENVAT credit on PY Yarn/Spun Yarn has been duly considered by the Appellant-Assessee while working out reversal of Rs. 32,04,919/- under Rule 11(3)(ii) of the CCR which is subject matter of Excise Appeal No. 75048 of 2015. It is submitted by the Assessee that if this demand amount is allowed to be sustained, it would amount to duplication of demand.

16.2. We agree with the above said submission made by the Appellant-Assessee. We find that either in the impugned order or in the report dated 06.08.2024, the adjudicating authority has not given any plausible reason for rejecting the above said submission made by the Appellant-Assessee. Thus, we observe that this demand in the impugned order has been confirmed without adducing any corroborative evidence to substantiate the allegations.

16.3. Further, we observe that the Appellant-Assessee mainly contested this issue on the ground of limitation. We observe that during the relevant period of time under Section 11A (1) of the CEA demand for not payment/short payment of duty could be raised within a period of 1 year from the relevant date. In the instant case, the demand has been confirmed for the period pertaining to FY 2011-12 to FY 2012-13 up to February 2013 and the instant Show Cause Notice has been issued on 25.02.2015 by invoking extended period of limitation under Section 11A (5) of the CER, alleging wilful suppression of facts and mis-declaration. We observe that no material/evidence has been adduced by the Department to prove as to how the Appellant had wilfully suppressed the facts or made any mis-declaration. We observe that the records of the appellant were periodically audited by the department. Further, a team of officers from the anti-evasion unit of the Department visited the factory of the Appellant-Assessee on 07.03.2013 for the purpose of ascertaining the details of finished goods and inputs lying in stock with regard to implementation of Rule 11(3)(ii) of the CENVAT

Credit Rules, 2004. We observe that during the visit on 07.03.2013, the Departmental officers specifically scrutinized the records to verify the details with respect to this issue only. The Show Cause Notice dated 27.02.2013 was issued to the Appellant-Assessee on the same issue, after the visit of the officers. However, another Notice to the Appellant-Assessee was issued on 25.02.2015, by invoking extended period of limitation, which is not permissible in law. We observe that the fact of availment of CENVAT credit was duly reflected in the periodical returns (ER-1) filed by the Appellant-Assessee. Thus, we hold that there is no evidence of suppression of fact with intention to evade the payment of tax established in this case. In absence of any such evidence of suppression of fact, we hold that raising of demand by invoking of extended period of limitation is not sustainable. This view has been held in the case of ***Pr. Commissioner vs. Himadri Speciality Chemical Ltd. [2022 (66) G.S.T.L. 264 (Cal.)]*** wherein it has been held that if availment of credit shown in ER-1 return filed with Department, then five years extended period of demand cannot be invoked. Similar view has been taken in the following cases also:

- *Bordubi Engineering Works vs. Union of India [2016 (42) STR 803 (Gau.)]*
- *Commissioner of C. Ex., Noida vs. Accurate Chemicals Industries [2014 (310) ELT 441], and*
- *Johnson Matthey Chemicals India P. Ltd vs. Comm. of C. Ex., Kanpur [2014 (34) STR 458 (Tri-Del.)]*

16.4. Thus, by relying on the decisions cited above, we hold that the entire demand confirmed vide impugned order dated 20.08.2015 is legally unsustainable on the grounds of limitation.

17. Regarding demand of interest on the payment/reversal of CENVAT Credit made in this case, we observe that Rule 14 of the CCR has been invoked to levy interest on the amount to be recovered under Rule 11(3)(ii) of the CCR. As per Rule 14(2), if CENVAT credit is taken and wrongly utilized, only then can interest be levied. In our opinion, an amount determined under Rule 11(3)(ii) of the CCR cannot be termed as CENVAT credit taken and wrongly utilized. Hence, we hold that Rule 14 cannot be invoked in this case to levy interest while recovering an amount under Rule 11(3) of the CCR.

18. Regarding the penalty imposed on the Appellant-Assessee, we observe that penalty under Rule 15 can be imposed only when CENVAT credit taken is wrongly utilized in contravention of any provision of the Central Excise Act or Rules made thereunder. In this case, we observe that no such violation has been established. Thus, we hold that while recovering an amount under Rule 11(3)(ii), no penalty can be imposed under Rule 15 of the CCR. In support of this view, we place our reliance on the decision in the case of **Commissioner of Cus., C. Ex. & ST., Hapur vs. Shree Baba Exports [2018 (364) ELT 665 (Tri-All.)]**. Relying on the decision cited above, we hold that no penalty imposable in this case and hence we set aside the same.

19. In view of the above discussions, we pass the following order: -

- (i) The Appellant-Assessee is liable to pay duty/ reverse the credit as per the reconciliation done by both the parties together. The Appellant-Assessee is liable to pay/reverse CENVAT Credit amounting to Rs.12,84,118/- as worked out by them. No interest is payable on this payment.
- (ii) The CENVAT Credit amount of Rs.6,25,651/-availed with respect to consumption of inputs, confirmed in the impugned order, is set aside.
- (iii) The demand of reversal of CENVAT Credit of Rs.5,14,168/-, confirmed in the impugned order, is set aside.
- (iv) The dropping the demand of CENVAT credit of Rs.89,61,000/- on brand promotion services provided by 2 IPL franchises, is upheld. Accordingly, the Revenue's appeal on this issue is dismissed.
- (v) We uphold the allowing of CENVAT Credit of Rs.26,70,004/- by the Id. adjudicating authority in the impugned order and set aside the confirmation of demand of Rs.14,962/- in the impugned order. Accordingly, the Revenue's appeal on this issue is dismissed.
- (vi) The entire demand confirmed vide impugned order dated 20.08.2015 is set aside, on the ground of limitation.
- (vii) No interest leviable on the amount paid/CENVAT Credit reversed by the Appellant-Assessee. The penalty imposed on the Appellant-Assessee is set aside.

20. The appeals filed by the Appellant-Assessee are disposed on the above terms. The appeal filed by Revenue is dismissed.

(Order pronounced in the open court on **29.08.2024**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd